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Emergency Adoptions

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

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

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next regular legislative session after its promulgation, or on an earlier date specified by the agency, if not already superseded by a permanent rule or terminated through legislative action as described in 75 O.S., Section 253(H)(2).

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

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

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 535. IMMUNIZATION REGULATIONS

[OAR Docket #20-732]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. Childhood Immunizations [AMENDED]
310:535-1-2 [AMENDED]
310:535-1-3 [AMENDED]

AUTHORITY:

Oklahoma State Commissioner of Health; Title 63 O.S. Section 1-104

ADOPTION:

July 23, 2020

APPROVED BY GOVERNOR:

July 27, 2020

EFFECTIVE:

September 12, 2020

EXPIRATION:

Effective through September 14, 2021, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The proposed amended emergency rules in OAC 310:535-1-2 and OAC 310:535-1-3 are necessary to remove rules that conflict with Title 70 O.S., Section 1210.192, the statutory provision that governs exemptions from school immunizations. OAC 310:535-1-2 and OAC 310:535-1-3 condition the receipt of a personal or religious exemption from school immunizations upon receiving an approved brief instructional presentation provided by any local county health department regarding the risks associated with not being vaccinated and the benefits vaccinations provide to the individual and the community. Title 70 O.S., Section 1210.192 does not impose such a condition. It permits exemptions from school immunizations if a parent, guardian or legal custodian of a child submits either: a certificate of a licensed physician stating that the physical condition of the child is such that immunization would endanger the life or health of the child; or a written statement by the parent, guardian or legal custodian of the child objecting to immunization of the child. The child is then exempt from the immunization laws of Oklahoma. Rescission of the instructional presentation on immunizations as a prerequisite to receiving an exemption from immunizations is necessary to remove the conflicting regulations created by the rules.

GIST/ANALYSIS:

The emergency rules remove the requirement that conditions the receipt of an exemption from immunization requirements on first viewing an instructional presentation on the benefits and risks of immunizations. As a

result, the emergency rules remove the rules that conflict with Title 70 O.S., Section 1210.192.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING EMERGENCY RULES ARE
CONSIDERED PROMULGATED UPON APPROVAL
BY THE GOVERNOR AS SET FORTH IN 75 O.S.,
SECTION 253(F), WITH A LATER EFFECTIVE DATE
OF SEPTEMBER 12, 2020:**

SUBCHAPTER 1. CHILDHOOD IMMUNIZATIONS

310:535-1-2. Criteria for immunizations required

(a) Each child shall present certification that he or she has received or is receiving the immunizations as specified below before he or she is admitted to any public, private, or parochial school.

(b) Certification shall include the following:

(1) Diphtheria, Tetanus and Pertussis (DTP/DTaP) vaccine in five doses unless the fourth dose is received on or after the fourth birthday in which case only four doses are required. If the doses are not completed by the seventh birthday, the series must be completed with Adult Td vaccine and/or Tdap vaccine based on the individual's age at the time the first dose was received and age at the time the series is completed and beginning with the fall 2011-12 school year one dose of Tdap vaccine for students entering the seventh grade. Each year following the 2011-12 school year, the Tdap requirement shall be extended one grade level so that in the 2016-17 school year and all subsequent school years, students in grades seven through twelve shall be required to have received one dose of Tdap vaccine.

(2) Poliomyelitis vaccine in four doses unless the last dose is on or after the fourth birthday in which case only three doses are required. If the doses are not started or

completed by the eighteenth birthday, no additional doses are required.

(3) Measles, Mumps and Rubella (MMR) vaccine with the first dose on or after the first birthday and the second dose at least twenty-eight days thereafter for children in grades kindergarten through eighth grade in the school year beginning in 1998. In the school year beginning in 1999, this requirement shall apply to the children through the ninth grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2002, children in all grades shall be required to have the second dose of vaccine.

(4) Hepatitis B vaccine in three doses for students of any age or two doses for students eleven through fifteen years of age who complete the alternative dosage schedule providing that the alternative schedule is fully documented. Such documentation must include the name of the vaccine and the dosage received for each dose of that vaccine:

(A) before entering seventh and eighth grades in 1998. In the school year beginning in 1999, this requirement shall apply to the children entering the seventh through ninth grades. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2002, children in grades seven through twelve shall be required to have the three doses of the vaccine.

(B) before entering kindergarten in 1998. In the school year beginning in 1999, this requirement shall apply to the children entering kindergarten and first grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2004, all children entering school shall be required to have the three doses of the vaccine.

(5) Hepatitis A vaccine in two doses with the first dose on or after the first birthday and the second dose six to eighteen calendar months later:

(A) before entering kindergarten in 1998. In the school year beginning in 1999, this requirement shall apply to the children entering kindergarten and first grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2004, all children entering school shall be required to have the two doses of the vaccine.

(B) before entering grade seven in 1998. In the school year beginning in 1999, this requirement shall apply to the children entering the seventh and eighth grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2003, children in grades seven through twelve shall be required to have the two doses of the vaccine.

(6) Varicella (chickenpox) vaccine in one dose on or after the first birthday: before entering kindergarten in 1998. In lieu of vaccination, a parent's statement of a history of the disease chickenpox will be accepted. In the school year beginning in 1999, this requirement shall apply to the children entering kindergarten and first grade.

Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2010, all children entering school shall be required to have the vaccine or a parent's statement of a history of the disease chickenpox.

(c) The minimum intervals between doses and minimum ages for doses shall be as follows:

(1) DTP/DTaP:

(A) First and second dose - 4 weeks

(B) Second and third dose - 4 weeks

(C) Third and fourth dose - 4 months

(D) Fourth and fifth dose - 6 months

(E) For all fifth doses given after January 1, 2003 the minimum age for the fifth dose is 4 years of age

(2) Polio:

(A) First and second dose - 4 weeks

(B) Second and third dose - 4 weeks

(C) Third and fourth dose - 4 weeks

(3) MMR: First and second dose - 4 weeks

(4) Hepatitis B 3-dose series:

(A) First and second dose - 1 month (4 weeks)

(B) Second and third dose - 2 months (8 weeks), and the third dose at least 4 months (16 weeks) after first dose, and the third dose not before 24 weeks of age

(5) Hepatitis B 2-dose series: First and second dose - 4 months

(6) Hepatitis A: First and second dose -- 6 months and for all doses given on or after January 1, 2003, 6 months will be defined as 6 calendar months

(7) Four day grace period: Vaccine doses administered 4 days or less before the minimum intervals or ages listed in the preceding sections will be counted as valid.

(d) A child, through his parent or guardian, may apply for an exemption from this requirement by submitting a form to the Department. The school shall maintain a copy of the approved application in the child's records. All exemptions submitted prior to a student entering 7th grade shall expire at the end of the student's 6th grade year. A new exemption is required to be completed and submitted to the Oklahoma State Department of Health by the parent or guardian prior to enrolling the child in 7th grade.

(1) A request for exemption for medical reasons shall contain a certificate signed by a physician stating that the physical condition of the child is such that the immunization would endanger the life or health of the child and that the child should be exempt for immunization.

(2) A request for exemption for religious or other personal reasons shall contain a signed written statement from the parent or guardian stating a summary of the objections. Lost or unobtainable immunization records are not a ground for personal exemption. Religious and personal exemptions may be obtained after receiving an approved brief instructional presentation provided by any local county health department regarding the risks associated with not being vaccinated and the benefits vaccinations provide to the individual and the community.

~~To be approved, the completed exemption form along with evidence of completed instruction is required.~~

(e) A child participating in a pre-kindergarten school program shall have received or be in the process of receiving the appropriate immunization for the listed diseases based on the child's age.

(f) The Department may grant exemptions or substitutions in the immunization schedule based on a medical history of a physical condition such that the immunization would endanger the life or health of the child or a medical history stating the child is likely to be immune as a result of having had a vaccine-preventable disease if the following are met:

(1) A history of having had diphtheria and/or tetanus is not acceptable as proof of immunity since infection with diphtheria or tetanus may not render an individual immune to either of these diseases,

(2) A history of having had polio, pertussis, rubella, mumps, hepatitis B, or hepatitis A must be supported by laboratory evidence to be acceptable as proof of immunity to these diseases,

(3) A history of having had measles must be accompanied by a statement from a physician, public health authority, or laboratory evidence to be acceptable as proof of immunity to measles,

(4) A parental history of having had varicella is acceptable evidence of immunity to varicella.

(g) Haemophilus influenzae type B (Hib) vaccine is not a requirement for children attending pre-kindergarten, kindergarten, or school.

(h) In some circumstances, the United States Food and Drug Administration may approve the use of an alternative dosage schedule for an existing vaccine. These alternative schedules may be used to meet the requirements only when the alternative schedule is fully documented. Such documentation must include the name of the vaccine and dosage received for each dose of that vaccine.

310:535-1-3. Criteria for immunizations required for child care

(a) Each child two months of age or older shall present certification that he or she has received or is receiving the immunizations as specified below before he or she is admitted to, and while enrolled in, a child care center or child care home.

(b) Certification shall include the following:

(1) 5 DTaP/DTP doses at 2, 4, 6, and 12 to 18 months and 4 to 6 years or beginning at 6 weeks of age with minimum intervals of 4 weeks between doses 1 and 2 and doses 2 and 3 and 4 months between doses 3 and 4 and 6 months between doses 4 and 5, with all fifth doses given on or after January 1, 2003 given on or after the fourth birthday; The fifth DTaP/DTP is not required if the fourth DTaP/DTP is administered on or after the fourth birthday;

(2) 4 Polio doses at 2, 4 and 6 to 18 months and 4 to 6 years or beginning at 6 weeks of age with minimum intervals of 4 weeks between all doses; The fourth Polio is not required if the third dose is given on or after the fourth birthday;

(3) 1 to 4 Haemophilus influenzae type B (Hib) doses at 2, 4, 6, and 12 to 15 months of age or older depending upon age at first Hib immunization and type of vaccine used or beginning at 6 weeks of age with minimum intervals of 4 weeks between doses 1, 2, and 3, if a third dose is part of the primary series, and the booster dose no earlier than 12 months of age and at least 8 weeks after the previous dose;

(4) 2 Measles, Mumps, Rubella doses with the first dose on or after the first birthday and the second dose at 4 to 6 years or at anytime after the first dose provided at least 4 weeks have elapsed since the receipt of the first dose;

(5) 1 Varicella dose on or after the first birthday;

(6) 2 Hepatitis A doses with the first dose on or after the first birthday and the second dose six to eighteen months later and for all doses given on or after January 1, 2003, 6 months will be defined as 6 calendar months;

(7) 3 Hepatitis B doses with minimum intervals as follows: 1 month (4 weeks) between doses 1 and 2, two months (8 weeks) between doses 2 and 3, four months (16 weeks) between doses 1 and 3, and dose 3 no earlier than 24 weeks of age;

(8) 1 to 4 doses of pneumococcal conjugate vaccine (PCV) for children 2 months through 59 months of age at 2, 4, 6, and 12 to 15 months of age or older depending upon age at first PCV immunization with minimum intervals between doses as follows: 4 weeks between doses 1, 2, and 3 and 8 weeks between doses 3 and 4 or any dose given as the final dose at age >12 months.

(9) Vaccine doses administered 4 days or less before the minimum intervals or ages listed in the preceding sections will be counted as valid.

(c) In the event that the parent, guardian, or responsible adult presenting a child for admission to a child care facility certifies in writing that a family emergency exists, the immunization requirements shall be waived for a period not to exceed thirty days. No such waiver shall be knowingly permitted more than once for any child.

(d) Immunization records for children attending school-age programs are not required if those records are maintained by the school and are readily available.

(e) A child, through his parent or guardian, may apply for an exemption from this requirement by submitting a form to the Department. The child care center or child care home shall maintain a copy of the approved application in the child's records.

(1) A request for exemption for medical reasons shall contain a certificate signed by a physician stating that the physical condition of the child is such that the immunization would endanger the life or health of the child and that the child should be exempt for immunization.

(2) A request for exemption for religious or other personal reasons shall contain a signed written statement from the parent or guardian stating a summary of the objections. Lost or unobtainable immunization records are not a ground for personal exemption. Religious and personal exemptions may be obtained after receiving an approved brief instructional presentation provided by any local county health department regarding the risks

~~associated with not being vaccinated and the benefits vaccinations provide to the individual and the community. To be approved, the completed exemption form along with evidence of completed instruction is required.~~

(f) The Department may grant exemptions or substitutions in the immunization schedule based on a medical history of a physical condition such that the immunization would endanger the life or health of the child or a medical history stating the child is likely to be immune as a result of having had a vaccine-preventable disease if the following are met:

- (1) A history of having had diphtheria and/or tetanus is not acceptable as proof of immunity since infection with diphtheria or tetanus may not render an individual immune to either of these diseases;
- (2) A history of having had polio, pertussis, rubella, mumps, or hepatitis A must be supported by laboratory evidence to be acceptable as proof of immunity to these diseases;
- (3) A history of having had measles must be accompanied by a statement from a physician, public health authority, or laboratory evidence to be acceptable as proof of immunity to measles;
- (4) A parental history of having had varicella is acceptable evidence of immunity to varicella.
- (5) A history of having had Hib before age two years is not acceptable as proof of immunity since infection with Hib prior to age two years may not render an individual immune.

[OAR Docket #20-732; filed 8-3-20]

TITLE 748. OKLAHOMA UNIFORM BUILDING CODE COMMISSION CHAPTER 20. ADOPTED CODES

[OAR Docket #20-733]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. IBC® 2015

748:20-1-9. IBC® 2015 Chapter 4 Special Detailed Requirements Based on Use and Occupancy [AMENDED AND RENUMBERED TO 748:20-2-9]

748:20-1-11. IBC® 2015 Chapter 9 Fire Protection Systems [AMENDED AND RENUMBERED TO 748:20-2-14]

748:20-1-12. IBC® 2015 Chapter 10 Means of Egress [AMENDED AND RENUMBERED TO 748:20-2-15]

Subchapter 2. IBC® 2015 [NEW]

748:20-2-1. Adoption of the International Building Code® (IBC®) [RESERVED]

748:20-2-2. Effect of Adoption [RESERVED]

748:20-2-3. IBC® and Other Appendices [RESERVED]

748:20-2-4. IBC® Provisions Adopted and Modified [RESERVED]

748:20-2-5. Participation in Federal Programs and/or Federally Funded or Financed Projects [RESERVED]

748:20-2-6. IBC® Chapter 1 [RESERVED]

748:20-2-7. IBC® 2015 Chapter 2 Definitions [NEW]

748:20-2-8. IBC® Chapter 3 [RESERVED]

748:20-2-9. IBC® 2015 Chapter 4 Special Detailed Requirements Based on Use and Occupancy [NEW]

748:20-2-10. IBC® Chapter 5 [RESERVED]

748:20-2-11. IBC® Chapter 6 [RESERVED]

748:20-2-12. IBC® Chapter 7 [RESERVED]

748:20-2-13. IBC® Chapter 8 [RESERVED]

748:20-2-14. IBC® 2015 Chapter 9 Fire Protection Systems [NEW]

748:20-2-15. IBC® 2015 Chapter 10 Means of Egress [NEW]

748:20-2-16. IBC® Chapter 11 [RESERVED]

748:20-2-17. IBC® Chapter 12 [RESERVED]

748:20-2-18. IBC® Chapter 13 [RESERVED]

748:20-2-19. IBC® Chapter 14 [RESERVED]

748:20-2-20. IBC® Chapter 15 [RESERVED]

748:20-2-21. IBC® Chapter 16 [RESERVED]

748:20-2-22. IBC® Chapter 17 [RESERVED]

748:20-2-23. IBC® Chapter 18 [RESERVED]

748:20-2-24. IBC® Chapter 19 [RESERVED]

748:20-2-25. IBC® Chapter 20 [RESERVED]

748:20-2-26. IBC® Chapter 21 [RESERVED]

748:20-2-27. IBC® Chapter 22 [RESERVED]

748:20-2-28. IBC® Chapter 23 [RESERVED]

748:20-2-29. IBC® Chapter 24 [RESERVED]

748:20-2-30. IBC® Chapter 25 [RESERVED]

748:20-2-31. IBC® Chapter 26 [RESERVED]

748:20-2-32. IBC® Chapter 27 [RESERVED]

748:20-2-33. IBC® Chapter 28 [RESERVED]

748:20-2-34. IBC® Chapter 29 [RESERVED]

748:20-2-35. IBC® Chapter 30 [RESERVED]

748:20-2-36. IBC® Chapter 31 [RESERVED]

748:20-2-37. IBC® Chapter 32 [RESERVED]

748:20-2-38. IBC® Chapter 33 [RESERVED]

748:20-2-39. IBC® Chapter 34 [RESERVED]

748:20-2-40. IBC® Chapter 35 [RESERVED]

Subchapter 3. IFC® 2015

748:20-3-4. IFC® 2015 Provisions Adopted and Modified [AMENDED AND RENUMBERED TO 748:20-4-4]

748:20-3-6. IFC® 2015 Chapter 1 Scope and Administration [AMENDED AND RENUMBERED TO 748:20-4-6]

748:20-3-7. IFC® 2015 Chapter 2 Definitions [AMENDED AND RENUMBERED TO 748:20-4-7]

748:20-3-11. IFC® 2015 Chapter 9 Fire Protection Systems [AMENDED AND RENUMBERED TO 748:20-4-14]

748:20-3-12. IFC® 2015 Chapter 10 Means of Egress [AMENDED AND RENUMBERED TO 748:20-4-15]

748:20-3-14. IFC® 2015 Chapter 80 Referenced Standards [AMENDED AND RENUMBERED TO 748:20-4-85]

Subchapter 4. IFC® 2015 [NEW]

748:20-4-1. Adoption of the International Fire Code® (IFC®) [RESERVED]

748:20-4-2. Effect of Adoption [RESERVED]

748:20-4-3. IFC® and Other Appendices [RESERVED]

748:20-4-4. IFC® 2015 Provisions Adopted and Modified [NEW]

748:20-4-5. IFC® Participation in Federal Programs and/or Federally Funded or Financed Projects [RESERVED]

748:20-4-6. IFC® 2015 Chapter 1 Scope and Administration [NEW]

748:20-4-7. IFC® 2015 Chapter 2 Definitions [NEW]

748:20-4-8. IFC® Chapter 3 [RESERVED]

748:20-4-9. IFC® Chapter 4 [RESERVED]

748:20-4-10. IFC® Chapter 5 [RESERVED]

748:20-4-11. IFC® Chapter 6 [RESERVED]

748:20-4-12. IFC® Chapter 7 [RESERVED]

748:20-4-13. IFC® Chapter 8 [RESERVED]

748:20-4-14. IFC® 2015 Chapter 9 Fire Protection Systems [NEW]

748:20-4-15. IFC® 2015 Chapter 10 Means of Egress [NEW]

748:20-4-16. IFC® Chapter 11 [RESERVED]

748:20-4-17. IFC® Chapter 12 [RESERVED]

748:20-4-18. IFC® Chapter 13 [RESERVED]

748:20-4-19. IFC® Chapter 14 [RESERVED]

748:20-4-20. IFC® Chapter 15 [RESERVED]

748:20-4-21. IFC® Chapter 16 [RESERVED]

748:20-4-22. IFC® Chapter 17 [RESERVED]

748:20-4-23. IFC® Chapter 18 [RESERVED]

748:20-4-24. IFC® Chapter 19 [RESERVED]

748:20-4-25. IFC® Chapter 20 [RESERVED]

748:20-4-26. IFC® Chapter 21 [RESERVED]

748:20-4-27. IFC® Chapter 22 [RESERVED]

748:20-4-28. IFC® Chapter 23 [RESERVED]

748:20-4-29. IFC® Chapter 24 [RESERVED]

748:20-4-30. IFC® Chapter 25 [RESERVED]
 748:20-4-31. IFC® Chapter 26 [RESERVED]
 748:20-4-32. IFC® Chapter 27 [RESERVED]
 748:20-4-33. IFC® Chapter 28 [RESERVED]
 748:20-4-34. IFC® Chapter 29 [RESERVED]
 748:20-4-35. IFC® Chapter 30 [RESERVED]
 748:20-4-36. IFC® Chapter 31 [RESERVED]
 748:20-4-37. IFC® Chapter 32 [RESERVED]
 748:20-4-38. IFC® Chapter 33 [RESERVED]
 748:20-4-39. IFC® Chapter 34 [RESERVED]
 748:20-4-40. IFC® Chapter 35 [RESERVED]
 748:20-4-41. IFC® Chapter 36 [RESERVED]
 748:20-4-42. IFC® Chapter 37 [RESERVED]
 748:20-4-43. IFC® Chapter 38 [RESERVED]
 748:20-4-44. IFC 2015® Chapter 39 Processing and Extraction Facilities [NEW]
 748:20-4-45. IFC® Chapter 40 [RESERVED]
 748:20-4-46. IFC® Chapter 41 [RESERVED]
 748:20-4-47. IFC® Chapter 42 [RESERVED]
 748:20-4-48. IFC® Chapter 43 [RESERVED]
 748:20-4-49. IFC® Chapter 44 [RESERVED]
 748:20-4-50. IFC® Chapter 45 [RESERVED]
 748:20-4-51. IFC® Chapter 46 [RESERVED]
 748:20-4-52. IFC® Chapter 47 [RESERVED]
 748:20-4-53. IFC® Chapter 48 [RESERVED]
 748:20-4-54. IFC® Chapter 49 [RESERVED]
 748:20-4-55. IFC® Chapter 50 [RESERVED]
 748:20-4-56. IFC® Chapter 51 [RESERVED]
 748:20-4-57. IFC® Chapter 52 [RESERVED]
 748:20-4-58. IFC® Chapter 53 Compressed Gases [NEW]
 748:20-4-59. IFC® Chapter 54 [RESERVED]
 748:20-4-60. IFC® Chapter 55 [RESERVED]
 748:20-4-61. IFC® Chapter 56 [RESERVED]
 748:20-4-62. IFC® Chapter 57 [RESERVED]
 748:20-4-63. IFC® Chapter 58 [RESERVED]
 748:20-4-64. IFC® Chapter 59 [RESERVED]
 748:20-4-65. IFC® Chapter 60 [RESERVED]
 748:20-4-66. IFC® Chapter 61 [RESERVED]
 748:20-4-67. IFC® Chapter 62 [RESERVED]
 748:20-4-68. IFC® Chapter 63 [RESERVED]
 748:20-4-69. IFC® Chapter 64 [RESERVED]
 748:20-4-70. IFC® Chapter 65 [RESERVED]
 748:20-4-71. IFC® Chapter 66 [RESERVED]
 748:20-4-72. IFC® Chapter 67 [RESERVED]
 748:20-4-73. IFC® Chapter 68 [RESERVED]
 748:20-4-74. IFC® Chapter 69 [RESERVED]
 748:20-4-75. IFC® Chapter 70 [RESERVED]
 748:20-4-76. IFC® Chapter 71 [RESERVED]
 748:20-4-77. IFC® Chapter 72 [RESERVED]
 748:20-4-78. IFC® Chapter 73 [RESERVED]
 748:20-4-79. IFC® Chapter 74 [RESERVED]
 748:20-4-80. IFC® Chapter 75 [RESERVED]
 748:20-4-81. IFC® Chapter 76 [RESERVED]
 748:20-4-82. IFC® Chapter 77 [RESERVED]
 748:20-4-83. IFC® Chapter 78 [RESERVED]
 748:20-4-84. IFC® Chapter 79 [RESERVED]
 748:20-4-85. IFC® 2015 Chapter 80 Referenced Standards [NEW]
 748:20-4-86. IFC® Appendix O [RESERVED]
 Subchapter 10. NEC® 2014 [NEW]
 748:20-10-1. Adoption of the National Electrical Code® (NEC®) [RESERVED]
 748:20-10-2. Effect of Adoption [RESERVED]
 748:20-10-3. NEC® Informative Annexes [RESERVED]
 748:20-10-4. NEC® Provisions Adopted and Modified [RESERVED]
 748:20-10-5. Participation in Federal Programs and/or Federally Funded or Financed Projects [RESERVED]
 748:20-10-6. NEC® Article 90 [RESERVED]
 748:20-10-7. NEC® Chapter 1 [RESERVED]
 748:20-10-8. NEC® Chapter 2 [RESERVED]
 748:20-10-9. NEC® Chapter 3 [RESERVED]
 748:20-10-10. NEC® 2014 Chapter 4 Equipment for General Use [NEW]
 748:20-10-11. NEC® Chapter 5 [RESERVED]
 748:20-10-12. NEC® Chapter 6 [RESERVED]
 748:20-10-13. NEC® Chapter 7 [RESERVED]

748:20-10-14. NEC® Chapter 8 [RESERVED]
 748:20-10-15. NEC® Chapter 9 [RESERVED]

AUTHORITY:

Oklahoma Uniform Building Code Commission; 59 O.S. § 1000.23 and 1000.24

COMMENT PERIOD:

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APPROVED BY GOVERNOR:

August 3, 2020

EXPIRATION:

Effective through September 14, 2021, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

International Code Council; International Building Code®, 2015 Edition
 International Code Council; International Fire Code®, 2015 Edition
 National Fire Protection Association; National Electrical Code®, 2014 Edition

Incorporating rules:

748:20-1-9., 748:20-1-11., 748:20-1-12., 748:20-2-7., 748:20-2-9., 748:20-2-14., 748:20-2-15., 748:20-3-4., 748:20-3-6., 748:20-3-7., 748:20-3-11., 748:20-3-12., 748:20-3-14., 748:20-4-4., 748:20-4-6., 748:20-4-7., 748:20-4-14., 748:20-4-15., 748:20-4-44., 748:20-4-58., 748:20-4-85., and 748:20-10-10.

Availability:

8:00 a.m. to 4:30 p.m., Monday through Friday at the Oklahoma Uniform Building Code Commission, 2401 NW 23rd Street, Suite 2F, Oklahoma City, OK 73107, 405-521-6501.

FINDING OF EMERGENCY:

The modifications to the OUBCC's adoption of the 2015 editions of the International Building Code®, International Fire Code®, and the 2014 edition of the National Electrical Code® are necessitated by the Medical Marijuana, 63 O.S. § 420-427, the Oklahoma Medical Marijuana and Patient Protection Act, 63 O.S. § 427.1-427.23 and the Oklahoma Medical Marijuana Waste Management Act, 63 O.S. § 427a-430 and related rules of the State Department of Health to clarify life safety building code requirements related to growing, processing and processing and extraction methods utilized through any industry that utilizes these practices.

GIST/ANALYSIS:

The purpose of these emergency rules is to continue implementation of 59 O.S. § 1000.20 through 1000.29 (the "Act") creating the Oklahoma Uniform Building Code Commission (the "OUBCC"). These emergency rules amend the adoptions of the 2015 Edition of the International Building Code®, as the statewide minimum code for commercial building construction in the State of Oklahoma; the 2015 Edition of the International Fire Code®, as the statewide minimum code for residential and commercial fire prevention and fire protection systems in the State of Oklahoma; and the 2014 Edition of the National Electrical Code® as the statewide minimum code for commercial electrical construction in the State of Oklahoma.

Sections 748:20-1-9., 748:20-1-11., and 748:20-1-12. of the IBC® 2015, have been amended and renumbered to 748:20-2-9., 748:20-2-14., and 748:20-2-15, respectively. Subchapter 2 has been added to begin the process of renumbering the agency rules related to the adoption of the International Building Code® (IBC®), which will conclude with the filing of permanent rules. Sections 748:20-2-7., 748:20-2-9., 748:20-2-14., and 748:20-2-15., amend the OUBCC's previous adoption of Oklahoma modifications to provide for changes needed for the extraction and processing of plant materials to provide critical safety requirements to those involved in any industry utilizing these practices, to the provisions adopted by the OUBCC for the IBC®, 2015 edition. Sections 748:20-2-1., through 748:20-2-6., 748:20-2-8., 748:20-2-10, through 748:20-2-13., and 748:20-2-16., through 748:20-2-40 have been reserved to address future changes to the chapters of the IBC® in permanent rulemaking.

Sections 748:20-3-4., 748:20-3-6., 748:20-3-7., 748:20-3-11., 748:20-3-12., and 748:20-3-14., of the IFC® 2015 have been amended and renumbered to 748:20-4-4., 748:20-4-6., 748:20-4-7., 748:20-4-14.,

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748:20-4-15., and 748:20-4-85, respectively. Subchapter 4 has been added to begin the process of renumbering the agency rules related to the adoption of the International Fire Code®, (IFC®), which will conclude with the filing of permanent rules. Sections 748:20-4-4., 748:20-4-6., 748:20-4-7., 748:20-4-14., 748:20-4-15., 748:20-4-44., 748:20-4-58., and 748:20-4-85., have been added to amend the OUBCC's previous adoption of Oklahoma modifications to provide for changes needed for the extraction and processing of plant materials to provide critical safety requirements to those involved in any industry utilizing these practices, to the provisions adopted by the OUBCC for the IFC®, 2015 edition. Sections 748:20-4-1., through 748:20-4-3., 748:20-4-5., 748:20-4-8., through 748:20-4-13., 748:20-4-16., through 748:20-4-43., 748:20-4-45., through 748:20-4-57., and 748:20-4-59., through 748:20-4-84., and 748:20-4-85., have been reserved to address future changes to the chapters of the IFC® in permanent rulemaking.

Subchapter 10 has been added to being the process of renumbering the agency rules related to the adoption of the National Electrical Code® (NEC®), which will conclude with the filing of permanent rules. Section 748:20-10-10 amends the OUBCC's previous adoption of Oklahoma modifications to provide for changes needed for horticultural lighting, to the provisions adopted by the OUBCC for the NEC® 2014 edition. Subchapters 748:20-10-1., through 748:20-10-9., and 748:20-10-11 through 748:20-10-15 have been reserved to address future changes to the chapters of the NEC® in permanent rulemaking.

CONTACT PERSON:

Billy Pope, Chief Executive Officer, OUBCC, 2401 NW 23rd, Suite 2F, Oklahoma City, OK 73107, 405-521-6501

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

SUBCHAPTER 1. IBC® 2015

748:20-1-9. IBC® 2015 Chapter 4 Special Detailed Requirements Based on Use and Occupancy [AMENDED AND RENUMBERED TO 748:20-2-9]

Chapter 4 of the IBC® 2015 is adopted with the following modifications:

(1) Section 406.7.2.1 Canopies used to support gaseous hydrogen systems. This section has been modified by deleting the word "hydrogen" in the heading and in the third requirement; and by adding the wording "lighter than air" to the section header to make the section applicable to all lighter than air fuels. This section has been modified to read: 406.7.2.1 Canopies used to support lighter than air gaseous systems. Canopies that are used to shelter dispensing operations where flammable compressed gases are located on the roof of the canopy shall be in accordance with the following:

- (A) The canopy shall meet or exceed Type I construction requirements.
- (B) Operations located under canopies shall be limited to refueling only.
- (C) The canopy shall be constructed in a manner that prevents the accumulation of gas.

(2) Section 406.7.2.2. Canopies sheltering units and devices that dispense lighter than air gas. This section has been added to require all canopies to be designed to prevent the accumulation or entrapment of ignitable vapors under canopies when dispensing lighter than air gas

or all electrical equipment installed beneath the canopy is required to be suitable for Class I, Division 2 hazardous (classified) locations. This section has been added to read: 406.7.2.2 Canopies sheltering units and devices that dispense lighter than air gas. Where CNG, LNG, or Hydrogen motor fuel dispensing devices are installed beneath a canopy, the canopy shall be designed to prevent the accumulation or entrapment of ignitable vapors, including provisions for natural or mechanical ventilation means, or all electrical equipment installed beneath the canopy or within the enclosure shall be suitable for Class I, Division 2 hazardous (classified) locations. Tank vents that are installed within or attached to the canopy shall extend a minimum of 5 feet (1524 mm) above the highest projection of the canopy. Compression and storage equipment located on the top of the canopy shall be in accordance with current State of Oklahoma adopted International Fire Code®, Section 2309.

(3) Section 419.1 General. This section has been modified to add a new exception to allow Group B, M, and F occupancies located in a detached dwelling unit to be constructed in accordance with the IRC® if they comply with the limitations in Section 419.1.1. This section has been modified to read: 419.1 General. A live/work unit shall comply with Sections 419.1 through 419.9. Exceptions:

(A) Dwelling or sleeping units that include an office that is less than 10 percent of the area of the dwelling unit are permitted to be classified as dwelling units with accessory occupancies in accordance with Section 508.2.

(B) Group B, M, and F occupancies that are located in a detached dwelling unit complying with the limitations of Section 419.1.1 shall be permitted to be constructed in accordance with the IRC®.

(4) Section 419.1.1 Limitations. This section has been modified to limit the nonresidential portion of the live/work unit to not greater than 2,500 square feet (232 square meters). This section has been modified to read: 419.1.1 Limitations. The following shall apply to all live/work areas:

(A) The nonresidential portion of the live/work unit is permitted to be not greater than 2,500 square feet (232 square meters) in area;

(B) The nonresidential area is permitted to be not more than 50 percent of the area of each live/work unit;

(C) The nonresidential area function shall be limited to the first or main floor only of the live/work unit; and

(D) Not more than five nonresidential workers or employees are allowed to occupy the nonresidential area at any one time.

(5) Section 423.1.1 Scope. This section has been modified to include above and below ground storm shelters and limit the use of the term storm shelter to those structures constructed according to this section. This section has been modified to read: 423.1.1 Scope. This section applies to the construction of above or below ground

storm shelters constructed as separate detached buildings, or rooms within buildings, structures, or portions thereof for the purpose of providing safe refuge from storms that produce high winds, such as tornados and hurricanes. Any room or structure, as may be used as a place of refuge during a severe wind storm event, shall not be defined as a storm shelter unless specifically designed to the requirements as listed in Section 423.

(6) ~~Section 423.3 Critical emergency operations.~~ This section, including the exception, has been moved to the newly created Appendix N, entitled "Supplemental Storm Shelter Requirements" and is not adopted as a minimum standard for residential or commercial construction within the State of Oklahoma. This section has been renumbered in Appendix N to become N102. The section number 423.3 itself, will stay as part of this code for numbering alignment but will not have any requirements attached to it.

(7) ~~Section 423.4 Group E occupancies.~~ This section, including exceptions, has been moved to the newly created Appendix N, entitled "Supplemental Storm Shelter Requirements" and is not adopted as a minimum standard for residential or commercial construction within the State of Oklahoma. The section has been renumbered in Appendix N to become N103. The section number 423.4 itself, will stay as part of this code for numbering alignment but will not have any requirements attached to it.

(8) ~~Section 423.5 Required.~~ This section has been added to specify the requirements when storm shelters are provided. This section has been added to read: 423.5 Required. Where storm shelters are provided, they shall be provided in compliance with ICC 500[®] except as required by Sections 423.5.1 through 423.5.11.

(9) ~~Section 423.5.1 Storm shelter documents.~~ This section has been added to require the construction documents prepared for the storm shelter to be maintained and protected within the storm shelter by the owner or owner's authorized agent. This section has been added to read: 423.5.1 Storm shelter documents. The construction documents which were prepared for the construction of the storm shelter, shall be maintained and protected within the storm shelter by the owner or owner's authorized agent.

(10) ~~Section 423.5.2 Signage.~~ This section has been added to clarify that all signs for a storm shelter, as outlined in ICC 500[®] Sections 108, 504.1, 504.1.1, and 504.1.2, comply with the applicable signage requirements of ICC A117.1[®]. This section has been added to read: 423.5.2 Signage. All signs, as outlined in ICC 500[®] Sections 108, 504.1, 504.1.1 and 504.1.2 shall comply with the applicable requirements of ICC A117.1[®].

(11) ~~Section 423.5.2.1 Entrance signage.~~ This section has been added to clarify entrance signage as required by ICC 500[®] Section 504.1.1 is not required for the storm shelter when the storm shelter can be accessed from within the host building and is only open to the occupants of the host building. This section has been added to read: 423.5.2.1 Entrance signage. Entrance signage, as outlined

in ICC 500[®] Section 504.1.1 shall not be required at exterior entrances where the shelter can be accessed from within a host building and is only open to the occupants of the host building.

(12) ~~Section 423.5.3 Roof live load reduction for shelters.~~ This section has been added to clarify roof live loads may not be reduced as allowed in Section 1607.12.2.1 (Equation 16-26) if the roof live load is stipulated under ICC 500[®] Section 303.2. This section has been added to read: 423.5.3 Roof live load reduction for shelters. Roof live load reduction in Section 1607.12.2.1 (Equation 16-26) shall not be allowed for roof live loads stipulated under ICC 500[®] Section 303.2.

(13) ~~Section 423.5.4 Design wind speed.~~ This section has been added to modify the requirements of ICC 500[®] Section 304.2 to clarify the minimum design wind speed for all storm shelters in the State of Oklahoma shall be set at 250 miles per hour. This section has been added to read: 423.5.4 Design wind speed. For storm shelters, the minimum design wind speed for the entire State of Oklahoma shall be 250 miles per hour.

(14) ~~Section 423.5.5 Usable storm shelter floor area.~~ This section has been added to modify the requirements of ICC 500[®] Section 501.1.2 to clarify when calculating the maximum usable floor area of a shelter, the areas within a privacy enclosure for sanitary facilities shall not be included. This section has been added to read: 423.5.5 Usable storm shelter floor area. The usable storm shelter floor area shall be determined by ICC 500[®] Section 501.1.2.1 or 501.1.2.2. Exception: Areas within privacy enclosures for sanitary facilities shall not be included in the usable floor area calculations.

(15) ~~Section 423.5.6 Door operation.~~ This section has been added to modify the requirements of ICC 500[®] Section 501.5 to specify means of egress doors shall be operable from the inside of the storm shelter without the use of keys or special knowledge or effort. This section has been added to read: 423.5.6 Door operation. Means of egress doors shall be operable from the inside without the use of keys or special knowledge or effort.

(16) ~~Section 423.5.6.1 Additional doors and shutters operation.~~ This section has been added to clarify doors and shutters designed to protect windows and other unprotected openings not required as a means of egress in storm shelters shall be operable from the inside without the use of keys or special relocatable tools. This section has been added to read: 423.5.6.1 Additional doors and shutters operation. Doors and shutters designed to protect windows or other unprotected openings not in a required means of egress in storm shelters shall be operable from the inside without the use of keys or special relocatable tools.

(17) ~~423.5.7 Height of storm shelter.~~ This section has been added to clarify how to determine the location of the natural ventilation openings in storm shelters in accordance with ICC 500[®] Section 702.1.1.1, by providing a definition for the height of the storm shelter to be calculated by average of the vertical dimensions from the floor elevation to the bottom of the storm shelter deck or to the

underside of a hard ceiling within the storm shelter. This section has been added to read: 423.5.7 Height of storm shelter. When determining the location of natural ventilation in accordance with ICC 500® Section 702.1.1.1, the height of the storm shelter shall be defined as an average of the vertical dimensions from the floor elevation to the bottom of the storm shelter deck or to the underside of a hard ceiling within the storm shelter.

(18) Section 423.5.8 Additional facilities for storm shelters. This section has been added to modify the requirements of ICC 500® Section 702.2.2 to clarify when the required number of sanitation facilities for the storm shelter exceeds the number of required facilities provided for the normal occupancy of space, additional facilities may be temporary toilets, chemical toilets or other approved means and must have privacy enclosures with minimum clear inside dimensions of 5 feet by 5 feet (1524 mm by 1524 mm). This section has been added to read: 423.5.8 Additional facilities for storm shelters. Where the required number of sanitation facilities for the storm shelter exceeds the number of facilities provided for the normal occupancy of the space, the additional facilities shall be permitted to be temporary sanitary fixtures, chemical toilets, or other means approved by the authority having jurisdiction. Temporary toilets, chemical toilets, or other approved means shall have temporary or permanent privacy enclosures such as fabric, portable screens, or other means approved by the authority having jurisdiction. Privacy enclosures shall have minimum clear inside dimensions of 5 feet by 5 feet (1524 mm by 1524 mm).

(19) Section 423.5.9 Sanitary facilities support systems. This section has been added to modify the requirements of ICC 500® Section 702.2.3 to clarify the support systems discussed in the section are for temporary sanitation facilities. This section has been added to read: 423.5.9. Sanitary facilities support systems. Support systems for the temporary sanitation facilities (e.g. bladders, storage tanks or vessels, etc.) shall be capable of supplying water and containing waste for the design capacity of the tornado shelter.

(20) Section 423.5.10 Conversion of plumbing systems. This section has been added to omit ICC 500® Section 702.2.4 from the minimum requirements of the code. This section has been added to read: 423.5.10 Conversion of plumbing systems. ICC 500® Section 702.2.4 is omitted.

(21) Section 423.5.11 First aid kit. This section has been added to modify the requirements of ICC 500® Section 702.4 to specify that first aid kits for community shelters shall be required to be ANSI rated for the number of occupants in the shelter. This section has been added to read: 423.5.11 First aid kit. An ANSI compliant first aid kit rated for the number of storm shelter occupants, as listed in the construction documents, shall be supplied in all tornado shelters.

748:20-1-11. IBC® 2015 Chapter 9 Fire Protection Systems [AMENDED AND RENUMBERED TO 748:20-2-14]

Chapter 9 of the IBC® 2015 is adopted with the following modifications:

(1) Section 903.2.7 Group M. This section has been modified to reword subsection 4 D of this text to provide a reasonable limit for these occupancies and adequate protection without excessive burden on Group M occupancies with small areas of upholstered furniture and mattresses. This section has been modified to read: 903.2.7 Group M. An automatic sprinkler system shall be provided throughout buildings containing a Group M occupancy where one of the following conditions exists:

(A) A Group M fire area exceeds 12,000 square feet (1115 square meters).

(B) A Group M fire area is located more than three stories above grade plane.

(C) The combined area of all Group M fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 square meters).

(D) A Group M occupancy where the cumulative area used for the display and sale of upholstered furniture or mattresses exceeds 5,000 square feet (464 square meters).

(2) 903.2.9 Group S 1. This section has been modified to add an exception to the fifth requirement in the list for when an automatic fire sprinkler system is required. This section has been modified to read: 903.2.9 Group S 1. An automatic sprinkler system shall be provided throughout all buildings containing a Group S 1 occupancy where one of the following conditions exists:

(A) A Group S 1 fire area exceeds 12,000 square feet (1115 square meters).

(B) A Group S 1 fire area is located more than three stories above grade plane.

(C) The combined area of all Group S 1 fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 square meters).

(D) A Group S 1 fire area used for the storage of commercial motor vehicles where the fire area exceeds 5,000 square feet (464 square meters).

(E) A Group S 1 occupancy used for the storage of upholstered furniture or mattresses exceeds 2,500 square feet (232 square meters). Exception: Self-service storage facility where the fire area is less than 5,000 square feet (464 square meters).

(3) Section 907.2.3 Group E. This section has been modified to delete the requirement for an emergency voice/alarm communication system in Group E occupancies and require a fire alarm system. This section has been modified to read: 907.2.3 Group E. A manual fire alarm system that activates the occupant notification signal in accordance with Section 907.5 and installed in accordance with 907.6 shall be installed in Group E occupancies. When automatic sprinkler systems or smoke detectors are installed such systems or detectors shall be connected to the building fire alarm system. Exceptions:

(A) A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.

(B) Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:

- (i) Interior corridors are protected by smoke detectors.
- (ii) Auditoriums, cafeterias, gymnasiums and similar areas are protected by heat detectors or other approved detection devices.
- (iii) Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.
- (iv) The capability to activate the evacuation signal from a central point is provided.
- (v) In buildings where normally occupied spaces are provided with a two-way communication system between such spaces and a constantly attended receiving station from where a general evacuation alarm can be sounded, except in locations specifically designated by the fire code official.

(C) Manual fire alarm boxes shall not be required in Group E occupancies where all of the following apply:

- (i) The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1.
- (ii) The fire alarm system will activate on sprinkler waterflow.
- (iii) Manual activation is provided from a normally occupied location.

(4) Section 911.1.3 Size. This section was modified to include an exception to make the fire command center smaller when approved by the fire code official. This section was modified to read: 911.1.3. Size. The room shall be a minimum of 200 square feet (19 square meters) with a minimum dimension of 10 feet (3048 mm). Exception: When approved by the fire code official the fire command center can be reduced in size to not less than a minimum of 96 square feet (9 square meters) with a minimum dimension of 8 feet (2438 mm).

**748:20-1-12. IBC® 2015 Chapter 10 Means of Egress
[AMENDED AND RENUMBERED TO
748:20-2-15]**

Chapter 10 of the IBC® 2015 is adopted with the following modifications:

(1) Section 1010.1.10 Panic and fire exit hardware. This section has been modified to add an exception to the requirement for panic hardware or fire exit hardware on the access doors for electrical rooms and working spaces. This section has been further modified to require personnel doors in rooms or spaces that contain electrical equipment rated 800 amperes or more that contain overcurrent devices, switching devices, or control devices where the personnel door intended for entrance to and

egress from the working space is less than 25 feet from the nearest edge of the working space, to be equipped with panic hardware or fire exit hardware. This section has been modified to read: 1010.1.10 Panic and fire exit hardware. Doors serving a Group H occupancy and doors serving rooms or spaces with an occupant load of 50 or more in a Group A or E occupancy shall not be provided with a latch or lock other than panic hardware or fire exit hardware. Exceptions:

(A) A main exit of a Group A occupancy shall be permitted to have locking hardware in accordance with Section 1010.1.9.3, Item 2.

(B) Doors serving a Group A or E occupancy shall be permitted to be electromagnetically locked in accordance with Section 1010.1.9.3.

(2) Electrical rooms with equipment operating at more than 600 volts, nominal, and equipment operating at 600 volts or less, nominal and rated 800 amperes or more that contain overcurrent devices, switching devices or control devices with exit or exit access doors, shall be equipped with panic hardware or fire exit hardware. The doors shall swing in the direction of egress travel. Exception: Personnel entrance to and egress from doors of the electrical equipment working spaces that are greater than 25 feet (7.6 m) from the nearest edge of the electrical equipment.

(3) Section 1015.6 Mechanical equipment, systems and devices. This section has been modified to clarify the circumstances under which guards shall be provided and to modify the exception to require the authority having jurisdiction approve the use of a fall/restraint system instead of guards. This section has been modified to read: 1015.6 Mechanical equipment, systems and devices. Guards shall be provided where various components that require services are located on a roof or elevated structure and have a condition as set forth in Sections 1015.6.1 through 1015.6.3. The guard shall be constructed so as to prevent the passage of a sphere 21 inches (533 mm) in diameter. Exception: When approved by the authority having jurisdiction, guards are not required where permanent fall arrest/restraint anchorage connector devices that comply with ANSI/ASSE Z 359.1 are affixed for use during the entire roof covering lifetime. The devices shall be reevaluated for possible replacement when the entire roof covering is replaced. The devices shall be placed not more than 10 feet (3048 mm) on center along hip and ridge lines and placed not less than 10 feet (3048 mm) from roof edges and the open sides of walking surfaces.

(4) Section 1015.6.1 Roof edge. This section has been added to clarify the circumstances required to exist for the installation of guards at the roof edge when the components needing service are within a specific distance of the roof edge. This section has been added to read: 1015.6.1 Roof edge. Guards shall be provided when components are located within 10 feet (3048 mm) of a roof edge or open side of a walking surface or elevated structure and such edge or open side is located more than 30 inches (762 mm) above the floor, roof, or grade below. The guard shall

extend not less than 30 inches (762 mm) beyond each end of the component that requires service.

(5) ~~Section 1015.6.2 Skylights. This section has been added to clarify the circumstances for the installation of guards around components near skylights and to provide exceptions to the requirement. This section has been added to read: 1015.6.2 Skylights. Guards shall be provided when a skylight is within 10 feet (3048 mm) of the component that requires service. The guard shall extend 30 inches (762 mm) beyond the edge of the skylight. Exceptions:~~

~~(A) Guards are not required when the skylight is located at least 42 inches (1067 mm) above the highest point of the walking surface adjacent to the skylight or component.~~

~~(B) Guards are not required if some other provision for skylight fall thru protection is provided and approved by the authority having jurisdiction.~~

(6) ~~Section 1015.6.3 Roof hatch. This section has been added to clarify the circumstances for the installation of guards around components installed within a specific distance from the roof hatch. This section has been added to read: 1015.6.3 Roof hatch. Guards shall be provided when a roof hatch is within 10 feet (3048 mm) of the component that requires service. The guard shall extend 30 inches (762 mm) beyond the edge of the roof hatch. If the component is within 10 feet (3048 mm) of the ladder access side of the roof hatch, the guard shall incorporate a self-closing, self-latching gate. The gate shall have a top edge of not less than 42 inches (1067 mm) above the elevated surface adjacent to the gate and shall not allow the passage of a 21-inch (533 mm) sphere.~~

(7) ~~Section 1015.7 Roof access. This section has been modified to require the authority having jurisdiction approve the use of a fall restraint system instead of a guard in the exception. This section has been modified to read: 1015.7 Roof access. Guards shall be provided where the roof hatch opening is located within 10 feet (3048 mm) of a roof edge or open side of a walking surface and such edge or open side is located more than 30 inches (762 mm) above the floor, roof or grade below. The guard shall be constructed so as to prevent the passage of a sphere 21 inches (533 mm) in diameter. Exception: When approved by the authority having jurisdiction, guards are not required where permanent fall arrest/restraint anchorage connector devices that comply with ANSI/ASSE Z 359.1 are affixed for use during the entire roof covering lifetime. The devices shall be reevaluated for possible replacement when the entire roof covering is replaced. The devices shall be placed not more than 10 feet (3048 mm) on center along hip and ridge lines and placed not less than 10 feet (3048 mm) from roof edges and the open sides of the walking surfaces.~~

SUBCHAPTER 2. IBC® 2015

748:20-2-1.

Adoption of the International Building Code® (IBC®) 1 [RESERVED]

748:20-2-2.

Effect of Adoption [RESERVED]

748:20-2-3.

IBC® and Other Appendices [RESERVED]

748:20-2-4.

IBC® Provisions Adopted and Modified [RESERVED]

748:20-2-5.

Participation in Federal Programs and/or Federally Funded or Financed Projects [RESERVED]

748:20-2-6.

IBC® Chapter 1 [RESERVED]

748:20-2-7.

IBC® 2015 Chapter 2 Definitions

Chapter 2 of the IBC® 2015 is adopted with the following modification: The definition of a GAS DETECTION SYSTEM has been added to clarify multiple references in the code. The definition has been added to read: GAS DETECTION SYSTEM. A system or portion of a combination system that utilizes one or more stationary sensors to detect the presence of a specified gas at a specified concentration and initiate one or more responses required by this code, such as notifying a responsible person, activating an alarm signal, or activating or deactivating equipment. A self-contained gas detection and alarm device is not classified as a gas detection system.

748:20-2-8.

IBC® Chapter 3 [RESERVED]

748:20-2-9.

IBC® 2015 Chapter 4 Special Detailed Requirements Based on Use and Occupancy

Chapter 4 of the IBC® 2015 is adopted with the following modifications:

(1) Section 406.7.2.1 Canopies used to support gaseous hydrogen systems. This section has been modified by deleting the word "hydrogen" in the heading and in the third requirement; and by adding the wording "lighter-than-air" to the section header to make the section applicable to all lighter-than-air fuels. This section has been modified to read: 406.7.2.1 Canopies used to support lighter-than-air gaseous systems. Canopies that are used to shelter dispensing operations where flammable compressed gases are located on the roof of the canopy shall be in accordance with the following:

(A) The canopy shall meet or exceed Type I construction requirements.

(B) Operations located under canopies shall be limited to refueling only.

(C) The canopy shall be constructed in a manner that prevents the accumulation of gas.

(2) Section 406.7.2.2. Canopies sheltering units and devices that dispense lighter-than-air gas. This section has been added to require all canopies to be designed to prevent the accumulation or entrapment of ignitable vapors under canopies when dispensing lighter-than-air gas or all electrical equipment installed beneath the canopy is required to be suitable for Class I, Division 2 hazardous (classified) locations. This section has been added to read: 406.7.2.2 Canopies sheltering units and devices that dispense lighter-than-air gas. Where CNG, LNG, or Hydrogen motor fuel dispensing devices are installed beneath a canopy, the canopy shall be designed to prevent the accumulation or entrapment of ignitable vapors, including provisions for natural or mechanical ventilation means, or all electrical equipment installed beneath the canopy or within the enclosure shall be suitable for Class I, Division 2 hazardous (classified) locations. Tank vents that are installed within or attached to the canopy shall extend a minimum of 5 feet (1524 mm) above the highest projection of the canopy. Compression and storage equipment located on the top of the canopy shall be in accordance with current State of Oklahoma adopted International Fire Code®, Section 2309.

(3) Section 419.1 General. This section has been modified to add a new exception to allow Group B, M, and F occupancies located in a detached dwelling unit to be constructed in accordance with the IRC® if they comply with the limitations in Section 419.1.1. This section has been modified to read: 419.1 General. A live/work unit shall comply with Sections 419.1 through 419.9. Exceptions:

(A) Dwelling or sleeping units that include an office that is less than 10 percent of the area of the dwelling unit are permitted to be classified as dwelling units with accessory occupancies in accordance with Section 508.2.

(B) Group B, M, and F occupancies that are located in a detached dwelling unit complying with the limitations of Section 419.1.1 shall be permitted to be constructed in accordance with the IRC®.

(4) Section 419.1.1 Limitations. This section has been modified to limit the nonresidential portion of the live/work unit to not greater than 2,500 square feet (232 square meters). This section has been modified to read: 419.1.1 Limitations. The following shall apply to all live/work areas:

(A) The nonresidential portion of the live/work unit is permitted to be not greater than 2,500 square feet (232 square meters) in area;

(B) The nonresidential area is permitted to be not more than 50 percent of the area of each live/work unit;

(C) The nonresidential area function shall be limited to the first or main floor only of the live/work unit; and

(D) Not more than five nonresidential workers or employees are allowed to occupy the nonresidential area at any one time.

(5) Section 423.1.1 Scope. This section has been modified to include above and below ground storm shelters and limit the use of the term storm shelter to those structures constructed according to this section. This section has been modified to read: 423.1.1 Scope. This section applies to the construction of above or below ground storm shelters constructed as separate detached buildings, or rooms within buildings, structures, or portions thereof for the purpose of providing safe refuge from storms that produce high winds, such as tornados and hurricanes. Any room or structure, as may be used as a place of refuge during a severe wind storm event, shall not be defined as a storm shelter unless specifically designed to the requirements as listed in Section 423.

(6) Section 423.3 Critical emergency operations. This section, including the exception, has been moved to the newly created Appendix N, entitled "Supplemental Storm Shelter Requirements" and is not adopted as a minimum standard for residential or commercial construction within the State of Oklahoma. This section has been renumbered in Appendix N to become N102. The section number 423.3 itself, will stay as part of this code for numbering alignment but will not have any requirements attached to it.

(7) Section 423.4 Group E occupancies. This section, including exceptions, has been moved to the newly created Appendix N, entitled "Supplemental Storm Shelter Requirements" and is not adopted as a minimum standard for residential or commercial construction within the State of Oklahoma. The section has been renumbered in Appendix N to become N103. The section number 423.4 itself, will stay as part of this code for numbering alignment but will not have any requirements attached to it.

(8) Section 423.5 Required. This section has been added to specify the requirements when storm shelters are provided. This section has been added to read: 423.5 Required. Where storm shelters are provided, they shall be provided in compliance with ICC 500® except as required by Sections 423.5.1 through 423.5.11.

(9) Section 423.5.1 Storm shelter documents. This section has been added to require the construction documents prepared for the storm shelter to be maintained and protected within the storm shelter by the owner or owner's authorized agent. This section has been added to read: 423.5.1 Storm shelter documents. The construction documents which were prepared for the construction of the storm shelter, shall be maintained and protected within the storm shelter by the owner or owner's authorized agent.

(10) Section 423.5.2 Signage. This section has been added to clarify that all signs for a storm shelter, as outlined in ICC 500® Sections 108, 504.1, 504.1.1, and 504.1.2, comply with the applicable signage requirements of ICC A117.1®. This section has been added to read: 423.5.2 Signage. All signs, as outlined in ICC 500® Sections 108, 504.1, 504.1.1 and 504.1.2 shall comply with the applicable requirements of ICC A117.1®.

(11) Section 423.5.2.1 Entrance signage. This section has been added to clarify entrance signage as required by

ICC 500® Section 504.1.1 is not required for the storm shelter when the storm shelter can be accessed from within the host building and is only open to the occupants of the host building. This section has been added to read: 423.5.2.1 Entrance signage. Entrance signage, as outlined in ICC 500® Section 504.1.1 shall not be required at exterior entrances where the shelter can be accessed from within a host building and is only open to the occupants of the host building.

(12) Section 423.5.3 Roof live load reduction for shelters. This section has been added to clarify roof live loads may not be reduced as allowed in Section 1607.12.2.1 (Equation 16-26) if the roof live load is stipulated under ICC 500® Section 303.2. This section has been added to read: 423.5.3 Roof live load reduction for shelters. Roof live load reduction in Section 1607.12.2.1 (Equation 16-26) shall not be allowed for roof live loads stipulated under ICC 500® Section 303.2.

(13) Section 423.5.4 Design wind speed. This section has been added to modify the requirements of ICC 500® Section 304.2 to clarify the minimum design wind speed for all storm shelters in the State of Oklahoma shall be set at 250 miles per hour. This section has been added to read: 423.5.4 Design wind speed. For storm shelters, the minimum design wind speed for the entire State of Oklahoma shall be 250 miles per hour.

(14) Section 423.5.5 Usable storm shelter floor area. This section has been added to modify the requirements of ICC 500® Section 501.1.2 to clarify when calculating the maximum usable floor area of a shelter, the areas within a privacy enclosure for sanitary facilities shall not be included. This section has been added to read: 423.5.5 Usable storm shelter floor area. The usable storm shelter floor area shall be determined by ICC 500® Section 501.1.2.1 or 501.1.2.2. Exception: Areas within privacy enclosures for sanitary facilities shall not be included in the usable floor area calculations.

(15) Section 423.5.6 Door operation. This section has been added to modify the requirements of ICC 500® Section 501.5 to specify means of egress doors shall be operable from the inside of the storm shelter without the use of keys or special knowledge or effort. This section has been added to read: 423.5.6 Door operation. Means of egress doors shall be operable from the inside without the use of keys or special knowledge or effort.

(16) Section 423.5.6.1 Additional doors and shutters operation. This section has been added to clarify doors and shutters designed to protect windows and other unprotected openings not required as a means of egress in storm shelters shall be operable from the inside without the use of keys or special relocatable tools. This section has been added to read: 423.5.6.1 Additional doors and shutters operation. Doors and shutters designed to protect windows or other unprotected openings not in a required means of egress in storm shelters shall be operable from the inside without the use of keys or special relocatable tools.

(17) 423.5.7 Height of storm shelter. This section has been added to clarify how to determine the location of

the natural ventilation openings in storm shelters in accordance with ICC 500® Section 702.1.1.1, by providing a definition for the height of the storm shelter to be calculated by average of the vertical dimensions from the floor elevation to the bottom of the storm shelter deck or to the underside of a hard ceiling within the storm shelter. This section has been added to read: 423.5.7 Height of storm shelter. When determining the location of natural ventilation in accordance with ICC 500® Section 702.1.1.1, the height of the storm shelter shall be defined as an average of the vertical dimensions from the floor elevation to the bottom of the storm shelter deck or to the underside of a hard ceiling within the storm shelter.

(18) Section 423.5.8 Additional facilities for storm shelters. This section has been added to modify the requirements of ICC 500® Section 702.2.2 to clarify when the required number of sanitation facilities for the storm shelter exceeds the number of required facilities provided for the normal occupancy of space, additional facilities may be temporary toilets, chemical toilets or other approved means and must have privacy enclosures with minimum clear inside dimensions of 5 feet by 5 feet (1524 mm by 1524 mm). This section has been added to read: 423.5.8 Additional facilities for storm shelters. Where the required number of sanitation facilities for the storm shelter exceeds the number of facilities provided for the normal occupancy of the space, the additional facilities shall be permitted to be temporary sanitary fixtures, chemical toilets, or other means approved by the authority having jurisdiction. Temporary toilets, chemical toilets, or other approved means shall have temporary or permanent privacy enclosures such as fabric, portable screens, or other means approved by the authority having jurisdiction. Privacy enclosures shall have minimum clear inside dimensions of 5 feet by 5 feet (1524 mm by 1524 mm).

(19) Section 423.5.9 Sanitary facilities support systems. This section has been added to modify the requirements of ICC 500® Section 702.2.3 to clarify the support systems discussed in the section are for temporary sanitation facilities. This section has been added to read: 423.5.9. Sanitary facilities support systems. Support systems for the temporary sanitation facilities (e.g. bladders, storage tanks or vessels, etc.) shall be capable of supplying water and containing waste for the design capacity of the tornado shelter.

(20) Section 423.5.10 Conversion of plumbing systems. This section has been added to omit ICC 500® Section 702.2.4 from the minimum requirements of the code. This section has been added to read: 423.5.10 Conversion of plumbing systems. ICC 500® Section 702.2.4 is omitted.

(21) Section 423.5.11 First aid kit. This section has been added to modify the requirements of ICC 500® Section 702.4 to specify that first aid kits for community shelters shall be required to be ANSI rated for the number of occupants in the shelter. This section has been added to read: 423.5.11 First aid kit. An ANSI compliant first aid kit rated for the number of storm shelter occupants, as listed

in the construction documents, shall be supplied in all tornado shelters.

(22) Section 427 Cultivation, Extraction and Processing Plant Material. This section header has been added to create and identify requirements related to cultivation, extraction and processing of plant material, covered by the 2018 edition of NFPA® 1, Fire Code, not otherwise covered by the IBC® or IFC®. This section has been added to read: 427 Cultivation, Extraction and Processing Plant Material.

(23) Section 427.1 General. This section has been added to clarify plant growing facilities that utilize carbon dioxide enrichment systems in accordance with Section 5307.4 of the International Fire Code® and plant processing or extraction facilities in accordance with Chapter 39 of the International Fire Code® shall also comply with Sections 427.2 through 427.6 of this code. This section has been added to read: 427.1 General. Plant growing facilities that utilize carbon dioxide enrichment systems in accordance with Section 5307.4 of the International Fire Code® and plant processing or extraction facilities in accordance with Chapter 39 of the International Fire Code® shall also comply with Sections 427.2 through 427.6.

(24) Section 427.2 Construction. This section has been added to clarify the construction of buildings used for the extraction process that include the act of extraction of the oils and fats by use of solvent, desolventizing of the raw material, production of the miscella, distillation of the solvent from the miscella and solvent recovery shall comply with the section. An exception has been provided for extraction processes that utilize nonhazardous solvents or carbon dioxide. This section has been added to read: 427.2 Construction. The construction of buildings used for the extraction process that include the act of extraction of the oils and fats by use of solvent, desolventizing of the raw material, production of the miscella, distillation of the solvent from the miscella and solvent recovery shall comply with this section. Exception: Extraction process that utilizes nonhazardous solvents or carbon dioxide.

(25) Section 427.2.1 Noncombustible construction. This section has been added to clarify extraction equipment and processes utilizing materials classified as physical hazards in accordance with Section 307 of this code and the International Fire Code® shall be located in a room constructed of noncombustible construction. This section has been added to read: 427.2.1 Noncombustible construction. Extraction equipment and processes utilizing materials classified as physical hazards in accordance with Section 307 and the International Fire Code® shall be located in a room constructed of noncombustible materials.

(26) Section 427.2.2 Prohibited occupancies. This section has been added to clarify extraction equipment and extraction processes utilizing materials classified as physical hazards in accordance with Section 307 of this code and the International Fire Code® are not permitted in any building containing a Group A, E, I or R occupancy. This section has been added to read: 427.2.2 Prohibited occupancies. Extraction equipment and extraction processes

utilizing materials classified as physical hazards in accordance with Section 307 and the International Fire Code® shall not be located in any building containing a Group A, E, I, or R occupancy.

(27) Section 427.3 Equipment location. This section has been added to clarify extraction equipment and extraction processes utilizing materials classified as physical hazards in accordance with Section 307 of this code and the International Fire Code® as solvents shall be located in a room dedicated to extraction and the room shall not be used for any other purpose. The section prohibits the storage of solvents in the extraction room. This section has been added to read: 427.3 Equipment location. The extraction equipment and extraction processes utilizing materials classified as physical hazards in accordance with Section 307 and the International Fire Code® as solvents shall be located in a room dedicated to extraction and the room shall not be used for any other purpose. There shall be no storage of solvents in the extraction room.

(28) Section 427.4 Interior finish. This section has been added to require the interior finish of walls and ceilings in plant growing, processing and extraction facilities to comply with this section and Section 803 of this code. This section has been added to read: 427.4 Interior finish. Interior finish of walls and ceilings in plant growing, processing and extraction facilities shall comply with this section and Section 803.

(29) Section 427.4.1 Plastic, mylar and other thin sheeting. This section has been added to require plastic, mylar or other thin sheeting that covers any walls or ceilings comply with this section and Section 803. This section has been added to read: 427.4.1 Plastic, mylar and other thin sheeting. Plastic, mylar and other thin sheeting that covers any walls or ceilings shall comply with this section and Section 803.

(30) Section 427.4.1.1 Installation. This section has been added to prohibit plastic, mylar or other thin sheeting from being hung from ceilings or suspended overhead structures to create divider walls or rooms. This section has been added to read: 427.4.1.1 Installation. Plastic, mylar and other thin sheeting shall not be hung from ceilings or suspended overhead structures to create divider walls or rooms.

(31) Section 427.5 Emergency power system. This section has been added to require emergency power to lighting and ventilation systems in the extraction room when the extraction process utilizes hydrocarbon gases or liquids as solvents, in accordance with Section 2702. This section has been added to read: 427.5 Emergency power system. For extraction processes utilizing hydrocarbon gases or liquids as solvents, the extraction room lighting and ventilation system shall be provided with emergency power in accordance with Section 2702.

(32) Section 427.6 Means of egress. This section has been added to require at least one means of egress door from an extraction room, utilizing materials classified as physical hazards in accordance with Section 307 of this

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code and the International Fire Code®, to swing in the direction of egress travel. The section requires the egress door to be equipped with panic hardware or fire exit hardware and to have a self-closing or automatic-closing device. This section has been added to read: 427.6 Means of egress. Extraction rooms utilizing materials classified as physical hazards in accordance with Section 307 and the International Fire Code® shall have a minimum of one exit access door that swings in the direction of egress travel. The exit access door shall be equipped with panic hardware or fire exit hardware and a self-closing or automatic-closing device.

748:20-2-10. IBC® Chapter 5 [RESERVED]

748:20-2-11. IBC® Chapter 6 [RESERVED]

748:20-2-12. IBC® Chapter 7 [RESERVED]

748:20-2-13. IBC® Chapter 8 [RESERVED]

748:20-2-14. IBC® 2015 Chapter 9 Fire Protection Systems

Chapter 9 of the IBC® 2015 is adopted with the following modifications:

(1) Section 902.1 Definitions. This section has been modified to clarify the definition of a "GAS DETECTION SYSTEM" has been added to chapter two of the code. This section has been modified to read: 902.1 Definitions. The following terms are defined in Chapter 2:

- (A) [F] ALARM NOTIFICATION APPLIANCE.
- (B) [F] ALARM SIGNAL.
- (C) [F] ALARM VERIFICATION FEATURE.
- (D) [F] ANNUNCIATOR.
- (E) [F] AUDIBLE ALARM NOTIFICATION APPLIANCE.
- (F) [F] AUTOMATIC.
- (G) [F] AUTOMATIC FIRE-EXTINGUISHING SYSTEM.
- (H) [F] AUTOMATIC SMOKE DETECTION SYSTEM.
- (I) [F] AUTOMATIC SPRINKLER SYSTEM.
- (J) [F] AUTOMATIC WATER MIST SYSTEM.
- (K) [F] AVERAGE AMBIENT SOUND LEVEL.
- (L) [F] CARBON DIOXIDE EXTINGUISHING SYSTEMS.
- (M) [F] CEILING LIMIT.
- (N) [F] CLEAN AGENT.
- (O) [F] COMMERCIAL MOTOR VEHICLE.
- (P) [F] CONSTANTLY ATTENDED LOCATION.
- (Q) [F] DELUGE SYSTEM.
- (R) [F] DETECTOR, HEAT.
- (S) [F] DRY-CHEMICAL EXTINGUISHING AGENT.

(T) [F] ELECTRICAL CIRCUIT PROTECTIVE SYSTEM.

(U) [F] ELEVATOR GROUP.

(V) [F] EMERGENCY ALARM SYSTEM.

(W) [F] EMERGENCY VOICE/ALARM COMMUNICATIONS.

(X) [F] FIRE ALARM BOX, MANUAL.

(Y) [F] FIRE ALARM CONTROL UNIT.

(Z) [F] FIRE ALARM SIGNAL.

(AA) [F] FIRE ALARM SYSTEM.

(BB) FIRE AREA.

(CC) [F] FIRE COMMAND CENTER.

(DD) [F] FIRE DETECTOR, AUTOMATIC.

(EE) [F] FIRE PROTECTION SYSTEM.

(FF) [F] FIRE SAFETY FUNCTIONS.

(GG) [F] FOAM-EXTINGUISHING SYSTEM.

(HH) [F] GAS DETECTION SYSTEM.

(II) [F] HALOGENATED EXTINGUISHING SYSTEM.

(JJ) [F] INITIATING DEVICE.

(KK) [F] MANUAL FIRE ALARM BOX.

(LL) [F] MULTIPLE-STATION ALARM DEVICE.

(MM) [F] MULTIPLE-STATION SMOKE ALARM.

(NN) [F] NOTIFICATION ZONE.

(OO) [F] NUISANCE ALARM.

(PP) PRIVATE GARAGE.

(QQ) [F] RECORD DRAWINGS.

(RR) [F] SINGLE-STATION SMOKE ALARM.

(SS) [F] SMOKE ALARM.

(TT) [F] SMOKE DETECTOR.

(UU) [F] SMOKEPROOF ENCLOSURE.

(VV) [F] STANDPIPE SYSTEM, CLASSES OF.

(i) Class I system.

(ii) Class II system.

(iii) Class III system.

(WW) [F] STANDPIPE, TYPES OF.

(i) Automatic dry.

(ii) Automatic wet.

(iii) Manual dry.

(iv) Manual wet.

(v) Semiautomatic dry.

(XX) [F] SUPERVISING STATION.

(YY) [F] SUPERVISORY SERVICE.

(ZZ) [F] SUPERVISORY SIGNAL.

(AAA) [F] SUPERVISORY SIGNAL-INITIATING DEVICE.

(BBB) [F] TIRES, BULK STORAGE OF.

(CCC) [F] TROUBLE SIGNAL.

(DDD) [F] VISIBLE ALARM NOTIFICATION APPLIANCE.

(EEE) [F] WET CHEMICAL EXTINGUISHING SYSTEM.

(FFF) [F] WIRELESS PROTECTION SYSTEM.

(GGG) [F] ZONE.

(HHH) [F] ZONE, NOTIFICATION.

(2) Section 903.2.7 Group M. This section has been modified to reword subsection 4 D of this section to provide a reasonable limit for these occupancies and adequate protection without excessive burden on Group M occupancies with small areas of upholstered furniture and mattresses. This section has been modified to read: 903.2.7 Group M. An automatic sprinkler system shall be provided throughout buildings containing a Group M occupancy where one of the following conditions exists:

(A) A Group M fire area exceeds 12,000 square feet (1115 square meters).

(B) A Group M fire area is located more than three stories above grade plane.

(C) The combined area of all Group M fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 square meters).

(D) A Group M occupancy where the cumulative area used for the display and sale of upholstered furniture or mattresses exceeds 5,000 square feet (464 square meters).

(3) Section 903.2.9 Group S-1. This section has been modified to add an exception to the fifth requirement in the list for when an automatic fire sprinkler system is required. This section has been modified to read: 903.2.9 Group S-1. An automatic sprinkler system shall be provided throughout all buildings containing a Group S-1 occupancy where one of the following conditions exists:

(A) A Group S-1 fire area exceeds 12,000 square feet (1115 square meters).

(B) A Group S-1 fire area is located more than three stories above grade plane.

(C) The combined area of all Group S-1 fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 square meters).

(D) A Group S-1 fire area used for the storage of commercial motor vehicles where the fire area exceeds 5,000 square feet (464 square meters).

(E) A Group S-1 occupancy used for the storage of upholstered furniture or mattresses exceeds 2,500 square feet (232 square meters). Exception: Self-service storage facility where the fire area is less than 5,000 square feet (464 square meters).

(4) Section 907.2.3 Group E. This section has been modified to delete the requirement for an emergency voice/alarm communication system in Group E occupancies and require a fire alarm system. This section has been modified to read: 907.2.3 Group E. A manual fire alarm system that activates the occupant notification signal in accordance with Section 907.5 and installed in accordance with 907.6 shall be installed in Group E occupancies. When automatic sprinkler systems or smoke detectors are installed such systems or detectors shall be connected to the building fire alarm system. Exceptions:

(A) A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.

(B) Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:

(i) Interior corridors are protected by smoke detectors.

(ii) Auditoriums, cafeterias, gymnasiums and similar areas are protected by heat detectors or other approved detection devices.

(iii) Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.

(iv) The capability to activate the evacuation signal from a central point is provided.

(v) In buildings where normally occupied spaces are provided with a two-way communication system between such spaces and a constantly attended receiving station from where a general evacuation alarm can be sounded, except in locations specifically designated by the fire code official.

(C) Manual fire alarm boxes shall not be required in Group E occupancies where all of the following apply:

(i) The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1.

(ii) The fire alarm system will activate on sprinkler waterflow.

(iii) Manual activation is provided from a normally occupied location.

(5) Section 911.1.3 Size. This section was modified to include an exception to make the fire command center smaller when approved by the fire code official. This section was modified to read: 911.1.3. Size. The room shall be a minimum of 200 square feet (19 square meters) with a minimum dimension of 10 feet (3048 mm). Exception: When approved by the fire code official the fire command center can be reduced in size to not less than a minimum of 96 square feet (9 square meters) with a minimum dimension of 8 feet (2438 mm).

(6) Section 916 Gas Detection Systems. This section header has been added to the code to clarify a new section of code has been added. This section heading has been added to read: Section 916 Gas Detection Systems.

(7) Section 916.1 Gas detection systems. This section has been added to specify when the requirements for gas detection systems are provided, they shall be in compliance with Section 916.2 through 916.11. This section has been added to read: 916.1 Gas detection systems. Gas detection systems required by this code shall comply with Sections 916.2 through 916.11.

(8) Section 916.2 Permits. This section has been added to specify permits shall be required as set forth in Section 105.7 of the International Fire Code®. This section has been modified to read: 916.2 Permits. Permits shall be required as set forth in Section 105.7 of the International Fire Code®.

(9) Section 916.2.1 Construction documents. This section has been added to require construction documentation to be submitted with the application for permit. It requires the documentation of the gas detection system design and equipment be used, demonstrate compliance with the requirements of this code and be provided with the permit application. This section has been added to read: 916.2.1 Construction documents. Documentation of the gas detection system design and equipment to be used that demonstrates compliance with the requirements of this code shall be provided with the application for permit.

(10) Section 916.3 Equipment. This section has been added to require gas detection systems to be designed for use with the gases being detected and to be installed in accordance with the manufacturer's instructions. This section has been added to read: 916.3 Equipment. Gas detection system equipment shall be designed for use with the gases being detected and shall be installed in accordance with the manufacturer's instructions.

(11) Section 916.4 Power connections. This section has been added to require gas detection systems to be permanently connected to the building electrical power supply or be permitted to be cord connected to an unswitched receptacle using an approved restraining means that secures the plug to the receptacle. This section has been added to read: 916.4 Power connections. Gas detection systems shall be permanently connected to the building electrical power supply or shall be permitted to be cord connected to an unswitched receptacle using an approved restraining means that secures the plug to the receptacle.

(12) Section 916.5 Emergency and standby power. This section has been added to require standby or emergency power to be provided to the gas detection system, or if the power supply is interrupted, the system shall initiate a trouble signal at an approved location. This section has been added to read: 916.5 Emergency and standby power. Standby or emergency power shall be provided or the gas detection system shall initiate a trouble signal at an approved location if the power supply is interrupted.

(13) Section 916.6 Sensor locations. This section has been added to require sensors to be installed in approved locations where leaking gases are expected to accumulate. This section has been added to read: 916.6 Sensor locations. Sensors shall be installed in approved locations where leaking gases are expected to accumulate.

(14) Section 916.7 Gas sampling. This section has been added to require gas sampling to be performed continuously and be processed immediately after sampling, except under certain conditions. The section further requires upon activation of a gas detection alarm, alarm signals or other required responses shall be specified by the section of this code requiring a gas detection system. The section requires audible and visible alarm signals associated with the gas detection alarm to be distinct from fire alarm and carbon monoxide signals. HPM stands for "Hazardous Production Material" as defined in Chapter 2 of this code. This section has been added to read: 916.7 Gas sampling. Gas sampling shall be performed continuously. Sample

analysis shall be processed immediately after sampling, except as follows:

(A) For HPM gases, sample analysis shall be performed at intervals not exceeding 30 minutes.

(B) For toxic gases that are not HPM, sample analysis shall be performed at intervals not exceeding 5 minutes, in accordance with Section 6004.2.2.7 of the International Fire Code®.

(C) Where a less frequent or delayed sampling interval is approved.

(15) Section 916.8 System activation. This section has been added to require a gas detection alarm to be initiated where any sensor detects a concentration of gases exceeding the thresholds specified in this section. The section requires upon activation of a gas detection alarm, alarm signals or other required responses to be specified by the section of this code requiring a gas detection system. The section further requires the alarm signals to be both audible and visible alarm signals that are distinct from fire alarm and carbon monoxide signals. IDLH stands for "Immediately Dangerous to Life and Health" as defined in Chapter 2 of this code. This section has been added to read: 916.8 System activation. A gas detection alarm shall be initiated where any sensor detects a concentration of gas exceeding the following thresholds:

(A) For flammable gases, a gas concentration exceeding 25 percent of the lower flammability limit (LFL).

(B) For nonflammable gases, a gas concentration exceeding one-half of the IDLH, unless a different threshold is specified by the section of this code requiring a gas detection system.

(16) Upon activation of a gas detection alarm, alarm signals or other required responses shall be specified by the section of this code requiring a gas detection system. Audible and visible alarm signals associated with a gas detection alarm shall be distinct from fire alarm and carbon monoxide alarm signals.

(17) Section 916.9 Signage. This section has been added to require signage to be provided adjacent to gas detection system alarm signaling devices that advises occupants of the nature of the signals and actions to take in response to the signal. This section has been added to read: 916.9 Signage. Signs shall be provided adjacent to gas detection system alarm signaling devices that advise occupants of the nature of the signals and actions to take in response to the signal.

(18) Section 916.10 Fire alarm system connections. This section has been added to prohibit gas sensors and gas detection systems to be connected to fire alarm systems unless approved and connected in accordance with the fire alarm equipment manufacturer's instructions. This section has been added to read: 916.10 Fire alarm system connections. Gas sensors and gas detection systems shall not be connected to fire alarm systems unless approved and connected in accordance with the fire alarm equipment manufacturer's instructions.

- (19) Section 916.11 Inspection, testing and sensor calibration. This section has been added to require gas detection systems and sensors to be inspected, tested and calibrated in accordance with the International Fire Code®. This section has been added to read: 916.11 Inspection, testing and sensor calibration. Gas detection systems and sensors shall be inspected, tested and calibrated in accordance with the International Fire Code®.
- (20) Section 917 Emergency Responder Radio Coverage. This section has been modified to change the section title number from 916 to 917. This section has been modified to read: Section 917 Emergency Responder Radio Coverage.
- (21) Section 917.1 General. This section has been modified to change the section reference from 916.1 to 917.1. This section has been modified to read: 917.1 General. Emergency responder radio coverage shall be provided in all new buildings in accordance with Section 510 of the International Fire Code®.

748:20-2-15. IBC® 2015 Chapter 10 Means of Egress
Chapter 10 of the IBC® 2015 is adopted with the following modifications:

- (1) Section 1010.1.9.8 Sensor release of electrically locked egress doors. This section has been modified to permit the use of sensor release of electronic locking systems on doors located in a means of egress in any occupancy except Group H where installed and operated in accordance with specific criteria. This section has been modified to read: 1010.1.9.8 Sensor release of electrically locked egress doors. Sensor release of electric locking systems shall be permitted on doors located in a means of egress in any occupancy except Group H where installed and operated in accordance with all of the following criteria:
- (A) The sensor shall be installed on the egress side, arranged to detect an occupant approaching the doors, and shall cause the electric locking system to unlock.
- (B) The electric locks shall be arranged to unlock by a signal from or loss of power to the sensor.
- (C) Loss of power to the lock or locking system shall automatically unlock the electric locks.
- (D) The doors shall be arranged to unlock from a manual unlocking device located 40 inches to 48 inches (1016 mm to 1219 mm) vertically above the floor and within 5 feet (1524 mm) of the secured doors. Ready access shall be provided to the manual unlocking device and the device shall be clearly identified by a sign that reads "PUSH TO EXIT." When operated, the manual unlocking device shall result in direct interruption of the power to the electric lock - independent of other electronics - and the doors electric lock shall remain unlocked for not less than 30 seconds.
- (E) Activation of the building fire alarm system, where provided, shall automatically unlock the electric lock, and the electric lock shall remain unlocked until the fire alarm system has been reset.

- (F) Activation of the building automatic fire sprinkler system or fire detection system, where provided, shall automatically unlock the electric lock. The electric lock shall remain unlocked until the fire alarm system has been reset.
- (G) The door locking system units shall be listed in accordance with UL 294.
- (2) Section 1010.1.9.9. Door hardware release of electrically locked egress doors. This section has been modified to change part of the section heading and permit door hardware release of electric locking systems to be on all doors in a means of egress in any occupancy except Group H where installed and operated in accordance specific requirements. This section has been modified to read: 1010.1.9.9. Door hardware release of electrically locked egress doors. Door hardware release of electric locking systems shall be permitted on doors in the means of egress in any occupancy except Group H where installed and operated in accordance with all of the following:
- (A) The door hardware that is affixed to the door leaf has an obvious method of operation that is readily operated under all lighting conditions.
- (B) The door hardware is capable of being operated with one hand and shall comply with Section 1010.1.9.5.
- (C) Operation of the door hardware directly interrupts the power to the electric lock and unlocks the door immediately.
- (D) Loss of power to the electric locking system automatically unlocks the door.
- (E) Where panic or fire exit hardware is required by Section 1010.1.10, operation of the panic or fire exit hardware also releases the electric lock.
- (F) The locking system units shall be listed in accordance with UL 294.
- (3) Section 1010.1.10 Panic and fire exit hardware. This section has been modified to change the door type, and allow for doors provided with panic hardware or fire exit hardware serving Group A or E occupancies to be permitted to be electrically locked, in accordance with Section 1010.1.9.8, or 1010.1.9.9. This section has been further modified to require personnel doors in rooms or spaces that contain electrical equipment rated 800 amperes or more that contain overcurrent devices, switching devices, or control devices where the personnel door intended for entrance to and egress from the working space is less than 25 feet from the nearest edge of the working space, to be equipped with panic hardware or fire exit hardware. This section has been modified to read: 1010.1.10 Panic and fire exit hardware. Swinging doors serving a Group H occupancy and swinging doors serving rooms or spaces with an occupant load of 50 or more in a Group A or E occupancy shall not be provided with a latch or lock other than panic hardware or fire exit hardware. Exceptions:
- (A) A main exit of a Group A occupancy shall be permitted to have locking hardware devices in accordance with Section 1010.1.9.3, Item 2.

- (B) Doors provided with panic hardware or fire exit hardware and serving a Group A or E occupancy shall be permitted to be electrically locked in accordance with Section 1010.1.9.8 or 1010.1.9.9.
- (4) Electrical rooms with equipment rated 1,200 amperes or more and over 6 feet (1829 mm) wide, and that contain overcurrent devices, switching devices or control devices with exit or exit access doors, shall be equipped with panic hardware or fire exit hardware. The doors shall swing in the direction of egress travel.
- (5) Where electrical equipment rated 800 amperes or more that contains overcurrent devices, switching devices, or control devices is installed and there is a personnel door(s) intended for entrance to and egress from the working space less than 25 feet (7.6 m) from the nearest edge of the working space, the personnel door shall be equipped with panic hardware or fire exit hardware. The door(s) shall open in the direction of egress.
- (6) Section 1015.6 Mechanical equipment, systems and devices. This section has been modified to clarify the circumstances under which guards shall be provided and to modify the exception to require the authority having jurisdiction approve the use of a fall/restraint system instead of guards. This section has been modified to read: 1015.6 Mechanical equipment, systems and devices. Guards shall be provided where various components that require services are located on a roof or elevated structure and have a condition as set forth in Sections 1015.6.1 through 1015.6.3. The guard shall be constructed so as to prevent the passage of a sphere 21 inches (533 mm) in diameter. Exception: When approved by the authority having jurisdiction, guards are not required where permanent fall arrest/restraint anchorage connector devices that comply with ANSI/ASSE Z 359.1 are affixed for use during the entire roof covering lifetime. The devices shall be reevaluated for possible replacement when the entire roof covering is replaced. The devices shall be placed not more than 10 feet (3048 mm) on center along hip and ridge lines and placed not less than 10 feet (3048 mm) from roof edges and the open sides of walking surfaces.
- (7) Section 1015.6.1 Roof edge. This section has been added to clarify the circumstances required to exist for the installation of guards at the roof edge when the components needing service are within a specific distance of the roof edge. This section has been added to read: 1015.6.1 Roof edge. Guards shall be provided when components are located within 10 feet (3048 mm) of a roof edge or open side of a walking surface or elevated structure and such edge or open side is located more than 30 inches (762 mm) above the floor, roof, or grade below. The guard shall extend not less than 30 inches (762 mm) beyond each end of the component that requires service.
- (8) Section 1015.6.2 Skylights. This section has been added to clarify the circumstances for the installation of guards around components near skylights and to provide exceptions to the requirement. This section has been added to read: 1015.6.2 Skylights. Guards shall be provided when a skylight is within 10 feet (3048 mm) of the

component that requires service. The guard shall extend 30 inches (762 mm) beyond the edge of the skylight. Exceptions:

- (A) Guards are not required when the skylight is located at least 42 inches (1067 mm) above the highest point of the walking surface adjacent to the skylight or component.
- (B) Guards are not required if some other provision for skylight fall-thru protection is provided and approved by the authority having jurisdiction.
- (9) Section 1015.6.3 Roof hatch. This section has been added to clarify the circumstances for the installation of guards around components installed within a specific distance from the roof hatch. This section has been added to read: 1015.6.3 Roof hatch. Guards shall be provided when a roof hatch is within 10 feet (3048 mm) of the component that requires service. The guard shall extend 30 inches (762 mm) beyond the edge of the roof hatch. If the component is within 10 feet (3048 mm) of the ladder access side of the roof hatch, the guard shall incorporate a self-closing, self-latching gate. The gate shall have a top edge of not less than 42 inches (1067 mm) above the elevated surface adjacent to the gate and shall not allow the passage of a 21 inch (533 mm) sphere.
- (10) Section 1015.7 Roof access. This section has been modified to require the authority having jurisdiction approve the use of a fall-restraint system instead of a guard in the exception. This section has been modified to read: 1015.7 Roof access. Guards shall be provided where the roof hatch opening is located within 10 feet (3048 mm) of a roof edge or open side of a walking surface and such edge or open side is located more than 30 inches (762 mm) above the floor, roof or grade below. The guard shall be constructed so as to prevent the passage of a sphere 21 inches (533 mm) in diameter. Exception: When approved by the authority having jurisdiction, guards are not required where permanent fall arrest/restraint anchorage connector devices that comply with ANSI/ASSE Z 359.1 are affixed for use during the entire roof covering lifetime. The devices shall be reevaluated for possible replacement when the entire roof covering is replaced. The devices shall be placed not more than 10 feet (3048 mm) on center along hip and ridge lines and placed not less than 10 feet (3048 mm) from roof edges and the open sides of the walking surfaces.

748:20-2-16. IBC® Chapter 11 [RESERVED]

748:20-2-17. IBC® Chapter 12 [RESERVED]

748:20-2-18. IBC® Chapter 13 [RESERVED]

748:20-2-19. IBC® Chapter 14 [RESERVED]

748:20-2-20. IBC® Chapter 15 [RESERVED]

<u>748:20-2-21.</u>	<u>IBC® Chapter 16</u> [RESERVED]
<u>748:20-2-22.</u>	<u>IBC® Chapter 17</u> [RESERVED]
<u>748:20-2-23.</u>	<u>IBC® Chapter 18</u> [RESERVED]
<u>748:20-2-24.</u>	<u>IBC® Chapter 19</u> [RESERVED]
<u>748:20-2-25.</u>	<u>IBC® Chapter 20</u> [RESERVED]
<u>748:20-2-26.</u>	<u>IBC® Chapter 21</u> [RESERVED]
<u>748:20-2-27.</u>	<u>IBC® Chapter 22</u> [RESERVED]
<u>748:20-2-28.</u>	<u>IBC® Chapter 23</u> [RESERVED]
<u>748:20-2-29.</u>	<u>IBC® Chapter 24</u> [RESERVED]
<u>748:20-2-30.</u>	<u>IBC® Chapter 25</u> [RESERVED]
<u>748:20-2-31.</u>	<u>IBC® Chapter 26</u> [RESERVED]
<u>748:20-2-32.</u>	<u>IBC® Chapter 27</u> [RESERVED]
<u>748:20-2-33.</u>	<u>IBC® Chapter 28</u> [RESERVED]
<u>748:20-2-34.</u>	<u>IBC® Chapter 29</u> [RESERVED]
<u>748:20-2-35.</u>	<u>IBC® Chapter 30</u> [RESERVED]
<u>748:20-2-36.</u>	<u>IBC® Chapter 31</u> [RESERVED]
<u>748:20-2-37.</u>	<u>IBC® Chapter 32</u> [RESERVED]
<u>748:20-2-38.</u>	<u>IBC® Chapter 33</u> [RESERVED]
<u>748:20-2-39.</u>	<u>IBC® Chapter 34</u> [RESERVED]
<u>748:20-2-40.</u>	<u>IBC® Chapter 35</u> [RESERVED]

SUBCHAPTER 3. IFC® 2015

748:20-3-4. IFC® 2015 Provisions Adopted and Modified [AMENDED AND RENUMBERED TO 748:20-4-4]

(a) All chapters and provisions within chapters, including exceptions, of the IFC® 2015 not specifically addressed within these rules as being modified, deleted, moved or removed are hereby adopted without modification as the statewide minimum code for residential and commercial fire prevention and fire protection systems within the State of Oklahoma pursuant to 59 O.S. § 1000.23. Chapters and provisions within chapters, including exceptions adopted with modifications are specifically addressed in these rules.

(b) The ICC® has reserved Chapters 12 through 18, Chapters 38 through 49, Chapter 52, and Chapters 68 through 79 for possible future use. The OUBCC has not adopted Chapters 12 through 18, Chapters 38 through 49, Chapter 52, and Chapters 68 through 79 and these chapters are not considered part of the statewide minimum code for residential and commercial fire prevention and fire protection systems within the State of Oklahoma.

(c) To the extent any references in the IFC® 2015 as amended and modified in this sub chapter are made to any other code or standard, the particular edition for that reference is defined in the referenced standards found in the IFC® 2015 as amended and modified in this sub chapter and in the IFC® 2015 Chapter 80 entitled "Referenced Standards."

748:20-3-6. IFC® 2015 Chapter 1 Scope and Administration [AMENDED AND RENUMBERED TO 748:20-4-6]

Chapter 1 of the Oklahoma adopted IFC® 2015, includes the following Preamble at the very beginning of the chapter:

(1) Pursuant to 59 O.S. § 1000.23, the OUBCC has adopted the IFC® 2015 as amended and revised by the Commission, as the statewide minimum code to be used by all entities for residential and commercial fire prevention and fire protection systems in jurisdictions throughout the State of Oklahoma. However, the OUBCC's adoption of Chapter 1 "Scope and Administration" of the IFC® 2015 is for continuity purposes and the OUBCC's adoption of Chapter 1 recognizes the methods of best practice in fully implementing the statewide minimum code for residential and commercial fire prevention and fire protection systems.

(2) All provisions of the adopted IFC® 2015, including Chapter 1, as amended and revised by the OUBCC, are hereby established and adopted as the statewide minimum code for residential and commercial fire prevention and fire protection systems in Oklahoma pursuant to 59 O.S. § 1000.23, which may only be amended or altered pursuant to Oklahoma law and the administrative rules of the OUBCC as set forth in Title 748, Chapter 15 of the Oklahoma Administrative Code. However, the provisions of Chapter 1 adopted herein are only intended to be in force and effect to the extent that the respective provisions do not conflict with State law or the lawful exercise of code administration and enforcement jurisdiction by entities empowered to do so pursuant to applicable law.

Emergency Adoptions

(3) ~~Section 105.1.1 Annual permit. This section has been modified to clarify what an annual permit is. This section shall read: An annual permit is a yearly permit which represents a group of individual permits for each alteration to an already approved electrical, gas, mechanical or plumbing installation. The building official is authorized to issue an annual permit upon application therefor to any person, firm or corporation regularly employing one or more qualified tradespersons in the building, structure or on the premises owned or operated by the applicant for the permit.~~

(4) ~~Section 105.1.2 Annual permit records. This section has been modified to require the building official to collect the OUBCC permit fee for each individual permit that is part of the annual permit at the completion of the annual permit term. This section has been modified to read: Annual permit records. The person to whom an annual permit is issued shall keep a detailed record of alterations made under such annual permit. The building official shall have access to such detailed records of alterations at all times. At the completion of the entity's annual permit term, the applicant shall file such detailed records of alterations with the building official. Pursuant to the authority of 59 O.S. § 1000.25, the building official shall collect fees for each individual permit which is part of the annual permit once the detailed records are submitted and remit such fees to the OUBCC.~~

(5) ~~The OUBCC's adoption of Chapter 1 in this manner is made with the recognition that the legal authority granting state and local code administration and enforcement jurisdictions the power and discretion to administer and enforce codes arises from Oklahoma laws governing those jurisdictions. Furthermore, the OUBCC also recognizes that many state and local code administration and enforcement jurisdictions have already created, or have the lawful authority to create, departments, offices and administrative policies pursuant to various applicable laws and other adopted model codes with "Scope and Administration" provisions similar to Chapter 1 of the adopted IFC® 2015.~~

(6) ~~This limited adoption of Chapter 1 is made in recognition of the authority and discretion possessed by jurisdictions to administer and enforce building codes. Exercising such authority and jurisdiction in a manner inconsistent with Chapter 1 must be supported by Oklahoma law. Code administration and enforcement jurisdictions shall not use the OUBCC's limited adoption of Chapter 1 to circumvent the remainder of the requirements established by the Oklahoma adopted IFC® 2015 and the OUBCC will strongly oppose any such practice.~~

748:20-3-7. IFC® 2015 Chapter 2 Definitions [AMENDED AND RENUMBERED TO 748:20-4-7]

Chapter 2 of the IFC® 2015 is adopted with the following modifications:

(1) ~~The definition of an AUTHORITY HAVING JURISDICTION has been added to clarify the different individuals that may have authority with in the code. This definition has been added to read: AUTHORITY HAVING JURISDICTION. Means an organization, office, or individual responsible for enforcing the requirements of the State Adopted Building Codes, including the prior authorization or approval of any equipment, materials, installations or procedures used in all or part of the construction of a new, or alteration or renovation of an existing building or structure, including integral finishes, fixtures and building system therein.~~

(2) ~~The definition of a DISPENSING AREA has been added to clarify multiple references in the code with regard to fuel dispensing. This definition has been added to read: DISPENSING AREA. The appropriate hazardous (classified) locations for the fuel being dispensed in accordance with the National Electrical Code®-NFPA® 70.~~

(3) ~~The definition of a MAIN RAILROAD TRACK has been added to provide clarity to building code officials. This definition has been added to read: MAIN RAILROAD TRACK. That part of the railway, exclusive of switch tracks, branches, yards, and terminals upon which trains are operated by timetable or train order or both.~~

(4) ~~The definition for Residential Group R-3 has been modified to clarify the International Residential Code® 2015 (IRC® 2015) can be utilized so long as the facilities have four or fewer rooms. This definition has been modified to read: [BG] Residential Group R-3. Residential R-3 occupancies where occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-5, or I including Boarding houses (non transient) with 16 or fewer occupants, Boarding houses (transient) with 10 or fewer occupants, Buildings that do not contain more than two dwelling units, Care facilities that provide accommodations for five or fewer persons receiving care, Congregate living facilities (non transient with 16 or fewer occupants), Congregate living facilities (transient) with 10 or fewer occupants and Lodging houses with four or fewer guest rooms.~~

(A) ~~[BG] Care facilities within a dwelling. Care facilities for five or fewer persons receiving care that are within a single family dwelling are permitted to comply with the IRC® provided an automatic sprinkler system is installed in accordance with Section 903.3.1.3 or Section P2904 of the IRC®.~~

(B) ~~[BG] Lodging houses. Owner occupied lodging houses with four or fewer guest rooms shall be permitted to be constructed in accordance with the IRC®.~~

(5) ~~The definition of a SELF SERVICE STORAGE FACILITY from the International Building Code®, 2015 Edition (Section 202) has been added to the International Fire Code®, 2015 Edition. This definition has been added to read: SELF SERVICE STORAGE FACILITY. Real property designed and used for the purpose of renting or leasing individual storage spaces to customers for the~~

purpose of storing and removing personal property on a self-service basis.

748:20-3-11. IFC® 2015 Chapter 9 Fire Protection Systems [AMENDED AND RENUMBERED TO 748:20-4-14]

Chapter 9 of the IFC® 2015 is adopted with the following modifications:

(1) Section 903.2.7 Group M. This section has been modified to reword subsection 4 to provide a reasonable limit for these occupancies and adequate protection without excessive burden on Group M occupancies with small areas of upholstered furniture and mattresses. This section has been modified to read: 903.2.7 Group M. An automatic sprinkler system shall be provided throughout buildings containing a Group M occupancy where one of the following conditions exists:

- (A) A Group M fire area exceeds 12,000 square feet (1115 square meters).
- (B) A Group M fire area is located more than three stories above grade plane.
- (C) The combined area of all Group M fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 square meters).
- (D) A group M occupancy where the cumulative area used for the display and sale of upholstered furniture or mattresses exceeds 5,000 square feet (464 square meters).

(2) 903.2.9 Group S 1. This section has been modified to add an exception to the fifth requirement in the list for when an automatic fire sprinkler system is required. This section has been modified to read: 903.2.9 Group S 1. An automatic sprinkler system shall be provided throughout all buildings containing a Group S 1 occupancy where one of the following conditions exists:

- (A) A Group S 1 fire area exceeds 12,000 square feet (1115 square meters).
- (B) A Group S 1 fire area is located more than three stories above grade plane.
- (C) The combined area of all Group S 1 fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 square meters).
- (D) A Group S 1 fire area used for the storage of commercial motor vehicles where the fire area exceeds 5,000 square feet (464 square meters).
- (E) A Group S 1 occupancy used for the storage of upholstered furniture or mattresses exceeds 2,500 square feet (232 square meters). Exception: Self-service storage facility where the fire area is less than 5,000 square feet (464 square meters).

(3) Section 907.2.3 Group E. This section has been modified to remove the requirement for an emergency voice/alarm system and require a fire alarm system in Group E occupancies. The section has been modified to read: 907.2.3 Group E. A manual fire alarm system that activates the occupant notification signal in accordance with Section 907.5 and installed in accordance with 907.6

shall be installed in Group E occupancies. When automatic sprinkler systems or smoke detectors are installed such systems or detectors shall be connected to the building fire alarm system. Exceptions:

- (A) A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.
- (B) Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
 - (i) Interior corridors are protected by smoke detectors
 - (ii) Auditoriums, cafeterias, gymnasiums or similar areas are protected by heat detectors or other approved detection devices.
 - (iii) Shop and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.
 - (iv) The capability to activate the evacuation signal from a central point is provided.
 - (v) In buildings where normally occupied spaces are provided with a two way communication system between such spaces and constantly attended receiving station from where a general evacuation alarm can be sounded, except in locations specifically designated by the fire code official.
- (C) Manual fire alarm boxes shall not be required in Group E occupancies where all the following apply:
 - (i) The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1.
 - (ii) The fire alarm system will activate on sprinkler waterflow.
 - (iii) Manual activation is provided from a normally occupied location.

748:20-3-12. IFC® 2015 Chapter 10 Means of Egress [AMENDED AND RENUMBERED TO 748:20-4-15]

Chapter 10 of the IFC® 2015 is adopted with the following modifications:

(1) Section 1010.1.10 Panic and fire exit hardware. This section has been modified to add an exception to the requirement for panic hardware or fire exit hardware on the access doors for electrical rooms and working spaces. This section has been further modified to require personnel doors in rooms or spaces that contain electrical equipment rated 800 amperes or more that contain overcurrent devices, switching devices, or control devices where the personnel door intended for entrance to and egress from the working space is less than 25 feet from the nearest edge of the working space, to be equipped with panic hardware or fire exit hardware. This section has been modified to read: 1010.1.10 Panic and fire exit hardware. Doors serving a Group H occupancy and doors serving rooms or spaces with an occupant load of 50 or

more in a Group A or E occupancy shall not be provided with a latch or lock other than panic hardware or fire exit hardware. Exceptions:

- (A) A main exit of a Group A occupancy shall be permitted to have locking hardware devices in accordance with Section 1010.1.9.3, Item 2.
 - (B) Doors serving a Group A or E occupancy shall be permitted to be electromagnetically locked in accordance with Section 1010.1.9.8 or 1010.1.9.9.
- (2) Electrical rooms and working spaces with equipment operating at more than 600 volts, nominal, and equipment operating at 600 volts or less, nominal and rated 800 amperes or more and that contain overcurrent devices, switching devices or control devices with exit or exit access doors, shall be equipped with panic hardware or fire exit hardware. The doors shall swing in the direction of egress travel. Exception: Personnel entrance to and egress from doors of the electrical equipment working spaces that are greater than 25 feet (7.6 m) from the nearest edge of the electrical equipment.
- (3) ~~Section 1015.6 Mechanical equipment, systems and devices. This section has been modified to clarify the circumstances under which guards shall be provided and to modify the exception to require the authority having jurisdiction approve the use of a fall/restraint system instead of guards. This section has been modified to read: 1015.6 Mechanical equipment, systems and devices. Guards shall be provided where various components that require services are located on a roof or elevated structure and have a condition as set forth in Sections 1015.6.1 through 1015.6.3. The guard shall be constructed so as to prevent the passage of a sphere 21 inches (533 mm) in diameter. Exception: When approved by the authority having jurisdiction, guards are not required where permanent fall arrest/restraint anchorage connector devices that comply with ANSI/ASSE Z 359.1 are affixed for use during the entire roof covering lifetime. The devices shall be reevaluated for possible replacement when the entire roof covering is replaced. The devices shall be placed not more than 10 feet (3048 mm) on center along hip and ridge lines and placed not less than 10 feet (3048 mm) from roof edges and the open sides of walking surfaces.~~
- (4) ~~Section 1015.6.1 Roof edge. This section has been added to clarify the circumstances required to exist for the installation of guards at the roof edge when the components needing service are within a specific distance of the roof edge. This section has been added to read: 1015.6.1 Roof edge. Guards shall be provided when components are located within 10 feet (3048 mm) of a roof edge or open side of a walking surface or elevated structure and such edge or open side is located more than 30 inches (762 mm) above the floor, roof, or grade below. The guard shall extend not less than 30 inches (762 mm) beyond each end of the component that requires service.~~
- (5) ~~Section 1015.6.2 Skylights. This section has been added to clarify the circumstances for the installation of guards around components near skylights and to provide exceptions to the requirement. This section has been~~

added to read: 1015.6.2 Skylights. Guards shall be provided when a skylight is within 10 feet (3048 mm) of the component that requires service. The guard shall extend 30 inches (762 mm) beyond the edge of the skylight. Exceptions:

- (A) Guards are not required when the skylight is located at least 42 inches (1067 mm) above the highest point of the walking surface adjacent to the skylight or component.
 - (B) Guards are not required if some other provision for skylight fall thru protection is provided and approved by the authority having jurisdiction.
- (6) ~~Section 1015.6.3 Roof hatch. This section has been added to clarify the circumstances for the installation of guards around components installed within a specific distance from the roof hatch. This section has been added to read: 1015.6.3 Roof hatch. Guards shall be provided when a roof hatch is within 10 feet (3048 mm) of the component that requires service. The guard shall extend 30 inches (762 mm) beyond the edge of the roof hatch. If the component is within 10 feet (3048 mm) of the ladder access side of the roof hatch, the guard shall incorporate a self-closing, self-latching gate. The gate shall have a top edge of not less than 42 inches (1067 mm) above the elevated surface adjacent to the gate and shall not allow the passage of a 21 inch (533 mm) sphere.~~
- (7) ~~Section 1015.7 Roof access. This section has been modified to require the authority having jurisdiction approve the use of a fall restraint system instead of a guard in the exception. This section has been modified to read: 1015.7 Roof access. Guards shall be provided where the roof hatch opening is located within 10 feet (3048 mm) of a roof edge or open side of a walking surface and such edge or open side is located more than 30 inches (762 mm) above the floor, roof or grade below. The guard shall be constructed so as to prevent the passage of a sphere 21 inches (533 mm) in diameter. Exception: When approved by the authority having jurisdiction, guards are not required where permanent fall arrest/restraint anchorage connector devices that comply with ANSI/ASSE Z 359.1 are affixed for use during the entire roof covering lifetime. The devices shall be reevaluated for possible replacement when the entire roof covering is replaced. The devices shall be placed not more than 10 feet (3048 mm) on center along hip and ridge lines and placed not less than 10 feet (3048 mm) from roof edges and the open sides of the walking surfaces.~~

748:20-3-14. IFC® 2015 Chapter 80 Referenced Standards [AMENDED AND RENUMBERED TO 748:20-4-85]

Chapter 80 of the IFC® 2015 is adopted with the following modifications:

- (1) The reference to the International Building Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read:

~~IBC® 15 International Building Code® as adopted and modified by the State of Oklahoma through the OUBCC.~~
(2) ~~The reference to the International Existing Building Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IEBC® 15 International Existing Building Code® as adopted and modified by the State of Oklahoma through the OUBCC.~~

(3) ~~The reference to the International Fuel Gas Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IFGC® 15 International Fuel Gas Code® as adopted and modified by the State of Oklahoma through the OUBCC.~~

(4) ~~The reference to the International Mechanical Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IMC® 15 International Mechanical Code® as adopted and modified by the State of Oklahoma through the OUBCC.~~

(5) ~~The reference to the International Plumbing Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through OUBCC." This section has been modified to read: IPC® 15 International Plumbing Code® as adopted and modified by the State of Oklahoma through the OUBCC.~~

(6) ~~The reference to the International Residential Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IRC® 15 International Residential Code® as adopted and modified by the State of Oklahoma through the OUBCC.~~

(7) ~~The referenced standard for NFPA® 2 Hydrogen Technologies Code has been modified to change the edition year from 2011 to 2016. This Section has been modified to read: 02 16 Hydrogen Technologies Code.~~

(8) ~~The referenced standard for NFPA® 70® National Electrical Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: 70 14 National Electrical Code® as adopted and modified by the State of Oklahoma through the OUBCC.~~

SUBCHAPTER 4. IFC® 2015

748:20-4-1. **Adoption of the International Fire Code®**
[RESERVED]

748:20-4-2. **Effect of Adoption [RESERVED]**

748:20-4-3.. **IFC® and Other Appendices**
[RESERVED]

748:20-4-4. **IFC® 2015 Provisions Adopted and Modified**

(a) All chapters and provisions within chapters, including exceptions, of the IFC® 2015 not specifically addressed within these rules as being modified, deleted, moved or removed are hereby adopted without modification as the statewide minimum code for residential and commercial fire prevention and fire protection systems within the State of Oklahoma pursuant to 59 O.S. § 1000.23. Chapters and provisions within chapters, including exceptions adopted with modifications are specifically addressed in these rules.

(b) The ICC® has reserved Chapters 12 through 18, Chapters 38 through 49, Chapter 52, and Chapters 68 through 79 for possible future use. The OUBCC has not adopted Chapters 12 through 18, Chapters 38 through 49, Chapter 52, and Chapters 68 through 79 and these chapters are not considered part of the statewide minimum code for residential and commercial fire prevention and fire protection systems within the State of Oklahoma.

(c) In light of the notice by ICC® of the creation of a new Chapter 39 entitled "Processing and Extraction Facilities" in the IFC® 2018, the OUBCC has created a Chapter 39 entitled "Processing and Extraction Facilities" as hereby amended and modified to clarify requirements to be utilized when processing and extracting fats and oils from plant based materials, not currently addressed in the IFC® 2015 as amended and modified in this sub-chapter.

(d) To the extent any references in the IFC® 2015 as amended and modified in this sub-chapter are made to any other code or standard, the particular edition for that reference is defined in the referenced standards found in the IFC® 2015 as amended and modified in this sub-chapter and in the IFC® 2015 Chapter 80 entitled "Referenced Standards."

748:20-4-5. **Participation in Federal Programs and/or Federally Funded or Financed Projects [RESERVED]**

748:20-4-6. **IFC® 2015 Chapter 1 Scope and Administration**

Chapter 1 of the Oklahoma adopted IFC® 2015, includes the following Preamble at the very beginning of the chapter:

(1) Pursuant to 59 O.S. § 1000.23, the OUBCC has adopted the IFC® 2015 as amended and revised by the Commission, as the statewide minimum code to be used by all entities for residential and commercial fire prevention and fire protection systems in jurisdictions throughout the State of Oklahoma. However, the OUBCC's adoption of Chapter 1 "Scope and Administration" of the IFC® 2015 is for continuity purposes and the OUBCC's adoption of Chapter 1 recognizes the methods of best practice in fully implementing the statewide minimum code for residential and commercial fire prevention and fire protection systems.

(2) All provisions of the adopted IFC® 2015, including Chapter 1, as amended and revised by the OUBCC,

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are hereby established and adopted as the statewide minimum code for residential and commercial fire prevention and fire protection systems in Oklahoma pursuant to 59 O.S. § 1000.23, which may only be amended or altered pursuant to Oklahoma law and the administrative rules of the OUBCC as set forth in Title 748, Chapter 15 of the Oklahoma Administrative Code. However, the provisions of Chapter 1 adopted herein are only intended to be in force and effect to the extent that the respective provisions do not conflict with State law or the lawful exercise of code administration and enforcement jurisdiction by entities empowered to do so pursuant to applicable law.

(3) Section 105.1.1 Annual permit. This section has been modified to clarify what an annual permit is. This section shall read: An annual permit is a yearly permit which represents a group of individual permits for each alteration to an already approved electrical, gas, mechanical or plumbing installation. The building official is authorized to issue an annual permit upon application therefor to any person, firm or corporation regularly employing one or more qualified tradespersons in the building, structure or on the premises owned or operated by the applicant for the permit.

(4) Section 105.1.2 Annual permit records. This section has been modified to require the building official to collect the OUBCC permit fee for each individual permit that is part of the annual permit at the completion of the annual permit term. This section has been modified to read: Annual permit records. The person to whom an annual permit is issued shall keep a detailed record of alterations made under such annual permit. The building official shall have access to such detailed records of alterations at all times. At the completion of the entity's annual permit term, the applicant shall file such detailed records of alterations with the building official. Pursuant to the authority of 59 O.S. § 1000.25, the building official shall collect fees for each individual permit which is part of the annual permit once the detailed records are submitted and remit such fees to the OUBCC.

(5) Table 105.6.9 Permit Amounts for Compressed Gases. This table has been modified to add carbon dioxide used in carbon dioxide enrichment systems and carbon dioxide used in insulated liquid carbon dioxide beverage dispensing systems to the list of types and amounts of compressed gases where an operational permit is required, if the amount of compressed gases used for the storage, use or handling of the compressed gases at normal temperature and pressure (NTP), is in excess of the amount listed in the table. This table has been modified to read: Table 105.6.9 Permit Amounts for Compressed Gases. The table contains ten rows with two columns per row as described below:

(A) Row 1 contains the headers for the two columns as listed below:

- (i) Row 1, column 1 is entitled "Type of Gas."
- (ii) Row 1, column 2 is entitled "Amount (cubic feet at NTP)."

(B) Row 2 contains the following information for the two columns listed in the header row number 1:

- (i) Row 2, column 1 lists the compressed gas type entitled "Carbon dioxide used in carbon dioxide enrichment systems."
- (ii) Row 2, column 2 lists the amount of cubic feet at NTP of "875 (100 lbs.)."

(C) Row 3 contains the following information for the two columns listed in the header row number 1:

- (i) Row 3, column 1 lists the compressed gas type entitled "Carbon dioxide used in insulated liquid carbon dioxide beverage dispensing applications."
- (ii) Row 3, column 2 lists the amount of cubic feet at NTP of "875 (100 lbs.)."

(D) Row 4 contains the following information for the two columns listed in the header row number 1:

- (i) Row 4, column 1 lists the compressed gas type entitled "Corrosive."
- (ii) Row 4, column 2 lists the amount of cubic feet at NTP of "200."

(E) Row 5 contains the following information for the two columns listed in the header row number 1:

- (i) Row 5, column 1 lists the compressed gas type entitled "Flammable (except cryogenic fluids and liquefied petroleum gases)."
- (ii) Row 5, column 2 lists the amount of cubic feet at NTP of "200."

(F) Row 6 contains the following information for the two columns listed in the header row number 1:

- (i) Row 6, column 1 lists the compressed gas type entitled "Highly toxic."
- (ii) Row 6, column 2 lists the amount of cubic feet at NTP of "Any Amount."

(G) Row 7 contains the following information for the two columns listed in the header row number 1:

- (i) Row 7, column 1 lists the compressed gas type entitled "Inert and simple asphyxiant."
- (ii) Row 7, column 2 lists the amount of cubic feet at NTP of "6,000."

(H) Row 8 contains the following information for the two columns listed in the header row number 1:

- (i) Row 8, column 1 lists the compressed gas type "Oxidizing (including oxygen)."
- (ii) Row 8, column 2 lists the amount of cubic feet at NTP of "504."

(I) Row 9 contains the following information for the two columns listed in the header row number 1:

- (i) Row 9, column 1 lists the compressed gas type "Pyrophoric."
- (ii) Row 9, column 2 lists the amount of cubic feet at NTP of "Any Amount."

(J) Row 10 contains the following information for the two columns listed in the header row number 1:

- (i) Row 10, column 1 lists the compressed gas type "Toxic."
- (ii) Row 10, column 2 lists the amount of cubic feet at NTP of "Any amount."

(K) Below the table is a footnote that reads: "For SI: 1 cubic foot equals 0.02832 cubic meters."

(6) Section 105.6.49 Plant extraction systems. This section has been added to require an operational permit for a plant extraction system. This section has been added to read: 105.6.49 Plant extraction systems. An operational permit is required to use plant extraction systems.

(7) Section 105.7.19 Gas detection systems. This section has been added to require a construction permit for the installation of or modification to a gas detection systems. The section clarifies that maintenance performed in accordance with the code is not considered a modification and shall not require a permit. This section has been added to read: 105.7.19 Gas detection systems. A construction permit is required for the installation of or modification to gas detection systems. Maintenance performed in accordance with this code is not considered a modification and shall not require a permit.

(8) Section 105.7.20 Plant extraction systems. This section has been added to require a construction permit for the installation of or modification to plant extraction systems. The section clarifies that maintenance performed in accordance with the code, is not considered a modification and shall not require a construction permit. This section has been added to read: 105.7.20 Plant extraction systems. A construction permit is required for the installation of or modification to plant extraction systems. Maintenance performed in accordance with this code is not considered to be a modification and does not require a permit.

(9) The OUBCC's adoption of Chapter 1 in this manner is made with the recognition that the legal authority granting state and local code administration and enforcement jurisdictions the power and discretion to administer and enforce codes arises from Oklahoma laws governing those jurisdictions. Furthermore, the OUBCC also recognizes that many state and local code administration and enforcement jurisdictions have already created, or have the lawful authority to create, departments, offices and administrative policies pursuant to various applicable laws and other adopted model codes with "Scope and Administration" provisions similar to Chapter 1 of the adopted IFC® 2015.

(10) This limited adoption of Chapter 1 is made in recognition of the authority and discretion possessed by jurisdictions to administer and enforce building codes. Exercising such authority and jurisdiction in a manner inconsistent with Chapter 1 must be supported by Oklahoma law. Code administration and enforcement jurisdictions shall not use the OUBCC's limited adoption of Chapter 1 to circumvent the remainder of the requirements established by the Oklahoma adopted IFC® 2015 and the OUBCC will strongly oppose any such practice.

748:20-4-7. IFC® 2015 Chapter 2 Definitions

Chapter 2 of the IFC® 2015 is adopted with the following modifications:

(1) The definition of an AUTHORITY HAVING JURISDICTION has been added to clarify the different individuals that may have authority with in the code. This definition has been added to read: AUTHORITY HAVING JURISDICTION. Means an organization, office, or individual responsible for enforcing the requirements of the State Adopted Building Codes, including the prior authorization or approval of any equipment, materials, installations or procedures used in all or part of the construction of a new, or alteration or renovation of an existing building or structure, including integral finishes, fixtures and building system therein.

(2) The definition of a DISPENSING AREA has been added to clarify multiple references in the code with regard to fuel dispensing. This definition has been added to read: DISPENSING AREA. The appropriate hazardous (classified) locations for the fuel being dispensed in accordance with the National Electrical Code® - NFPA® 70.

(3) The definition of GAS DETECTION SYSTEM has been added to clarify multiple references in the code with regard to gas detection. This section has been added to read: GAS DETECTION SYSTEM. A system or portion of a combination system that utilizes one or more stationary sensors to detect the presence of a specified gas at a specified concentration and initiate one or more responses required by this code, such as notifying a responsible person, activating an alarm signal, or activating or deactivating equipment. A self-contained gas detection and alarm device is not classified as a gas detection system.

(4) The definition of a MAIN RAILROAD TRACK has been added to provide clarity to building code officials. This definition has been added to read: MAIN RAILROAD TRACK. That part of the railway, exclusive of switch tracks, branches, yards, and terminals upon which trains are operated by timetable or train order or both.

(5) The definition of MISCELLA has been added to clarify multiple references in the code. This definition has been added to read: MISCELLA. A mixture, in any proportion, of the extracted oil or fat and the extracting solvent.

(6) The definition for Residential Group R-3 has been modified to clarify the International Residential Code® 2015 (IRC® 2015) can be utilized so long as the facilities have four or fewer rooms. This definition has been modified to read: [BG] Residential Group R-3. Residential R-3 occupancies where occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-5, or I including Boarding houses (non-transient) with 16 or fewer occupants, Boarding houses (transient) with 10 or fewer occupants, Buildings that do not contain more than two dwelling units, Care facilities that provide accommodations for five or fewer persons receiving care, Congregate living facilities (non-transient with 16 or fewer occupants), Congregate living facilities (transient) with 10 or fewer occupants and Lodging houses with four or fewer guest rooms.

(A) [BG] Care facilities within a dwelling. Care facilities for five or fewer persons receiving care that

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are within a single-family dwelling are permitted to comply with the IRC[®] provided an automatic sprinkler system is installed in accordance with Section 903.3.1.3 or Section P2904 of the IRC[®].

(B) [BG] Lodging houses. Owner-occupied lodging houses with four or fewer guest rooms shall be permitted to be constructed in accordance with the IRC[®].

(7) The definition of a SELF-SERVICE STORAGE FACILITY from the International Building Code[®], 2015 Edition (Section 202) has been added to the International Fire Code[®], 2015 Edition. This definition has been added to read: SELF-SERVICE STORAGE FACILITY. Real property designed and used for the purpose of renting or leasing individual storage spaces to customers for the purpose of storing and removing personal property on a self-service basis.

748:20-4-8. IFC[®] Chapter 3 [RESERVED]

748:20-4-9. IFC[®] Chapter 4 [RESERVED]

748:20-4-10. IFC[®] Chapter 5 [RESERVED]

748:20-4-11. IFC[®] Chapter 6 [RESERVED]

748:20-4-12. IFC[®] Chapter 7 [RESERVED]

748:20-4-13. IFC[®] Chapter 8 [RESERVED]

748:20-4-14. IFC[®] 2015 Chapter 9 Fire Protection Systems

Chapter 9 of the IFC[®] 2015 is adopted with the following modifications:

(1) Section 902.1 Definitions. This section has been modified to clarify the definition for a "GAS DETECTION SYSTEM," has been added to the list of definitions defined in Chapter 2. This section has been modified to read: 902.1 Definitions. The following terms are defined in Chapter 2.

- (A) ALARM NOTIFICATION APPLIANCE.
- (B) ALARM SIGNAL.
- (C) ALARM VERIFICATION FEATURE.
- (D) ANNUNCIATOR.
- (E) AUDIBLE ALARM NOTIFICATION APPLIANCE.
- (F) AUTOMATIC.
- (G) AUTOMATIC FIRE-EXTINGUISHING SYSTEM.
- (H) AUTOMATIC SMOKE DETECTION SYSTEM.
- (I) AUTOMATIC SPRINKLER SYSTEM.
- (J) AUTOMATIC WATER MIST SYSTEM.
- (K) AVERAGE AMBIENT SOUND LEVEL.

(L) CARBON DIOXIDE EXTINGUISHING SYSTEM.

(M) CLEAN AGENT.

(N) COMMERCIAL MOTOR VEHICLE.

(O) CONSTANTLY ATTENDED LOCATION.

(P) DELUGE SYSTEM.

(Q) DETECTOR, HEAT.

(R) DRY-CHEMICAL EXTINGUISHING AGENT.

(S) ELEVATOR GROUP.

(T) EMERGENCY ALARM SYSTEM.

(U) EMERGENCY VOICE/ALARM COMMUNICATIONS.

(V) FIRE ALARM BOX, MANUAL.

(W) FIRE ALARM CONTROL UNIT.

(X) FIRE ALARM SIGNAL.

(Y) FIRE ALARM SYSTEM.

(Z) FIRE AREA.

(AA) FIRE DETECTOR, AUTOMATIC.

(BB) FIRE PROTECTION SYSTEM.

(CC) FIRE SAFETY FUNCTIONS.

(DD) FIXED BASE OPERATOR (FBO).

(EE) FOAM-EXTINGUISHING SYSTEM.

(FF) GAS DETECTION SYSTEM.

(GG) HALOGENATED EXTINGUISHING SYSTEM.

(HH) IMPAIRMENT COORDINATOR.

(II) INITIATING DEVICE.

(JJ) MANUAL FIRE ALARM BOX.

(KK) MULTIPLE-STATION ALARM DEVICE.

(LL) MULTIPLE-STATION SMOKE ALARM.

(MM) NOTIFICATION ZONE.

(NN) NUISANCE ALARM.

(OO) PRIVATE GARAGE.

(PP) RECORD DRAWINGS.

(QQ) SINGLE-STATION SMOKE ALARM.

(RR) SLEEPING UNIT.

(SS) SMOKE ALARM.

(TT) SMOKE DETECTOR.

(UU) STANDPIPE SYSTEM, CLASSES OF.

(i) Class I system.

(ii) Class II system.

(iii) Class III system.

(VV) STANDPIPE, TYPES OF.

(i) Automatic dry.

(ii) Automatic wet.

(iii) Manual dry.

(iv) Manual wet.

(v) Semiautomatic dry.

(WW) SUPERVISING STATION.

(XX) SUPERVISORY SERVICE.

(YY) SUPERVISORY SIGNAL.

(ZZ) SUPERVISORY SIGNAL-INITIATING DEVICE.

(AAA) TIRES, BULK STORAGE OF.

(BBB) TRANSIENT AIRCRAFT.

(CCC) TROUBLE SIGNAL.

(DDD) VISIBLE ALARM NOTIFICATION APPLIANCE.

(EEE) WET-CHEMICAL EXTINGUISHING AGENT.

(FFF) WIRELESS PROTECTION SYSTEM.

(GGG) ZONE.

(HHH) ZONE, NOTIFICATION.

(2) Section 903.2.7 Group M. This section has been modified to reword subsection 4 to provide a reasonable limit for these occupancies and adequate protection without excessive burden on Group M occupancies with small areas of upholstered furniture and mattresses. This section has been modified to read: 903.2.7 Group M. An automatic sprinkler system shall be provided throughout buildings containing a Group M occupancy where one of the following conditions exists:

(A) A Group M fire area exceeds 12,000 square feet (1115 square meters).

(B) A Group M fire area is located more than three stories above grade plane.

(C) The combined area of all Group M fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 square meters).

(D) A group M occupancy where the cumulative area used for the display and sale of upholstered furniture or mattresses exceeds 5,000 square feet (464 square meters).

(3) Section 903.2.9 Group S-1. This section has been modified to add an exception to the fifth requirement in the list for when an automatic fire sprinkler system is required. This section has been modified to read: 903.2.9 Group S-1. An automatic sprinkler system shall be provided throughout all buildings containing a Group S-1 occupancy where one of the following conditions exists:

(A) A Group S-1 fire area exceeds 12,000 square feet (1115 square meters).

(B) A Group S-1 fire area is located more than three stories above grade plane.

(C) The combined area of all Group S-1 fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 square meters).

(D) A Group S-1 fire area used for the storage of commercial motor vehicles where the fire area exceeds 5,000 square feet (464 square meters).

(E) A Group S-1 occupancy used for the storage of upholstered furniture or mattresses exceeds 2,500 square feet (232 square meters). Exception: Self-service storage facility where the fire area is less than 5,000 square feet (464 square meters).

(4) Section 907.2.3 Group E. This section has been modified to remove the requirement for an emergency voice/alarm system and require a fire alarm system in Group E occupancies. The section has been modified to read: 907.2.3 Group E. A manual fire alarm system that activates the occupant notification signal in accordance with Section 907.5 and installed in accordance with 907.6 shall be installed in Group E occupancies. When automatic sprinkler systems or smoke detectors are installed

such systems or detectors shall be connected to the building fire alarm system. Exceptions:

(A) A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.

(B) Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:

(i) Interior corridors are protected by smoke detectors

(ii) Auditoriums, cafeterias, gymnasiums or similar areas are protected by heat detectors or other approved detection devices.

(iii) Shop and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.

(iv) The capability to activate the evacuation signal from a central point is provided.

(v) In buildings where normally occupied spaces are provided with a two-way communication system between such spaces and constantly attended receiving station from where a general evacuation alarm can be sounded, except in locations specifically designated by the fire code official.

(C) Manual fire alarm boxes shall not be required in Group E occupancies where all the following apply:

(i) The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1.

(ii) The fire alarm system will activate on sprinkler waterflow.

(iii) Manual activation is provided from a normally occupied location.

(5) Section 916 Gas Detection Systems. This section header has been added to the code to clarify a new section of code has been added. This section heading has been added to read: Section 916 Gas Detection Systems.

(6) Section 916.1 Gas detection systems. This section has been added to specify when the requirements for gas detection systems are provided, they shall be in compliance with section 916.2 through 916.11. This section has been added to read: 916.1 Gas detection systems. Gas detection systems required by this code shall comply with Sections 916.2 through 916.11.

(7) Section 916.2 Permits. This section has been added to specify permits shall be required as set forth in Section 105.7. This section has been modified to read: 916.2 Permits. Permits shall be required as set forth in Section 105.7.

(8) Section 916.2.1 Construction documents. This section has been added to require construction documentation to be submitted with the application for permit. It requires the documentation of the gas detection system design and equipment be used, demonstrate compliance with the requirements of this code and be provided with the permit application. This section has been added to read: 916.2.1

Construction documents. Documentation of the gas detection system design and equipment to be used that demonstrates compliance with the requirements of this code shall be provided with the application for permit.

(9) Section 916.3 Equipment. This section has been added to require gas detection system equipment to be designed for use with the gases being detected and be installed in accordance with the manufacturer's instructions. This section has been added to read: 916.3 Equipment. Gas detection system equipment shall be designed for use with the gases being detected and shall be installed in accordance with the manufacturer's instructions.

(10) Section 916.4 Power connections. This section has been added to require gas detection systems to be permanently connected to the building electrical power supply or be permitted to be cord connected to an unswitched receptacle using an approved restraining means that secures the plug to the receptacle. This section has been added to read: 916.4 Power connections. Gas detection systems shall be permanently connected to the building electrical power supply or shall be permitted to be cord connected to an unswitched receptacle using an approved restraining means that secures the plug to the receptacle.

(11) Section 916.5 Emergency and standby power. This section has been added to require standby or emergency power to be provided to the gas detection system, or if the power supply is interrupted, the system shall initiate a trouble signal at an approved location. This section has been added to read: 916.5 Emergency and standby power. Standby or emergency power shall be provided or the gas detection system shall initiate a trouble signal at an approved location if the power supply is interrupted.

(12) Section 916.6 Sensor locations. This section has been added to require sensors to be installed in approved locations where leaking gases are expected to accumulate. This section has been added to read: 916.6 Sensor locations. Sensors shall be installed in approved locations where leaking gases are expected to accumulate.

(13) Section 916.7 Gas sampling. This section has been added to require gas sampling to be performed continuously and require sample analysis to be processed immediately after sampling, except under certain conditions. HPM stands for "Hazardous Production Material" as defined in Chapter 2 of this code. This section has been added to read: 916.7 Gas sampling. Gas sampling shall be performed continuously. Sample analysis shall be processed immediately after sampling, except as follows:

(A) For HPM gases, sample analysis shall be performed at intervals not exceeding 30 minutes.

(B) For toxic gases that are not HPM, sample analysis shall be performed at intervals not exceeding 5 minutes, in accordance with Section 6004.2.2.7.

(C) Where a less frequent or delayed sampling interval is approved.

(14) Section 916.8 System activation. This section has been added to require a gas detection alarm to be initiated

where any sensor detects a concentration of gases exceeding the thresholds specified in this section. The section requires upon activation of a gas detection alarm, alarm signals or other required responses to be specified by the section of this code requiring a gas detection system. The section further requires the alarm signals to be both audible and visible alarm signals that are distinct from fire alarm and carbon monoxide signals. IDLH stands for "Immediately Dangerous to Life and Health" as defined in Chapter 2 of the IBC®. This section has been added to read: 916.8 System activation. A gas detection alarm shall be initiated where any sensor detects a concentration of gas exceeding the following thresholds:

(A) For flammable gases, a gas concentration exceeding 25 percent of the lower flammability limit (LFL).

(B) For nonflammable gases, a gas concentration exceeding one-half of the IDLH, unless a different threshold is specified by the section of this code requiring a gas detection system.

(15) Upon activation of a gas detection alarm, alarm signals or other required responses shall be specified by the section of this code requiring a gas detection system. Audible and visible alarm signals associated with a gas detection alarm shall be distinct from fire alarm and carbon monoxide alarm signals.

(16) Section 916.9 Signage. This section has been added to require signage to be provided adjacent to gas detection system alarm signaling devices that advises occupants of the nature of the signals and actions to take in response to the signal. This section has been added to read: 916.9 Signage. Signs shall be provided adjacent to gas detection system alarm signaling devices that advise occupants of the nature of the signals and actions to take in response to the signal.

(17) Section 916.10 Fire alarm system connections. This section has been added to prohibit gas sensors and gas detection systems to be connected to fire alarm systems unless approved and connected in accordance with the fire alarm equipment manufacturer's instructions. This section has been added to read: 916.10 Fire alarm system connections. Gas sensors and gas detection systems shall not be connected to fire alarm systems unless approved and connected in accordance with the fire alarm equipment manufacturer's instructions.

(18) Section 916.11 Inspection, testing and sensor calibration. This section has been added to require gas detection systems to be inspected and tested not less than annually and sensors to be calibrated as specified by the sensor manufacturer. This section has been added to read: 916.11 Inspection, testing and sensor calibration. Inspection and testing of gas detection systems shall be conducted not less than annually. Sensor calibration shall be confirmed at the time of sensor installation and calibration shall be performed at the frequency specified by the sensor manufacturer.

748:20-4-15. IFC® 2015 Chapter 10 Means of Egress

Chapter 10 of the IFC® 2015 is adopted with the following modifications:

(1) Section 1010.1.9.8 Sensor release of electrically locked egress doors. This section has been modified to permit the use of sensor release of electronic locking systems on doors located in a means of egress in any occupancy except Group H, where installed and operated in accordance with specific criteria. This section has been modified to read: 1010.1.9.8 Sensor release of electrically locked egress doors. Sensor release of electric locking systems shall be permitted on doors located in a means of egress in any occupancy except Group H where installed and operated in accordance with all of the following criteria:

(A) The sensor shall be installed on the egress side, arranged to detect an occupant approaching the doors, and shall cause the electric locking system to unlock.

(B) The electric locks shall be arranged to unlock by a signal from or loss of power to the sensor.

(C) Loss of power to the lock or locking system shall automatically unlock the electric locks.

(D) The doors shall be arranged to unlock from a manual unlocking device located 40 inches to 48 inches (1016 mm to 1219 mm) vertically above the floor and within 5 feet (1524 mm) of the secured doors. Ready access shall be provided to the manual unlocking device and the device shall be clearly identified by a sign that reads "PUSH TO EXIT." When operated, the manual unlocking device shall result in direct interruption of the power to the electric lock - independent of other electronics - and the doors electric lock shall remain unlocked for not less than 30 seconds.

(E) Activation of the building fire alarm system, where provided, shall automatically unlock the electric lock, and the electric lock shall remain unlocked until the fire alarm system has been reset.

(F) Activation of the building automatic fire sprinkler system or fire detection system, where provided, shall automatically unlock the electric lock. The electric lock shall remain unlocked until the fire alarm system has been reset.

(G) The door locking system units shall be listed in accordance with UL 294.

(2) Section 1010.1.9.9. Door hardware release of electrically locked egress doors. This section has been modified to change part of the section heading and permit door hardware release of electric locking systems to be on all doors in a means of egress in any occupancy except Group H, where installed and operated in accordance with specific requirements. This section has been modified to read: 1010.1.9.9. Door hardware release of electrically locked egress doors. Door hardware release of electric locking systems shall be permitted on doors in the means of egress in any occupancy except Group H where installed and operated in accordance with all of the following:

(A) The door hardware that is affixed to the door leaf has an obvious method of operation that is readily operated under all lighting conditions.

(B) The door hardware is capable of being operated with one hand and shall comply with Section 1010.1.9.5.

(C) Operation of the door hardware directly interrupts the power to the electric lock and unlocks the door immediately.

(D) Loss of power to the electric locking system automatically unlocks the door.

(E) Where panic or fire exit hardware is required by Section 1010.1.10, operation of the panic or fire exit hardware also releases the electric lock.

(F) The locking system units shall be listed in accordance with UL 294.

(3) Section 1010.1.10 Panic and fire exit hardware. This section has been modified to change the door type, and allow for doors provided with panic hardware or fire exit hardware serving Group A or E occupancies to be permitted to be electrically locked, in accordance with Section 1010.1.9.8, or 1010.1.9.9. This section has been further modified to require personnel doors in rooms or spaces that contain electrical equipment rated 800 amperes or more that contain overcurrent devices, switching devices, or control devices where the personnel door intended for entrance to and egress from the working space is less than 25 feet from the nearest edge of the working space, to be equipped with panic hardware or fire exit hardware. This section has been modified to read: 1010.1.10 Panic and fire exit hardware. Swinging doors serving a Group H occupancy and swinging doors serving rooms or spaces with an occupant load of 50 or more in a Group A or E occupancy shall not be provided with a latch or lock other than panic hardware or fire exit hardware. Exceptions:

(A) A main exit of a Group A occupancy shall be permitted to have locking devices in accordance with Section 1010.1.9.3, Item 2.

(B) Doors provided with panic hardware or fire exit hardware and serving a Group A or E occupancy shall be permitted to be electrically locked in accordance with Section 1010.1.9.8 or 1010.1.9.9.

(4) Electrical rooms with equipment rated 1200 amperes or more and over 6 feet (1829 mm) wide, and that contain overcurrent devices, switching devices or control devices with exit or exit access doors, shall be equipped with panic hardware or fire exit hardware. The doors shall swing in the direction of egress travel.

(5) Where electrical equipment rated 800 amperes or more that contains overcurrent devices, switching devices, or control devices is installed and there is a personnel door(s) intended for entrance to and egress from the working space less than 25 feet (7.6 m) from the nearest edge of the working space, the personnel door shall be equipped with panic hardware or fire exit hardware. The door(s) shall open in the direction of egress.

(6) Section 1015.6 Mechanical equipment, systems and devices. This section has been modified to clarify the circumstances under which guards shall be provided and to modify the exception to require the authority having jurisdiction approve the use of a fall/restraint system instead of guards. This section has been modified to read: 1015.6 Mechanical equipment, systems and devices. Guards shall be provided where various components that require services are located on a roof or elevated structure and have a condition as set forth in Sections 1015.6.1 through 1015.6.3. The guard shall be constructed so as to prevent the passage of a sphere 21 inches (533 mm) in diameter. Exception: When approved by the authority having jurisdiction, guards are not required where permanent fall arrest/restraint anchorage connector devices that comply with ANSI/ASSE Z 359.1 are affixed for use during the entire roof covering lifetime. The devices shall be reevaluated for possible replacement when the entire roof covering is replaced. The devices shall be placed not more than 10 feet (3048 mm) on center along hip and ridge lines and placed not less than 10 feet (3048 mm) from roof edges and the open sides of walking surfaces.

(7) Section 1015.6.1 Roof edge. This section has been added to clarify the circumstances required to exist for the installation of guards at the roof edge when the components needing service are within a specific distance of the roof edge. This section has been added to read: 1015.6.1 Roof edge. Guards shall be provided when components are located within 10 feet (3048 mm) of a roof edge or open side of a walking surface or elevated structure and such edge or open side is located more than 30 inches (762 mm) above the floor, roof, or grade below. The guard shall extend not less than 30 inches (762 mm) beyond each end of the component that requires service.

(8) Section 1015.6.2 Skylights. This section has been added to clarify the circumstances for the installation of guards around components near skylights and to provide exceptions to the requirement. This section has been added to read: 1015.6.2 Skylights. Guards shall be provided when a skylight is within 10 feet (3048 mm) of the component that requires service. The guard shall extend 30 inches (762 mm) beyond the edge of the skylight. Exceptions:

(A) Guards are not required when the skylight is located at least 42 inches (1067 mm) above the highest point of the walking surface adjacent to the skylight or component.

(B) Guards are not required if some other provision for skylight fall-thru protection is provided and approved by the authority having jurisdiction.

(9) Section 1015.6.3 Roof hatch. This section has been added to clarify the circumstances for the installation of guards around components installed within a specific distance from the roof hatch. This section has been added to read: 1015.6.3 Roof hatch. Guards shall be provided when a roof hatch is within 10 feet (3048 mm) of the component that requires service. The guard shall extend 30 inches (762 mm) beyond the edge of the roof hatch. If the

component is within 10 feet (3048 mm) of the ladder access side of the roof hatch, the guard shall incorporate a self-closing, self-latching gate. The gate shall have a top edge of not less than 42 inches (1067 mm) above the elevated surface adjacent to the gate and shall not allow the passage of a 21 inch (533 mm) sphere.

(10) Section 1015.7 Roof access. This section has been modified to require the authority having jurisdiction approve the use of a fall-restraint system instead of a guard in the exception. This section has been modified to read: 1015.7 Roof access. Guards shall be provided where the roof hatch opening is located within 10 feet (3048 mm) of a roof edge or open side of a walking surface and such edge or open side is located more than 30 inches (762 mm) above the floor, roof or grade below. The guard shall be constructed so as to prevent the passage of a sphere 21 inches (533 mm) in diameter. Exception: When approved by the authority having jurisdiction, guards are not required where permanent fall arrest/restraint anchorage connector devices that comply with ANSI/ASSE Z 359.1 are affixed for use during the entire roof covering lifetime. The devices shall be reevaluated for possible replacement when the entire roof covering is replaced. The devices shall be placed not more than 10 feet (3048 mm) on center along hip and ridge lines and placed not less than 10 feet (3048 mm) from roof edges and the open sides of the walking surfaces.

748:20-4-16. IFC® Chapter 11 [RESERVED]

748:20-4-17. IFC® Chapter 12 [RESERVED]

748:20-4-18. IFC® Chapter 13 [RESERVED]

748:20-4-19. IFC® Chapter 14 [RESERVED]

748:20-4-20. IFC® Chapter 15 [RESERVED]

748:20-4-21. IFC® Chapter 16 [RESERVED]

748:20-4-22. IFC® Chapter 17 [RESERVED]

748:20-4-23. IFC® Chapter 18 [RESERVED]

748:20-4-24. IFC® Chapter 19 [RESERVED]

748:20-4-25. IFC® Chapter 20 [RESERVED]

748:20-4-26. IFC® Chapter 21 [RESERVED]

748:20-4-27. IFC® Chapter 22 [RESERVED]

<u>748:20-4-28.</u>	<u>IFC® Chapter 23 [RESERVED]</u>
<u>748:20-4-29.</u>	<u>IFC® Chapter 24 [RESERVED]</u>
<u>748:20-4-30.</u>	<u>IFC® Chapter 25 [RESERVED]</u>
<u>748:20-4-31.</u>	<u>IFC® Chapter 26 [RESERVED]</u>
<u>748:20-4-32.</u>	<u>IFC® Chapter 27 [RESERVED]</u>
<u>748:20-4-33.</u>	<u>IFC® Chapter 28 [RESERVED]</u>
<u>748:20-4-34.</u>	<u>IFC® Chapter 29 [RESERVED]</u>
<u>748:20-4-35.</u>	<u>IFC® Chapter 30 [RESERVED]</u>
<u>748:20-4-36.</u>	<u>IFC® Chapter 31 [RESERVED]</u>
<u>748:20-4-37.</u>	<u>IFC® Chapter 32 [RESERVED]</u>
<u>748:20-4-38.</u>	<u>IFC® Chapter 33 [RESERVED]</u>
<u>748:20-4-39.</u>	<u>IFC® Chapter 34 [RESERVED]</u>
<u>748:20-4-40.</u>	<u>IFC® Chapter 35 [RESERVED]</u>
<u>748:20-4-41.</u>	<u>IFC® Chapter 36 [RESERVED]</u>
<u>748:20-4-42.</u>	<u>IFC® Chapter 37 [RESERVED]</u>
<u>748:20-4-43.</u>	<u>IFC® Chapter 38 [RESERVED]</u>
<u>748:20-4-44.</u>	<u>IFC® 2015 Chapter 39 Processing and Extraction Facilities</u>

Chapter 39 of the IFC® has been created and added to the 2015 edition to address plant processing and extraction facilities. This chapter title has been added to read: Chapter 39 Processing and Extraction Facilities. Chapter 39 is adopted as follows:

- (1) Section 3901 General. This section heading has been added to clarify a new section of code has been added to address the scope, utilization of existing buildings and permit requirements for plant processing and extraction facilities. This section heading has been added to read: Section 3901. General.
- (2) Section 3901.1 Scope. This section has been added to clarify plant processing and extraction facilities will comply with this chapter and the International Building

Code®. The section clarifies the extraction process includes the act of extracting oils and fats by the use of a solvent, desolventizing of the raw material, production of the miscella, distillation of the solvent and solvent recovery. The section further requires the use, storage and transfilling and handling of hazardous materials in these facilities to comply with the chapter, other applicable provisions of this code and the International Building Code®. This section has been added to read: 3901.1 Scope. Plant processing or extraction facilities shall comply with this chapter and the International Building Code®. The extraction process includes the act of extraction of the oils and fats by use of a solvent, desolventizing of the raw material, production of the miscella, distillation of the solvent from the miscella and solvent recovery. The use, storage, transfilling, and handling of hazardous materials in these facilities shall comply with this chapter, other applicable provisions of this code and the International Building Code®.

(3) Section 3901.2 Existing buildings or facilities. This section has been added to clarify when existing buildings or facilities used for the processing of plants or where the medium of extraction or solvent is changed, they shall comply with this chapter. This section has been added to read: 3901.2 Existing buildings or facilities. Existing buildings or facilities used for the processing of plants or where the medium of extraction or solvent is changed shall comply with this chapter.

(4) Section 3901.3 Permits. This section has been added to clarify permits shall be required as set forth in Sections 105.6 and 105.7. This section has been added to read: Permits shall be required as set forth in Sections 105.6 and 105.7.

(5) Section 3902 Definitions. This section heading has been added to signify the start of a new section of code related to definitions. This section heading has been added to read: 3902 Definitions.

(6) Section 3902.1 Definitions. This section has been added to clarify what terms have definitions in Chapter 2. This section has been added to read: 3902.1 Definitions. The following terms are defined in Chapter 2:

(A) DESOLVENTIZING.

(B) MISCELLA.

(7) Section 3903 Processing and Extraction. This section heading has been added to signify the start of new section of code related to processing and extraction. This section heading has been added to read: 3903 Processing and Extraction.

(8) Section 3903.1 Construction. This section has been added to clarify all processing shall be located in buildings complying with the International Building Code®. This section has been added to read: 3903.1 Construction. Processing shall be located in a building complying with the International Building Code®.

(9) Section 3903.2 Prohibited occupancies. This section has been added to clarify that any extraction equipment and extraction processes utilizing materials classified as physical hazards in accordance with Section 307 of the International Building Code® and other provisions of

this code shall not be located in any building containing a Group A, E, I or R occupancy. This section has been added to read: 3903.2 Prohibited occupancies. Extraction equipment and extraction processes utilizing materials classified as physical hazards in accordance with Section 307 of the International Building Code® and other provisions of this code shall not be located in any building containing a Group A, E, I or R occupancy.

(10) Section 3903.3 Location. This section has been added to clarify extraction equipment and extraction processes utilizing materials classified as physical hazards in accordance with Section 307 of the International Building Code® and other provisions of this code shall be located in a room dedicated to extraction and prohibits the room from being used for any other purpose. The section prohibits the storage of solvents in the extraction room. This section has been added to read: 3903.3 Location. The extraction equipment and extraction processes utilizing materials classified as physical hazards in accordance with Section 307 of the International Building Code® and other provisions of this code as solvents shall be located in a room dedicated to extraction and the room shall not be used for any other purpose. There shall be no storage of solvents in the extraction room.

(11) Section 3903.4 Post-process purification and winterization. This section has been added to clarify post processing and winterization involving the heating, cooling or pressurizing of miscella to other than normal pressure or temperature shall be approved and performed in an appliance listed for such use and shall comply with Sections 3903.4.1 or 3903.4.2. The section prohibits the use of domestic or commercial cooking appliances. This section has been added to read: 3903.4 Post-process purification and winterization. Post-processing and winterization involving the heating, cooling or pressurizing of the miscella to other than normal pressure or temperature shall be approved and performed in an appliance listed for such use and shall comply with Sections 3903.4.1 or 3903.4.2. Domestic or commercial cooking appliances and cooling appliances shall not be used.

(12) Section 3903.4.1 Industrial ovens. This section has been added to require industrial ovens, when used, to comply with Chapter 30. This section has been added to read: 3903.4.1 Industrial Ovens. The use of industrial ovens shall comply with Chapter 30.

(13) Section 3903.4.2 Refrigerators, freezers and other cooling equipment. This section has been added to require refrigerators, freezers and other cooling equipment used to store or cool flammable liquids to be listed for the storage of flammable and/or combustible liquids or shall be listed for Class I Division I locations in accordance with NFPA 70®. This section has been added to read: 3903.4.2 Refrigerators, freezers and other cooling equipment. Refrigerators, freezers and other cooling equipment used to store or cool flammable liquids shall be listed for the storage of flammable and/or combustible liquids or shall be listed for Class I, Division I locations in accordance with NFPA 70®.

(14) Section 3903.4.3. Post-processing. This section has been added to require post-processing operations, including dispensing of flammable liquids between containers, to be performed within a hazardous exhaust fume hood rated for exhausting flammable vapors and listed in accordance UL 1805. The section requires the electrical equipment utilized within the hazardous exhaust fume hood to be rated for use in flammable atmospheres and provides an exception for the exhaust fume hood when an approved exhaust system is installed in accordance with NFPA 91®. This section has been added to read: 3903.4.3 Post-processing. Post-processing operations, including dispensing of flammable liquids between containers, shall be performed within a hazardous exhaust fume hood rated for exhausting flammable vapors and listed in accordance with UL 1805. Electrical equipment used within the hazardous exhaust fume hood shall be rated for use in flammable atmospheres. Exception: A hazardous exhaust fume hood is not required where an approved exhaust system is installed in accordance with NFPA 91®.

(15) Section 3903.5 Use of flammable and combustible liquids. This section has been added to specify the use of flammable and combustible liquids for liquid extraction processes, including dispensing of flammable liquids between containers, where the liquid is boiled, distilled, or evaporated, to be located within a hazardous exhaust fume hood, rated for exhausting flammable vapors and listed in accordance with UL 1805. The section requires all electrical equipment used within the hazardous exhaust fume hood to be rated for use in flammable atmospheres, prohibits the heating of flammable or combustible liquids over an open flame, and provides exceptions when certain conditions are met. This section has been added to read: 3903.5 Use of flammable and combustible liquids. The use of flammable and combustible liquids for liquid extraction processes, including dispensing of flammable liquids between containers, where the liquid is boiled, distilled, or evaporated shall be located within a hazardous exhaust fume hood, rated for exhausting flammable vapors and listed in accordance with UL 1805. Electrical equipment used within the hazardous exhaust fume hood shall be rated for use in flammable atmospheres. Heating of flammable or combustible liquids over an open flame is prohibited. Exceptions:

(A) The use of a heating element not rated for flammable atmospheres, where documentation from the manufacturer, or approved testing laboratory indicates the element is rated for heating of flammable liquids.

(B) Unheated processes at atmospheric pressure using less than 16 oz. (473 ml) of flammable liquids are not required to be located within a hazardous exhaust fume hood.

(C) A hazardous exhaust fume hood is not required where an approved exhaust system is installed in accordance with NFPA 91®. Electrical equipment used within this room shall be rated for use in flammable atmosphere.

(16) Section 3903.6 Liquefied petroleum gas. This section has been added to require plant processing and extraction utilizing liquefied petroleum gas to comply with Sections 3903.6.1 through 3903.6.4 and other applicable provisions of this code. This section has been added to read: 3903.6 Liquefied Petroleum gas. Plant processing and extraction utilizing liquefied petroleum gas shall comply with Section 3903.6.1 through 3903.6.4 and other applicable provisions of this code.

(17) Section 3903.6.1 Release of gas. This section has been added to prohibit liquefied petroleum gases from being released to the atmosphere except when released in accordance with Section 7.3 of NFPA 58®. This section has been added to read: 3903.6.1 Release of gas. Liquefied petroleum gases shall not be released to the atmosphere except where released in accordance with Section 7.3 of NFPA 58®.

(18) Section 3903.6.2 Exhaust. This section has been added to require any plant processing and extraction utilizing liquefied petroleum gas including processes for off-gassing spent plant material and oil retrieval to be located under a chemical fume hood, listed in accordance with UL 1805. The section provides an exception where an approved exhaust system is installed in accordance with NFPA 91®. This section has been added to read: 3903.6.2 Exhaust. Plant processing and extraction utilizing liquefied petroleum gas, including processes for off-gassing spent plant material and oil retrieval, shall be located under a chemical fume hood, listed in accordance with UL 1805. Exception: A chemical fume hood is not required where an approved exhaust system is installed in accordance with NFPA 91®.

(19) Section 3903.6.3 Electrical. This section has been added to require the extraction room where liquefied petroleum gas is used as a solvent to be classified as Class I, Division I hazardous location in accordance with NFPA 70®. The section requires all conductive equipment and conductive objects within the extraction room to be bonded and grounded with a resistance of less than 1.0 times 10 to the sixth power ohms in accordance with NFPA 70®. This section has been added to read: 3903.6.3 Electrical. The extraction room where liquefied petroleum gas is used as a solvent shall be classified as Class I, Division I hazardous location in accordance with NFPA 70®. All conductive equipment and conductive objects within the extraction room shall be bonded and grounded with a resistance of less than 1.0 times 10 to the sixth power ohms in accordance with NFPA 70®.

(20) Section 3903.6.4 Automatic fire-extinguishing system. This section has been added to require chemical fume hoods and enclosures, including ductwork required by Section 3903.6.2 to be provided with an automatic fire-extinguishing system complying with Section 903.3.1.1, 904.6, 904.8 or 904.10. This section has been added to read: 3903.6.4 Automatic fire-extinguishing system. Chemical fume hoods and enclosures, including ductwork required by Section 3903.6.2 shall be provided

with an automatic fire-extinguishing system complying with Section 903.3.1.1, 904.6, 904.8 or 904.10.

(21) Section 3903.7 Carbon dioxide extraction. This section has been added to require plant processing and extraction facilities utilizing carbon dioxide solvents to comply with Sections 3903.7.1 through 3903.7.3, Section 5307 and other applicable provisions of the code. This section has been added to read: 3903.7 Carbon dioxide extraction. Plant processing and extraction facilities utilizing carbon dioxide solvents shall comply with Sections 3903.7.1 through 3903.7.3, Section 5307 and other applicable provisions of this code.

(22) Section 3903.7.1 Storage and handling. This section has been added to require all carbon dioxide compressed gas cylinders to be secured to a fixed object to prevent falling. This section has been added to read: 3903.7.1 Storage and handling. All carbon dioxide compressed gas cylinders shall be secured to a fixed object to prevent falling.

(23) Section 3903.7.2 Gas detection system. This section has been added to require a gas detection system complying with Sections 916 and 5307.4.3 to be provided in a room where carbon dioxide solvents are used in the extraction process. This section has been added to read: 3903.7.2 Gas detection system. A gas detection system complying with Sections 916 and 5307.4.3 shall be provided in a room where carbon dioxide solvents are used in the extraction process.

(24) Section 3903.7.3 Carbon dioxide discharge. This section has been added to require the carbon dioxide equipment pressure relief device and blow-off valves to be piped to the exterior of the building. This section has been added to read: 3903.7.3 Carbon dioxide discharge. The carbon dioxide extraction equipment pressure relief device and blow-off valves shall be piped to the exterior of the building.

(25) Section 3904 Systems and Equipment. This section heading has been added to signify the start of new section of code to address the systems and equipment for processing and extraction facilities. This section header has been added to read: 3904 Systems and Equipment.

(26) Section 3904.1 General requirements. This section has been added to require systems and equipment used with the processing and extraction of oils and products from plants, to comply with Sections 3904.2 through 3904.4 and 5003.2, and other applicable provisions of this code, the International Building Code® and International Mechanical Code®. This section has been added to read: 3904.1 General requirements. Systems and equipment used with the processing and extraction of oils and products from plants shall comply with Sections 3904.2 through 3904.4 and 5003.2, and other applicable provisions of this code, the International Building Code®, and International Mechanical Code®.

(27) 3904.2 Systems and equipment. This section has been added to require systems and equipment used for the extraction of oils from plant material to be listed or approved for the specific use or require the unlisted systems

and equipment to be reviewed by a registered design professional who will review and consider any information provided by the systems designer or manufacturer. The section requires for systems and equipment not listed for a specific use that a technical report, in accordance with Section 3904.3, be prepared by the registered design professional and submitted to the fire code official for review and approval, and requires the firm or individual preparing the technical report to be approved by the fire code official prior to performing the analysis. This section has been added to read: 3904.2 Systems and equipment. Systems or equipment used for the extraction of oils from plant material shall be listed or approved for the specific use. If the system used for extraction of oils and products from plant material is not listed, the system shall be reviewed by a registered design professional. The registered design professional shall review and consider any information provided by the system's designer or manufacturer. For systems and equipment not listed for the specific use, a technical report in accordance with Section 3904.3 shall be prepared and submitted to the fire code official for review and approval. The firm or individual preparing the technical report shall be approved by the fire code official prior to performing the analysis.

(28) 3904.3 Technical report. This section has been added to specify a technical report must be reviewed and approved by the fire code official as required by Section 3904.2 prior to the equipment being located or installed at the facility. The section requires the report to be prepared by a registered design professional or other professional approved by the fire code official. This section has been added to read: 3904.3 Technical report. A technical report, reviewed and approved by the fire code official as required by Section 3904.2, is required prior to the equipment being located or installed at the facility. The report shall be prepared by a registered design professional or other professional approved by the fire code official.

(29) 3904.3.1 Report content. This section has been added to list out the items to be included in the technical report required in Section 3904.3. This section has been added to read: Section 3904.3.1 Report content. The technical report shall contain all of the following:

- (A) Manufacturer information.
- (B) Preparer of record of the technical report.
- (C) Date of review and report revision history.
- (D) Signature page, including all of the following:
 - (i) Author of the report.
 - (ii) Date of the report.
 - (iii) Date and signature of registered design professional of record performing the design or peer review.
- (E) Model number of the item evaluated. If the equipment is provided with a serial number the serial number shall be included for verification at the time of site inspection.
- (F) Methodology of the design or peer review process used to determine minimum safety requirement. Methodology shall consider the basis of

design, and shall include a code analysis and code path to demonstrate whether specific codes or standards are applicable.

(G) Equipment description. A list of every component and subassembly, such as fittings, hose, quick disconnects, gauges, site glass, gaskets, valves, pumps, vessels, containers and switches, of the system or equipment, indicating the manufacturer, model number, material and solvent compatibility. Manufacturer's data sheets shall be provided.

(H) A general flow schematic or general process flow diagram of the process. Post-processing or winterization shall be included in this diagram. Primary components of the process equipment shall be identified and match the equipment list required in Item 7. Operating temperatures, pressures and solvent state of matter shall be identified in each primary step or component. A piping and instrumentation diagram (PID or P&ID) shall be provided.

(I) Analysis of the vessel(s) if pressurized beyond standard atmospheric pressure. Analysis shall include purchased and fabricated components.

(J) Structural analysis for the frame system supporting the equipment.

(K) Process safety analysis of the extraction system, from the introduction of raw product to the end of the extraction process.

(L) Comprehensive process hazard analysis considering failure modes and points of failure throughout the process. The process hazard analysis shall include a review of emergency procedure information provided by the manufacturer of equipment or process and not that of the facility, building or room.

(M) Review of the assembly instructions, operational and maintenance manuals provided by the manufacturer.

(N) List of references used in the analysis.

(30) Section 3904.4 Site Inspection. This section has been added to specify prior to the operation of the extraction equipment, when required by the fire code official, the engineer of record or approved professional, as approved in Section 3904.2, inspect the site of the extraction process once equipment has been installed for compliance with the technical report and building analysis. The section requires the engineer of record or approved professional to provide a report of the findings and observations of the site inspection to the fire code official prior to the approval of the extraction process. It requires the field inspection report authored by the engineer of record to include the serial number of the equipment used in the process and confirm that the equipment installed is the same model and type of equipment identified in the technical report. This section has been added to read: 3904.4 Site inspection. Prior to the operation of the extraction equipment, where required by the fire code official, the engineer of record or approved professional, as approved in 3904.2, shall inspect the site of the extraction process once equipment has been installed for compliance with the technical

report and the building analysis. The engineer of record or approved professional shall provide a report of the findings and observations of the site inspection to the fire code official prior to the approval of the extraction process. The field inspection report authored by the engineer of record shall include the serial number of the equipment used in the process and shall confirm that the equipment installed is the same model and type of equipment identified in the technical report.

(31) Section 3905 Safety Systems. This section header has been added to signify the addition of new section of code related to the safety systems for extraction and processing facilities. This section heading has been added to read: Section 3905 Safety Systems.

(32) Section 3905.1 Gas detection. This section has been added to require a continuous gas detection system to be provided for extraction processes utilizing flammable gases as solvents. It requires the gas detection threshold be not greater than 25 percent of the lower explosive limit/lower flammability limit (LEL/LFL) of the materials. This section has been added to read: 3905.1 Gas detection. For extraction processes utilizing flammable gases as solvents, a continuous gas detection system shall be provided. The gas detection threshold shall be not greater than 25 percent of the lower explosive limit/lower flammability limit (LEL/LFL) of the materials.

(33) Section 3905.1.1 System design. This section has been added to require the flammable gas detection system to be listed or approved and calibrated to the types of fuels or gases used for the extraction process. The section requires the gas detection system to be designed to activate when the level of flammable gas exceeds 25 percent of the LFL. This section has been added to read: 3905.1.1 System design. The flammable gas detection system shall be listed or approved and shall be calibrated to the types of fuels or gases used for the extraction process. The gas detection system shall be designed to activate when the level of flammable gases exceeds 25 percent of the LFL.

(34) Section 3905.1.2 Gas detection system components. This section has been added to require gas detection system control units and gas detectors to be listed and labeled in accordance with specific standards for use with the gases and vapors being detected. This section has been added to read: 3905.1.2 Gas detection system components. Gas detection system control units shall be listed and labeled in accordance with UL 864 or UL 2017. Gas detectors shall be listed and labeled in accordance with UL 2075 for use with the gases and vapors being detected.

(35) Section 3905.1.3 Operation. This section has been added to require the activation of the gas detection system to result in the initiation of specific actions to activate alarms and the ventilation systems while deactivating heating systems, located in the extraction room. This section has been added to read: 3905.1.3 Operation. Activation of the gas detection system shall result in all of the following:

(A) Initiation of distinct audible and visual alarm signals in the extraction room.

(B) Deactivation of all heating systems located in the extraction room.

(C) Activation of the mechanical ventilation system, where the system is interlocked with gas detection.

(36) Section 3905.1.4 Failure of the gas detection system. This section has been added to require specific actions to occur when the gas detection system experiences a failure. This section has been added to read: 3905.1.4 Failure of the gas detection system. Failure of the gas detection system shall result in the deactivation of the heating system; activation of the mechanical ventilation system where the system is interlocked with the gas detection system; and initiation of a trouble signal to sound in an approved location.

(37) Section 3905.1.5 Interlocks. This section has been added to require electrical components within the extraction room to be interlocked with the gas detection system and disable all light switches and electrical outlets when the gas detection system is activated. This section has been added to read: 3905.1.5 Interlocks. Electrical components within the extraction room shall be interlocked with the gas detection system. Activation of the gas detection system shall disable all light switches and electrical outlets.

(38) Section 3905.2 Emergency shutoff. This section has been added to require an emergency shutoff system to be provided when extraction processes utilize gaseous hydrocarbon-based solvents. This section has been added to read: 3905.2 Emergency shutoff. Extraction processes utilizing gaseous hydrocarbon-based solvents shall be provided with emergency shutoff systems in accordance with Section 5803.1.3.

(39) Section 3905.3 Emergency power system. This section has been added to require the extraction room lighting and extraction room ventilation system to be provided with emergency power for extraction processes utilizing hydrocarbon gases or liquids as solvents, in accordance with Section 2702 of the International Building Code®. This section has been added to read: 3905.3 Emergency power system. For extraction processes utilizing hydrocarbon gases or liquids as solvents, the extraction room lighting and extraction room ventilation system shall be provided with emergency power in accordance with Section 2702 of the International Building Code®.

748:20-4-45. IFC® Chapter 40 [RESERVED]

748:20-4-46. IFC® Chapter 41 [RESERVED]

748:20-4-47. IFC® Chapter 42 [RESERVED]

748:20-4-48. IFC® Chapter 43 [RESERVED]

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- 748:20-4-49. IFC® Chapter 44 [RESERVED]
- 748:20-4-50. IFC® Chapter 45 [RESERVED]
- 748:20-4-51. IFC® Chapter 46 [RESERVED]
- 748:20-4-52. IFC® Chapter 47 [RESERVED]
- 748:20-4-53. IFC® Chapter 48 [RESERVED]
- 748:20-4-54. IFC® Chapter 49 [RESERVED]
- 748:20-4-55. IFC® Chapter 50 [RESERVED]
- 748:20-4-56. IFC® Chapter 51 [RESERVED]
- 748:20-4-57. IFC® Chapter 52 [RESERVED]
- 748:20-4-58. IFC® 2015 Chapter 53 Compressed Gases

Chapter 53 of the IFC® is adopted with the following modifications:

(1) Section 5302.1 Definitions. This section has been modified to clarify the definition for a "CARBON DIOXIDE ENRICHMENT SYSTEM" has been added to the list of definitions defined in Chapter 2. This section has been modified to read: 5302.1 Definitions. The following terms are defined in Chapter 2:

- (A) CARBON DIOXIDE ENRICHMENT SYSTEM.
- (B) COMPRESSED GAS.
- (C) COMPRESSED GAS CONTAINER.
- (D) COMPRESSED GAS SYSTEM.
- (E) NESTING.
- (F) TUBE TRAILER.

(2) Section 5307 Compressed gases not otherwise regulated. This section header has been modified to change the title from "Carbon Dioxide Systems used in Beverage Dispensing Applications" to "Compressed gases not otherwise regulated" and to update Section 5307 to address more than carbon dioxide systems used in beverage dispensing applications. This section header has been modified to read: 5307 Compressed Gases Not Otherwise Regulated.

(3) Section 5307.1 General. The original Section 5307.1 published in the 2015 IFC® has been modified and moved to Section 5307.3 and a new Section 5307.1 with the same section heading entitled: "General" has been added to clarify compressed gases in storage or use not regulated by material specific provisions in other chapters of the code, including asphyxiant, irritant and radioactive gases, shall comply with this section in addition to other requirements in this chapter. This section has been

modified to read: 5307.1 General. Compressed gases in storage or use not regulated by the material-specific provisions of Chapters 6, 54, 55, and 60 through 67, including asphyxiant, irritant and radioactive gases, shall comply with this section in addition to other requirements of this chapter.

(4) Section 5307.2 Ventilation. The original Section 5307.2 published the 2015 IFC®, entitled "Permits" has been stricken from the code. A new Section 5307.2 entitled "Ventilation" has been added in its place. This section has been added to clarify indoor storage and use areas and storage buildings shall be provided with ventilation in accordance with Section 5004.3; and where mechanical ventilation is provided, the system shall be operational during such time as the building or space is occupied. The section provides exceptions to the requirement for mechanical ventilation when a gas detection system complying with Section 5307.2.1 is utilized and when areas containing insulated liquid carbon dioxide systems used in beverage dispensing applications comply with Section 5307.3. This section has been added to read: 5307.2 Ventilation: Indoor storage and use areas and storage buildings shall be provided with ventilation in accordance with Section 5004.3. Where mechanical ventilation is provided, the systems shall be operational during such time as the building or space is occupied. Exceptions:

(A) A gas detection system complying with Section 5307.2.1 shall be permitted in lieu of mechanical ventilation.

(B) Areas containing insulated liquid carbon dioxide systems used in beverage dispensing applications shall comply with Section 5307.3.

(5) Section 5307.2.1 Gas detection systems. This section has been added to require a gas detection system complying with Section 916 or where approved, an oxygen depletion alarm system, either of which initiates audible and visible alarm signals in the room or area where the sensors are installed, shall be provided. This section has been added to read: 5307.2.1 Gas detection systems. In rooms or areas not provided with ventilation in accordance with Section 5307.2, a gas detection system complying with Section 916 or, where approved, an oxygen depletion alarm system, either of which initiates audible and visible alarm signals in the room or area where the sensors are installed, shall be provided.

(6) Section 5307.3 Insulated liquid carbon dioxide systems used in beverage dispensing applications. The original Section 5307.3 published in the 2015 IFC® entitled "Equipment" has been stricken and the originally published Section 5307.1 entitled "General" has been modified and moved to change the title of the section from "General" to "Insulated liquid carbon dioxide systems used in beverage dispensing applications." The section requires insulated liquid carbon dioxide systems with more than 100 pounds (45.4 kg) of carbon dioxide used in beverage dispensing applications to comply with Section 5307.3.1. This section has been modified to read: 5307.3 Insulated liquid carbon dioxide systems used in beverage

dispensing applications. Insulated liquid carbon dioxide systems with more than 100 pounds (45.4 kg) of carbon dioxide used in beverage dispensing applications shall comply with Section 5307.3.1.

(7) Section 5307.3.1. Ventilation. The original section 5307.5 published in the 2015 IFC® has been modified and moved to Section 5307.3.1 by changing the title of the section from "Required protection" to "Ventilation." The section requires insulated liquid carbon dioxide storage tanks, cylinders, piping and equipment located indoors and in any other indoor areas where a leak of carbon dioxide may accumulate to be provided with mechanical ventilation and to be designed to have a negative pressure in relation to the surrounding area. The section contains an exception if there is a gas detection system complying with Section 5307.3.2. This section has been added to read: 5307.3.1 Ventilation. Where insulated liquid carbon dioxide storage tanks, cylinders, piping and equipment are located indoors, rooms or areas containing storage tanks, cylinders, piping and equipment, and other areas where a leak of carbon dioxide is expected to accumulate, shall be provided with mechanical ventilation in accordance with Section 5004.3 and designed to maintain the room containing the carbon dioxide at a negative pressure in relation to the surrounding area. Exception: A gas detection system complying with Section 5307.3.2 shall be permitted in lieu of mechanical ventilation.

(8) Section 5307.3.2 Gas detection system. This section has been added to specify where ventilation is not provided in accordance with Section 5307.3.1, a gas detection system shall be provided in rooms or indoor areas and in below grade outdoor locations with insulated carbon dioxide systems. The section specifies where carbon dioxide sensors shall be provided and requires the system to be designed to activate audible and visible supervisory alarms under specific circumstances and at specific locations. This section has been added to read: 5307.3.2 Gas detection system. Where ventilation is not provided in accordance with Section 5307.3.1, a gas detection system shall be provided in rooms or indoor areas and in below grade outdoor locations with insulated carbon dioxide systems. Carbon dioxide sensors shall be provided within 12 inches (305 mm) of the floor in the area where the gas is expected to accumulate or other approved locations. The system shall be designed as follows:

(A) Activates an audible and visible supervisory alarm at a normally attended location upon detection of a carbon dioxide concentration of 5,000 ppm (9000 mg/cubic meter).

(B) Activates an audible and visible alarm within the room or immediate area where the system is installed upon the detection of a carbon dioxide concentration of 30,000 ppm (54 000 mg/cubic meter).

(9) Section 5307.4 Carbon dioxide enrichment systems. The originally published Section 5307.4 entitled "Protection from damage" has been stricken from the code and has been replaced with a new Section 5307.4

entitled "Carbon dioxide enrichment systems." The section specifies the design, installation and maintenance of carbon dioxide enrichment systems with more than 100 pounds (45.4 kg) of carbon dioxide and carbon dioxide enrichment systems with any quantity of carbon dioxide having a remote fill connection, to comply with Sections 5307.4.1 through 5307.4.7. This section has been added to read: 5307.4 Carbon dioxide enrichment systems. The design, installation and maintenance of carbon dioxide enrichment systems with more than 100 pounds (45.4 kg) of carbon dioxide, and carbon dioxide enrichment systems with any quantity of carbon dioxide having a remote fill connection, shall comply with Sections 5307.4.1 through 5307.4.7.

(10) Section 5307.4.1 Documentation. This section has been added to list the information that must be submitted with the application for permit. This section has been added to read: 5307.4.1 Documentation. The following information shall be provided with the application for permit:

(A) Total aggregate quantity of liquid carbon dioxide in pounds or cubic feet at normal temperature and pressure.

(B) Location and total volume of the room where the carbon dioxide enrichment operation will be conducted. Identify whether the room is at grade or below grade.

(C) Location of containers relative to equipment, building openings, and means of egress.

(D) Manufacturer's specifications and pressure rating, including cut sheets, of all piping and tubing to be used.

(E) A piping and instrumentation diagram that shows piping support and remote fill connections.

(F) Details of container venting, including but not limited to vent line size, material and termination location.

(G) Alarm and detection system and equipment, if applicable.

(H) Seismic support for containers.

(11) Section 5307.4.2 Equipment. This section has been added to require pressure relief, vent piping, fill indicators, fill connections, vent terminations, piping systems and the storage, use and handling of carbon dioxide to be in accordance with Chapter 53 and NFPA 55. This section has been added to read: 5307.4.2 Equipment. Pressure relief, vent piping, fill indicators, fill connections, vent terminations, piping systems and the storage, use and handling of carbon dioxide shall be in accordance with Chapter 53 and NFPA 55.

(12) Section 5307.4.3. Gas detection system. This section has been added to require a gas detection system complying with Section 916 to be provided in rooms or indoor areas in which the carbon dioxide enrichment process is located, in rooms or areas where container systems are located, and in other areas where carbon dioxide is expected to accumulate. The section provides directions on where

the carbon dioxide sensors will be located, how the system shall be designed and specifications for alarm activation. This section has been added to read: 5307.4.3 Gas detection system. A gas detection system complying with Section 916 shall be provided in rooms or indoor areas in which the carbon dioxide enrichment process is located, in rooms or indoor areas in which container systems are located, and in other areas where carbon dioxide is expected to accumulate. Carbon dioxide sensors shall be provided within 12 inches (305 mm) of the floor in the area where the gas is expected to accumulate or leaks are most likely to occur. The system shall be designed as follows:

(A) Activates a low-level alarm upon detection of carbon dioxide concentration of 5,000 ppm (9000 mg/cubic meter).

(B) Activates a high-level alarm upon detection of carbon dioxide concentration of 30,000 ppm (54 000 mg/cubic meter).

(13) Section 5307.4.3.1 System activation. This section has been added to specify the required automatic system activation steps for both low level and high level gas detection alarms. This section has been added to read: 5307.4.3.1 System activation.

(A) Activation of the low level gas detection system alarms shall automatically:

(i) Stop the flow of carbon dioxide to the piping system.

(ii) Activate the mechanical exhaust ventilation system.

(iii) Activate the audible and visible supervisory alarm signal at an approved location within the building.

(B) Activation of the high-level gas detection system alarm shall automatically:

(i) Stop the flow of carbon dioxide to the piping system.

(ii) Activate the mechanical exhaust ventilation system.

(iii) Activate the audible and visible evacuation alarm both inside and outside of the carbon dioxide enrichment area, and the area in which the carbon dioxide containers are located.

(14) Section 5307.4.4 Pressurizing and ventilation. This section has been added to require rooms or indoor areas in which carbon dioxide enrichment is provided to be maintained at a negative pressure in relation to the surrounding areas in the building. The section requires a mechanical ventilation system to be provided in accordance with the International Mechanical Code® and other requirements in the section. This section has been added to read: 5307.4.4 Pressurizing and ventilation. Rooms or indoor areas in which carbon dioxide enrichment is provided shall be maintained at a negative pressure in relation to the surrounding areas in the building. A mechanical ventilation system shall be provided in accordance with the International Mechanical Code® that complies with all of the following:

(A) Mechanical ventilation in the room or area shall be at a rate of not less than 1 cfm per square foot [0.00508 cubic meters divided by (s times meters squared)].

(B) When activated by the gas detection system, the mechanical ventilation system shall remain on until manually reset.

(C) The exhaust system intakes shall be taken from points within 12 inches (305 mm) of the floor.

(D) The ventilation system shall discharge to the outdoors in an approved location.

(15) Section 5307.4.5 Signage. This section has been added to require hazard identification signs to be posted at the entrance to the room and indoor areas where the carbon dioxide enrichment process is located and at the entrance to the rooms or indoor areas where the carbon dioxide containers are located. The section specifies the minimum size of the sign and the required warning language for the sign. This section has been added to read: 5307.4.5 Signage. Hazard identification signs shall be posted at the entrance to the room and indoor areas where the carbon dioxide enrichment process is located and at the entrance to the room or indoor area where the carbon dioxide containers are located. The sign shall be not less than 8 inches (200 mm) in width and 6 inches (150 mm) in height and indicate: CAUTION - CARBON DIOXIDE GAS. VENTILATE THE AREA BEFORE ENTERING. A HIGH CARBON DIOXIDE (C02) GAS CONCENTRATION IN THIS AREA CAN CAUSE ASPHYXIATION.

(16) Section 5307.4.6 Seismic and structural design. This section has been added to require carbon dioxide system containers and piping to comply with the seismic design requirements in Chapter 16 of the International Building Code® and not exceed the floor loading limitation of the building. This section has been added to read: 5307.4.6 Seismic and structural design. Carbon dioxide system containers and piping shall comply with the seismic design requirements in Chapter 16 of the International Building Code® and shall not exceed the floor loading limitation of the building.

(17) Section 5307.4.7 Container refilling. This section has been added to prohibit refilling of carbon dioxide containers located indoors, unless filled from a remote connection located outdoors. This section has been added to read: 5307.4.7 Container refilling. Carbon dioxide containers located indoors shall not be refilled unless filled from a remote connection located outdoors.

(18) Section 5307.5 Required protection. The originally published section 5307.5 entitled "Required protection" in the 2015 IFC® has been modified and moved to Section 5307.3.1 entitled "Ventilation."

(19) Section 5307.5.1 Ventilation. This section has been stricken from the code.

(20) Section 5307.5.2 Emergency alarm system. This section has been stricken from the code.

(21) Section 5308 Compressed gases not otherwise regulated. This section header and the subsequent sections

5308.1 General and 5308.2 Ventilation have been stricken from the code.

<u>748:20-4-59.</u>	<u>IFC® Chapter 54</u> [RESERVED]
<u>748:20-4-60.</u>	<u>IFC® Chapter 55</u> [RESERVED]
<u>748:20-4-61.</u>	<u>IFC® Chapter 56</u> [RESERVED]
<u>748:20-4-62.</u>	<u>IFC® Chapter 57</u> [RESERVED]
<u>748:20-4-63.</u>	<u>IFC® Chapter 58</u> [RESERVED]
<u>748:20-4-64.</u>	<u>IFC® Chapter 59</u> [RESERVED]
<u>748:20-4-65.</u>	<u>IFC® Chapter 60</u> [RESERVED]
<u>748:20-4-66.</u>	<u>IFC® Chapter 61</u> [RESERVED]
<u>748:20-4-67.</u>	<u>IFC® Chapter 62</u> [RESERVED]
<u>748:20-4-68.</u>	<u>IFC® Chapter 63</u> [RESERVED]
<u>748:20-4-69.</u>	<u>IFC® Chapter 64</u> [RESERVED]
<u>748:20-4-70.</u>	<u>IFC® Chapter 65</u> [RESERVED]
<u>748:20-4-71.</u>	<u>IFC® Chapter 66</u> [RESERVED]
<u>748:20-4-72.</u>	<u>IFC® Chapter 67</u> [RESERVED]
<u>748:20-4-73.</u>	<u>IFC® Chapter 68</u> [RESERVED]
<u>748:20-4-74.</u>	<u>IFC® Chapter 69</u> [RESERVED]
<u>748:20-4-75.</u>	<u>IFC® Chapter 70</u> [RESERVED]
<u>748:20-4-76.</u>	<u>IFC® Chapter 71</u> [RESERVED]
<u>748:20-4-77.</u>	<u>IFC® Chapter 72</u> [RESERVED]
<u>748:20-4-78.</u>	<u>IFC® Chapter 73</u> [RESERVED]
<u>748:20-4-79.</u>	<u>IFC® Chapter 74</u> [RESERVED]
<u>748:20-4-80.</u>	<u>IFC® Chapter 75</u> [RESERVED]

748:20-4-81. IFC® Chapter 76 [RESERVED]

748:20-4-82. IFC® Chapter 77 [RESERVED]

748:20-4-83. IFC® Chapter 78 [RESERVED]

748:20-4-84. IFC® Chapter 79 [RESERVED]

748:20-4-85. IFC® 2015 Chapter 80 Referenced Standards

Chapter 80 of the IFC® 2015 is adopted with the following modifications:

- (1) The reference to the International Building Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IBC®-15 International Building Code® as adopted and modified by the State of Oklahoma through the OUBCC.
- (2) The reference to the International Existing Building Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IEBC®-15 International Existing Building Code® as adopted and modified by the State of Oklahoma through the OUBCC.
- (3) The reference to the International Fuel Gas Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IFGC®-15 International Fuel Gas Code® as adopted and modified by the State of Oklahoma through the OUBCC.
- (4) The reference to the International Mechanical Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IMC®-15 International Mechanical Code® as adopted and modified by the State of Oklahoma through the OUBCC.
- (5) The reference to the International Plumbing Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through OUBCC." This section has been modified to read: IPC®-15 International Plumbing Code® as adopted and modified by the State of Oklahoma through the OUBCC.
- (6) The reference to the International Residential Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: IRC®-15 International Residential Code® as adopted and modified by the State of Oklahoma through the OUBCC.
- (7) The referenced standard for NFPA® 2 Hydrogen Technologies Code has been modified to change the edition year from 2011 to 2016. This Section has been modified to read: 02-16 Hydrogen Technologies Code.

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(8) The referenced standard for NFPA® 70® National Electrical Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the OUBCC." This section has been modified to read: 70-14 National Electrical Code® as adopted and modified by the State of Oklahoma through the OUBCC.

(9) A reference to the UL Standard 1805 - 2002 Standard for Laboratory Hoods and Cabinets has been added to the list of UL standards. This standard has been added to read: UL 1805 - 2002: Standard for Laboratory Hoods and Cabinets. 3903.4.3, 3903.5, 3903.6.2.

748:20-4-86. IFC® Appendix O [RESERVED]

SUBCHAPTER 10. NEC® 2014

748:20-10-1. Adoption of the National Electrical Code® NEC® [RESERVED]

748:20-10-2. Effect of Adoption [RESERVED]

748:20-10-3. NEC® Informative Annexes [RESERVED]

748:20-10-4. NEC® Provisions Adopted and Modified [RESERVED]

748:20-10-5. Participation in Federal Programs and/or Federally Funded or Financed Projects [RESERVED]

748:20-10-6. NEC® Article 90 [RESERVED]

748:20-10-7. NEC® Chapter 1 [RESERVED]

748:20-10-8. NEC® Chapter 2 [RESERVED]

748:20-10-9. NEC® Chapter 3 [RESERVED]

748:20-10-10. NEC® 2014 Chapter 4 Equipment for General Use

Chapter 4 of the NEC® 2014 is adopted with the following modifications:

(1) Section 410.2 Definition. This section has been modified to add two definitions to the section:

(A) The definition of HORTICULTURAL LIGHTING EQUIPMENT has been added to clarify lighting equipment identified for horticultural use is to be designed to provide supplemental general illumination within the growing environment. This definition has

been added to read: HORTICULTURAL LIGHTING EQUIPMENT. Lighting equipment identified for horticultural use is designed to provide a spectral characteristic needed for the growth of plants and can also provide supplemental general illumination within the growing environment.

(B) The definition of LUMINAIRE REMOTE POWER SOURCES has been added to clarify Luminaire remote power sources include LED Drivers, fluorescent ballasts or HID ballasts. This definition has been added to read: LUMINAIRE REMOTE POWER SOURCES. Luminaire remote power sources include LED Drivers, fluorescent ballasts, or HID ballasts.

(2) Part XVI. Special Provisions for Horticultural Lighting Equipment. This part header has been added to Article 410 Luminaires, Lampholders, and Lamps to signify the start of a new section of code related to provisions for horticultural lighting equipment. This part heading has been added to read: Part XVI. Special Provisions for Horticultural Lighting Equipment

(3) Section 410.170 General. This section has been added to clarify luminaires complying with Parts I, II, III, IV, V, VI, VII, IX, X, XI, and XII of this article shall be permitted to be used for horticultural lighting. The section clarifies Part XVI of the article shall apply to lighting equipment specifically identified for horticultural use. This section has been added to read: 410.170 General. Luminaires complying with Parts, I, II, III, IV, V, VI, VII, IX, X, XI, and XII of this article shall be permitted to be used for horticultural lighting. Part XVI shall additionally apply to lighting equipment specifically identified for horticultural use.

(4) Section 410.172 Listing. This section has been added to clarify lighting equipment identified for horticultural use is required to be listed. This section has been added to read: 410.172 Listing. Lighting equipment identified for horticultural use shall be listed.

(5) Section 410.174 Installation and use. This section has been added to clarify lighting equipment identified for horticultural use shall be installed and used in accordance with the manufacturer's installation instructions and installation markings on the equipment as required by the listing. This section has been added to read: 410.174 Installation and use. Lighting equipment identified for horticultural use shall be installed and used in accordance with the manufacturer's installation instructions and installation markings on the equipment as required by that listing.

(6) Section 410.176 Locations not permitted. This section has been added to clarify the location and installation where lighting equipment identified for horticultural use is not permitted. This section has been added to read: 410.176 Locations not permitted.

(A) General Lighting. Lighting equipment identified for horticultural use shall not be installed as lighting for general illumination unless such use is indicated in the manufacturer's instructions.

(B) Installed Location. Lighting equipment identified for horticultural use shall not be installed where it is likely to be subject to physical damage or where concealed.

(7) Section 410.178 Flexible cord. This section has been added to clarify flexible cords will be permitted only when provided as part of a listed lighting equipment identified for horticultural use and identified for specific uses. This section has been added to read: 410.178 Flexible cord. Flexible cord shall only be permitted when provided as part of listed lighting equipment identified for horticultural use for any of the following uses:

(A) Connecting a horticultural lighting luminaire directly to a branch circuit outlet.

(B) Interconnecting horticultural lighting luminaires.

(C) Connecting a horticultural lighting luminaire to a remote power source.

(8) Section 410.180 Fittings and connectors. This section has been added to clarify fittings and connectors attached to flexible cords shall be provided as part of a listed horticultural lighting equipment device or system and be installed in accordance with the instructions provided as part of the listing. This section has been added to read: 410.180 Fittings and connectors. Fittings and connectors attached to flexible cords shall be provided as part of a listed horticultural lighting equipment device or system and installed in accordance with the instructions provided as part of that listing.

(9) Section 410.182 Grounding. This section has been added to require lighting equipment identified for horticultural use to be grounded as required in Article 250 and Part V of this article. This section has been added to read: 410.182 Grounding. Lighting equipment identified for horticultural use shall be grounded as required in Article 250 and Part V of this article.

(10) Section 410.184 Ground-fault circuit-interrupter protection. This section has been added to clarify lighting equipment identified for horticultural use employing flexible cord(s) with one or more connectors to be supplied by lighting outlets with ground-fault circuit-interrupter protection. This section has been added to read: 410.184 Ground-fault circuit-interrupter protection. Lighting equipment identified for horticultural use employing flexible cord(s) with one or more connectors shall be supplied by lighting outlets with ground-fault circuit-interrupter protection.

(11) Section 410.186 Support. This section has been added to clarify special fittings identified for support of horticultural lighting equipment shall be designed specifically for the horticultural lighting equipment on which they are installed and shall be used in accordance with the installation instructions provided and shall be securely fastened. This section has been added to read: 410.186 Support. Special fittings identified for support of horticultural lighting equipment shall be designed specifically for the horticultural lighting equipment on which they are

installed and shall be used in accordance with the installation instructions provided and shall be securely fastened.

(12) Section 410.188 Hazardous (classified) locations. This section has been added to clarify where horticultural lighting is installed in hazardous (classified) locations, the horticultural lighting equipment shall conform to Articles 500 through 517 in addition to this article. This section has been added to read: 410.188 Hazardous (classified) locations. Where installed in hazardous (classified) locations, horticultural lighting equipment shall conform to Articles 500 through 517 in addition to this article.

748:20-10-11. NEC® Chapter 5 [RESERVED]

748:20-10-12. NEC® Chapter 6 [RESERVED]

748:20-10-13. NEC® Chapter 7 [RESERVED]

748:20-10-14. NEC® Chapter 8 [RESERVED]

748:20-10-15. NEC® Chapter 9 [RESERVED]

[OAR Docket #20-733; filed 8-7-20]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 25. WILDLIFE RULES

[OAR Docket #20-730]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 7. General Hunting Seasons

Part 19. Season on Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service

800:25-7-139.1. Sandhills WMA [NEW]

AUTHORITY:

Title 29 O.S., Sections 3-103, 5-401; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

ADOPTION:

June 17, 2020

EFFECTIVE:

Immediately upon Governor's Approval

APPROVED BY GOVERNOR:

July 13, 2020

EXPIRATION:

Effective through September 14, 2021, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The Department recently purchased 5,212 acres in Woods County and named it Sandhills Wildlife Management Area. The property remains closed until rules/regulations can be established. Passage of emergency rules will allow the Department to open the property this fall so the public will be able to access and utilize this property and the natural resources found there. Without emergency rules, the Department cannot open the property for public use until the fall of 2021.

Emergency Adoptions

GIST/ANALYSIS:

These rules will establish hunting season dates on the newly acquired Sandhills Wildlife Management Area so that the public can utilize this property and the natural resources beginning this fall.

CONTACT PERSON:

Bill Dinkines, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, PO Box 53465, Oklahoma City, OK 73152. Phone: 405/521-2739 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

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

SUBCHAPTER 7. GENERAL HUNTING SEASONS

PART 19. SEASONS ON AREAS OWNED OR MANAGED BY THE OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION AND THE U.S. FISH AND WILDLIFE SERVICE

800:25-7-139.1. Sandhills WMA

The following hunting and trapping seasons apply to the Sandhills WMA:

- (1) Quail: Same as statewide season dates, except closed during the first nine days of deer gun season. Hunting hours close at 4:30 PM daily.
- (2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates.
 - (B) Gun: Same as statewide season dates, shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - Primitive firearms: Same as statewide season dates, except closed to antlerless hunting.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Open to water sets, live box traps and enclosed trigger traps only.

(17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.

(18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.

(19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

[OAR Docket #20-730; filed 7-31-20]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 30. DEPARTMENT OF WILDLIFE LANDS MANAGEMENT

[OAR Docket #20-731]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. Use of Department Managed Lands
800:30-1-7. Livestock and feral hogs [AMENDED]

AUTHORITY:

Title 29 O.S., Sections 3-103, 5-401; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

ADOPTION:

June 17, 2020

EFFECTIVE:

Immediately upon Governor's Approval

APPROVED BY GOVERNOR:

July 13, 2020

EXPIRATION:

Effective through September 14, 2021, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The Feral Swine Eradication and Control Pilot Program (FSCP) was established in the 2018 Farm Bill to respond to the threat feral swine pose to agriculture, native ecosystems, and human/animal health. This Program is a joint effort between USDA, NRCS and the Department to eradicate feral swine in the 2 designated zones in Oklahoma. Within these two zones are four Wildlife Management Areas (WMA's) that currently allow feral swine hunting. For efficiency and safety, these four WMA's need to be closed immediately to hog hunting so that Program personnel can conduct eradication efforts without interference. Without emergency rules, feral swine hunting on these WMA's would continue until the fall of 2021, which would compromise and cause serious delays to the eradication efforts.

GIST/ANALYSIS:

These rules will eliminate recreational feral swine hunting on the four WMA's within the FSCP zones. This will allow Wildlife Services to begin and increase control efforts on these WMA's without interference and also reduces the incentive for illegal transport/release of feral swine to these WMA's. The WMA's included in this rule are: Hackberry Flat, Kaw, Sandy Sanders, and Waurika.

CONTACT PERSON:

Bill Dinkines, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, PO Box 53465, Oklahoma City, OK 73152. Phone: 405/521-2739 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

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

**SUBCHAPTER 1. USE OF DEPARTMENT
MANAGED LANDS****800:30-1-7. Livestock and feral hogs**

(a) **Livestock.** It is unlawful for any person to willfully or neglectfully allow unauthorized livestock to encroach upon any lands owned or managed by the Oklahoma Department of Wildlife Conservation.

(b) **Horses.** No person shall ride, drive, lead or keep a horse or other livestock on lands owned or managed by the Oklahoma Department of Wildlife Conservation, except Honobia Creek WMA and Three Rivers WMA, during the period of October 1 through January 1 and spring turkey season, annually without prior written approval from the Oklahoma Department of Wildlife Conservation. Individuals or parties of less than 25 may ride on areas with prior written approval of the local biologist during the closed period if no hunting conflict is determined by the biologist. U.S. Forest Service regulations shall apply to those lands owned by the Forest Service. See 800:25-7-71 [REVOKED] (renumbered to 800:30-1-20) also.

(c) **Use of horses.** Hunting on, from or with the aid of horses or mules on WMAs (except U.S. Forest Service lands, Honobia Creek WMA and Three Rivers WMA) is prohibited during daylight hours during the period of October 1 - January 1 and during spring turkey season. Persons holding nonambulatory permits or motor vehicle permits are exempt.

(d) **Feral hogs.** Feral hogs may be taken on lands owned or managed by the Oklahoma Department of Wildlife Conservation during any established hunting season with methods authorized by the Department for that hunting season, except that during any open deer and/or turkey season only appropriate methods, hunting hours, and weapons for that deer and/or turkey season are authorized for taking or pursuing feral hogs. The following WMAs are closed to all hog hunting: Hackberry Flat, Kaw, Sandy Sanders and Waurika. No feral hogs may be removed alive from a WMA.

[OAR Docket #20-731; filed 7-31-20]

Permanent Final Adoptions

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

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

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

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

TITLE 10. OKLAHOMA ACCOUNTANCY BOARD CHAPTER 15. LICENSURE AND REGULATION OF ACCOUNTANCY

[OAR Docket #20-605]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 18. Computer-Based Examination

10:15-18-1. [AMENDED]

10:15-18-3. [AMENDED]

Subchapter 21. Reciprocity

10:15-21-1. [AMENDED]

Subchapter 23. Registration

10:15-23-1. [AMENDED]

Subchapter 25. Permits

10:15-25-3. [AMENDED]

Subchapter 27. Fees

10:15-27-16. [NEW]

Subchapter 37. Enforcement Procedures

10:15-37-11. [AMENDED]

AUTHORITY:

Oklahoma Accountancy Board; 59 O.S., § 15.5(B)(6)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 6, 2019

COMMENT PERIOD:

December 2, 2019 through January 3, 2020

PUBLIC HEARING:

January 9, 2020

ADOPTION:

February 21, 2020

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 27, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 11, 2020

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 27. Fees

10:15-27-16. [NEW]

Subchapter 37. Enforcement Procedures

10:15-37-11. [AMENDED]

Gubernatorial approval:

October 25, 2019

Register publication:

37 Ok Reg 167

Docket number:

19-816

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revision to 10:15-18-1(b) is to take out the "good moral character" requirement for exam applicants in keeping with the removal of the same requirement for qualification applicants under House Bill 1373

("HB 1373"), which became effective November 1, 2019. The removal of 10:15-18-3(b)(3) allows for continuous CPA exam testing. The proposed revisions to 10:15-21-1, 10:15-23-1, and 10:15-25-3, assists in compliance with the Military Service Occupation, Education, and Credentialing Act under Senate Bill 670 (2019). These changes require the application of an active duty military personnel or their spouse to be processed expeditiously and also waives the application fee. The proposed revisions also grant a waiver of the first year registration and permit fees for those same military personnel applicants. The addition of 10:15-27-16 allows the Board to charge a \$95.00 fee, as authorized under HB 1373, for an "initial determination of eligibility request" for those applicants with criminal history. The proposed revisions to 10:15-37-11 are to set out the framework to effectuate the requirements under HB 1373. Under the new law, the Board must maintain and make available to the public a list of criminal offenses that would disqualify an individual from holding a license or certificate.

CONTACT PERSON:

Randall A. Ross, CPA, Executive Director, or LaLisa Semrad, Staff Liaison to the OAB Rules Committee, Oklahoma Accountancy Board, 201 NW 63rd Street, Suite 210, Oklahoma City, OK 73116, (405) 521-2397, rross@oab.ok.gov or lsemrad@oab.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 18. COMPUTER-BASED EXAMINATION

10:15-18-1. Applications for examination

(a) An application for qualification in a format prescribed by the Board, will not be considered filed until the application and all required fees as provided by §15.8 of the Act and supporting documents, including but not limited to photographs and official transcripts as proof that the applicant has satisfied the education requirement, are received by the Board.

(b) Evidence, ~~by means established in Title 59, Section 15.8 of the Act, is obtained to substantiate that the applicant is of good moral character~~ by submission to a national criminal history record search, that the applicant has not committed a criminal offense that would disqualify the applicant from holding a certificate or license;

(c) A candidate's application for examination will not be considered filed until the application in a format prescribed by the Board and the application fee as provided in Subchapter 27 are received by the Board.

(d) Failure of a candidate to furnish all information requested by the Board within the time frame set by the Board shall be grounds for denying such candidate admission to the examination.

Permanent Final Adoptions

(e) Any candidate who gives false information to the Board in order to be eligible to take the examination shall be subject to disciplinary action by the Board.

10:15-18-3. Retake and granting of credit requirements

(a) A grade of seventy-five (75) in each required test section shall be the minimum passing grade for purposes of granting credit.

(b) A candidate may take the required test sections individually and in any order. Credit for any test section(s) passed shall be valid for eighteen months from the date the candidate took that test section, without having to attain a minimum score on any failed test section(s) and without regard to whether the candidate has taken other test sections.

(1) A CPA candidate must pass all four test sections of the AICPA Uniform CPA Examination within a rolling eighteen-month period, which begins on the date that the first test section(s) passed is taken. In the event all four test sections of the AICPA Uniform CPA Examination are not passed within the rolling eighteen-month period, credit for any test section(s) passed outside the eighteen-month period will expire and that/those test section(s) must be retaken.

(2) A PA candidate must pass the Financial Accounting and Reporting (FAR), Auditing and Attestation (AUD), and Regulation (REG) sections of the AICPA Uniform CPA Examination within a rolling eighteen-month period, which begins on the date that the first test section(s) passed is taken. In the event all three test sections of the PA Examination are not passed within the rolling eighteen-month period, credit for any test section(s) passed outside the eighteen-month period will expire and that/those test section(s) must be retaken.

~~(3) A candidate cannot retake a failed test section(s) in the same examination window. An examination window refers to a three month period in which a candidate has an opportunity to take the CPA/PA examination (comprised of two months in which the examination is available to be taken and one month in which the examination will not be offered while routine maintenance is performed and the item bank is refreshed). Thus, a candidate will be able to test two out of the three months within an examination window.~~

(c) A candidate shall be deemed to have passed the CPA examination once the candidate holds at the same time valid credit for passing each of the four test sections of the examination within the rolling eighteen month period. For purposes of this section, credit for passing a test section of the computer-based examination is valid from the actual date of the testing event for that test section, regardless of the date the candidate actually receives notice of the passing grade.

(d) A candidate shall be deemed to have passed the PA examination once the candidate holds at the same time valid credit for passing each of the three test sections of the examination within the rolling eighteen month period. For purposes of this section, credit for passing a test section of the computer-based examination is valid from the actual date of the testing event for

that test section, regardless of the date the candidate actually receives notice of the passing grade.

SUBCHAPTER 21. RECIPROCITY

10:15-21-1. Application for certificate or license

(a) An applicant seeking to obtain an Oklahoma reciprocal certificate or license, who holds a valid certificate or license pursuant to the laws of another jurisdiction shall provide the Board with:

(1) written proof of test scores received on all examinations from the examining jurisdiction;

(2) written information that the applicant met or currently meets all Oklahoma requirements for eligibility as provided by statute, §15.13, Title 59, Oklahoma Statutes and these rules;

(3) a current certificate of good standing from the jurisdiction who issued the certificate or license upon which the reciprocal certificate or license is based;

(4) written proof of having met all Oklahoma continuing professional educational requirements for those applicants seeking a permit to practice public accounting;

(5) evidence of successful completion of the AICPA ethics examination or its equivalent as determined by the Board; and

(6) evidence, by means established in Section 15.9 of the Act, is obtained to substantiate that the applicant is of good moral character.

(b) The application for a reciprocal certificate or license shall be filed within one hundred twenty (120) days of employment with a public accounting firm located in this state or engaging in the practice of public accounting in Oklahoma.

(c) An application for a reciprocal certificate or license, in a format prescribed by the Board, will not be considered filed until the application, all required documents as proof that the applicant has satisfied the eligibility requirements, and fees are received by the Board.

(d) The filed application of an active duty military personnel or their spouse shall be processed expeditiously and the requested certificate or license shall be issued within thirty (30) days, assuming the eligibility requirements are met. In addition, pursuant to the Military Service Occupation, Education and Credentialing Act, the reciprocal application fee shall be waived for an active duty military personnel or their spouse.

SUBCHAPTER 23. REGISTRATION

10:15-23-1. Registration of individuals

(a) All individuals shall register annually by the last day of the individuals' birth months as provided in Section 15.14 of the Oklahoma Accountancy Act and shall file a registration statement with the Board in a format prescribed by the Board. The certificate or license shall be considered lapsed after the last day of the birth month.

(b) All registration statements shall be accompanied by a registration fee.

(1) In the case of a registrant who has reached the age of sixty-five (65), the registration fee shall be reduced, as provided in Subchapter 27.

(2) In the case of a registrant who is disabled beyond gainful employment, as provided in Section 15.14 of the Oklahoma Accountancy Act, the registration fee may be waived for the period of disability.

(3) In the case of a registrant who is retired as defined in Subchapter 1, the registration fee shall be waived.

(4) Pursuant to the Military Service Occupation, Education and Credentialing Act, the first year registration fee shall be waived for an active duty military personnel or their spouse.

(45) All requests for a reduction or waiver of the registration fee shall be addressed to the Board, in writing.

(56) The Board shall use its discretion in determining the conditions required for disability.

(c) In addition to the registration fee paid by an individual, there shall be a fee for registering after the last day of the renewal month but within twelve (12) months after the lapse date of the certificate or license.

(d) In addition to the registration fee paid by an individual, there shall be a fee for registering later than twelve (12) months following the lapse date of the certificate or license.

(e) Evaluation of qualifications and approval of registrations filed by individuals shall be performed by the Executive Director or his/her designee, subject to the review and supervision of the Board.

(f) Denial of individual registrations shall be by the Board.

(g) During the period when a certificate or license is suspended by the Board, the suspended registrant shall be required to file annually with the Board an informational report in a format prescribed by the Board. No fee shall be required with such filing.

(h) Renewal forms delivered to the Board office via carrier service with a postmark or ship date on or before the set expiration date as provided in this subsection shall be deemed timely filed.

SUBCHAPTER 25. PERMITS

10:15-25-3. Individual permit

(a) Any registrant engaged in the practice of public accounting, regardless of whether such services are rendered for compensation, must have a permit, except for a licensed attorney providing tax services who does not display the certificate or license and does not have any reference thereto on professional stationery, business cards, or printed or electronic format. However, for purposes of this section, an individual may not be considered to be in the practice of public accounting if the individual performs an incidental amount of non-compensated services for immediate family members. An individual who meets the definition of retired or inactive status as defined in the Code or the Act is not considered to be in the practice of public accounting. In order to obtain a

permit, an individual must have a valid certificate or license, be properly registered, pay all applicable fees, and comply with the continuing education requirements.

(b) The application for renewal of a permit shall be filed with the Board in a format prescribed by the Board prior to the expiration of the permit.

(c) At the time the application for a permit is filed, the registrant shall attest to compliance with the continuing education requirement for the applicable compliance period as specified by the Board.

(d) An application for a permit may be filed at any time during the year by a registrant who is entering or reentering the practice of public accounting. Such registrant shall attest to compliance with the applicable continuing education requirement.

(e) The fees to obtain a permit to practice shall accompany the application. The fees for the renewal of permits are set forth in Subchapter 27. However, pursuant to the Military Service Occupation, Education and Credentialing Act, the first year permit fee shall be waived for an active duty military personnel or their spouse.

(f) Effective January 1, 2010, the issue dates and expiration dates for individual permits to practice public accounting, as provided in this subchapter, shall be adjusted according to the schedule provided for in 10:15-25-3(g) below.

(g) The Board shall provide a schedule of expiration dates and prorated fees for purposes of transitioning into the new staggered annual renewal dates.

SUBCHAPTER 27. FEES

10:15-27-16. ~~Initial determination of eligibility~~

Each request for an initial determination of eligibility due to criminal history record shall be accompanied by an administrative fee of Ninety-Five Dollars (\$95.00).

SUBCHAPTER 37. ENFORCEMENT PROCEDURES

10:15-37-11. ~~Felony convictions~~ Convictions and pleas

(a) The provisions of this section shall be applicable, except where indicated, to applicants for the examination, examination candidates, and applicants for certificates and licenses; ~~and registrants~~ including registrants seeking renewal of certificates and licenses (applicants).

(b) When an applicant has been convicted of or plead guilty or nolo contendere to a ~~felony~~ crime included on the Board's list of disqualifying crimes, the applicant shall be required to furnish to the Board documentation of the charges and the final judgment of the Court in the form of certified documents from the Court file. Failure by an applicant for the examination to furnish adequate documentation no later than sixty (60) days prior to the commencement of the examination applied for shall result in denial of the application.

Permanent Final Adoptions

(c) Failure of any applicant to cooperate with an investigation conducted by the Board shall result in denial of the application.

~~(d) The Enforcement Committee shall review all documents pertaining to the applicant's conviction or plea and may further require that an investigation be conducted in accordance with Subchapter 37 of the Oklahoma Administrative Code.~~

~~(e) The Board may obtain from the Oklahoma State Bureau of Investigation or other sources a criminal record check of any applicant.~~

~~(e) The Board shall maintain and make available to the public a list of criminal offenses that would disqualify an individual from obtaining or holding a license or certificate. This list shall be periodically reviewed, at least annually, and updated, if necessary, by the Board.~~

~~(f) A person with a criminal history record may at any time, including before obtaining any required education or training, request an initial determination of whether his or her criminal history would potentially disqualify the individual from obtaining a license or certificate. The request shall be in writing and shall include either a copy of the person's criminal history record with explanation of each conviction mentioned in the criminal history record or a statement describing each criminal conviction including the date of each conviction, the court of jurisdiction and the sentence imposed. The person may include a statement with his or her request describing additional information for consideration by the Board including, but not limited to, information about his or her current circumstances, the length of time since conviction and what has changed since the conviction, evidence of rehabilitation, testimonials or personal reference statements and his or her employment aspirations.~~

~~(g) Upon receipt of a written request for consideration of a criminal history record, the Board shall evaluate the request and make an initial determination based upon the information provided in such request whether the stated conviction is disqualifying. A notice of initial determination shall be issued to the petitioner within sixty (60) days from the date such request was received by the Board and shall contain the following statements:~~

~~(1) Whether the person appears eligible for licensure or certification at the current time based upon the information submitted by the requestor;~~

~~(2) Whether there is a disqualifying offense prohibiting the person's licensure or certification at any time and a statement identifying such offense in the criminal history record or information submitted for consideration;~~

~~(3) Any actions the person may take to remedy what appears to be a temporary disqualification, if any;~~

~~(4) The earliest date the person may submit another request for consideration, if any; and~~

~~(5) A statement that the notice of initial determination is only an initial determination for eligibility for licensure or certification based upon the information provided by the requestor.~~

~~(hf) The Enforcement Committee shall make a preliminary determination of whether the applicant satisfies the requirement of good moral character as set forth in Sections 15.8 and~~

~~15.9 of the Act. The Enforcement Committee shall consider, but not be limited to, the nature of the felony conviction or plea and the time period which has elapsed since the offense was committed or judgement was entered. The Board may approve applications disclosing criminal history based upon the nature of the crime, the time period which has elapsed since the offense was committed, and any other factors which the Board deems relevant. When, in the opinion of the Board, public protection requires conditional approval of an applicant, the Enforcement Committee may negotiate a consent order with the applicant. The consent order shall set forth the terms and conditions proposed by the Enforcement Committee for approving the application. All consent orders must be either approved or disapproved by the Board.~~

~~(g) When, in the opinion of the Enforcement Committee, public protection requires conditional approval of an applicant, the Enforcement Committee may negotiate a consent order with the applicant. The consent order shall set forth the terms and conditions proposed by the Enforcement Committee for approving the application. All consent orders must be either approved or disapproved by the Board.~~

~~(h) If the Enforcement Committee is unable to negotiate a consent order with an applicant, or if the Board does not approve the consent order, a hearing may be held to determine whether the application may be approved and to determine conditions for such approval which may be imposed by the Board as a result of the hearing.~~

~~(i) A list of all applicants having criminal histories, with information describing each felony conviction or plea and the penalty imposed for each, shall be presented to the Vice Chair. Board approval must be granted, or a hearing, as ordered by the Board, must be held in conjunction with each application presented to the Board.~~

~~(j) Individual registrants who have a felony conviction or plea are subject to the provisions of the Act and the enforcement procedures set forth in this Subchapter.~~

[OAR Docket #20-605; filed 7-14-20]

TITLE 25. OKLAHOMA AERONAUTICS COMMISSION CHAPTER 15. OAC GRANT PROGRAM

[OAR Docket #20-479]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

25:15-1-2 through 25:15-1-4 [AMENDED]

AUTHORITY:

Oklahoma Aeronautics Commission; 3 O.S. Section 85

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 8, 2020

COMMENT PERIOD:

February 4, 2020 through March 6, 2020

PUBLIC HEARING:

March 9, 2020

ADOPTION:

March 10, 2020

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 13, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 11, 2020

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The proposed permanent rules will modify the definition of Airport Layout Plan/Drawing and add the definition for Project Sketch. It will also alphabetize the already established definitions. A change made to planning will identify the letter of interest requirement for a projects potential inclusion into the Airport Construction Program. Changes made to programming implementation include a signatory requirement when an airport's administration and/or operation is performed by a Trust and clarifying language regarding the type of account a sponsor's share of a project must be deposited in. The amendments will allow staff to consider line-item change orders. The amendments will allow for inclusion of engineering costs incurred pursuant to submitting a completed grant application. The amendments will stipulate the Engineer-of-record is to sign the tabulation of all bids. The amendments will clarify the documentation requirements for reimbursement requests and the Commission's obligation until a satisfactory financial report is completed by the Commission.

All of these changes to the permanent rules are to help clarify and ensure efficiency with the Commission's airport grant program. More specifically, we want our airport grant administration processes to be easily understood by those airports and communities we provide grant funding to across the State of Oklahoma.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

25:15-1-2. Definitions

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

"Commission" means the Oklahoma Aeronautics Commission, the state agency responsible for administering airport grant programs for the State of Oklahoma and the Federal Aviation Administration.

"Administrative official" means an official of the airport sponsor who is authorized to legally bind the airport sponsor.

"Airport Construction Program" means a list of airport construction projects approved by the Commission for implementation within a five-year programming horizon showing a description of the project, the cost of each phase of the project, when the project is expected to occur, and the sources of funding.

"Airport Development Worksheet" means a listing of the capital projects needed at an airport over a twenty-year planning horizon together with the estimated cost, construction type, objective code, and airport component for each project. Projects identified for a particular airport must be consistent

with the service level, functional classification, design standard, and airport reference code identified for the airport in the Oklahoma Airport System Plan. An airport development worksheet is developed and maintained for each system plan airport that is not part of the National Plan of Integrated Airport Systems (NPIAS) cooperatively by the airport sponsor and the Commission staff.

"Airport layout plan/drawing" means the basic plan for the layout of an airport that shows, at a minimum, the present boundaries of the airport, the areas that the airport sponsor owns or controls for airport purposes, and any proposed areas that will be acquired by the airport sponsor in the future. It will include the location and nature of existing and proposed airport facilities such as runways, taxiways, aprons, terminal buildings, hangars, roads, and other vital airport infrastructure items. Also, it will provide the location of existing and proposed uses of property under control by the airport sponsor. The full airport layout plan-set is a combination of many pages of documents, including items such as instrument approach path details, terminal area maps, property maps, and the page that is identified as the airport layout drawing. Not every airport will have a full plan-set and may only have an airport layout drawing which will detail most of the above information on a single page drawing.

"Airport Sponsor" or **"Municipality"** is used interchangeably throughout this chapter. Either term means any incorporated city, village, or town of this state, any public institution of higher education, and any county or political subdivision or district of this state, or any public trust thereof, which is, or may be, authorized by law to acquire, establish, construct, maintain, improve, and operate airports, airstrips, and aeronautical facilities. To be eligible for the state grant program, the airport sponsor must be one of the governmental entities referenced in the preceding sentence and included in the Oklahoma Airport System Plan. Nothing herein precludes two or more of these entities from acting jointly as an airport sponsor. In the event a public trust is the airport sponsor, the beneficiary of that public trust must also be a record owner of the airport property.

"Commission" means the Oklahoma Aeronautics Commission, the state agency responsible for administering airport grant programs for the State of Oklahoma and the Federal Aviation Administration.

"Oklahoma Airport System Plan" means the plan, adopted by the Commission, which identifies the airports included in the State's airport system and identifies the service level, functional classification, design standard, and airport reference code for each system airport.

"Administrative Official" means an official of the airport sponsor who is authorized to legally bind the airport sponsor.

"Emergency" means a condition that could not have been foreseen and which affects the safety of the airport sufficiently that the airport or runway may need to be closed if the situation is not remedied.

"FAA" means the Federal Aviation Administration, a unit of the U.S. Department of Transportation.

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"Letter of Interest" means a letter expressing the desire of an airport sponsor to have one or more projects included in the Airport Construction Program.

"Non-Primary Entitlement (NPE) funds" are FAA Airport Improvement Program (AIP) funds set aside for general aviation airports listed in the National Plan of Integrated Airport Systems. These airports can each receive up to \$150,000 per year based on the FAA assessment of needs over a 5 year period.

"Notification Letter" means correspondence prepared by the Commission staff informing an airport sponsor that one or more of their projects have advanced to the current year of the Airport Construction Program. The letter sets forth the terms the Commission imposes on airport sponsors participating in the state grant program, describes the project, authorizes the airport sponsor to begin engineering work for the project and directs the sponsor to prepare a grant application once project bids have been received.

"Airport Layout Plan" means the basic plan for the layout of an airport that shows, as a minimum the present boundaries of the airport and of the offsite areas that the airport sponsor owns or controls for airport purposes, and of their proposed additions. It will include the location and nature of existing and proposed airport facilities such as runways, taxiways, aprons, terminal buildings, hangars and roads, and of their proposed modifications and extensions. Also, it will provide the location of existing and proposed non-aviation areas, and of their existing improvements.

"NPIAS Needs Worksheets" are identical to Airport Development Worksheets with the difference being that these are maintained for NPIAS airports.

"Non-Primary Entitlement (NPE) funds" are FAA Airport Improvement Program (AIP) funds set aside for general aviation airports listed in the National Plan of Integrated Airport Systems. These airports can each receive up to \$150,000 per year based on the FAA assessment of needs over a 5 year period.

"Oklahoma Airport System Plan" means the plan, adopted by the Commission, which identifies the airports included in the State's airport system and identifies the service level, functional classification, design standard, and airport reference code for each system airport.

"Project Sketch" shown in color the area and location of proposed construction or rehabilitation work for the accompanying construction grant application.

25:15-1-3. Planning

(a) Planning and Programming Process.

(1) The Commission staff shall, in consultation with airport sponsors, prepare and maintain the Oklahoma Airport System Plan. The Commission shall adopt and approve changes to the plan.

(2) The Commission staff shall assist publicly owned, publicly used airports in identifying airport needs and deficiencies. Airport sponsors eligible to participate in grant programs are sponsors of publicly owned, public use airports included in the Oklahoma Airport System Plan. The Commission staff shall, in consultation with

each airport sponsor, prepare and maintain an airport development worksheet for each airport included in the Oklahoma Airport System Plan. The airport development worksheet shall be reviewed and updated at least once every three years. The airport development worksheet shall identify the capital projects needed at the airport over a 20 year planning horizon, together with the estimated cost, construction type, objective code, and airport component for each project. The identified projects shall be consistent with the service level, functional classification, design standard, and airport reference code identified for the airport in the Oklahoma Airport System Plan.

(3) The Commission staff shall, in consultation with airport sponsors, prepare and update annually the Airport Construction Program. The Commission shall approve the Airport Construction Program.

(b) Airport Construction Program Content.

(1) The Airport Construction Program shall contain a list of proposed State and FAA funded projects that can be implemented with forecast revenues within the five year programming horizon.

(2) Projects included for an airport in the Airport Construction Program shall be consistent with service level, functional classification, design standard, and airport reference code identified for the airport in the Oklahoma Airport System Plan.

(3) The Airport Construction Program shall show the proposed sources of funding for each project.

(4) The Airport Construction Program shall show the proposed implementation schedule for each project.

(5) The Airport Construction Program shall include other priorities, policies, and procedures as adopted by the Commission.

(c) Airport Construction Program Projects.

(1) To be included in the Airport Construction Program a project must be eligible to receive airport grant funding from OAC. To be eligible a project must be conducted on active public-use areas of an airport or to support those public-use areas of an airport. Types of projects considered eligible are listed below:

(A) Maintenance: this type of work is limited to pavement maintenance of runways, taxiways, and aprons and can include routine cleaning, filling, or sealing of cracks/joints, maintenance of pavement drainage systems, patching pavement, and remarking of the above mentioned pavement areas. Items not considered maintenance are applying herbicide to prevent grass encroachment, mowing of airport grass, FOD sweeping, replacing light bulbs, replacing light fixtures due to damage from a manmade source, re-topping of trees that had been previously topped in an OAC project, and other similar type activities.

(B) Rehabilitation: this type of work is a more comprehensive restoration of an item to its original functionality. Items such as pavement sealcoats, overlays, replacement of an entire set of lighting fixtures would be considered rehabilitation.

(C) Reconstruction: this type of work is a complete restoration of an item to its original functionality once it has reached the end of its useful life. This results in a virtually new piece of pavement, electrical system, or building.

(D) New Construction/Installation: this type of work would construct new pavement such as a runway widening or extension, hangar taxiway area, or apron expansion, or construct new structures such as a terminal building, or construct new drainage structures to support the removal of water from the airport. This work item would also include the installation of new navigational aids that weren't previously at an airport such as a precision approach path indicator, runway edge lighting, omnidirectional approach light system, weather observation system, or similar item.

(E) Planning/Design: this type of work includes the engineer design and associated support work with any of the eligible project types. This could also include planning projects such as master plans, airport layout plans, specialty planning studies, and obstruction/approach surveys.

(F) Off-airport: this type of work is typically for the support of on-airport operations. This work item could include items such as obstruction removal, land acquisition, drainage improvements, relocation of roads and utilities, installation of navigational aids, or similar projects.

(2) The following are three basic tests that must be met to determine if a project is justified for inclusion in the Airport Construction Program:

(A) The project advances OAC policy laid out in 3 O.S. § 85 and the adopted Oklahoma Airport System Plan. The basic goals and objectives in these policies include airport safety, security, and capacity, meeting FAA or OAC standards, preserving and improving airport infrastructure that is for the use and benefit of the public, airport planning, and other similar projects.

(B) OAC must determine if there is an actual need for the project at the airport within the five-year horizon.

(C) The project scope is appropriate. OAC must determine that all the elements of the project are necessary to obtain the project scope's overall goal. Any elements that do not meet this criteria must stand on their own separate merit and justification.

(3) For a project to be considered for inclusion in the Airport Construction Program, the airport sponsor must submit a letter of interest to the Commission detailing the basic scope and estimated cost of the project that they want to have included in the Airport Construction Program.

(d) Airport Construction Program Development.

(1) The Airport Construction Program lists projects for which expenditures are expected to begin within the five year programming horizon.

(2) On a two-year cycle, the Commission staff shall update the NPIAS needs database and the ADWS database

(for Non-NPIAS airports). To update the Commission's database, sponsors will use FAA's Overall Development Objective (ODO) data sheet for each requested project.

(3) The Commission staff shall evaluate projects in the NPIAS and ADWS databases and recommend projects for inclusion in the Airport Construction Program based on:

(A) Airport system development priorities, policies, and procedures adopted by the Commission and/or the FAA.

(B) Multi-year on-going projects that are currently identified in the approved Airport Construction Program will be given higher priority during the development of the Airport Construction Program.

(C) The airport's pavement condition index, pavement life-cycle consideration as developed by the pavement management program.

(D) The National Priority Rating System developed by FAA and included in FAA's Order 5100.39 titled "Airports Capital Improvement Plan".

(E) The amount of aviation activity, the types of airplanes served, the numbers of based airplanes at the airport, and the population included in the airport's service area.

(F) Other factors as may be relevant (for example, the services provided at the airport, the sponsor's demonstrated ability to maintain and operate the airport, the sponsor's ability to address safety inspection deficiencies, etc.)

(G) An emergency project request, with verifiable justification, may be submitted to the Commission for inclusion in the Airport Construction Program at any time.

(4) The five year programming horizon of the Airport Construction Program shall be broken down into three general time periods (Appendix A): near-term program, transition year, and the extended program.

(A) Near-term program: This shall be the current year plus years two and three. Projects in this time period are considered to be of low flexibility.

(B) Transition year: This shall be year four. Projects in this time period are considered to be of moderate flexibility.

(C) Extended program: This shall be year five. Projects in this time period are considered to be flexible.

25:15-1-4. Programming Implementation Airport Grant Program Requirements and Procedures

(a) **Contingency.** Implementation of an airport grant program is contingent upon funding being available to the Commission for this purpose.

(b) **Notification to Proceed.**

(1) As funding becomes available, the Commission staff shall send a notification letter to each airport sponsor that has a capital project included in the approved Airport Construction Program as described in 25:15-1-3.

(2) The notification letter shall:

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- (A) Advise the airport sponsor of the proposed cost sharing for the project and identify project development items eligible for funding.
- (B) Authorize or direct the airport sponsor to:
- confirm in writing within 30 days the airport sponsor's intention to proceed with the project as programmed;
 - select an engineering consultant and provide a copy of the contract entered into with the consultant;
 - prepare project plans and specifications and to coordinate the project design with the Commission staff;
 - prepare to meet the federal and state administrative requirements depending upon the proposed funding sources;
 - provide updated project costs after the final design is completed;
 - proceed to bid when directed by the Commission staff; and
 - submit a grant application for the Commission's consideration and approval.
- (c) **Grant Application; General Information.**
- The airport sponsor shall submit a complete grant application for a capital project for ~~either~~:
- Reimbursement of the cost of planning and engineering; and/or
 - Reimbursement for the cost of ~~planning or~~ construction based on the bids received by the airport sponsor.
- The airport sponsor's administrative official must sign the grant application form(s). If the administration and/or operation of the airport is performed by a Trust, the Chairman of the Trust must also sign the grant application.
 - The Commission shall consider all grant applications in accordance with 25:15-1-3(c).
 - Reimbursement for the cost of engineering is contingent upon submission of the final set of plans and specifications to the Commission staff.
- (d) **Grant Application; Funding Information.**
- Each airport sponsor must state in its application that it has on hand funds to pay all estimated costs of the proposed project that are not borne by the Commission or any other state or federal agency. As part of this requirement, each airport sponsor is required to provide written verification in the grant application (designated as Exhibit E) to the Commission that the airports sponsor's share of the project has been deposited in a ~~designated~~ an account; that will be used for defraying the costs of the project.
 - If any of the funds for the project are to be furnished by another state or federal agency, the airport sponsor must provide evidence that the funds are available with the grant application.
- (e) **Information Regarding State Level of Participation and Required Matches.**
- For state grants, the maximum level of participation for the Commission shall not exceed 95 percent.
 - For FAA grants for projects identified in the Commission's Airport Construction Program, the Commission may provide half of the match that is required from the airport sponsor.
 - For FAA grants for projects identified in the Commission's Airport Construction Program, the Commission may provide supplemental state grant funding for project items. The maximum level of participation for the Commission in such supplemental funding shall not exceed 95 percent.
 - For non-primary entitlement (NPE) grants or special earmarks, the Commission will not provide half the match that is required from the airport sponsor. If NPE grant funds are transferred from other airport sponsors to an airport sponsor for a project identified in the Commission's Airport Construction Program, the Commission may assist with half of any required match from the receiving airport sponsor so long as it will save the Commission state funds.
 - For terminal building projects, the Commission's maximum cost-share level shall be 50 percent and shall not exceed \$500,000.
- (f) **Grant Application; Project Information.**
- The airport sponsor will provide the following information:
- The airport sponsor shall submit an Airport Layout ~~Plan~~ Drawing or project sketch with the grant application—(designated as Exhibit A) indicating the location of the proposed construction work with all grant applications.
 - The airport sponsor shall submit final project plans and specifications with the grant application (designated as Exhibit B).
 - The airport sponsor shall submit a project narrative with the grant application describing the items of airport development for which the airport sponsor is requesting assistance (designated as Exhibit B-1).
 - The airport sponsor shall submit a line-item project cost list with the grant application that provides a detailed cost breakdown of the project (designated as Exhibit B-2). This list will be based on the bid awarded by the airport sponsor. The amounts on this list are considered not to be exceeded amounts without prior approval, and any ~~Any~~ expenditure over these line-item amounts will not be considered for reimbursement ~~without prior~~ unless approval of ~~the Commission (designated as Exhibit B-2).~~ has been received as described in 25:15-1-4(g).
 - The airport sponsor shall submit the engineering contract for the project scope and the project engineering fees with the grant application (designated as Exhibit B-3).
 - The Sponsor will ~~also~~ submit a certification stating compliance with FAA standards ~~(or state standards with~~ unless an approved Modification to

Standards for state standards has been received from the appropriate funding agencies) agency.

(G) The airport sponsor shall submit the contract for on-site construction observations (designated Exhibit B-4).

(H) The airport sponsor shall provide a signed statement in the grant application that the airport sponsor is not currently in default to any state agency for any obligation related to the development, operation or maintenance of the airport (designated as Exhibit C).

(I) The airport sponsor shall provide a signed statement with the grant application that the airport sponsor will not award any contract to any contractor who is currently suspended or disbarred by any federal agency, the Oklahoma Department of Central Services or the Oklahoma Department of Transportation for the project contemplated under the grant application (designated as Exhibit C-1).

(J) The airport sponsor shall provide an affidavit with the grant application that states the person signing is the administrative official for the sponsor, that the sponsor has not provided any compensation, donation or gift to an officer or employee of the state in procuring the grant, that any employee of the state compensated by the airport sponsor involved in the development of the grant will not provide any services in the project, and that this project will not result in any duplication of previous grant requests or awards (designated as Exhibit C-2).

(g) **Change Orders.** As described in 25:15-1-4(f) the B-2 form lists line-item project costs that cannot be exceeded. During the course of the construction of a project, change orders and/or supplemental agreements may be necessary to increase or decrease bid or line-item amounts and quantities due to unknown or unforeseen circumstances. A change order and/or supplemental agreement shall be sent to the Commission along with a request to amend the approved grant's B-2 line-item or bid item.

(1) For change orders and/or supplemental agreements that will not increase the Commission's overall share for the project the Director may approve such an amendment to the grant application. Change orders and/or supplemental agreements approved by the Director shall be presented to the Commission at its next regular or special business meeting stating the reasons for the change order and/or supplemental agreement with such information as the Commission may require.

(2) For change orders and/or supplemental agreements involving a total increase to the Commission's overall share for the project not to exceed Ten Thousand Dollars (\$10,000) the Director may approve such an amendment to the grant application. Change orders and/or supplemental agreements approved by the Director shall be presented to the Commission at its next regular or special business meeting stating the reasons for the change order and/or supplemental agreement with such information as the Commission may require.

(3) For change orders and/or supplemental agreements involving a total increase to the Commission's overall share for the project in excess of Ten Thousand Dollars (\$10,000) the Commission may approve such an amendment to the grant application.

(gh) **Grant Application; Height Hazard Zoning and Land Use.** Each airport sponsor shall indicate within the application that it has taken action to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and take-off of aircraft, and assuring the protection or control of the aerial approaches to the airport (designated as Exhibit D). The adoption and enacting of these zoning regulations is outlined in Title 3, Section 103 through 116, of the Oklahoma State Statutes.

(hi) **Grant Application; Assurances.** The airport sponsor, upon signing the grant application, agrees to the following assurances:

(1) Upon the approval of the grant by the Commission, the capital project will be completed within a maximum of two years.

(2) The airport sponsor agrees to the following conditions regarding the users of the airport:

(A) Neither the airport sponsor nor the occupant of any of the airport facilities shall discriminate against any person or a class of persons in the use of any facility provided to the public on airport property.

(B) The airport sponsor shall operate the airport in such a manner that the airport is open to all types and classes of users and establish such non-discriminatory conditions required for the safe and efficient operation of the airport.

(C) Any agreement, contract, lease or other arrangement that the airport sponsor enters into shall include provisions that such services meet the demands of all users of the airport, that services shall be provided on a non-discriminatory basis, that charges for goods and services shall be fair and reasonable, that services allow any user of the airport to perform any and all services to their own aircraft, and that essential facilities will be operated in a manner that these facilities shall be available to all users of the airport. In addition, if the airport sponsor provides any or all of these services, the airport sponsor agrees to the same provisions.

(3) The airport sponsor certifies that it has the legal authority to carry out all provisions of the grant application in conformity with State and Federal Statutes, Acts, and Regulations.

(4) The airport sponsor shall reserve sufficient powers and authority when entering into any transaction or arrangement to perform any of the covenants expressed in the grant application.

(5) The airport sponsor shall provide the following minimum essential facilities: a landing area and an aircraft parking area.

(6) The airport sponsor shall agree to properly maintain the airport under the following conditions:

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- (A) The airport sponsor will operate and maintain the airport and all facilities to meet the needs of all users of the airport.
- (B) The airport sponsor shall not permit the airport to be used for an activity that would impede or obstruct aeronautical activity.
- (C) The airport sponsor shall appropriate the funds required to properly maintain the airport to prevent deterioration of the facilities. Failure to have a documented pavement maintenance program shall be cause for the Commission to disqualify the airport sponsor for additional funds. In addition, failure to have a documented pavement maintenance program shall be considered a breach of these assurances.
- (7) The airport sponsor shall maintain an updated Airport Layout Plan that has been prepared in accordance with the FAA's regulations and shall not make any alterations to the airport other than those outlined in the approved Airport Layout Plan, or approved by the FAA or the Commission in writing.
- (8) The Commission shall prepare a financial report of income and expenditures of all project funds. All project records shall be maintained by the airport sponsor for not less than three (3) years from the final acceptance of the project by the Commission, and the airport sponsor shall provide access to these records upon request of the Commission or the FAA. This provision shall in no way affect any requirement imposed upon the airport sponsor by the Oklahoma Open Records Act or any other state or federal law. These records shall include such documentary evidence as invoices, cost estimates, payrolls, vouchers, cancelled checks or warrants, and receipts for cash payments that support each item of project costs. The final 10% of state grant funds will not be released until a satisfactory financial report has been completed and accepted by the Commission staff.
- (9) The Commission shall not pay or be obligated to pay for any work on the project that has been incurred prior to the grant application being submitted to and awarded by the Commission except for planning and/or engineering costs incurred pursuant to submitting a completed grant application. In addition, any funds approved by the Commission shall only be used for project costs identified in the grant application unless approval has been obtained as described in 25:15-1-4(g).
- (ij) **Grant Agreement; Terms and Conditions.** Upon the approval of Commission, the completed grant application shall constitute an agreement between the Commission and the airport sponsor. Both the Commission and the airport sponsor are bound to all the requirements of the grant agreement. In addition, all grants of the Commission shall be subject to the following terms and conditions:
- (1) The time period of the grant agreement between the airport sponsor and the Commission shall be twenty (20) years from the date of the airport sponsor's acceptance and/or the life of the improvements contemplated under the grant application.
- (2) The airport and all visual navigational aids shall be under the control of and maintained by the airport sponsor for the period covered by the grant agreement.
- (3) For the purposes of the grant agreement, the airport sponsor must have title free and clear of any reversionary interest, lien, easement, lease, or other encumbrance for all property to be constructed on during the grant agreement. If the property is leased, the airport sponsor asserts that the lease will be maintained no less than the time period of the grant agreement, and in both circumstances, asserts that the property will not be used for any purpose other than the operation of the airport. In addition, airport property as defined in the airport layout plan cannot be transferred by the airport sponsor without the written approval of the Commission.
- (4) The airport and all visual navigational aids shall be made available to all classes of aeronautical users without discrimination by airport sponsor with adequate access at all times.
- (5) The airport sponsor will not grant or permit, either directly or indirectly, any exclusive right to any person, firm or corporation for any aeronautical activities, and will terminate any existing exclusive rights now existing before accepting a grant from the Commission.
- (6) The airport sponsor shall complete the project in accordance with FAA's standard specifications unless prior written modification to standards has been approved by the FAA (for federally funded projects) or the Commission (for state only projects). The airport sponsor shall provide the following reports to the Commission:
- (A) A weekly progress report using the appropriate FAA form;
- (B) A copy of all acceptance tests shall be provided by the acceptance testing laboratory as soon as they are available; and
- (C) An acceptance test summary report shall be provided to the Commission upon completion of the project.
- (7) The airport sponsor, upon request, shall provide annual statements of airport revenues and expenses.
- (8) The airport sponsor shall comply with the Municipal Airports Act, Title 3, Section 65, and the provisions thereafter, of the Oklahoma State Statutes, specifically Section 65.12, that requires that revenues from airport operations be deposited in a separate fund and used exclusively for the airport.
- (9) All airport development using grant funds shall be consistent with the Airport Layout Plan approved by the FAA. A copy of the approved Airport Layout Plan, with any modifications, will be filed with the Commission.
- (10) The airport sponsor shall comply with all applicable provisions of Title 61 of the Oklahoma State Statutes which governs competitive bidding for public construction contracts.
- (11) The airport sponsor shall provide a tabulation of all bids signed by the Engineer-of-record for the project with the grant application.

(12) The airport sponsor shall operate lighting for the airport when such lighting is included in the project.

(13) The Commission and/or the state are not parties to any contract entered into by the airport sponsor to accomplish the project.

(14) The airport sponsor shall understand and agree that should the airport sponsor fail to abide by all of the terms and conditions of the grant agreement, then the funds provided by the Commission shall be withdrawn. In addition, the airport sponsor shall notify the Commission of any delays or problems with the project and request an extension or deviation from the Commission.

(jk) Grant Agreement; Payments.

(1) The airport sponsor shall request reimbursement for project costs from the Commission on a monthly basis upon initiation of the project. The Commission shall reimburse the sponsor only for bid items at the bid unit price. The Commission will only process the request for reimbursement when accompanied by the following documentation:

(A) For federal participation grants, a copy of a ~~signed FAA form SF 271 Outlay Report Invoice Summary Worksheet~~ and a Cost Distribution Worksheet based upon the line items in the executed grant.

(B) For non-federal participation grants, ~~a Cost Distribution Worksheet~~ an Invoice Summary Worksheet based upon line items in the executed grant.

(C) Copies of all vendor invoices.

(D) A construction quantities report from the primary contractor signed by ~~the resident inspector and/or~~ the Engineer-of-record.

(E) All test invoices.

(2) The Commission shall process the monthly requests for reimbursement until 90% of the grant awarded by the Commission is expended or 90% of the Commission's total project cost is expended in the event the project comes in under budget. The final 10% will be released upon the completion of the following items:

(A) ~~A copy of all acceptance tests. The summary of acceptance testing report~~ and if required by the specifications, the calculated lot-wise percentage within limits (PWL) calculation has been submitted to the Commission of the project. The report shall document the results of all acceptance tests performed, the construction lot, location of the material tested and the quantity represented.

(B) A report submitted by the ~~The Resident Inspector or Engineer-of-Record shall submit a report~~ detailing those acceptance tests that were out-of-tolerance and include the pay reductions applied and reasons for accepting any out-of-tolerance material.

(C) All final acceptance and close-out forms for the project have been submitted to the Commission.

(D) ~~A satisfactory financial report has been completed by the Commission.~~ For federal participation grants, a copy of the final signed FAA form SF 271 Outlay Report.

(E) A satisfactory financial report has been completed by the Commission.

(kl) Endorsement by the Commission:

(1) Upon receipt of the fully executed and complete grant application, the Commission staff shall verify compliance with the terms of the notification letter.

(2) If the grant application is found to be in compliance with the terms of the notification letter, the Commission staff shall forward the grant application to the Commission for action.

(3) If the Commission approves the grant application, the Commission staff shall communicate that approval to the airport sponsor with authorization to proceed.

(4) If the Commission staff finds that the grant application is not in compliance with the terms of the notification letter, the Commission staff shall notify the airport sponsor of the non-compliance and suggest possible remedies.

(5) Upon receipt of the Commission staff's finding of non-compliance, the airport sponsor may:

(A) Modify the grant application to bring it into compliance with the terms of the notification letter; or

(B) State the reason that the airport sponsor believes it is in compliance and request that the grant application be forwarded to the Commission for action; or

(C) Agree that it is not in compliance and request that the grant application be forwarded to the Commission as is.

(D) Request the grant application not be forwarded to the Commission.

(6) The Commission staff shall notify the airport sponsor of the Commission's action.

[OAR Docket #20-479; filed 6-26-20]

TITLE 25. OKLAHOMA AERONAUTICS COMMISSION

CHAPTER 40. WIND ENERGY RULES

[OAR Docket #20-480]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions [NEW]

25:40-1-1 [NEW]

25:40-1-2 [NEW]

Subchapter 3. Submittal Requirements for Federal Aviation Administration and Department of Defense Documentation [NEW]

25:40-3-1 [NEW]

25:40-3-2 [NEW]

Subchapter 5. Aeronautics Commission actions to the Oklahoma Strategic Military Planning Commission [NEW]

25:40-5-1 [NEW]

AUTHORITY:

Oklahoma Aeronautics Commission; 17 O.S. Section 160.20 and 160.21

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Permanent Final Adoptions

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SUPERSEDED EMERGENCY ACTIONS:

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Subchapter 1. General Provisions [NEW]

25:40-1-1 [NEW]

25:40-1-2 [NEW]

Subchapter 3. Submittal Requirements for Federal Aviation Administration and Department of Defense Documentation [NEW]

25:40-3-1 [NEW]

25:40-3-2 [NEW]

Subchapter 5. Aeronautics Commission actions to the Oklahoma Strategic Military Planning Commission [NEW]

25:40-5-1 [NEW]

Gubernatorial approval:

November 15, 2019

Register publication:

37 Ok Reg 823

Docket number:

20-585

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The permanent rule will set the requirements and procedures to be followed as a result of House Bill (HB) 2118. This legislation provided requirements for wind energy companies to submit documentation to the Aeronautics Commission prior to the construction of wind turbines and other structures associated with wind energy facilities. The substance of these rules will detail the submittal timelines, methods, and documentation for wind energy companies to comply with HB2118 as well as further action required by the Aeronautics Commission to other state agencies

CONTACT PERSON:

Michelle Bouziden, Grants Administrator, Oklahoma Aeronautics Commission, 110 N. Robinson, Suite 200, Oklahoma City, OK 73102, (405) 604-6912.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

25:40-1-1. Purpose of this chapter

The purpose of this chapter is to implement the Aeronautics Commission's responsibilities within the Oklahoma Wind Energy Development Act, 17 O.S. §§ 160.11 et seq., by establishing rules and procedures for an owner of a wind energy facility to submit documentation to the Aeronautics Commission.

25:40-1-2. Definitions

In addition to terms defined in the Oklahoma Wind Energy Development Act, 17 O.S. § 160.11 et seq., the following

word(s) or term(s), when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Clearinghouse" means the Military Aviation and Installation Assurance Siting Clearinghouse.

"Determination of No Hazard" means a document issued by the Federal Aviation Administration.

"Director" means the Director of the Oklahoma Aeronautics Commission.

"FAA" means the Federal Aviation Administration.

"Owner" means the entity having a majority equity interest in commercial wind energy equipment, including their respective successors and assigns.

"Project boundary" means a graphic depiction of a wind energy facility's outer boundary, which should adequately demonstrate the project's outer perimeter, inclusive of all wind turbines.

"Wind energy facility" means an electrical generation facility consisting of one or more wind turbines under common ownership or operating control, and includes substations, meteorological data towers, aboveground and underground electrical transmission lines, transformers, control systems, and other buildings or facilities used to support the operation of the facility, and whose primary purpose is to supply electricity to an off-site customer or customers. Wind energy facility shall not include a wind energy facility located entirely on property held in fee simple absolute estate by the owner of the wind energy facility.

"Wind turbine" means a wind energy conversion system which converts wind energy into electricity through the use of a wind turbine generator and includes the turbine, blade, tower, base, and pad transformer, if any.

SUBCHAPTER 3. SUBMITTAL REQUIREMENTS FOR FEDERAL AVIATION ADMINISTRATION AND DEPARTMENT OF DEFENSE DOCUMENTATION

25:40-3-1. Notification of intent to build a wind energy facility and other notices

(a) The owner of a wind energy facility shall submit to the Aeronautics Commission copies of all initial FAA 7460-1 form(s) for all individual wind turbines or any other individual structure that requires a FAA form 7460-1 that is part of a wind energy facility within thirty (30) days of the initial filing with the FAA.

(b) If the owner of a wind energy facility is required to file subsequent 7460-1 forms with the FAA due to changing locations or heights of individual structures from the locations or heights originally proposed in the initial 7460-1 forms submitted to the Aeronautics Commission, the owner shall, within ten (10) calendar days of filing with the FAA, submit such subsequent 7460-1 forms to the Aeronautics Commission.

(c) The 7460-1 form(s) shall be submitted electronically unless prior approval of another format has been granted by the Director. A cover letter shall accompany the 7460-1 form(s)

detailing the name of the project, the owner of the wind energy facility, and indicating whether the submittal is for initial 7460-1 form(s) or subsequent 7460-1 form(s).

25:40-3-2. Final Documentation from the Federal Aviation Administration and Department of Defense

- (a) The owner of a wind energy facility shall submit to the Aeronautics Commission the Determination of No Hazard from the FAA for each individual wind turbine or other individual structure that requires a 7460-1 form that is part of a wind energy facility prior to the start of construction.
- (b) The owner of a wind energy facility shall submit to the Aeronautics Commission the Military Compatibility Certification Letter or successor form from the Clearinghouse which serves as documentation of the resolution of adverse impacts to the Department of Defense prior to the start of construction.
- (c) All submissions shall be submitted electronically unless prior approval of another format has been granted by the Director.

SUBCHAPTER 5. AERONAUTICS COMMISSION ACTIONS TO THE OKLAHOMA STRATEGIC MILITARY PLANNING COMMISSION

25:40-5-1. Notification to the Strategic Military Planning Commission

After receiving a FAA 7460-1 form from the owner of a wind energy facility, either as an initial or subsequent 7460-1 form, the Aeronautics Commission shall notify the Strategic Military Planning Commission within 10 days of receiving the 7460-1 form.

[OAR Docket #20-480; filed 6-26-20]

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

[OAR Docket #20-549]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Fee Schedules

35:2-3-2. Schedules of laboratory fees [AMENDED]

35:2-3-2.1. Schedule of animal health testing fees [AMENDED]

35:2-3-2.3. Schedule of meat chemistry testing fees [AMENDED]

35:2-3-2.4. Schedule of microbiological testing fees [AMENDED]

35:2-3-2.5. Schedule of pesticide testing fees [AMENDED]

35:2-3-12. Schedule of horticulture program fees [AMENDED]

AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2) and (20); and 2 O.S. § 14-81 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rule amendments increase certain laboratory fees to cover the Department's costs of labor and testing supplies; reduce certain laboratory fee to reflect reduced cost; modify entities to be charged for certain license; and delete obsolete or unused laboratory testing procedures from the Department's fee schedules.

CONTACT PERSON:

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 3. FEE SCHEDULES

35:2-3-2. Schedules of laboratory fees

- (a) The following schedules of laboratory testing fees shall apply to all samples submitted to the Oklahoma Department of Agriculture, Food, and Forestry Laboratory Services Division, unless otherwise stated.
- (b) All listed fees are for standard analysis time according to the methods utilized and the workload of the Laboratory Services Division. Any request to rush the analysis of a sample shall be subject to a fifty percent (50%) surcharge.
- (c) Samples submitted by or services provided to nonresident persons shall be billed at twice the listed fee.
- (d) Any listed fee may be waived if deemed necessary by the Laboratory Services Division Director.
- (e) Fees may be discounted or waived pursuant to a contract for a high volume of samples as approved by the Board.
- (f) The following administrative fees shall apply to all types of testing:

(1) Extra copies of official reports provided by hard copy, facsimile, or electronic means - \$1.00 per page.

(2) ~~Results delivered by facsimile - \$1.00 per page.~~

(3) Complete analytical data packets with reports - \$50.00 per invoice.

(4) Unlisted tests, special - \$70.00 per hour plus reagent cost.

Permanent Final Adoptions

35:2-3-2.1. Schedule of animal health testing fees

- (a) Equine Infectious Anemia:
 - (1) AGID (agar gel immuno-diffusion) - \$10.00.
 - (2) ELISA (enzyme linked immuno-sorbent assay) - \$10.00.
- (b) Pseudorabies - \$6.00.
- (c) Brucellosis:
 - ~~(1) All tests, except complement fixation (CF) - \$5.00.~~
 - ~~(2) Complement fixation (CF) - \$10.00.~~

35:2-3-2.3. Schedule of meat chemistry testing fees

- (a) Sample preparation - \$5.00.
- (b) Starchy flour (qualitative) - \$11.00.
- (c) Cereal (qualitative) - \$45.00.
- (d) Corn syrup solids - 75.00.
- (e) Fat, total - \$30.00.
- (f) Non-fat dry milk - \$75.00.
- (g) Protein, total - \$20.00.
- (h) Salt - \$42.00.
- (i) Sodium nitrite(quantitative) - \$65.00.
- (j) Potassium nitrite (quantitative) - \$65.00.
- (k) Sodium sulfite, (qualitative) - \$9.00.
- (l) Soy protein - \$45.00.
- (m) Water, total - \$13.00.
- ~~(n) Water activity - \$30.00.~~

35:2-3-2.4. Schedule of microbiological testing fees

- (a) Aerobic plate count - \$22.00.
- (b) Coliform, total (PA, MPN, or MF) - \$22.00.
- (c) E. coli (PA, MPN, or MF) - \$22.00.
- (d) E. coli O157:H7 or STEC - \$66.00.
- ~~(e) Enterococcus - \$44.00.~~
- ~~(f) Coliform, fecal (MF or MPN) - \$22.00.~~
- ~~(g) Listeria spp. or listeria monocytogenes - \$66.00.~~
- ~~(h) Salmonella - \$66.00.~~
- ~~(i) Shigella - \$85.00.~~
- ~~(j) Staphylococcus aureus on petri film - \$85.00~~\$25.00.
- ~~(k) Thermometer check for OK Dairy Program - \$25.00.~~
- ~~(l) Pipette check for OK Dairy Program - \$25.00.~~
- ~~(m) Yeast and mold count - \$25.00.~~
- ~~(n) Antibiotics in dairy products - \$22.00~~\$25.00.
- ~~(o) Somatic cell count in dairy products - \$22.00.~~
- ~~(p) Fat, protein, added water, and lactose in dairy products - \$22.00.~~
- ~~(q) Aflatoxin in dairy products - \$33.00.~~
- ~~(r) Alkaline phosphatase in dairy products - \$33.00.~~
- (q) Water activity in jerky - \$70.00.

35:2-3-2.5. Schedule of pesticide testing fees

- (a) Residue analyses:
 - (1) Water samples:
 - (A) Organochloride/organophosphate/organonitrogen analysis - \$225.00.
 - (B) Herbicide analysis, per test - \$325.00.
 - (C) Unknown/other - \$400.00.
 - (2) Soil samples:

- (A) Organochloride/organophosphate/organonitrogen analysis - \$225.00.
- (B) Herbicide analysis, per test - \$350.00.
- (C) Termiticide analysis - \$225.00.
- (D) Unknown/other - \$375.00.

- (3) Vegetation samples:
 - (A) Organochloride/organophosphate/organonitrogen analysis - \$275.00.
 - (B) Herbicide analysis, per test - \$375.00
 - (C) Unknown/other - \$400.00.

- (4) Organic food program or food samples:
 - (A) Organochloride/organophosphate/organonitrogen analysis - \$275.00.
 - (B) Herbicide analysis, per test - \$375.00.
 - (C) Unknown/other - \$400.00.

- (5) Surface/Swab samples:
 - (A) Organochloride/organophosphate/organonitrogen analysis - \$225.00.
 - (B) Herbicide analysis, per test - \$325.00.
 - (C) Unknown/other - \$400.00.

- (6) Air Samples:
 - (A) Organochloride/organophosphate/organonitrogen analysis - \$225.00.
 - (B) Herbicide analysis, per test - \$325.00.
 - (C) Unknown/other - \$400.00.

- (7) Animal Tissue:
 - (A) Organochloride/organophosphate/organonitrogen analysis - \$375.00.
 - (B) Herbicide analysis, per test - \$400.00.
 - (C) Unknown/other - \$400.00.

- (8) Other matrices not listed above:
 - (A) Organochloride/organophosphate/organonitrogen analysis - \$375.00.
 - (B) Herbicide analysis, per test - \$400.00.
 - (C) Unknown/other - \$400.00.

- (b) Formulations or tank mixes:
 - (1) Concentrates or tank mixes:
 - (A) Single component - \$100.00.
 - (B) Two components - \$150.00.
 - (C) Three or more components - \$225.00.
 - (2) Aerosols - \$275.00.
 - (3) Baits - \$325.00.
 - (4) Unknowns/other - \$350.00.

(c) Hemp (may only be submitted by Consumer Protection Services Division of the Oklahoma Department of Agriculture, Food, and Forestry) Δ9-THC (delta-9-tetrahydrocannabinol) - \$200.00.

35:2-3-12. Schedule of horticulture program fees

(a) The fee for each Federal Phytosanitary Certificate issued or renewed shall be as follows:

- (1) Federal Phytosanitary Certificate PPQ Form 577.
 - (A) If the aggregate commercial value of the product inspected for certification is \$1,250.00 or more: One Hundred and Six Dollars (\$106.00).
 - (B) If the aggregate commercial value of the product inspected for certification is less than \$1,250.00: Sixty One Dollars (\$61.00).

- (2) Federal Phytosanitary Certificate, Processed Plant Products PPQ Form 578.
 - (A) If the aggregate commercial value of the product inspected for certification is \$1,250.00 or more: One Hundred and Six Dollars (\$106.00).
 - (B) If the aggregate commercial value of the product inspected for certification is less than \$1,250.00: Sixty One Dollars (\$61.00).
- (3) Federal Phytosanitary Certificate for Re-export PPQ Form 579.
 - (A) If the aggregate commercial value of the product inspected for certification is \$1,250.00 or more: One Hundred and Six Dollars (\$106.00).
 - (B) If the aggregate commercial value of the product inspected for certification is less than \$1,250.00: Sixty One Dollars (\$61.00).
 - (C) Ten Dollars (\$10.00) for the re-issuance of a Federal Phytosanitary Certificate.
- (4) All Federal Phytosanitary Certificates shall require an administrative fee paid by the Department to USDA in the following amounts:
 - (A) Six Dollars (\$6.00) if the certificate is issued in PCIT.
 - (B) Twelve Dollars (\$12.00) if the certificate is issued outside of PCIT.
- (b) The fee for each State Phytosanitary Certificate issued or renewed shall be as follows:
 - (1) If the aggregate commercial value of the product inspected for certification is \$250.00 or more: Twenty Dollars (\$20.00).
 - (2) If the aggregate commercial value of the product inspected for certification is \$249.00 or less: Five dollars (\$5.00).
 - (3) The Phytosanitary Certificate fee if you do not have an Oklahoma nursery license shall be \$20.00 regardless of aggregate commercial value.
 - (4) There shall be no charge for the issuance of a Phytosanitary Certificate if it is required by the Japanese Beetle Harmonization Plan unless a treatment is monitored by an authorized agent of the Board.
- (c) The fee for each grower, dealer, and landscaper license issued or renewed and inspection conducted shall be as follows:
 - (1) Growers license - Twenty-five Dollars (\$25.00) for each business location.
 - (2) Growers inspection fee - One Dollar (\$1.00) per acre and per 1,000 square feet of greenhouse area inspected.
 - (3) Dealers license fee - Thirty-eight Dollars (\$38.00) for each business location.
 - (4) Landscaper or Personal Use Only license fee - One Hundred Dollars (\$100.00) for each business location.
 - (5) No fee shall be charged for a license issued to any scientific, agricultural, or horticultural club, ~~garden center~~, educational or eleemosynary institution, or any department or branch of the state or federal government.

- (6) Failure to remit the license fee by the 15th day of the month following the expiration month shall result in a penalty fee equal to the cost of the license.
- (d) A fee of Twenty-Five Dollars (\$25.00) shall be charged for any requested inspection or certification and shall be payable at the time of inspection and includes inspections and certificates issued for transporting plants.
- (e) All fees and monies collected under this program shall be paid to the Oklahoma Department of Agriculture, Food, and Forestry.

[OAR Docket #20-549; filed 7-7-20]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY

CHAPTER 10. AGRICULTURAL PRODUCTS

[OAR Docket #20-550]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

35:10-1-3. Handbook and publication editions [AMENDED]

AUTHORITY:

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

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated Standards:

Handbook 44 "Specifications, Tolerances and Other Technical Requirements for Commercial Weighing & Measuring Devices" (2020 Edition), Handbook 130 "Uniform Laws and Regulations" (2020 Edition), excluding Section G "Uniform Engine Fuels and Automotive Lubricants Regulation, Handbook 133 "Checking the Net Contents of Packaged Goods" (2020 Edition), Handbook 105-1 "Specifications and Tolerances for Field Standard Weights" (2019 Edition), Handbook 105-3 "Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards" (2010 Edition), and Publication 14 (2020 Edition).

Incorporating Rules:

35:10-1-3

Availability:

See contact person below.

GIST/ANALYSIS:

The proposed rule amendments update citations to publications and reference materials.

CONTACT PERSON:

Kambi Maddy, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box

Permanent Final Adoptions

528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: kambi.maddy@ag.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

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

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

- (1) Handbook 44 "Specifications, Tolerances and Other Technical Requirements for Commercial Weighing & Measuring Devices" (~~2018~~2020 Edition).
- (2) Handbook 130 "Uniform Laws and Regulations" (~~2018~~2020 Edition), excluding Section G "Uniform Engine Fuels and Automotive Lubricants Regulation."
- (3) Handbook 133 "Checking the Net Contents of Packaged Goods" (~~2018~~2020 Edition).
- (4) Handbook 105-1 "Specifications and Tolerances for Field Standard Weights" (~~1990~~2019 Edition).
- (5) Handbook 105-2 "Specifications and Tolerances for Field Standard Measuring Flasks" (1996 Edition).
- (6) Handbook 105-3 "Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards" (~~2004~~2010 Edition).
- (7) Publication 14 (~~2009~~2020 Edition).
- (8) Publication 12 (1991 Edition).
- (9) Federal Grain Inspection Service Moisture Handbook (2006 Edition).

[OAR Docket #20-550; filed 7-7-20]

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

[OAR Docket #20-551]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- 35:13-1-1. Incorporation by reference of federal distilled spirits for fuel use regulations [AMENDED]
35:13-1-2. Deleted regulations [AMENDED]

AUTHORITY:

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

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n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

27 CFR (2019 Revision) Part 19.661 et seq. unless otherwise specified.

Incorporating rules:

35:13-1-1

35:13-1-2

Availability:

See contact person below.

GIST/ANALYSIS:

The proposed rule amendments update citations to the Code of Federal Regulations.

CONTACT PERSON:

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

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

The Distilled Spirits for Fuel Use regulations found in Title 27 of the Code of Federal Regulations (CFR) (~~2018-2019~~ Revision), Part 19.661 et seq. for the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:13-1-2.

35:13-1-2. Deleted regulations

The following sections of the Code of Federal Regulations governing distilled spirits for fuel use of the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau incorporated by reference under 35:13-1-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 27 CFR §§ 19.669, 19.670, 19.699, and 19.700 (~~2018~~2019 Revision).

[OAR Docket #20-551; filed 7-7-20]

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

[OAR Docket #20-552]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
35:15-1-2. Definitions [AMENDED]
Subchapter 5. Biological Products and Laboratories
35:15-5-1. Biological products [AMENDED]
Subchapter 13. Testing and Inspection for Disease and Release of Livestock at Auction Markets
35:15-13-6. Movement of livestock through livestock auction markets [AMENDED]
Subchapter 15. Equine Infectious Anemia (EIA)
Part 1. General Provisions
35:15-15-4. Definitions [AMENDED]
Part 11. Requirements for Equidae Entering Oklahoma
35:15-15-111. General requirements for Equidae entering Oklahoma [AMENDED]
35:15-15-113. Entry requirements to an approved slaughter facility [REVOKED]
Subchapter 16. Contagious Equine Metritis
35:15-16-1. Incorporation by reference [AMENDED]
Subchapter 22. Swine Pseudorabies and Brucellosis
Part 1. General Provisions
35:15-22-4. Requirements for livestock auction markets [AMENDED]
Subchapter 34. Feral Swine
35:15-34-2. Definitions [AMENDED]
35:15-34-6. Sporting facilities [AMENDED]
Subchapter 35. Garbage Feeding
35:15-35-1. Permits [REVOKED]
35:15-35-2. Cooking of garbage [REVOKED]
35:15-35-3. Premise and equipment [REVOKED]
35:15-35-4. Records [REVOKED]
Subchapter 36. Scrapie
35:15-36-1. Incorporation by reference of federal regulations [AMENDED]
35:15-36-2. Deleted regulations [AMENDED]
35:15-36-3. Requirements for identification [AMENDED]
Subchapter 38. Bovine Trichomoniasis
35:15-38-1. Definitions [AMENDED]
35:15-38-2. Import requirements for bulls [AMENDED]
Subchapter 40. Bovine Tuberculosis
Part 1. Definitions
35:15-40-1. Definitions [AMENDED]
Subchapter 44. Farmed Cervidae
35:15-44-3. Application for license [AMENDED]
35:15-44-19. Entry and export requirements [AMENDED]
Subchapter 47. Chronic Wasting Disease (CWD) in Cervids
Part 7. Interstate Movement Requirements
35:15-47-18. Minimum CWD requirements for interstate movement of cervids [AMENDED]
Subchapter 49. Miscellaneous Animal Diseases
35:15-49-7. Equine Herpes Virus [NEW]

AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2); 2 O.S. § 6-1 et seq., 2 O.S. § 6-91 et seq., 2 O.S. § 6-121 et seq., 2 O.S. § 6-131 et seq., 2 O.S. § 6-141 et seq., 2 O.S. § 6-281 et seq., 2 O.S. § 6-501 et seq., 2 O.S. § 6-601 et seq., and 2 O.S. § 9-130 et seq.

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated Standards:

9 CFR (2019 Revision), Section 93-301 and USDA VS Guidance Document 13406.1 (2013) Revision, and 9 CFR Part 79 (2019 Revision) unless otherwise specified.

Incorporating Rules:

35:15-16-1

35:15-36-1

35:15-36-2

Availability:

See contact person below.

GIST/ANALYSIS:

The proposed rule amendments update citations to the Code of Federal Regulations; add and revise definitions; revise rules related to movement and presentation of animals at livestock auction markets; modify requirements for entry of certain animals into the state; revise and create rules related to miscellaneous animal diseases and biological products; modify restrictions on licensing of certain facilities; revoke rules related to garbage feeding of swine; and make grammatical corrections.

CONTACT PERSON:

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

35:15-1-2. Definitions

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

"**Accredited veterinarian**" means a veterinarian approved by the United States Department of Agriculture (USDA) to perform functions required for state or cooperative state and federal animal disease control and eradication programs.

"**Animal disease traceability**" means the ability to trace an animal to its site of application of official identification and/or premises of origin as set out in 9 CFR Parts 71, 77, 78, 86, et al. Traceability for Livestock Moving Interstate; Final Rule.

"**Approved tagging site**" means a premises, authorized by APHIS, State, or Tribal animal health officials, where livestock may be officially identified on behalf of their owner or the person in possession, care, or control of the animals when they are brought to the premises.

"Backtag" means a USDA approved identification system consisting of a tag of special tough paper, bearing identification codes relating to origin of animals, which are stuck to animals a few inches from the midline and just behind the shoulder with very strong glue. The backtag is designed as temporary identification for easy reading in livestock auction markets to help trace the origin of livestock in Department investigations.

"Certificate of veterinary inspection" means an official document or its electronic equivalent approved by the chief livestock official of the state of origin issued by an accredited veterinarian at the point of origin of a shipment of animals that includes the name and address of the consignor; the name and address of the consignee; the entry permit number, if applicable; the age, sex, number, and breed of the animal; sufficient identifying marks or tags to positively identify each animal; purpose of shipment; and the results of all required tests. It shall also include a record of a physical examination of the animal verifying that each animal is free from visible evidence of any contagious, infectious, or communicable diseases and that the animals do not originate from an area of quarantine, infestation, or infection. A certificate of veterinary inspection is valid for thirty (30) days after the date of issuance. The term certificate of veterinary inspection shall also include an official health certificate, an official certificate, or a certificate.

"Commuter herd" means all cattle under common ownership or supervision, that are located on one (1) or more premises in two (2) or more states and there is an interchange or interstate movement of animals between premises in those states as part of the normal farming, breeding or ranching operation without a change of ownership. A commuter herd agreement shall be completed and approval of commuter herd status shall be obtained from each chief animal health official of all states in which the herd resides.

"Designated epidemiologist" means an epidemiologist selected by the State Veterinarian who has been designated to perform those functions necessary for the classification of livestock suspected to be infected with a particular disease, based on an evaluation of test results and consideration of the animal and herd history, as well as other epidemiological factors.

"Livestock special sale" means a consignment, production, or farm sale, other than a regular livestock auction, where livestock are sold.

"Official identification" means any official method of identification approved by USDA, as described by 9 C.F.R. § 86.1, or the State Veterinarian. Official identification for specific species may be further defined within the applicable section of the Oklahoma Administrative Code. Backtags shall not be considered official identification unless the animal is shipped directly to slaughter. The term "official ear tag" is synonymous with "official identification."

"Owner-Shipper statement" means a statement signed by the owner or shipper of the livestock being moved stating the location from which the animals are moved interstate; the destination of the animals; the number of animals covered by the statement; the species of animal covered; the name and address of the owner at the time of the movement; the name and address of the shipper; and the identification of each animal, as

required by the regulations, unless the regulations specifically provide that the identification does not have to be recorded.

"Quarantine" means a written notice or order issued by an authorized agent of the Department showing the boundaries of the area or premise affected, the animals restricted, and conditions, if any. No livestock held under quarantine may be moved or released without a written permit or quarantine release signed by an authorized agent.

"Resident herd of origin" means a group of livestock that have been maintained as a herd or flock on the same premises for at least four (4) months.

"Special sale permit" means a permit from the Animal Industry Services Division to hold a consignment, production, farm, or special sale.

"State animal health official" means the state animal health official, or designee, who is responsible for the livestock and poultry disease control and eradication programs in a state.

SUBCHAPTER 5. BIOLOGICAL PRODUCTS AND LABORATORIES

35:15-5-1. Biological products

(a) No biological product, ~~including antigens, used to immunize, test, or treat in the treatment of~~ livestock or any other species of animals shall be manufactured, produced, transported, distributed, sold, or offered for sale, or ~~possessed~~ used in Oklahoma unless the biological product has been ~~licensed or permitted by and produced in an establishment licensed by the United States Veterinary Biologics Division of the United States Department of Agriculture, and approved by the Oklahoma Department of Agriculture, Food, and Forestry.~~ Exemption: Autogenous vaccines and/or bacterins when prepared for use on individual premises or animals may be prepared in laboratories approved by the Department.

(1) licensed or permitted by the United States Veterinary Biologics Division of the United States Department of Agriculture;

(2) produced in an establishment licensed by the United States Veterinary Biologics Division of the United States Department of Agriculture; and

(3) approved by the Oklahoma Department of Agriculture, Food, and Forestry.

(b) Biological products prepared in laboratories approved by the Oklahoma Department of Agriculture, Food, and Forestry when prepared by any person solely for the treatment of animals of such person or prepared solely for treatment of animals under a veterinary-client-patient relationship in the course of the state licensed professional practice of veterinary medicine by such person shall be exempt from (a) and (d) of this section.

(c) Johne's (Paratuberculosis) vaccine is expressly prohibited in Oklahoma without prior approval of the Department. This approval may be obtained only after a written agreement is developed between the producer, attending veterinarian, and state regulatory officials. A plan of herd management, vaccination, and any restrictions shall be a part of this agreement.

(~~ed~~) Each biological product manufactured, produced, distributed, sold, offered for sale or used in Oklahoma or delivered

for transportation or transported in intrastate or interstate commerce shall be registered with the Department on an annual basis.

(~~de~~) Each person registering biological products shall pay an annual registration fee of Two Hundred Dollars (\$200.00) for each biological product registered.

(1) The Department may require the submission of the complete formula of any biological product.

(2) Trade secrets and formulations submitted with the registration shall be kept confidential.

(~~ef~~) If it appears to the Department that the composition of the biological product is adequate to warrant the proposed claims and if the biological product, its labeling, and other material required to be submitted comply with the requirements of this section, then the biological product shall be registered.

(~~fg~~) Additional registration of a biological product shall not be required in the case of a biological product shipped from one location within Oklahoma to another location within Oklahoma if the location is operated by the same person.

(~~gh~~) All biological product registrations shall expire on March 20 of each year but may be renewed by the Department. Any person who fails to renew a biological product by March 20 of each year shall pay a penalty of an additional Two Hundred Dollars (\$200.00).

(~~i~~) Any biological product that contains any living organism and is produced pursuant to subsection (b) may be used with prior written notice to the Department. Notice shall be provided for each day the person intends to utilize the biological product and shall contain the name of the person prescribing the biological product, the specific location where the biological product will be used, and the reason for using the biological product.

(~~j~~) Any person providing notice to the Department may elect to provide notice to neighboring owners of susceptible species.

(~~hk~~) No person shall sell or offer for sale an unregistered biological product or an expired biological product.

(~~il~~) The term "biological product" shall mean all viruses, serums, toxins (excluding substances that are selectively toxic to microorganisms, including antibiotics), or analogous products at any stage of production, shipment, distribution, or sale, which are intended for use in the treatment of animals and which act primarily through the direct stimulation, supplementation, enhancement, or modulation of the immune system or immune response. The term biological products includes but is not limited to vaccines, bacterins, allergens, antibodies, antitoxins, toxoids, immunostimulants, certain cytokines, antigenic or immunizing components of live organisms, and diagnostic components that are of natural or synthetic origin, or that are derived from synthesizing or altering various substances or components of substances such as microorganisms, genes or genetic sequences, carbohydrates, proteins, antigens, allergens, or antibodies. The term shall not include any product identified and regulated as a pesticide by the Department.

(1) A product's intended use shall be determined through an objective standard dependent upon factors such as representations, oral or written claims, packaging, labeling, or appearance.

(2) The term "analogous products" shall include the following:

(A) Substances, at any stage of production, shipment, distribution, or sale, which are intended for use in the treatment of animals and which are similar in function to biological products in that they act, or are intended to act, through the stimulation, supplementation, enhancement, or modulation of the immune system or immune response;

(B) Substances, at any stage of production, shipment, distribution, or sale, which are intended for use in the treatment of animals through the detection or measurement of antigens, antibodies, nucleic acids, or immunity; or

(C) Substances, at any stage of production, shipment, distribution, or sale, which resemble or are represented as biological products intended for use in the treatment of animals through appearance, packaging, labeling, claims (either oral or written), representations, or through any other means.

(~~jm~~) The term "treatment" shall mean the prevention, diagnosis, management, or cure of diseases of animals.

(~~n~~) The term "unregistered biological product" shall mean a biological product that has not been registered with the Department or a biological product that has been previously registered with the Department but the registration has lapsed.

(~~ko~~) The term "expired biological product" shall mean a biological product which exceeds the expiration date established by the manufacturer.

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

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

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

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

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

(~~d~~) Restricted cattle shall be tagged with a slaughter only tag except in instances where the cattle have been tested for the disease of concern.

(~~e~~) Cattle tagged with a Slaughter Only Tag shall not be diverted from slaughter channels and shall be transported to

~~a slaughter establishment or an approved feedlot livestock facility within seven (7) days of sale.~~

~~(f) It shall be a violation of the Oklahoma Administrative Code to remove a Slaughter Only Tag from an animal.~~

~~(g) It shall be a violation of the Oklahoma Administrative Code to present feral swine to a livestock auction market or to sell feral swine at livestock auction markets.~~

SUBCHAPTER 15. EQUINE INFECTIOUS ANEMIA (EIA)

PART 1. GENERAL PROVISIONS

35:15-15-4. Definitions

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

"Adjacent herds" means a group or groups of Equidae sharing common pasture or having any direct contact with an affected herd or positive animal and includes any herd containing an animal purchased from or exchanged with the affected herd. Herds separated by a distance of less than two hundred (200) yards are adjacent herds.

"Affected herd" means a herd of Equidae that contains or has contained one or more animals infected with equine infectious anemia and that has not passed all tests required for release from quarantine.

"Approved laboratory" means a laboratory approved prior to operating by the State Veterinarian and the Federal Area Veterinarian In Charge to conduct an official test for equine infectious anemia.

"Approved market" means a stockyard, livestock market, or other premises approved by the Board, where horses or other Equidae are assembled for sale purposes.

"Direct shipment to slaughter" means the shipment of equine infectious anemia positive or exposed Equidae from the premises of origin or a quarantined holding facility to a slaughter establishment operated under state or federal inspection without diversion of any type.

"Equidae" means a family of perissodactyl ungulate mammals containing a single genus *Equus*, which includes but is not limited to horses, asses, jacks, jennies, hennies, mules, donkeys, burros, ponies, and zebras.

"Equine infectious anemia (EIA)" means a blood borne viral infection of Equidae.

"Exposed animals" means Equidae that have been in contact with, associated with, or adjacent to animals known to be equine infectious anemia positive. Untested animals sold for slaughter at approved markets shall be considered exposed.

"Herd" means one or more Equidae maintained on common ground and includes all Equidae under single or multiple ownership or supervision that are geographically separated but can have an interchange or movement without regard to health status.

"Herd plan" means a herd management and testing agreement designed by a state or federal veterinarian and a

herd owner to control and eradicate equine infectious anemia from an affected, adjacent, or exposed herd of Equidae.

"Livestock dealer" means any person engaged in the business of buying or selling Equidae in commerce or any person registered and bonded under the provisions of the Federal Packers and Stockyards Act of 1921, as amended, who buys Equidae. The term livestock dealer shall not include a farmer or rancher who buys or sells Equidae in the ordinary course of their farming or ranching operation, unless they are registered and bonded under the Federal Packers and Stockyards Act of 1921, as amended.

"Market veterinarian" means any accredited veterinarian who has entered into a written agreement to work a specified market.

"Negative animals" means Equidae that show a negative response to an official test for equine infectious anemia or have been classified negative by the designated epidemiologist, based on history, supplemental tests, or other epidemiological evidence.

~~**"Official Equine Passport" or "Equine Interstate Event Permit"**~~
Extended Equine Certificate of Veterinary Inspection means an ~~approved~~ electronic document issued by an accredited veterinarian ~~at the point of origin of a shipment of equine originating in a state with an equine passport agreement or equine interstate event permit~~ which allows a horse to be transported for up to six (6) months between states with an Extended Equine Certificate of Veterinary Inspection agreement.

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

"Official test" means the agar gel immunodiffusion (AGID) or "Coggins" test, the enzyme-linked immunosorbent assay (ELISA) test, or any other diagnostic test approved by the State Veterinarian.

"Owner" means any person with the legal right of possession or having control over any Equidae, and shall include but not be limited to agents, caretakers, and other persons acting on behalf of that person.

"Permit" means an official document that shall accompany positive or exposed Equidae to a quarantined holding facility, an approved slaughter establishment, or approved quarantined premise. The permit shall be issued by the Board, a representative of USDA, or an accredited veterinarian. The permit shall list the name, breed, any registration number, any tattoo, any brand, sex, age, color, and markings sufficient to positively identify each Equidae listed on the form and shall also include the owner's name and address, origin and destination locations, and the purpose of the movement.

"Positive" means any Equidae which discloses a positive reaction to an official test for equine infectious anemia.

"Quarantined holding facility" means a quarantined premise approved by the Board to handle positive or exposed Equidae for a period of not more than thirty (30) days prior to direct shipment to an approved slaughter establishment.

"State or federal veterinarian" means any veterinarian employed by a state or federal regulatory agency.

"**Test eligible**" means all Equidae other than foals less than six (6) months of age accompanied by their negative tested dam.

"**VS Form 10-11**" means the official USDA Equine Infectious Anemia Laboratory Test form labeled VS Form 10-11 or an approved electronic version.

PART 11. REQUIREMENTS FOR EQUIDAE ENTERING OKLAHOMA

35:15-15-111. General requirements for Equidae entering Oklahoma

(a) All test eligible Equidae entering Oklahoma for any purpose other than consignment to a veterinarian's clinic ~~or an approved slaughter facility~~ or livestock auction market shall be accompanied by one of the following:

- (1) ~~An Official Equine Passport~~ A record of a negative official test for EIA conducted within the previous twelve (12) months and an Extended Equine Certificate of Veterinary Inspection.
- (2) A record of a negative official test for EIA conducted within the previous twelve (12) months and a certificate of veterinary inspection.
- (3) An equivalent certificate as approved by the State Veterinarian.
- (4) A copy of a VS Form 10-11 shall be considered an official record of test when accompanied by a properly completed certificate of veterinary inspection.
- (5) An exception to import test requirements may be issued by the Department. To qualify for the exception, the person seeking the exception shall:
 - (A) Apply for an entry permit during the Department's office hours.
 - (B) Obtain a certificate of veterinary inspection issued no more than thirty (30) calendar days prior to entry;
 - (C) Test the Equidae for EIA within thirty (30) days after entry; and
 - (D) Immediately quarantine the Equidae entering Oklahoma pursuant to this subsection until the Equidae is tested negative for EIA.

(b) ~~An Official Equine Passport shall include the following:~~

- (1) ~~The name, breed, sex, age, color, and an electronic identification, a unique brand, or a tattoo to positively identify each Equidae listed on the form, provided that any owner using electronic identification shall carry and maintain a functional reader or scanner.~~
- (2) ~~A record of a physical examination of each Equidae verifying freedom from visible evidence of any contagious, infectious, or communicable diseases at the time of the examination.~~
- (3) ~~The negative test results of an official test for EIA, including the name of the approved laboratory, the case or accession number, and the date of the most recent test.~~
- (4) ~~A VS Form 10-11 or equivalent EIA test chart for each animal.~~

(e) ~~The Official Equine Passport shall be valid and meet import requirements for a period of six (6) months when accompanied by proof of an official negative VS Form 10-11 or equivalent EIA test chart. In no instance shall a permit expiration date exceed twelve (12) months after the date of a negative EIA test.~~

(d) ~~An Official Equine Passport~~ Extended Equine Certificate of Veterinary Inspection shall be accepted from states ~~approved by the State Veterinarian~~ participating in the Extended Equine Certificate of Veterinary Inspection program.

35:15-15-113. Entry requirements to an approved slaughter facility [REVOKED]

- (a) ~~All Equidae consigned to an approved slaughter facility shall be properly and individually identified and accompanied by a waybill, bill of lading, permit, or certificate of veterinary inspection.~~
- (b) ~~Known positive EIA Equidae shall be branded and known exposed animals shall be properly identified.~~
- (c) ~~Known positive and exposed EIA animals shall be accompanied by a permit.~~

SUBCHAPTER 16. CONTAGIOUS EQUINE METRITIS

35:15-16-1. Incorporation by reference

- (a) The contagious equine metritis regulation found in Title 9 of the Code of Federal Regulations (CFR) (2017 ~~2019~~ Revision), Section 93-301 and USDA VS Guidance Document 13406.1 (2013) Revision are hereby adopted in their entirety.
- (b) All words and terms defined or used in the federal regulation incorporated by reference by the Department shall mean the state equivalent or counterpart to those words or terms.

SUBCHAPTER 22. SWINE PSEUDORABIES AND BRUCELLOSIS

PART 1. GENERAL PROVISIONS

35:15-22-4. Requirements for livestock auction markets

- (a) ~~All~~ Except for swine purchased for immediate slaughter, all swine consigned to a livestock auction market shall have an official identification for each pig. The market operator shall maintain a record of each official identification, consignee's name and address, and premise of origin.
 - (1) ~~official identification already in place and the official identification shall be recorded by the livestock auction market; or~~
 - (2) ~~official identification applied and the official identification shall be recorded by the livestock auction market.~~
- (b) ~~The market operator shall maintain a record of all official identifications and the corresponding consignee's name and address.~~

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(e) All swine over six (6) months of age not purchased or ~~reassigned~~ as direct to slaughter shall be tested for brucellosis and pseudorabies prior to leaving the livestock auction market.

SUBCHAPTER 34. FERAL SWINE

35:15-34-2. Definitions

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

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

"Feral swine" means any ~~hog, pig, or swine~~ domestic or wild animal of the species (~~Sus scrofa~~) ~~including, but not limited to, Russian and European wild boar~~ Sus scrofa that ~~are~~ is or has been running at large, free roaming, or wild upon public or private lands ~~in this state, or has been captured, hunted, pursued, maintained, utilized, or released for any sporting purpose and shall also include any hog, pig, or swine species that has lived any part of its life running at large, free roaming, or wild. The term feral swine shall also include any feral phenotype swine, whether or not running at large, free roaming, or wild. The term feral swine shall denote live feral swine and not feral swine carcasses unless otherwise specified.~~

"Feral swine facility" means a handling facility or sporting facility.

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

"Handling facility" means any premises maintaining feral swine in captivity for the purpose of temporary holding, breeding, slaughter, re-sale, dog training, competition, exhibition, personal use, or any other purpose. Commercial hunting is not permitted in a handling facility.

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

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

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

35:15-34-6. Sporting facilities

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(H) Driving directions from the nearest town; and

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

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

(eb) Sporting facilities may have a gate device installed in the perimeter fence that allow for the ingress of additional

feral swine but does not allow the egress of captive feral swine. These devices shall be inspected and approved by the Department within seven (7) days of installation.

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

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

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

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

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

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

SUBCHAPTER 35. GARBAGE FEEDING

35:15-35-1. Permits [REVOKED]

~~No person shall feed garbage to swine unless a permit therefor has first been obtained from the State Board of Agriculture. Applications for such permits shall be on a form prescribed by the Board. The State Veterinarian may refuse to issue such permit or suspend any permit that has been issued if the applicant fails to comply with or violates any of the laws or rules of the Board pertaining to the feeding of garbage. The Board may revoke any permit if they find any operator guilty of violating the laws or rules.~~

35:15-35-2. Cooking of garbage [REVOKED]

(~~a~~) A direct fire cooker shall be constructed over a fire box with the bottom of the cooker at least 15 inches above the ground. The cooker shall have a hinged lid completely covering the cooker opening to hold heat.

(~~b~~) The fire box shall be constructed of brick, stone or heavy gauge steel that will not burn out. The fire box shall have a hinged door and smoke stack.

(~~c~~) The cooker shall be separated from any feeding area by a hog tight fence.

(~~d~~) An adequate fuel supply shall be exhibited at all times.

(~~e~~) Cooking on a kitchen or restaurant stove is prohibited.

(~~f~~) Cooker must be sheltered by a roof in order to facilitate cooking during inclement weather. (Does not apply to a steam cooker.)

(~~g~~) A definite schedule for cooking garbage shall be established and filed with the State Veterinarian. (Days and time of day that the cooker will be in operation.) The schedule may be changed by notifying the inspector or the State Veterinarian's office.

(~~h~~) A thermometer shall be supplied by the permit holder, and used to determine the temperature of the garbage being cooked. All garbage, regardless of previous processing, shall, before being fed, be thoroughly heated to at least 212°F., and said temperature shall be maintained for at least thirty (30) minutes, unless treated in some manner approved in writing by the Board or authorized agent of the Board as being equally effective for the protection of animal and human health.

35:15-35-3. Premise and equipment [REVOKED]

(~~a~~) If feeding platforms are used, the platform will constitute at least three (3) square feet for each hog to be fed.

(~~b~~) If troughs are used, at least one (1) linear foot will be supplied for each hog to be fed.

(~~c~~) Excess garbage shall be removed from the premises, and is not to remain on premise over thirty six (36) hours in warm weather. Unused, excess or spoiled garbage shall be buried or burned, and shall under no circumstances be poured or dumped in the feeding or cooking area.

(~~d~~) Premise shall be kept free of all waste materials such as cans, boxes and paper.

(~~e~~) Premise is to be sprayed a minimum of one (1) time each week for fly control during the seasons that flies are active. Effective rodent control measures shall be used.

(~~f~~) Containers used to transport or store garbage are to be closed and shall be sufficiently sealed to prevent access by rodents or insects. These containers are to be kept clean and free from accumulation of grease and foreign matter.

35:15-35-4. Records [REVOKED]

~~A daily log shall be kept by the permit holder giving the amount of garbage collected and cooked, the time of day cooked and the maximum temperature reached, and the length of time cooked. These forms will be furnished by the State Board of Agriculture, and are to be submitted to the inspector or State Board of Agriculture upon request.~~

SUBCHAPTER 36. SCRAPIE

Permanent Final Adoptions

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

Regulations of the United States Department of Agriculture concerning scrapie in sheep and goats found at 9 CFR Part 79 (20172019 Revision) are adopted by reference with the exception of the deleted regulations specified in 35:15-36-2.

35:15-36-2. Deleted regulations

The following sections of the Federal regulations governing scrapie in sheep and goats (9 CFR, Part 79 et seq.) (20172019 Revision) of the USDA incorporated by reference under 35:15-36-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 79.6 and 79.7.

35:15-36-3. Requirements for identification

(a) All sheep and goats imported into Oklahoma shall be identified by a USDA approved official identification device.

(b) All sheep and goats shall be officially identified prior to movement for sale or exhibition.

(1) If moving to a livestock market, identification may be applied by the market before sale.

(2) The state veterinarian may grant a written exception for the official identification of wethers on an individual basis.

SUBCHAPTER 38. BOVINE TRICHOMONIASIS

35:15-38-1. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Resident herd of origin" means a group of livestock maintained together as a herd or flock on the same premises for at least four (4) months.

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

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

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

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

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

35:15-38-2. Import requirements for bulls

- (a) All bulls entering Oklahoma shall be accompanied by a certificate of veterinary inspection. All non-virgin bulls shall have a negative official T. foetus test within sixty (60) days prior to entry with no exposure to females from seven (7) days prior to the test to the time of change of ownership.
- (b) The pre-entry test shall be conducted at a laboratory approved by the American Association of Veterinary Diagnostic Laboratories or the Oklahoma state veterinarian.
- (c) No bull that has ever previously tested positive for T. foetus shall enter Oklahoma unless the bull is consigned directly to slaughter and is individually identified for movement on a VS form 1-27.
- (d) No bull from a known positive T. foetus herd shall enter Oklahoma unless the bull has three (3) consecutive negative tests at least a week apart within thirty (30) days prior to entry, in addition to a post entry test and the bulls shall be isolated from all females until the in-state test results are known.
- (e) The veterinarian issuing the certificate of veterinary inspection shall list the official identification, date of the test, name of the laboratory, laboratory accession number, type of test, and result of the test for each bull represented on the certificate of veterinary inspection.
- (f) Exceptions to the importation requirements are:
 - (1) transient rodeo or exhibition bulls that will have no sexual contact with a female bovine and are held in a secure facility to prevent contact, excluding pasture while in Oklahoma;
 - (2) bulls consigned direct to slaughter; ~~or~~
 - (3) bulls consigned to a feedlot for feeding and slaughter purposes where they will be isolated from all females; and
 - (4) bulls consigned from a resident herd of origin to a livestock auction market.

SUBCHAPTER 40. BOVINE TUBERCULOSIS

PART 1. DEFINITIONS

35:15-40-1. Definitions

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

"Accredited free state" means a state that maintains full compliance with all of the provisions of the USDA Uniform Methods and Rules for bovine tuberculosis eradication and

where no evidence of bovine tuberculosis has been disclosed for five (5) or more years.

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

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

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

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

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

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

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

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

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

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

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

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

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

"Dealer" means any person, firm, or partnership engaged in the business of buying or selling cattle, bison, or dairy goats in commerce, either on the dealer's own account or as the employee or agent of the vendor or purchaser, or any person engaged in the business of buying or selling cattle, bison, swine, sheep, or dairy goats in commerce on a commission basis. The term shall not include any person who buys or sells cattle,

bison, or dairy goats as a part of their own bona fide breeding, feeding, or dairy operation; is not engaged in negotiating the transfer of cattle, bison, or dairy goats; or receives cattle, bison, or dairy goats exclusively for immediate slaughter on the person's own premise.

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

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

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

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

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

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

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

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

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

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

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

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

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

"Permit" means a VS 127 issued by an authorized agent of the State Board of Agriculture, a representative of USDA

APHIS Veterinary Services or an accredited veterinarian that is required to accompany any reactor, suspect, or exposed animals to slaughter.

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

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

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

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

SUBCHAPTER 44. FARMED CERVIDAE

35:15-44-3. Application for license

(a) An application for a farmed cervidae facility shall contain the following complete, accurate, and legible information, in addition to the information required by the Farmed Cervidae Act:

- (1) Email addresses, if available, of the applicant.
- (2) Name, address, telephone number, and email addresses, if available, of the operator, if different from the applicant.
- (3) A list of all names the farmed cervidae facility operates pursuant to, and the address and facility telephone number of each, including but not limited to the Doing Business As (D/B/A), corporate name, or other name. If a corporation, submit the certificate of good standing from the Secretary of State.

(b) The Department shall not issue a license if the applicant had any equivalent license denied, revoked, or suspended by any authority, except in accordance with the provisions of 2 O.S. § 6-514.

(c) The Department may refuse to issue a license for a premises where a previous herd of animals has been infected with a reportable or other disease regulated by the Department.

(d) Using information from the application and from the State's files, the Department shall determine if the proposed facility is adequate and complies with all legal requirements and would not result in harm to native wildlife.

(~~e~~) If an applicant is denied a farmed cervidae license, the Department shall notify the applicant in writing by certified mail, return receipt requested, of the denial. The denial shall include the following:

- (1) Reasons for the denial;
- (2) Steps necessary to meet the requirements for a license, if applicable; and
- (3) The opportunity to request an administrative hearing on the denial.

35:15-44-19. Entry and export requirements

(a) Import of cervidae shall be accompanied by a Certificate of Veterinary Inspection and a Cervidae Import Permit approved or provided by the Department.

(1) The import permit shall be valid for thirty (30) days from approval.

(2) Cervidae Import Permit applications shall be submitted to the Department no less than three (3) working days prior to the scheduled shipment.

(b) Cervidae shall have two forms of identification. One (1) of these two (2) forms of identification shall be official identification.

(c) The State Veterinarian or designee may require a brucellosis test of any cervidae subject to the provisions of this subchapter.

(d) All cervidae ~~six (6) months or older shall meet one of the following criteria prior to entry:~~

~~(1) Classified negative to two (2) official tuberculosis test that were conducted no less than ninety (90) days apart with the second test conducted no more than ninety (90) days prior to the date of movement and recorded on the Certificate of Veterinary Inspection.~~

~~(2) Originate from a Qualified Herd and test negative to an official tuberculosis test conducted no more than ninety (90) days prior to the date of movement. The Qualified Herd number and date of the qualifying test shall be recorded on the Certificate of Veterinary Inspection.~~

~~(3) Originate from an Accredited Free Herd provided the Accredited Free Herd number and date of last test are recorded on the Certificate of Veterinary Inspection shall meet the tuberculosis testing provisions found at 9 CFR Part 77 (2019 Revision).~~

(e) All cervidae, with the exception of fallow deer, within the genera Odocoileus, Cervus, and Alces and their hybrids, shall originate from a chronic wasting disease certified herd from a county where no chronic wasting disease has been confirmed in native cervidae populations.

SUBCHAPTER 47. CHRONIC WASTING DISEASE (CWD) IN CERVIDS

PART 7. INTERSTATE MOVEMENT REQUIREMENTS

35:15-47-18. Minimum CWD requirements for interstate movement of cervids

(a) Regulations of the United States Department of Agriculture concerning the interstate movement of cervidae found at 9 CFR Part 81 ~~(2014)~~2019 Revision) are adopted by reference.

(b) Caribou and Reindeer shall meet all interstate movement regulations that apply to cervidae found at 9 CFR Part 81 ~~(2014)~~2019 Revision).

SUBCHAPTER 49. MISCELLANEOUS ANIMAL DISEASES

35:15-49-7. Equine herpes virus

(a) The State Veterinarian or any state or federal veterinarian acting under authority of the State Veterinarian may cause an official test to be conducted on any Equidae known or suspected to be infected with or exposed to Equine Herpes Virus.

(b) If the owner refuses or neglects to comply with the testing requirements, the Equidae shall be quarantined and the movement of any Equidae from the premises shall be prohibited.

[OAR Docket #20-552; filed 7-7-20]

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY
CHAPTER 17. WATER QUALITY**

[OAR Docket #20-553]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Swine Feeding Operations

35:17-3-10. Transfer of license [AMENDED]

35:17-3-11. Pollution Prevention Plan (PPP) [AMENDED]

35:17-3-13. Criteria for liners [AMENDED]

35:17-3-17. Carcass disposal [AMENDED]

35:17-3-30. Commencement of construction [AMENDED]

Subchapter 4. Concentrated Animal Feeding Operations

35:17-4-8. Transfer of license [AMENDED]

35:17-4-9. Pollution Prevention Plan (PPP) [AMENDED]

35:17-4-11. Criteria for liners [AMENDED]

35:17-4-13. Carcass disposal [AMENDED]

Subchapter 5. Registered Poultry Feeding Operations

35:17-5-3. Registration, Nutrient Management Plan (NMP) required [AMENDED]

35:17-5-3.2. Cancellation of poultry feeding operation registration [NEW]

35:17-5-4. Soil and litter tests required [AMENDED]

35:17-5-5. Nutrient Management Plan [AMENDED]

Subchapter 9. Agricultural Compost Facilities [AMENDED]

35:17-9-1. Purpose and applicability [AMENDED]

35:17-9-3. Permit provisions and application [AMENDED]

AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2); 2 O.S. § 2A-1 et seq., 2 O.S. § 10-2 et seq., 2 O.S. § 20-1 et seq., and 2 O.S. § 20-40 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 25, 2019

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PUBLIC HEARING:

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SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

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APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020.

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 14, 2020

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rule amendments revise transfer of license requirements; modify requirements of pollution prevention plans; clarify criteria for certain liners; update language; clarify conditions for commencement of construction of certain operation; modify requirements of nutrient management plans; provide conditions for cancellation of poultry feeding operation registration; provide requirements for poultry waste application; and limit application of compost facility rules.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 3. SWINE FEEDING OPERATIONS

35:17-3-10. Transfer of license

In addition to the provisions of the Act, transfer of a license to a new owner or lessee shall meet the following conditions:

- (1) Upon approval of the transfer of a license, the transferee shall provide to the Department within thirty (30) calendar days, a notarized statement and other proof of transfer of ownership or occupancy as the Department requires.
- (2) All required transfer application documents shall be completed and submitted to the Department within ninety (90) calendar days of approval by the Department of transfer of a license or actual transfer of a licensed operation, whichever is sooner.
- (3) If a transfer is denied by the Department, the transferee may, within thirty (30) calendar days after receiving notification of the denial, request in writing a hearing to review the denial of the transfer. In addition to the items which are considered at the hearing, the ALJ may also hear evidence and witnesses on the issue of whether a substantial change of condition has occurred since the issuance of the original license and whether the changes should result in a denial of the transfer of the license.

35:17-3-11. Pollution Prevention Plan (PPP)

- (a) Prior to the submission of a CAFO license application or modification, each facility shall develop or update a Pollution Prevention Plan (PPP) according to the Oklahoma Swine Feeding Operations Act and rules promulgated pursuant to the Act.
- (b) The PPP shall include provisions for documentation of structural controls, documentation of operating Best Management Practices (BMPs), a Swine Waste Management Plan, a carcass disposal plan for normal and emergency disposal of carcasses, and record keeping provisions.
- (c) The following forms and records shall be maintained by the CAFO for each PPP:

- (1) wastewater measurements;
- (2) precipitation measurements;
- (3) spill reporting forms;
- (4) discharge reporting forms;
- (5) inspection and maintenance records;
- (6) annual inspection records;
- (7) preventive maintenance records;
- (8) employee annual education records (for LMFO's);
- (9) records of manure or wastewater sold or transferred (if applicable);
- (10) records of land application of solid manure (if applicable);
- (11) records of land application of liquid manure (if applicable);
- (12) records of land application of compost from mortalities (if applicable)
- (13) mortality management records; and
- (14) other site specific information requested by the Department.

(d) The Plan shall identify an individual who is responsible for implementing, maintaining, and revising the PPP.

(e) The PPP for an LMFO shall also include an Odor Abatement Plan (OAP) and a Pest Management Plan (PMP).

(f) Equivalent measures contained in a site specific swine waste management plan prepared by the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) may be substituted for the appropriate PPP requirements. An AWMP developed by USDA NRCS can be substituted for the documentation of land application rate calculations.

(g) With Department approval, the owner shall amend the PPP prior to any change in design, construction, operation, or maintenance, which has significant effect on the potential for the discharge of pollutants to the surface or groundwaters of the State.

(h) The owner shall implement appropriate changes to the Plan within ninety (90) calendar days of notification that the plan does not meet one or more specified minimum requirements unless otherwise provided by the Department. If notice of changes is not received by the Department within the prescribed ninety (90) calendar days, the application shall be denied.

(i) In addition to the requirements of the Act, the PPP shall include:

- (1) A list of materials that are used, stored, or disposed of at the facility which may cause pollution. A contingency plan for releases of potential pollutants shall also be included. The PPP shall contain a log of any pollutant releases and clean up of those materials. Documentation of releases shall include any corrective action taken to prevent recurrence.
- (2) Testing of groundwater, Nitrogen as Nitrate, total Phosphorous, and fecal coliform bacteria levels shall be performed by an Oklahoma Department of Environmental Quality certified independent testing laboratory at least annually. All testing shall establish a management record, with all costs paid by the owner. Owners of LMFOs shall sample groundwater annually for electrical conductivity,

pH, ammonium-nitrogen, nitrate-nitrogen, total phosphorus, and fecal coliform bacteria.

(3) Soil tests from land application sites shall be performed by an Oklahoma Department of Environmental Quality certified testing laboratory or State operated laboratory at least annually. All testing shall establish a management record, with all costs paid by the owner. Owners of LMFOs shall perform soil tests for electrical conductivity, pH, nitrate-nitrogen, ammonium-nitrogen, organic matter, sodium, potassium, calcium, magnesium, available phosphorus, and total nitrogen. Soil test results shall be maintained at the site for as long as the facility is in operation.

(4) Sufficient testing of wastewater in waste storage facilities shall be required at least every three (3) years and performed by a qualified independent testing laboratory. Testing may be required more frequently at an individual facility at the Department's request. All owners of LMFOs shall sample waste retention structure contents annually prior to the first land application of the calendar year. Owners of LMFOs shall sample waste retention structure contents for ammonium-nitrogen, nitrate-nitrogen, total phosphorus, electrical conductivity, pH, sodium, potassium, calcium, magnesium, total nitrogen, and total solids. Additional parameters may be required upon request of the Department.

(5) A description of management controls appropriate for the facility. The owner initiates these controls. The appropriateness and priorities of any controls shall reflect the identified sources of pollutants at the facility and conform to criteria established by the Act and the Department.

(A) The location and a description of existing surface water controls. Structural controls shall be inspected at least quarterly each year for structural integrity and maintenance.

(B) Documentation of new or rebuilt retention structure capacity shall be submitted to the Department and shall be based upon input parameters, the assumptions and actual calculations, showing volumes for all intermediate steps, used in determining the appropriate volume capacity. All waste retention structures for LMFOs shall be designed for the maximum number of swine that are or will be licensed at the facility. Retention structure capacity shall be based upon the following, at a minimum:

- (i) The runoff volume from open lot surfaces.
- (ii) The runoff volume from areas between open lot surfaces and the retention structure.
- (iii) The rainfall multiplied by the area of the retention structure.
- (iv) The volume of rainfall from any roofed area that is directed into the retention structure.
- (v) All waste and process generated wastewater produced during a period of time not less than one-hundred-eighty (180) calendar days, including: volume of wet manure that enters a pond; plus volume of water used for manure or waste removal; plus volume of wash or cleanup water; plus

other water, including drinking water that enters the retention structure.

(vi) Volume of a 25-year, 24-hour rainfall event.

(vii) One (1) foot of freeboard below spillway or outlet.

(viii) A water budget analysis shall be performed on all liquid waste retention structures based on real the average monthly or daily data from a rain gauge located near the facility precipitation taken from a National Weather Service current publication of the previous fifteen (15) years of data, at a minimum.

(C) A description of the design standards for the retention facility embankments. The following minimum design standards are required for construction or modification of a retention structure embankment:

(i) Soils used in the embankment shall be free of foreign material, including trash, brush, and fallen trees.

(ii) The embankment shall be constructed in lifts no more than six (6) inches thick after compaction and compacted to a minimum of 95% of the maximum dry density and 2% of optimum moisture content as determined by ASTM D 698 standard proctor test.

(iii) Each lift of the embankment of the retention structures shall be checked to ensure proper compaction and moisture content; all readings shall be recorded and properly documented with minimum information required for documentation to include:

- (I) project name,
- (II) date,
- (III) test method used,
- (IV) site name,
- (V) technician name,
- (VI) location of reading, including sketch, if necessary,
- (VII) percent compaction,
- (VIII) wet density, pcf,
- (IX) dry density, pcf,
- (X) moisture content,
- (XI) lift number, and
- (XII) soils lab name, report number and proctor test results used to obtain field measurements.

(iv) If retention structures are constructed with an emergency spillway, a minimum of one (1) foot of freeboard shall be maintained between the top of the 25-year, 24-hour storm volume and the bottom of the emergency spillway.

(v) An erosion control plan shall be developed and approved by the Department detailing how the owner immediately stabilizes the embankment walls to prevent erosion and deterioration. The plan shall include a preventive maintenance section. Each plan shall be approved on a case by case

basis and may include the use of vegetative cover, geomembrane liners, sod, or other Department approved methods for controlling erosion.

(vi) A permanent measuring device shall be maintained in the wastewater retention structure to show the volume required to contain a 25-year, 24-hour rainfall event. The device shall be visible from the top of the levee and a separate mark shall be placed on the measuring device clearly identifying the 25-year, 24-hour rainfall event. Installation of the measuring device shall be performed in a manner to protect the integrity of liner at all times.

(vii) A rain gauge shall be kept on site and properly maintained. A log of all measurable precipitation events shall be kept with the PPP.

(viii) Documentation of method used to ensure liner of the waste retention structure is protected at or below the inlet.

(6) All owners of LMFOs shall install a leak detection system or monitoring wells in accordance with criteria approved by the Department.

(A) Samples of groundwater shall be collected by the Oklahoma Department of Agriculture, Food, and Forestry at least annually. The analysis of the water samples shall be performed by a qualified environmental laboratory approved by the Oklahoma Department of Environmental Quality or the relevant certification agency for the state in which the laboratory is located and approved by the Oklahoma Department of Agriculture, Food, and Forestry. All costs of analysis shall be the responsibility of the owner of the LMFO.

(i) The frequency of sampling may be reduced to once every three (3) years for those monitoring wells which have been sampled for at least three (3) consecutive years and have always been found to be dry.

(ii) If any subsequent sampling event indicates the monitoring well is no longer dry, that monitoring well shall be sampled pursuant to this subsection.

(B) All waste retention structures shall have sufficient numbers of groundwater monitoring wells upgradient and downgradient in the direction of groundwater flow. All monitoring well locations shall be approved by the Department on a case by case basis.

(C) No monitoring well shall be installed more than one hundred and fifty (150) feet from the crown of the outer berm.

(D) All new monitoring wells shall be drilled through the first aquifer encountered, but need not extend more than fifty (50) feet below the bottom of the waste retention structure. One downgradient monitoring well shall be drilled to the first aquifer encountered or the first impermeable layer, but need not extend more than one hundred (100) feet below the bottom of the waste retention structure.

(E) All monitoring wells shall be drilled and completed by an Oklahoma Water Resources Board licensed monitoring well driller.

(F) If no groundwater is encountered during the drilling operation, the bore hole shall be left open for at least forty eight (48) hours but not over thirty (30) days for the aquifer to recharge the bore hole. Thereafter, the bore hole shall be either developed into a monitoring well or plugged according to Oklahoma Water Resources Board requirements.

(G) All new monitoring wells shall meet the following minimum requirements:

(i) A minimum of two (2) inch diameter PVC casing shall be used with a sealing cap on the bottom.

(ii) The casing shall consist of minimum SDR-21 rated casing with a minimum SDR-21 rated factory screen in the saturated zone, or the bottom ten (10) feet if no groundwater is encountered.

(iii) Perforated zone shall be gravel or sand packed originating at the bottom of the screen and extending to two (2) feet above the top of the screen, and otherwise as appropriate for the installation.

(iv) Bentonite shall be placed in the annular space of the well above the gravel or sand pack for an interval of at least two (2) feet to form an impermeable seal.

(v) A cement grout or a mixture of bentonite and cement shall be placed above the bentonite seal to prevent seepage from entering behind the pipe and causing hydrologic connection.

(vi) At least the top ten (10) feet of the annular space shall be filled with type A cement.

(vii) A concrete apron, minimum of four (4) inch thickness and two (2) feet from the casing shall be installed at the surface to prevent seepage of rain water into the bore hole. The apron shall be sloping away from the casing to avoid percolation of rain water.

(viii) A lockable protective cap shall be placed on top of the casing, which shall be a metal protective casing extending two (2) feet above the concrete apron and one (1) foot into the apron. The well shall remain securely capped and locked at all times, except during sampling events.

(ix) Within thirty (30) days of installation, a copy of the Oklahoma Water Resources Board approved Multi-Purpose Completion Form shall be submitted to the Department.

(x) Existing monitoring wells shall be evaluated on a case by case basis by the Department to determine equivalency. Monitoring wells previously required and approved by the Department shall be considered equivalent.

(H) Groundwater monitoring wells shall be sampled at least annually for electrical conductivity, pH,

ammonium-nitrogen, nitrate-nitrogen, total phosphorus, and fecal coliform bacteria.

(I) Owners of LMFOs may install a leak detection system instead of monitoring wells. The system shall be approved by the Department on a case by case basis.

(7) The following records, in addition to those required by the Act, shall be maintained at the site for a minimum of three (3) years:

(A) Weekly measure of water level in the retention facility;

(B) Quarterly inspection and maintenance reports;

(C) Copies of waste retention structure liner specifications and design plans and any other information required by the Department directly related to the construction, installation, or future modification or operation of the swine feeding operation;

(D) Copies of groundwater sample laboratory analyses;

(E) Waste retention structure(s) contents sample laboratory analyses;

(F) Dates of inspections of the retention structure and a log of the findings of the inspections;

(G) A rain gauge shall be kept on site and properly maintained. A log of all measurable precipitation events shall be kept with the PPP;

(H) If swine wastes are sold or given to other persons for disposal, the owner of the LMFO shall maintain a log of the following:

(i) Date of removal from the swine feeding operation,

(ii) Name of hauler, and

(iii) Amount in wet tons, dry tons, gallons, or cubic yards of waste removed from the swine feeding operation;

(I) A log of employee training and education shall be maintained at the site;

(J) A complete inspection of the site shall be performed at least annually by the owner. A report documenting the findings of the inspection shall be prepared and retained which includes the operative status of the check valves system on applicable wells;

(K) Records of incidents including spills, discharges, and other information describing the pollution potential and quantity of the discharge shall be included in the records. Inspections and maintenance activities shall be documented and recorded; and

(L) Records documenting significant observation made during the site inspection shall be retained as part of the PPP.

(8) The following records, in addition to those required by the Act, shall be maintained at the site as long as the facility is in operation:

(A) Documentation of no significant impact, if applicable,

(B) Copy of Notice of Intent (NOI) or Notice of Termination (NOT), if applicable,

(C) Copy of ~~EPACAF~~EPACAF~~AgPDES~~ General Permit, if applicable,

(D) Copies of soil samples/test/laboratory results from land application fields, and

(E) A notarized sworn statement signed by the owner accepting full responsibility for properly closing all waste retention structures upon termination of the swine feeding operation.

(9) Within twenty-four (24) hours of identifying a discharge, a licensee shall be required to report the discharge to the Department. The licensee shall be required to submit an additional, final report to the Department upon clean-up and receipt of discharge analysis.

35:17-3-13. Criteria for liners

(a) Soil liners shall be constructed to meet the following minimum requirements:

(1) Constructed in lifts or layers no more than six (6) inches thick when compacted.

(A) Soils used in the liner shall be free of foreign material, including trash, brush, and fallen trees.

(B) All side slopes and the floor of the retention structures shall be checked after each lift to ensure proper compaction and moisture content. All readings shall be recorded and properly documented. Minimum information required for documentation shall include:

(i) Project name.

(ii) Date.

(iii) Test method used per ASTM specification.

(iv) Site name.

(v) Technician name.

(vi) Location of reading, include sketch.

(vii) Percent compaction.

(viii) Wet density in pounds per cubic foot (pcf).

(ix) Dry density in pounds per cubic foot (pcf).

(x) Moisture content, percent.

(xi) Lift number.

(xii) Soils lab name, report number, and Proctor Test results used to obtain field measurements.

(2) Compaction to a minimum of ninety-five percent (95%) of Standard Proctor (ASTM D 698) at optimum or wetter moisture content.

(3) Hydraulic conductivities of no greater than 1×10^{-7} cm/sec. The field permeability of the liner shall be verified by using one of the following methods:

(A) If a sealed Double Ring Infiltrometer is used to determine the field permeability of the liner, at least one representative location on each corner and one location in the center of the waste retention structure bottom shall be selected for Double Ring Infiltrometer determination.

(B) At least four (4) representative undisturbed core samples, one from each corner of the waste retention structure bottom shall be retrieved for permeability determination in the laboratory. The permeability shall be determined using a Flexible Wall Permeameter (ASTM D 5084).

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- (4) Minimum thickness of one and one half (1.5) feet.
- (5) Maximum hydrostatic head of ten and one half (10.5) feet.
- (6) Hydrostatic head or water depth may be increased above ten and one half (10.5) feet in one of the following circumstances:

(A) Liner thickness above the minimum shall be increased by an amount needed to maintain the allowable seepage rate, which shall not exceed eighty three one hundredths (0.83) feet per year pursuant to Darcy's Velocity.

(B) Soils with permeabilities less than 1×10^{-7} cm/sec are used to maintain the allowable seepage rate, which shall not exceed eighty three one hundredths (0.83) feet per year pursuant to Darcy's Velocity. Soils which do not meet the maximum criteria of 1×10^{-7} cm/sec can be mixed with a sufficient amount of bentonite clay to achieve the desired standard.

(C) Any combination of (A) or (B). In no case shall hydraulic conductivity be used to reduce the minimum thickness of one and one half (1.5) feet or shall thickness be used to increase the maximum hydraulic conductivity of 1×10^{-7} cm/sec.

- (i) ~~Project name.~~
- (ii) ~~Date.~~
- (iii) ~~Test method used per ASTM specification.~~
- (iv) ~~Site name.~~
- (v) ~~Technician name.~~
- (vi) ~~Location of reading, include sketch.~~
- (vii) ~~Percent compaction~~
- (viii) ~~Wet density in pounds per cubic foot (pcf).~~
- (ix) ~~Dry density in pounds per cubic foot (pcf).~~
- (x) ~~Moisture content, percent.~~
- (xi) ~~Lift number.~~
- (xii) ~~Soils lab name, report number, and Proctor Test results used to obtain field measurements.~~

(b) The owner shall maintain the liner to inhibit infiltration of wastewaters. Liners shall be protected from burrowing and other animals by fences or other protective devices. Liners shall also be protected from the potential root zone of all trees.

(c) Any mechanical or structural damage to the liner shall be evaluated by an environmental, agricultural, or other Department approved professional engineer registered in the state of Oklahoma within thirty (30) calendar days of the damage. Documentation of liner maintenance shall be kept with the Pollution Prevention Plan.

(d) ~~USDA NRCS Agricultural Waste Management Field Handbook Chapter 10 Appendix D shall only be used when an NRCS Engineer designs the retention structures.~~

(e) Flexible membrane or synthetic liners may be used in connection with a soil liner or as a substitute for a soil liner. Geosynthetic liners and flexible membrane liners shall be installed so as to protect waters of the State from contamination.

(1) The subgrade soil shall be prepared according to the design standards. A subgrade verification form shall be submitted with liner documentation.

(2) The surface to be lined shall be rolled and compacted and free of irregularities, undulations, protrusions,

vegetation, excessive moisture, loose soil, or abrupt changes in slope.

(3) The subgrade surface shall be free of foreign material including stones, cobbles, broken pieces of wood, plastic, or glass.

(4) The owner shall provide a copy of a completed Surface Acceptance Form indicating acceptable locations. In no case shall the installer deploy any geomembrane or flexible membrane liner in areas not acceptable within these rules.

(5) If at any time during the installation the subgrade surface deteriorates or is damaged, or in any way deemed unacceptable by the regulatory authority, all work shall stop until proper repair is performed.

(6) The anchor trench shall be constructed according to the standard industry practices. The trench shall be adequately drained to prevent ponding or softening of the side walls. After installation of the liner, the trench shall be back filled, compacted, and anchored according to the standards.

(7) The liner placement plan shall take into consideration the site drainage, low lying areas, temperature, and prevailing wind velocity and direction. Field panels shall be deployed one at a time and seamed as soon as possible to minimize the risk of wind or water damage.

(8) Field panel deployment shall not proceed at an ambient temperature below forty degrees (40°) F, unless Low Temperature Welding Procedures are used. All deployed panels should be amply ballasted or sand bagged at all times to avoid wind damage.

(9) Personnel responsible for placement of the liner shall not smoke, wear damaging shoes, or engage in other activities which may cause damage to the liner. The method of deployment shall not cause scratches, crimps, or tear the liner or damage the subgrade. Adequate sand bags shall be placed on the edges of the liner to avoid wind uplifting.

(10) The installer shall visually inspect the panels as soon as possible after deployment for damage or distressed surfaces.

(11) A seam is considered a separate entity if it joins two panels. Repairs are not considered seams in this context. Seams shall be generally oriented parallel to the line of maximum slope, or along instead of across the slope. In corners and odd shaped geometric locations the number of seams should be minimized.

(12) The Extrusion Process shall be used only for repairs and patching and shall not be used for the overall operation. The Fusion Process shall be used for seaming panels together using hot-wedge type or solid wedge type automated self-propelled apparatus equipped with temperature gauges.

(13) The nondestructive seam continuity test shall be performed during daylight hours and certified by the owner.

35:17-3-17. Carcass disposal

(a) Dead swine shall be disposed of in accordance with a carcass disposal plan developed by the owner and approved by the Department which shall decrease the possibility of the spread of disease, reduce odors, and preclude contamination of ground and surface waters of the state. Dead swine shall be disposed of properly and in an environmentally safe manner in accordance with Federal, State, and local requirements. At all times the facility shall comply with the provisions of ~~Section 1223 of Title 21 of the Oklahoma Statutes, in addition to compliance with the~~ approved carcass disposal plan.

(b) The plan shall include provisions for the disposal of carcasses associated with normal mortality and shall include provisions for emergency disposal when a major disease outbreak or other emergency results in deaths significantly higher than normal mortality rates.

(c) Accepted methods of carcass disposal include the following:

(1) Rendering.

(A) The owner shall obtain a contract with a rendering service that insures disposal of all carcasses within a reasonable period of time. The name, address, and telephone number of the rendering service shall be provided. In addition, the frequency and schedule of carcass pickup shall be included.

(B) Storage facilities shall be sealed or have lids and maintained so as to prevent pests and odors in accordance with a Department approved OAP and PMP.

(C) Sealed storage facilities shall not be required for animals weighing 300 pounds or more, but the prevention of pests and odors shall be addressed by a Department approved OAP and PMP.

(2) Burial.

(A) Burial shall only be allowed as a method of carcass disposal if no reasonable alternative exists and the disposal plan contains specific measures and practices which are utilized to protect the ground and surface waters of the state.

(B) In no event shall burial be used by an LMFO unless the burial area meets the requirements of a Swine Waste Management System, including but not limited to the use of liners.

(C) Prior approval by the Department is required of any carcass disposal plan listing burial as the method of disposal.

(3) Composting.

(A) Prior approval by the Department is required of any carcass disposal plan listing composting as the method of disposal.

(B) The Department may require another method of carcass disposal other than composting if the Department determines that a more feasible and effective method of carcass disposal exists.

(4) Incineration shall only be used as method of carcass disposal if the swine feeding operation has a valid air quality permit from the Oklahoma Department of Environmental Quality, Air Quality Division.

35:17-3-30. Commencement of construction

(a) ~~Construction~~ Upon the request of an affected property owner, construction of a new or expanding operation shall not commence until an administrative hearing has been completed. Completion of an administrative hearing shall occur when the Administrative Law Judge submits final recommendations to the Oklahoma Department of Agriculture, Food, and Forestry and the State Board of Agriculture ~~issues a building permit~~ has approved or denied a requested license.

(b) If an administrative hearing is not requested by an affected property owner, construction shall commence upon the approval of a requested license by the State Board of Agriculture ~~issuing a building permit~~.

SUBCHAPTER 4. CONCENTRATED ANIMAL FEEDING OPERATIONS

35:17-4-8. Transfer of license

In addition to the provisions of the Act, transfer of a license to a new owner or lessee shall meet the following conditions:

(1) Upon approval of the transfer of a license, the transferee shall provide to the Department within thirty (30) calendar days, a notarized statement and other proof of transfer of ownership or occupancy as the Department requires;

(2) All required transfer application documents shall be completed and submitted to the Department within ninety (90) days of approval of transfer of a license or actual transfer of a licensed operation, whichever is sooner.

(3) If a transfer is denied by the Department, the transferee may, within thirty (30) calendar days after receiving notification of the denial, request in writing a hearing to review the denial of the transfer. In addition to the items which are considered at the hearing, the ALJ may also hear evidence and witnesses on the issue of whether a substantial change of condition has occurred since the issuance of the original license and whether the changes should result in a denial of the transfer of the license.

35:17-4-9. Pollution Prevention Plan (PPP)

(a) Prior to the submission of a CAFO license application or modification, each facility shall develop or update a Pollution Prevention Plan (PPP) according to the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant to the Act.

(b) The PPP shall include provisions for documentation of structural controls, documentation of operating Best Management Practices (BMPs), an Animal Waste Management Plan (AWMP), a carcass disposal plan for normal and emergency disposal of carcasses, and record keeping provisions.

(c) The following forms and records shall be maintained by the CAFO for each PPP:

- (1) wastewater measurements;
- (2) precipitation measurements;
- (3) spill reporting forms;
- (4) discharge reporting forms;

- (5) inspection and maintenance records;
 - (6) annual inspection records;
 - (7) preventive maintenance records;
 - (8) records of manure or wastewater sold or transferred (if applicable);
 - (9) records of land application of solid manure (if applicable);
 - (10) records of land application of liquid manure (if applicable);
 - (11) records of land application of compost from mortalities (if applicable)
 - (12) mortality management records; and
 - (13) other site specific information requested by the Department.
- (d) The Plan shall identify an individual who is responsible for implementing, maintaining, and revising the PPP.
- (e) Equivalent measures contained in a site specific AWMP prepared by the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) may be substituted for the appropriate PPP requirements. An AWMP developed by USDA NRCS can be substituted for the documentation of land application rate calculations.
- (f) With Department approval, the owner shall amend the PPP prior to any change in design, construction, operation, or maintenance, which has significant effect on the potential for the discharge of pollutants to the surface or groundwaters of the State.
- (g) The owner shall implement appropriate changes to the Plan within ninety (90) calendar days of notification that the plan does not meet one or more specified minimum requirements unless otherwise provided by the Department. If notice of changes is not received by the Department within the prescribed ninety (90) calendar days, the application shall be denied.
- (h) In addition to the requirements of the Act, the PPP shall include:
- (1) A list of materials that are used, stored, or disposed of at the facility which may cause pollution. A contingency plan for releases of potential pollutants shall also be included. The PPP shall contain a log of any pollutant releases and clean up of those materials. Documentation of releases shall include any corrective action taken to prevent recurrence.
 - (2) Testing of groundwater, Nitrogen as Nitrate, total Phosphorous, and fecal coliform bacteria levels shall be performed by an Oklahoma Department of Environmental Quality certified independent testing laboratory at least annually. All testing shall establish a management record, with all costs paid by the owner.
 - (3) Soil tests from land application sites shall be performed by an Oklahoma Department of Environmental Quality certified testing laboratory or State operated laboratory at least annually. All testing shall establish a management record, with all costs paid by the owner.
 - (4) Sufficient testing of wastewater in waste storage facilities shall be required at least every three (3) years and performed by a qualified independent testing laboratory. Testing may be required more frequently at an individual

facility at the Department's request. Additional parameters may be required upon request of the Department.

(5) A description of management controls appropriate for the facility. The owner initiates these controls. The appropriateness and priorities of any controls shall reflect the identified sources of pollutants at the facility and conform to criteria established by the Act and the Department.

(A) The location and a description of existing surface water controls. Structural controls shall be inspected at least quarterly each year for structural integrity and maintenance. Dates of inspections of the retention structure and a log of the findings of the inspections shall be maintained at the site.

(B) Documentation of retention structure capacity shall be submitted to the Department and shall be based upon input parameters, the assumptions and actual calculations, showing volumes for all intermediate steps, used in determining the appropriate volume capacity. Retention structure capacity shall be based upon the following, at a minimum:

(i) The runoff volume from open lot surfaces.

(ii) The runoff volume from areas between open lot surfaces and the retention structure.

(iii) The rainfall multiplied by the area of the retention structure.

(iv) The volume of rainfall from any roofed area that is directed into the retention structure.

(v) All waste and process generated wastewater produced during a period of time not less than twenty-one (21) calendar days, including: volume of wet manure that enters a pond; plus volume of water used for manure or waste removal; plus volume of wash or cleanup water; plus other water, including drinking water that enters the retention structure. The minimum twenty-one (21) day storage capacity is an absolute minimum. The minimum storage capacity may be increased depending on the number of acres available for land application, crops and crop water demands, climate conditions, operations and management.

(vi) Volume of a 25-year, 24-hour rainfall event.

(vii) One (1) foot of freeboard below spillway or outlet.

(viii) A water budget analysis shall be performed on all liquid waste retention structures based on the average monthly or daily data from a rain gauge located near the facility; precipitation taken from a National Weather Service current publication of the previous fifteen (15) years of data, at a minimum.

(C) A description of the design standards for the retention facility embankments. The following minimum design standards are required for construction or modification of a retention structure embankment:

(i) Soils used in the embankment shall be free of foreign material, including trash, brush, and fallen trees.

- (ii) The embankment shall be constructed in lifts no more than six (6) inches thick after compaction and compacted to a minimum of 95% of the maximum dry density and 2% of optimum moisture content as determined by ASTM D 698 standard proctor test.
 - (iii) Each lift of the embankment of the retention structures shall be checked to ensure proper compaction and moisture content; all documentation to include:
 - (I) project name,
 - (II) date,
 - (III) test method used,
 - (IV) site name,
 - (V) technician name,
 - (VI) location of reading, including sketch, if necessary,
 - (VII) percent compaction,
 - (VIII) wet density, pcf,
 - (IX) dry density, pcf,
 - (X) moisture content,
 - (XI) lift number, and
 - (XII) soils lab name, report number and proctor test results used to obtain field measurements.
 - (iv) If retention structures are constructed with an emergency spillway, a minimum of one (1) foot of freeboard shall be maintained between the top of the 25-year, 24-hour storm volume and the bottom of the emergency spillway.
 - (v) An erosion control plan shall be developed and approved by the Department detailing how the owner immediately stabilizes the embankment walls to prevent erosion and deterioration. The plan shall include a preventive maintenance section. Each plan shall be approved on a case by case basis and may include the use of vegetative cover, geomembrane liners, sod, or other Department approved methods for controlling erosion.
 - (vi) A permanent measuring device shall be maintained in the wastewater retention structure to show the volume required to contain a 25-year, 24-hour rainfall event. The device shall be visible from the top of the levee and a separate mark shall be placed on the measuring device clearly identifying the 25-year, 24-hour rainfall event. Installation of the measuring device shall be performed in a manner to protect the integrity of liner at all times.
 - (vii) A rain gauge shall be kept on site and properly maintained. A log of all measurable precipitation events shall be kept with the PPP.
 - (viii) Documentation of method used to ensure liner of the waste retention structure is protected at or below the inlet.
- (6) The following records, in addition to those required by the Act, shall be maintained at the site for a minimum of three (3) years.
- (A) Weekly measure of water level in the retention facility;
 - (B) Quarterly inspection and maintenance reports;
 - (C) Other specific information required by the Department.
- (7) The following records, in addition to those required by the Act, shall be maintained at the site as long as the facility is in operation:
- (A) Documentation of no significant impact, if applicable.
 - (B) Copy of Notice of Intent (NOI) or Notice of Termination (NOT), if applicable.
 - (C) Other records as required by the Department.
- (8) Within twenty-four (24) hours of identifying a discharge, a licensee shall be required to report the discharge to the Department. The licensee shall be required to submit an additional, final report to the Department upon clean-up and receipt of discharge analysis.
- 35:17-4-11. Criteria for liners**
- (a) Soil liners shall be constructed to meet the following minimum requirements:
- (1) Constructed in lifts or layers no more than six (6) inches thick when compacted.
 - (A) Soils used in the liner shall be free of foreign material, including trash, brush, and fallen trees.
 - (B) All side slopes and the floor of the retention structures shall be checked after each lift to ensure proper compaction and moisture content. All readings shall be recorded and properly documented. Minimum information required for documentation shall include:
 - (i) Project name.
 - (ii) Date.
 - (iii) Test method used per ASTM specification.
 - (iv) Site name.
 - (v) Technician name.
 - (vi) Location of reading, include sketch.
 - (vii) Percent compaction
 - (viii) Wet density in pounds per cubic foot (pcf).
 - (ix) Dry density in pounds per cubic foot (pcf).
 - (x) Moisture content, percent.
 - (xi) Lift number.
 - (xii) Soils lab name, report number, and Proctor Test results used to obtain field measurements.
 - (2) Compaction to a minimum of ninety-five percent (95%) of Standard Proctor (ASTM D 698) at optimum or wetter moisture content.
 - (3) Hydraulic conductivities of no greater than 1×10^{-7} cm/sec. The field permeability of the liner shall be verified by using one of the following methods:
 - (A) If a sealed Double Ring Infiltrometer is used to determine the field permeability of the liner, at least one representative location on each corner and one location in the center of the waste retention structure bottom shall be selected for Double Ring Infiltrometer determination.

- (B) At least four (4) representative undisturbed core samples, one from each corner of the waste retention structure bottom shall be retrieved for permeability determination in the laboratory. The permeability shall be determined using a Flexible Wall Permeameter (ASTM D 5084).
- (4) Minimum thickness of one and one half (1.5) feet.
- (5) Maximum hydrostatic head of ten and one half (10.5) feet.
- (6) Hydrostatic head or water depth may be increased above ten and one half (10.5) feet in one of the following circumstances:
- (A) Liner thickness above the minimum shall be increased by an amount needed to maintain the allowable seepage rate, which shall not exceed eighty three one hundredths (0.83) feet per year pursuant to Darcy's Velocity.
- (B) Soils with permeabilities less than 1×10^{-7} cm/sec are used to maintain the allowable seepage rate, which shall not exceed eighty three one hundredths (0.83) feet per year pursuant to Darcy's Velocity. Soils which do not meet the maximum criteria of 1×10^{-7} cm/sec can be mixed with a sufficient amount of bentonite clay to achieve the desired standard.
- (C) Any combination of (A) or (B). In no case shall hydraulic conductivity be used to reduce the minimum thickness of one and one half (1.5) feet or shall thickness be used to increase the maximum hydraulic conductivity of 1×10^{-7} cm/sec.
- (b) The owner shall maintain the liner to inhibit infiltration of wastewaters. Liners shall be protected from burrowing and other animals by fences or other protective devices. Liners shall also be protected from the potential root zone of all trees.
- (c) Any mechanical or structural damage to the liner shall be evaluated by an environmental, agricultural, or other Department approved professional engineer registered in the state of Oklahoma within thirty (30) calendar days of the damage. Documentation of liner maintenance shall be kept with the Pollution Prevention Plan.
- ~~(d) USDA NRCS Agricultural Waste Management Field Handbook Chapter 10 Appendix D shall only be used when an NRCS Engineer designs the retention structures.~~
- ~~(e)~~ Flexible membrane or synthetic liners may be used in connection with a soil liner or as a substitute for a soil liner. Geosynthetic liners and flexible membrane liners shall be installed so as to protect waters of the State from contamination.
- (1) The subgrade soil shall be prepared according to the design standards. A subgrade verification form shall be submitted with liner documentation.
- (2) The surface to be lined shall be rolled and compacted and free of irregularities, undulations, protrusions, vegetation, excessive moisture, loose soil, or abrupt changes in slope.
- (3) The subgrade surface shall be free of foreign material including stones, cobbles, broken pieces of wood, plastic, or glass.
- (4) The owner shall provide a copy of a completed Surface Acceptance Form indicating acceptable locations.

In no case shall the installer deploy any geomembrane or flexible membrane liner in areas not acceptable within these rules.

- (5) If at any time during the installation the subgrade surface deteriorates or is damaged, or in any way deemed unacceptable by the regulatory authority, all work shall stop until proper repair is performed.
- (6) The anchor trench shall be constructed according to the standard industry practices. The trench shall be adequately drained to prevent ponding or softening of the side walls. After installation of the liner, the trench shall be back filled, compacted, and anchored according to the standards.
- (7) The liner placement plan shall take into consideration the site drainage, low lying areas, temperature, and prevailing wind velocity and direction. Field panels shall be deployed one at a time and seamed as soon as possible to minimize the risk of wind or water damage.
- (8) Field panel deployment shall not proceed at an ambient temperature below forty degrees (40°) F, unless Low Temperature Welding Procedures are used. All deployed panels should be amply ballasted or sand bagged at all times to avoid wind damage.
- (9) Personnel responsible for placement of the liner shall not smoke, wear damaging shoes, or engage in other activities which may cause damage to the liner. The method of deployment shall not cause scratches, crimps, or tear the liner or damage the subgrade. Adequate sand bags shall be placed on the edges of the liner to avoid wind uplifting.
- (10) The installer shall visually inspect the panels as soon as possible after deployment for damage or distressed surfaces.
- (11) A seam is considered a separate entity if it joins two panels. Repairs are not considered seams in this context. Seams shall be generally oriented parallel to the line of maximum slope, or along instead of across the slope. In corners and odd shaped geometric locations the number of seams should be minimized.
- (12) The Extrusion Process shall be used only for repairs and patching and shall not be used for the overall operation. The Fusion Process shall be used for seaming panels together using hot-wedge type or solid wedge type automated self-propelled apparatus equipped with temperature gauges.
- (13) The nondestructive seam continuity test shall be performed during daylight hours and certified by the owner.

35:17-4-13. Carcass disposal

- (a) Dead animals shall be disposed of in accordance with a carcass disposal plan developed by the owner and approved by the Department which shall decrease the possibility of the spread of disease, reduce odors, and preclude contamination of ground and surface waters of the state. Dead animals shall be disposed of properly and in an environmentally safe manner in accordance with Federal, State, and local requirements. At all times the facility shall comply with the provisions of ~~Section~~

~~1223 of Title 21 of the Oklahoma Statutes, in addition to compliance with the approved carcass disposal plan.~~

(b) The plan shall include provisions for the disposal of carcasses associated with normal mortality and shall include provisions for emergency disposal when a major disease outbreak or other emergency results in deaths significantly higher than normal mortality rates.

(c) Accepted methods of carcass disposal include the following:

(1) Rendering.

(A) The owner shall obtain a contract with a rendering service that insures disposal of all carcasses within a reasonable period of time. The name, address, and telephone number of the rendering service shall be provided. In addition, the frequency and schedule of carcass pickup shall be included.

(B) Storage facilities shall be sealed or have lids and maintained so as to prevent pests and odors.

(C) Sealed storage facilities shall not be required for animals weighing 300 pounds or more, but the prevention of pests and odors shall be addressed.

(2) Burial.

(A) Burial shall only be allowed as a method of carcass disposal if no reasonable alternative exists and the disposal plan contains specific measures and practices which are utilized to protect the ground and surface waters of the state.

(B) Prior approval by the Department is required of any carcass disposal plan listing burial as the method of disposal.

(3) Composting.

(A) Prior approval by the Department is required of any carcass disposal plan listing composting as the method of disposal.

(B) The Department may require another method of carcass disposal other than composting if the Department determines that a more feasible and effective method of carcass disposal exists.

(4) Incineration shall only be used as method of carcass disposal if the animal feeding operation has a valid air quality permit from the Oklahoma Department of Environmental Quality, Air Quality Division.

SUBCHAPTER 5. REGISTERED POULTRY FEEDING OPERATIONS

35:17-5-3. Registration, Nutrient Management Plan (NMP) required

(a) Registration.

(1) Every poultry feeding operation in operation on July 1, 1998 shall register by January 1, 1999. All registrations shall be received by the State Department of Agriculture prior to January 1, 1999. It shall be unlawful for any person to construct or operate a new poultry feeding operation without first registering with the State Board of Agriculture.

(2) Every poultry feeding operation shall be required to reregister annually by January 1 to operate.

(3) Any poultry feeding operation that has a valid license pursuant to the Oklahoma Concentrated Animal Feeding Operations Act shall not be required to register pursuant to the Oklahoma Registered Poultry Feeding Operations Act.

(4) The owner or operator of a poultry feeding operation not classified as a poultry feeding operation may register if the owner elects to come under the provisions of the Oklahoma Registered Poultry Feeding Operations Act and the rules of the State Board of Agriculture.

~~(5) It shall be unlawful for any person to construct or operate a new poultry feeding operation without first registering with the State Board of Agriculture.~~

(b) Nutrient Management Plan.

(1) Every poultry feeding operation shall obtain or apply for an approved NMP addressing both nitrogen and phosphorus.

(2) All new operators of poultry feeding operations shall obtain or apply for ~~an~~ NMP prior to construction of the facility.

(3) The NMP shall be prepared by USDA NRCS or an entity approved by the StateOklahoma Department of Agriculture, Food, and Forestry.

(4) Plans shall be reviewed and updated at least every six (6) years from the date the NMP was obtained. Plans ~~shall~~may also be reviewed and updated in the following circumstances:

(A) When a change in the waste utilization standards occurs and upon notification by the StateOklahoma Department of Agriculture, Food, and Forestry; and

(B) Upon recommendation of the StateOklahoma Department of Agriculture, Food, and Forestry.

(5) Plans shall be updated prior to the expansion of a facility.

(6) Implementation of the NMP shall occur within ninety (90) days of receipt of the NMP unless otherwise determined by the StateOklahoma Department of Agriculture, Food, and Forestry. In no event shall the poultry feeding operation land apply poultry waste in excess of the current USDA NRCS ~~Waste Utilization Standards~~ 590 Standard, unless the StateOklahoma Department of Agriculture, Food, and Forestry approves other standards.

~~(7) Registered poultry feeding operations may voluntarily submit to the Oklahoma Department of Agriculture, Food, and Forestry an annual assessment of one hundred dollars (\$100.00) for the purpose of securing the ODAFF service of drafting NMP for their registered poultry feeding operation(s). ODAFF shall revise plans for poultry operations that pay the voluntary assessment every six years and/or when the poultry operation adds or subtracts poultry litter land application fields or when their carcass disposal method changes. ODAFF will assign a priority of drafting new or revised NMP to operations that pay ODAFF the annual voluntary assessment over operations~~

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~~that do not pay the voluntary assessment. ODAFF may assign additional priority to operations based on the receipt date of the voluntary annual assessments.~~

35:17-5-3.2. Cancellation of poultry feeding operation registration

(a) A request to cancel registration of a poultry feeding operation shall be in writing and include a final annual report for the current fiscal year.

(b) Poultry waste shall be properly removed from all poultry waste management systems prior to request for cancellation of a poultry feeding operation registration.

35:17-5-4. Soil and litter tests required

(a) All soil and poultry waste analysis data shall be dated prior to land application.

(b) Poultry waste shall be applied only by a certified poultry waste applicator.

35:17-5-5. Nutrient Management Plan

(a) The NMP shall contain, at a minimum, the following:

(1) A description of poultry waste handling procedures and availability of equipment and type of equipment to be used.

(2) The calculations and assumptions used for determining land application rates.

(3) All nutrient analysis data, including soil and poultry waste testing.

(4) Legal description of lands to be used by an operation for land application.

(5) Soils map with description and type or series.

(6) Land application rates of poultry waste shall be based on the available nitrogen and phosphorus content of the poultry waste and soil test results.

(7) The procedures documented in the NMP shall ensure that the handling and utilization of poultry waste complies with the following requirements:

(A) Adequate poultry waste storage shall be provided. Poultry waste shall not be stored without adequate protection from rainfall and runoff. All new poultry feeding operations shall make provisions for storage of poultry waste prior to operating. Exceptions to storage requirements for poultry waste in emergency situations shall be granted on a case by case basis. Exceptions shall include but not be limited to allowing a contract poultry grower to take such actions as are necessary to meet requirements imposed on a grower by an integrator. However, in all situations growers shall be required to take all actions feasible to prevent pollution from stored poultry waste.

(B) Poultry waste shall not be applied to land when the ground is saturated or during rainfall events. Poultry waste shall not be applied to land when the ground is frozen or snow covered except in conformance with the NMP.

(C) Poultry waste shall only be applied to suitable land at appropriate times and rates as specified by the NMP. Runoff of poultry waste from the application site is prohibited.

(D) All practices necessary to minimize movement of poultry waste to watercourses shall be utilized and documented in the NMP.

(E) Edge of field, grassed strips shall separate water courses from runoff which may be carrying eroded soil and poultry waste.

(F) Poultry waste application shall be prohibited on land subject to excessive erosion.

(G) Land application rates of poultry waste shall provide controls for runoff as appropriate for site conditions.

(H) Poultry waste shall be applied only by a certified poultry waste applicator.

(b) The NMP shall also include a method for the disposal of carcasses. The NMP shall include provisions for disposal of carcasses associated with normal mortality and shall include provisions for emergency disposal when a major disease outbreak or other emergency results in deaths significantly higher than normal mortality rates. Accepted methods of carcass disposal include:

(1) Rendering

(A) Disposal of all carcasses shall occur within a reasonable period of time as approved by the State Department of Agriculture.

(B) Storage facilities shall be sealed or have lids and maintained so as to prevent pests and odors.

(2) Burial shall only be allowed as a method of carcass disposal if no reasonable alternative exists and specific measures and practices are identified which will be utilized to protect the ground and surface waters of the State.

(3) Composting by methods as approved in the NMP.

(4) Incineration shall only be used as a method of carcass disposal if the poultry feeding operation has a valid air quality permit from the Oklahoma Department of Environmental Quality, Air Quality Division, if required.

(c) Storage and land application of poultry waste shall not cause a discharge or runoff of significant pollutants to waters of the State or cause a water quality violation to waters of the State.

(d) The operator shall notify the State Department of Agriculture within twenty-four (24) hours of a discharge.

SUBCHAPTER 9. AGRICULTURAL COMPOST FACILITIES

35:17-9-1. Purpose and applicability

(a) This subchapter applies to any person who owns or operates any compost facility using source materials within the Department's areas of environmental jurisdiction pursuant to 2 O.S. § 2-4(A)(16).

(b) These rules shall not apply to any compost facility located:

- (1) Located on a facility permitted or licensed as a concentrated animal feeding operation or a registered poultry feeding operation ~~so long as~~ if any portion of the source materials is from the concentrated animal feeding operation or registered poultry feeding operation, ~~not to any compost facility permitted.~~
- (2) Permitted or required to be permitted by the Oklahoma Department of Environmental Quality ~~or~~
- (3) Producing compost volume of fewer than two hundred (200) cubic yards annually if production does not create a public nuisance or impair local water quality standards.

35:17-9-3. Permit provisions and application

- (a) Prior to operation, any person using any source materials within the Department's jurisdictional areas of environmental responsibility to produce compost shall obtain a permit to operate the facility from the Department, ~~unless the person is producing compost solely for personal use and not for commercial purposes.~~
- (b) The permit shall be renewed every five (5) years on October 1.
- (c) The application for a compost facility shall contain, as a minimum, the following information:
 - (1) Name, address, and telephone number of the owner;
 - (2) Name, address, and county of the facility, including specific driving directions from the nearest municipality, and legal description of the facility to the nearest ten (10) acres;
 - (3) Name, address, and telephone number of the operator, if other than the owner;
 - (4) Narrative describing the proposed compost facility.
 - (5) A composting plan that shall include but not be limited to the following:
 - (A) Source materials proposed for use and the estimated amount of compost produced per month or per year;
 - (B) Proposed type of composting process or processes to be used at the facility, including windrow, static pile, or in vessel composting method;
 - (C) Characterization of the physical and environmental setup of the facility, including but not limited to the following:
 - (i) Description of topography using a current 7.5 minutes topographic map highlighting the location of waters of the state within three (3) miles of the facility, an outline of the watershed drainage area with arrows indicating general direction of surface water drainage from the facility;
 - (ii) Soil map showing soil types at the facility; and
 - (iii) 100-year flood plain map.
 - (D) Laboratory test reports showing the amount of nitrogen as nitrate and total phosphorus contained in waters of the state at the facility, including but not limited to groundwater from all existing wells and surface impoundments located on the site.
 - (E) Design drawings and specifications for:

- (i) receiving, processing, storage, disposal, or reuse areas;
- (ii) leachate collection systems;
- (iii) storage, treatment, and disposal of leachate;
- (iv) storm water drainage;
- (v) protection of groundwater from leachate;
- (vi) any other design drawings and specifications necessary to describe the proposed operations of the facility.
- (F) Proposed operational parameters.
- (G) Site layout and construction.
- (H) Best management practices used at the site for erosion control, water pollution control, odor control, storage of the source materials, storage of the finished compost, and aesthetic enhancement.
- (I) A notarized sworn statement signed by the owner accepting full responsibility for properly closing the facility upon termination of operation at the facility.
- (J) A notarized certification signed by the person applying for the permit, stating: "I certify under penalty of law this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for knowingly submitting false, inaccurate, or incomplete information, including the possibility of fines for each violation."
- (K) Supporting documentation regarding composting method used, including compost mix design, selection of C:N ratio, determining bulking agent need, aeration method, and moisture content and temperature to be maintained.
- (L) All other documentation deemed necessary and requested by the Department to assure the quality of waters of the state is not compromised, and any other information required by the Department directly related to the construction, installation and operation of the facility.
- (d) The application for a new facility or a renewal shall be accompanied by an application fee of Two Hundred Dollars (\$200.00).
- (e) The operator of a facility shall notify the Department in writing that the facility is no longer in operation within thirty (30) days of the cessation of operation.
- (f) The Department shall require closure of any facility under the following circumstances:
 - (1) The operator of the facility notifies the Department that the facility is no longer in operation.
 - (2) The facility has not accepted source material nor produced compost for a period of six (6) months.

(3) The facility is ordered to close by the Board due to failure to operate in compliance with any provision of the Agriculture Code or rules of the Board.

[OAR Docket #20-553; filed 7-7-20]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 18. CARCASS DISPOSAL

[OAR Docket #20-554]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

35:18-1-1. Purpose [NEW]
35:18-1-2. Definitions [NEW]
35:18-1-3. Unlawful Acts [NEW]
35:18-1-4. Methods of Disposal [NEW]
35:18-1-5. Variances [NEW]

AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2); 2 O.S. § 2A-1 et seq., 2 O.S. § 10-2 et seq., 2 O.S. § 20-1 et seq., 2 O.S. § 20-40 et seq., and 21 O.S. § 1223, as amended by SB 546 (effective November 2, 2019).

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Approved by Governor's declaration on June 25, 2020.

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June 25, 2020

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rule amendments are for regulating the disposal of all domestic animal carcasses in Oklahoma pursuant to the provisions of Section 1223 of Title 21 of the Oklahoma Statutes, as amended by SB 546, which became effective November 1, 2019.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

35:18-1-1. Purpose

(a) These rules are for regulating the disposal of all domestic animal carcasses in Oklahoma pursuant to the provisions of Section 1223 of Title 21 of the Oklahoma Statutes.

(b) The owner of any domestic animal shall be required to dispose of its carcass within twenty-four (24) hours after notice or knowledge of the animal's death.

(c) These rules shall supercede any other rules related to carcass disposal in Title 35 of the Oklahoma Administrative Code, except for those related to licensed managed feeding operations pursuant to 35:17-3-17. These rules shall not apply to wildlife, but may be used as guidance in disposal of wildlife animal carcasses.

35:18-1-2. Definitions

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

"Burial" means a process by which an animal carcass is disposed of by placement within an excavation into the soil or upon the soil surface where it is then covered by soil material.

"Composting" means the natural biological degradation of plant and animal matter in a controlled, well-aerated system.

"Domestic animal" means any cattle, bison, horses, sheep, goats, asses, mules, swine, domesticated rabbits, chickens, turkeys, other domesticated fowl, and any animal or bird in captivity.

"Incineration" means the controlled and monitored combustion of animal carcasses for the purposes of volume reduction and pathogen control and the final product is reduced to ashes.

"Landfill" means a solid waste disposal site permitted or approved by the Oklahoma Department of Environmental Quality.

"NRCS" means Natural Resources Conservation Service, an agency in the United States Department of Agriculture.

"Owner" means any person who has possession of a domestic animal by ownership, rent, hire, loan, or otherwise. This definition includes, but is not limited to, an owner or caretaker of an animal and any person who owns or is in control of land on which an animal carcass is found.

"Rendering" means the process or business of recycling animal carcasses and animal by products.

35:18-1-3. Unlawful acts

It shall be unlawful for the owner of any domestic animal to leave or deposit, or cause to be left or deposited, the carcass of any domestic animal in any well, spring, pond, or stream of water; or leave or deposit the carcass within one-fourth (1/4) mile of any occupied dwelling or of any public highway, without burying or disposing of the carcass pursuant to the provisions of this Chapter.

35:18-1-4. Methods of disposal

A domestic animal carcass may be stored in a freezer until such time as the owner is able to dispose of the carcass in one of the following methods:

(1) Burial shall be used to dispose of a domestic animal carcass if the soil and site conditions are suitable and if no other reasonable alternative exists.

(A) Specific measures and practices shall be utilized to protect the ground and surface waters of the state. The local NRCS office may be available with initial evaluation or an owner may use the NRCS web soil survey tool to perform a desktop site evaluation, but actual site conditions shall be the determining factor when evaluating a site's suitability for burial of a domestic animal carcass.

(B) Requirements for burial of a domestic animal carcass are as follows:

(i) Burial of a domestic animal carcass requires the construction of a pit or trench.

(ii) A burial pit or trench shall not be located closer than one (1) foot vertically above the flood plain or within two (2) feet of the water table or bedrock.

(iii) A burial pit or trench shall not be located within three hundred (300) feet of a well, waters of the state, neighboring residences, public areas, or property lines.

(iv) A burial pit or trench shall not be located along any stream or ravine where a domestic animal carcass may become exposed through erosion of the soil, or where the land is at any time subject to overflow.

(v) After placing a domestic animal carcass in a pit or trench, the carcass shall be covered with a minimum of two and one-half ($2\frac{1}{2}$) feet of soil.

(vi) A burial pit or trench shall be mounded so water does not pond on the mounded area.

(vii) A burial pit or trench shall be routinely inspected to add additional soil, if necessary, and to ensure that animals are not scavenging, digging, or dragging away a domestic animal carcass.

(viii) Surface rainwater shall be directed to flow away or around the burial pit or trench.

(2) General requirements for composting of a domestic animal carcass are as follows:

(A) The composting process shall be managed at all times to be practically odorless, prevent fly larvae development, prevent animal depredation and prevent leaching of waste material which may cause water or soil contamination.

(B) A domestic animal carcass shall be reduced to brittle, easily broken bone after composting.

(C) A minimal peak temperature of 130 degrees Fahrenheit shall be achieved during the composting process to produce pathogen free compost.

(3) A domestic animal carcass shall be disposed of in a self-contained, closed incinerator. An air quality permit from the Oklahoma Department of Environmental Quality may be required.

(4) A domestic animal carcass shall be disposed of in a landfill approved to dispose of animal carcasses by the Oklahoma Department of Environmental Quality.

(5) A domestic animal carcass shall be disposed of by delivering to a rendering facility within twenty-four (24) hours of death, unless the carcass has been refrigerated or frozen.

35:18-1-5. Variances

Variances from these rules shall only be granted by the Department on a case by case basis. The granting of a variance shall not act as a precedent for any other case, whether similar or not. In each case where a variance is granted, the decision shall be thoroughly documented.

[OAR Docket #20-554; filed 7-7-20]

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

[OAR Docket #20-555]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 13. Imported Fire Ant Quarantine
35:30-13-3. Regulated area [AMENDED]
Subchapter 17. Combined Pesticide
Part 6. Pesticidal Product Producing Establishments
35:30-17-13. Incorporation by reference of federal pesticide producing establishment regulations [AMENDED]
Part 15. Minimum Standards for Termite Work for Existing Structures
35:30-17-69.1. Perimeter termite treatments [AMENDED]
35:30-17-69.2. Exceptions to minimum standards [AMENDED]
Part 21. Standards for Disposal of Pesticide and Pesticide Containers
35:30-17-89.1. Incorporation by reference of federal pesticide management and disposal regulations [AMENDED]
Part 22. Wood Infestation Reports
35:30-17-107. Forms [AMENDED]
Subchapter 25. Seed
35:30-25.2. Labeling requirements [AMENDED]
Subchapter 29. Fertilizer
Part 3. Liquid, Dry, and Anhydrous Ammonia
35:30-29-38. Anhydrous ammonia requirements [AMENDED]
Subchapter 37. Nursery Stock Sales
35:30-37-12. Schedule of horticulture program fees [AMENDED]

AUTHORITY:

Okla. Const., Art. 6, § 31; 2 O.S. § 2-4(A)(2); State Board of Agriculture; 2 O.S. § 3-81 et seq.; 2 O.S. § 8-1 et seq.; and 2 O.S. § 8-41.1 et seq.

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n/a

Permanent Final Adoptions

INCORPORATIONS BY REFERENCE:

Incorporated Standards:

40 CFR Parts 156.140, 165, 167, and 169 et seq. (2019 Revision) unless otherwise specified.

Incorporating Rules:

35:30-17-13

35:30-17-89.1

Availability:

See contact person below.

GIST/ANALYSIS:

The proposed rule amendments modify fire ant quarantine areas; update citations to the Code of Federal Regulations; clarify termite treatment standards; reduce requirements for wood infestation reports; add seed labeling requirements; add minimum safety requirements for valves on anhydrous ammonia nurse tanks; update language; and modify entities to be charged for grower's license.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 13. IMPORTED FIRE ANT QUARANTINE

35:30-13-3. Regulated area

Imported Fire Ant regulated areas are the Oklahoma counties of:

- (1) Bryan Jefferson, and McCurtain (~~4-15-86~~)(1986);
- (2) Marshall (Additional Infested Area ~~2-5-87~~1987);
- (3) Carter, Choctaw, Comanche, Johnston, and Love; ~~and~~
- (4) LeFlore, Pushmataha, Atoka, Coal, Pontotoc, Garvin, Murray, Stephens, Jefferson, Cotton, Tillman, and Jackson;
- (5) Latimer (~~6-9-17~~)(2017); and
- (6) Pittsburgh (2020).

SUBCHAPTER 17. COMBINED PESTICIDE

PART 6. PESTICIDAL PRODUCT PRODUCING ESTABLISHMENTS

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

(a) The Registration of Pesticide and Active Ingredient Producing Establishments, Submission of Pesticide Reports and Books and Records of Pesticide Production and Distribution Regulations found in Title 40 of the Code of Federal Regulations (CFR) (~~2017~~2019 Revision), Part 167 et seq. and Part 169 et seq. for the United States Environmental Protection Agency (EPA) as promulgated and amended in the Federal

Register, are hereby adopted in their entirety with the exception of 40 CFR § 167.90.

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

PART 15. MINIMUM STANDARDS FOR TERMITE WORK FOR EXISTING STRUCTURES

35:30-17-69.1. Perimeter termite treatments

(a) These minimum standards are intended to address perimeter termite treatments with termiticides which allow perimeter treatments.

(b) Perimeter treatments can not be performed using any pesticide which does not allow this type treatment as stated on the product label.

(1) Perimeter Termite Treatments shall be considered a complete structural treatment unless limited by the label.

(2) The exterior open ground area along the foundation wall shall be trenched or trenched and rodded through the bottom of the trench to the bottom of the footing at no more than twelve inch (12") intervals. The trench shall be a minimum of six inches (6") in depth and six inches (6") wide. The trench shall be backfilled and the backfill treated at label rate. If physical obstructions prevent trenching then rodding can be performed at twelve inch (12") intervals.

(3) All concrete slabs adjoining the structure shall be drilled and treated at no more than twelve inch (12") intervals.

(4) With an accessible crawl space, all piers, pipes and interior support walls shall be trenched or trenched and rodded through the bottom of the trench to the bottom of the footing at no more than twelve inch (12") intervals. The trench shall be a minimum of six inches (6") in depth and six inches (6") wide.

(5) If termites are found in an inaccessible crawl space the soil shall be treated in accordance with label directions.

(6) Treatment of a garage shall be performed around all garage door supports and along any wall or portion of wall that has not been treated in accordance with this section. The drilling shall be at twelve inch (12") intervals.

(7) Basements shall be trenched or trenched and rodded through the bottom of the trench to a depth of at least four feet (4'). The trench shall be a minimum of six inches (6") in depth and six inches (6") wide.

(8) The contract shall specifically identify the exact location where a spot treatment is performed and the treatment shall meet all minimum standards for the specific location identified. The spot treatment shall be at least three feet (3') in two (2) or more directions ~~unless label requires a distance greater than three feet (3').~~

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

(a) Exceptions to minimum standards for a complete treatment shall include the following:

- (1) The property owner agrees with the written explanation in the contract as to why the standard was not performed. Sections 35:30-17-66 and 35:30-17-69 shall in no case be written out of the contract; and
 - (2) The termiticide label specifically allows for a variation and the variation is stated in the contract.
- (b) Exceptions to minimum standards for a spot or partial treatment shall include the following:
- (1) The property owner agrees with the written explanation in the contract as to why the standard is not performed, or the termiticide label specifically allows for a variation and the variation is stated in the contract. Sections 35:30-17-66 and 35:30-17-69 shall in no case be written out of the contract.
 - (2) The contract shall include the statement, "This is a SPOT/PARTIAL treatment," or otherwise clearly convey that the treatment is not a complete termite treatment.
 - (3) The contract shall specifically identify the exact location where the spot treatment is performed and the treatment shall meet all minimum standards for the specific location identified. The identified spot treatment location shall be at least three feet (3') in two (2) or more directions but the identified spot treatment location shall not be equal to the entire structure.
 - (4) The contract shall not contain any misrepresentations or false claims regarding the effectiveness of a spot or partial treatment.
- (c) The Board of Agriculture may grant an exception to existing rules or minimum standards if:
- (1) The registered pesticide allows for the use or application method that is currently prohibited under rule or minimum standards; and
 - (2) The manufacturer provides verifiable research data to the Board concerning the efficacy of the chemical or methodology.

PART 21. STANDARDS FOR DISPOSAL OF PESTICIDE AND PESTICIDE CONTAINERS

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

- (a) The Labeling Requirements for Pesticides and Devices, Container Labeling and Pesticide Management and Disposal regulations found in Title 40 of the Code of Federal Regulations (CFR) (2017/2019 Revision), Part 156.140 et seq. and Part 165 et seq. for the United States Environmental Protection Agency (EPA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety.
- (b) All words or terms defined or used in the federal regulations incorporated by reference shall mean the state equivalent or counterpart to those words or terms.

PART 22. WOOD INFESTATION REPORTS

35:30-17-107. Forms

- (a) Form ODAFF-1 [Oklahoma Official Termite and Wood Destroying Insect Report] ~~and Form ODAFF-2 (Official Termite and Wood Destroying Insect Report Follow up)~~ shall be the official and required ~~forms~~ form for WIRs and ~~are~~ is available for inspection or ~~copies~~ copy at the offices of the Plant Industry and Consumer Services Division, Oklahoma Department of Agriculture, Food, and Forestry.
- (b) The official ~~forms~~ form may be preprinted by a business, however no alterations or additions to the form shall occur, other than the following:
 - (1) Name of the business.
 - (2) Business structural pest control license number.
 - (3) Business address and telephone number.
- (c) Additional documents or addenda shall be listed and attached to the WIR.
- (d) Each official form including more than one page, whether printed on the front and back or on separate pages, shall include the total number of pages in the WIR and the page number of each individual page, i.e. "Page One of Three."

SUBCHAPTER 25. SEED

35:30-25-2. Labeling requirements

- (a) **Agricultural Seed.** Labeling requirements for agricultural seed are as follows:
 - (1) The word "trace" or other nonspecific word is prohibited from the label in expressing any required labeling point.
 - (2) Noxious weeds shall be expressed on the label in "Name and Number Per Pound", subject to the limitations in Section 35:30-24-4. The name and number per gram or per ounce cannot be used in expressing noxious weeds. The words "None in Excess" or similar phrases are prohibited in the labeling of noxious weeds.
 - (3) Unacceptable abbreviations in labeling seed are not permissible.
 - (4) The percent of germination, hard or firm seed, shall be expressed in whole figures.
 - (5) Noncertified seed labeled a variety which has been restricted for sale to certified class only by the Federal Seed Act and U.S. Plant Variety Protection Act shall be considered falsely labeled.
 - (6) The name of the laboratory testing the seed is not required on the label. Phrases such as "State Tested" or "Tested by Oklahoma Seed Laboratory" are not permitted on the label.
 - (7) Variety labeling requirements are as follows:
 - (A) The following kinds of agricultural seeds are generally labeled as to variety and shall be labeled to show the variety name or the words "variety not stated":
 - (i) Alfalfa
 - (ii) Bahiagrass
 - (iii) Barley
 - (iv) Bean, field
 - (v) Beet, field

- (vi) Brome, smooth
- (vii) Broomcorn
- (viii) Clover, crimson
- (ix) Clover, red
- (x) Clover, white
- (xi) Corn, field
- (xii) Corn, pop
- (xiii) Cotton
- (xiv) Cowpea
- (xv) Fescue, tall
- (xvi) Flax
- (xvii) Lespedeza, striate
- (xviii) Millet, foxtail
- (xix) Millet, pearl
- (xx) Oat
- (xxi) Pea, field
- (xxii) Peanut
- (xxiii) Rice
- (xxiv) Rye
- (xxv) Safflower
- (xxvi) Sorghum
- (xxvii) Sorghum-sudangrass, hybrid
- (xxviii) Soybean
- (xxix) Sudangrass
- (xxx) Sunflower
- (xxxi) Tobacco
- (xxxii) Trefoil, birdsfoot
- (xxxiii) Wheat, common
- (xxxiv) Wheat, durum

(B) If the name of the variety is given, the name may be associated with the name of the kind with or without the words "kind and variety". The percentages in this case, which may be shown as "pure seed", shall apply only to seed of the variety named. If separate percentages for the kind and variety are shown, the name of the kind and the name of the variety shall be clearly associated with the respective percentages. When two or more varieties are present in excess of 5 percent and are named on the label, the name of each variety shall be accompanied by the percentage of each.

(8) When type is designated, the designation may be associated with the name of the kind but shall in all cases be clearly associated with the word "type". The percentage, which may be shown as "pure seed", shall apply only to the type designated. If separate percentages for the kind and the type are shown, the percentages shall be clearly associated with the name of the kind and the name of the type.

(A) If the type designation does not include a variety name, it shall include a name descriptive of a group of varieties of similar character; and the pure seed shall be at least 90 percent of one or more varieties all of which conform to the type designation.

(B) If the name of a variety is used as a part of the type designation, the seed shall be of that variety and may contain an admixture of seed of other indistinguishable varieties of the same kind and of similar

character; or an admixture of indistinguishable seeds having genetic characteristics dissimilar to the variety name by reason of cross-fertilization with other varieties. In either case, at least 90 percent of the pure seed shall be of the variety named or upon growth shall produce plants having characteristics similar to the variety named. No one kind or variety of seed shall be labeled as hybrid if the pure seed contains less than 90 percent hybrid seed.

(9) No one kind or variety of seed shall be labeled as hybrid if the pure seed contains less than (90) percent hybrid seed.

(10) Agricultural seeds other than those included in the percentage or percentages of kind, hybrid, variety, or type may be expressed as "other crop seeds" or "other crop", but the percentage shall include collectively all kinds, hybrids, varieties, or types not named upon the label.

(b) **Vegetable Seed.** For vegetable seeds which contain other crop, weed seed, or noxious weed seed, labeling shall be attached showing:

- (1) Percent of pure seed
- (2) Percent of inert matter
- (3) Percent of other crop
- (4) Percent of weed seed

(c) **Standard of germination.** The standard of germination for vegetable seed, including hard seed, is as follows:

- (1) Artichoke - 60%
- (2) Asparagus - 70%
- (3) Asparagus bean - 75%
- (4) Bean, garden - 70%
- (5) Bean, lima - 70%
- (6) Bean, runner - 75%
- (7) Beet - 65%
- (8) Broadbean - 75%
- (9) Broccoli - 75%
- (10) Brussels sprouts - 70%
- (11) Burdock, great - 60%
- (12) Cabbage - 75%
- (13) Cabbage, tronchuda - 75%
- (14) Cantaloupe (see Muskmelon)
- (15) Cardoon - 60%
- (16) Carrot - 55%
- (17) Cauliflower - 75%
- (18) Celeriac - 55%
- (19) Celery - 55%
- (20) Chard, Swiss - 65%
- (21) Chicory - 65%
- (22) Chinese cabbage - 75%
- (23) Chives - 50%
- (24) Citron - 65%
- (25) Collards - 80%
- (26) Corn, sweet - 75%
- (27) Cornsalad - 70%
- (28) Cowpea - 75%
- (29) Cress, garden - 75%
- (30) Cress, upland - 60%
- (31) Cress, water - 40%
- (32) Cucumber - 80%

- (33) Dandelion - 60%
- (34) Eggplant - 60%
- (35) Endive - 70%
- (36) Kale - 75%
- (37) Kale, Chinese - 75%
- (38) Kohlrabi - 75%
- (39) Leek - 60%
- (40) Lettuce - 80%
- (41) Muskmelon - 75%
- (42) Mustard, India - 75%
- (43) Mustard, Spinach - 75%
- (44) Okra - 50%
- (45) Onion - 70%
- (46) Onion, Welsh - 70%
- (47) Pak-Choi - 75%
- (48) Parsley - 60%
- (49) Parsnip - 60%
- (50) Pea - 80%
- (51) Pepper - 55%
- (52) Pumpkin - 75%
- (53) Radish - 75%
- (54) Rhubarb - 60%
- (55) Rutabaga - 75%
- (56) Salsify - 75%
- (57) Sorrel - 65%
- (58) Soybean - 75%
- (59) Spinach - 60%
- (60) Spinach, New Zealand - 40%
- (61) Squash - 75%
- (62) Tomato - 75%
- (63) Tomato, husk - 50%
- (64) Turnip - 80%
- (65) Watermelon - 70%

(d) Marijuana seed. Labeling requirements for marijuana seed are as follows:

- (1) Company/grower's name
- (2) Company/grower's OMMA license number, if licensed
- (3) Company/grower's seed license number
- (4) Seed name (marijuana)
- (5) Strain name (if unknown, labeled as unknown)
- (6) Origin
- (7) Lot number (number or name identifier)
- (8) Harvest date (date of seed's actual harvest)
- (9) Net weight (g/oz.) or number of seeds

SUBCHAPTER 29. FERTILIZER

PART 3. LIQUID, DRY, AND ANHYDROUS AMMONIA

35:30-29-38. Anhydrous ammonia requirements

(a) General safety requirements.

- (1) Each tank used with a system shall be constructed and tested in accordance with parts UG-1 through UG-36, inclusive, entitled "General Requirements for All Methods

of Construction and All materials" and parts UF-1 through UF-136 entitled "Requirements for Pressure Vessels Fabricated by Forging" as published in Section VIII, Division I of the ASME Boiler and Pressure Vessel Code, July 1, 1983 edition amendments, supplements, or successors.

(2) No person shall fill a storage or nurse tank with anhydrous ammonia unless the tank bears a manufacturer's nameplate showing that it is a code container.

(3) The copy of the report form from each inspection and re-qualification, together with tank repair and mill test reports, if any, shall be maintained for the entire service life of the tank. The reports shall be forwarded with the tank when relocated.

(4) For protection to the public and safety for individuals, the storage of nurse tanks shall conform to the same subsection as permanent storage installations in order to prevent tampering by individuals, which may cause injury to human health.

(5) Anhydrous ammonia tanks of three thousand (3,000) gallon water capacity or less shall not be used for any other commodity except anhydrous ammonia.

(6) Tank trucks, semi-trailers, nurse tanks, and trailers transporting anhydrous ammonia shall not be left unattended on public thoroughfares or in densely populated areas.

(7) If the ammonia hose is marked with:

(A) the year of manufacture and made from the following materials, it shall be replaced per the indicated service life with not more than one (1) year shelf life added:

- (i) Rayon - 2 years
- (ii) Nylon - 4 years
- (iii) Stainless Steel - 6 years

(B) a manufacturer's removal date, it shall be replaced prior to that date (i.e., the manufacturer removal date is ~~2005~~2020, the hose shall be removed prior to January 1, ~~2005~~2020).

(8) All anhydrous ammonia high pressure transfer hoses shall be clearly marked at least once every five (5) feet with the manufacturer's name or trademark, the words Anhydrous Ammonia, the maximum working pressure in PSIG, and the year of manufacture or manufacture removal date. Bulk hoses shall not be used. All hose ends shall be connected by the manufacturer.

(9) Any accident or release, involving anhydrous ammonia, shall be reported (telephone or fax) to the Oklahoma Department of Agriculture as soon as possible, no later than twenty-four (24) hours following the incident, so that an investigation may be made before the area is disturbed.

(A) An accident includes nurse tanks that have been in a wreck, overturned tanks, vandalism (without a release), storage tank being damaged, or "ANY" personal injuries.

(B) A release includes valve malfunctions, ruptured hoses, or any time anhydrous ammonia is released into the air with the exception of safety relief (pop off and hydrostatic) valves.

(10) Converted railroad tank cars shall not be used for the storage of anhydrous ammonia unless they have been retested and meet the requirements of this subsection.

(11) All storage installations shall have on hand, as a minimum, the following equipment in a readily accessible location for emergency and rescue purposes:

(A) One full face gas mask with one industrial size ammonia canister with current date and at least one spare ammonia canister in a readily accessible location. A positive pressure self-contained breathing apparatus shall be used in ammonia contaminated atmospheres that are immediately dangerous to life or health. Gas masks and self-contained breathing apparatus shall be approved by NIOSH/MSHA under provisions of 30 CFR Part II. Procedures and training shall be in accordance with 29 CFT Part 1910 and documented.

(B) One pair of approved protective gloves made of material impervious to anhydrous ammonia.

(C) One pair of protective boots made of material impervious to anhydrous ammonia.

(D) One protective slicker and/or protective pants and jacket made of material impervious to anhydrous ammonia.

(E) Approved flexible fitting, hooded ventilation goggles and one full face shield.

(12) Each employee shall be provided with a pair of approved gloves and a pair of approved flexible fitting, hooded ventilation goggles and, as an option, a full face shield worn over the goggles, which shall be worn when making, breaking, or testing, any ammonia connection, transferring ammonia, or performing maintenance on an ammonia system under pressure.

(13) Each vehicle transporting anhydrous ammonia shall carry a container of at least five gallons of water and shall be equipped with one pair approved protective gloves; a full face gas mask; a pair of approved flexible fitting hooded ventilation goggles, and as an option, one full face shield to be worn over the goggles. The driver shall be instructed in their use and the proper action to take to provide for their safety.

(14) If a leak occurs in transportation equipment and it is not practical to stop the leak, the driver should move the vehicle to an isolated location downwind from populated communities or heavily traveled highways.

(15) Wheel chocks for nurse tanks and railcars shall be available and shall be used when loading or unloading.

(16) It is a violation for any person to transfer or deliver any anhydrous ammonia into a storage or nurse tank having defects which are plainly apparent.

(17) No container pressure relief device shall be used after the replacement date as specified by the manufacturer.

(18) An attendant is required to transfer anhydrous ammonia and shall be trained in safe operating practices, use of equipment, safety devices, and the proper action to take in the event of emergencies.

(19) Additional safety guidelines found in the American National Standards Institute, Inc., Safety Requirements for

Storage and Handling of Anhydrous Ammonia may be applied at the Board's discretion.

(b) **Minimum safety requirements for anhydrous ammonia storage tanks.** Minimum safety requirements for storage tank facility operations are as follows:

(1) A sign shall be on display at each location in a conspicuous place stating the name, address, and phone number of the nearest representative, agent, or owner of the storage system in letters not less than one inch high.

(2) An easily accessible shower and/or a minimum of one hundred (100) gallons of clean water in an open top container shall be available at every anhydrous ammonia storage location.

(3) Storage tanks shall be free of leaks

(4) Tank supports shall be in good condition.

(5) Storage tanks shall have a reflective surface maintained in good condition. White is recommended for painted surfaces, but other light reflective colors are acceptable.

(6) All hoses shall be maintained, approved for anhydrous ammonia and meet current data specifications.

(7) Hose hang-up racks shall be provided and operational.

(8) All gauges shall be operative with markings clearly visible.

(9) Vapor valves shall be color coded safety yellow and labeled.

(10) Liquid valves shall be color coded safety orange and labeled.

(11) All pressure relief valves shall be capped.

(12) All piping shall be well supported and provision made for expansion and contraction.

(13) All piping shall be done with Schedule 40 black pipe when joints are welded or Schedule 80 black pipe when joints are threaded. An unpainted stainless steel braided flex hose, with Schedule 80 welded fittings, no longer than thirty (30) inches, may be used to provide expansion, contraction, jarring, vibrating, and for settling. In no case shall the angle of the connection exceed ten (10) degrees.

(14) Brass, copper, or galvanized steel pipe or tubing shall not be used.

(15) Provisions shall be made to protect all exposed piping by use of guardrails or other types of protective barriers.

(16) In addition, to the excess flow valves in the liquid and vapor connections of the storage tank and the tank car or truck, an excess flow valve or backflow check valve shall be installed in the piping connecting the storage tank with the tank car or truck, close to the point where the piping and hose are joined.

(17) "STOP-TANK CAR CONNECTED" signs shall be available and in use when railcars are being unloaded. A sign shall be used at each end of the railcar when the railroad siding opens onto the main line from both directions.

(18) The area around permanent storage tanks shall be kept free of trash, debris, and vegetation which could be a fire or safety hazard.

(19) Storage tanks and appurtenances shall be secured to provide reasonable protection against vandalism or unauthorized access which may result in a discharge. Discharge valves on storage tanks shall be locked except when persons responsible for facility security or transfer operations are present. A trained attendant shall make all connections, disconnections, and supervise the transfer of liquids from the time the connections are made until they are disconnected.

(20) Each storage tank shall be marked on at least two sides with the words "ANHYDROUS AMMONIA" OR "CAUTION-AMMONIA" in sharply contrasting colors with letters not less than four (4) inches high. The inhalation hazard decals on a background of sharply contrasting colors at least two (2) inches high shall be on two (2) sides.

(21) Storage tanks shall be located outside of densely populated areas.

(22) Storage tanks shall not be located less than fifty (50) feet from any property line upon which a building may be erected.

(23) Storage tanks shall not be located less than six hundred (600) feet from building, structures, or areas used for activities such as civic, political, religious, recreational, or education purposes, or for involuntary detention of persons.

(24) Storage tanks shall not be located less than fifteen hundred (1500) feet from hospitals, nursing homes, homes for the aged, or public swimming facilities.

(25) Storage tanks shall not be located less than fifty (50) feet from containers of petroleum products.

(c) **Minimum safety requirements for anhydrous ammonia nurse tanks.** Minimum safety requirements for nurse tanks are as follows:

(1) Nurse tanks shall be painted white or aluminum.

(2) All nurse tanks shall be equipped with both pressure gauge and liquid level gauge. Gauges shall be operative at all times.

(3) All ammonia hoses shall be in good condition, approved for anhydrous ammonia, and meet current date specifications.

(4) It is a violation for any person to transfer or deliver any anhydrous ammonia into a nurse tank having defects which are plainly apparent.

(5) Nurse tanks shall be securely attached to the pulling vehicle and supplemented by two (2) suitably welded safety chains.

(6) There shall appear on each side and on each end of the nurse tank the words "ANHYDROUS AMMONIA" on a background of sharply contrasting colors at least four (4) inches high. The words are not required on the tank end with valves, fittings, gauges, or appurtenances. In addition, on the rear end of the tank or trailer, there shall be a "Slow Moving Vehicle" sign.

(7) The name of the owner, place of business, phone number, or contact in case of an emergency shall appear on each side.

(8) The owner's unique number shall appear as an individual identifying figure on each nurse tank, including single or dual nurse tank setups, in letters and numbers with at least one half (1/2) inch in height and width.

(9) Vapor valves shall be color coded safety yellow and labeled.

(10) Liquid valves shall be color coded, safety orange and labeled.

(11) Vapor valves and liquid valves shall remain closed when not in operation.

(12) All pressure relief valves shall be capped.

~~(12)~~ (13) Decals depicting step by step ammonia transfer instructions and/or connecting/disconnecting instructions for quick couplers to include first aid procedures to use when contaminated with ammonia shall be on each nurse tank.

~~(13)~~ (14) All nurse tank operators shall be furnished with the following by the dealer:

(A) One pair of approved flexible fitting, hooded ventilation goggles or full face shield.

(B) One pair of approved protective gloves made of rubber or other material impervious to ammonia.

~~(14)~~ (15) A minimum five gallon container of water shall be carried on all tanks containing anhydrous ammonia. When the temperature is near freezing or below, five gallons of water shall be carried in the pulling vehicle. The water container shall be filled with clean water before the trailer leaves the storage facility.

~~(15)~~ (16) Nurse tanks shall have the 1005 nonflammable gas placard on the sides and ends. The placard is not required on the tank end with valves, fittings, gauges, or appurtenances.

~~(16)~~ (17) The inhalation hazard decals on a background of sharply contrasting colors at least two (2) inches high shall be on two (2) sides of the tank.

~~(17)~~ (18) A decal showing the maximum pulling speed of 25 M.P.H. shall be on the front of each nurse tank as per the American National Standards Institute, Inc. (ANSI).

~~(18)~~ (19) The provisions found in Title 49 CFR § 173.315 (m) (1) and (2) (2010) as promulgated and amended in the Federal Register, are hereby adopted by reference in their entirety.

SUBCHAPTER 37. NURSERY STOCK SALES

35:30-37-12. Schedule of horticulture program fees

(a) The fee for each Federal Phytosanitary Certificate issued or renewed shall be as follows:

(1) Federal Phytosanitary Certificate PPQ Form 577

(A) If the aggregate commercial value of the product inspected for certification is \$1,250.00 or more - Fifty Dollars (\$50.00).

(B) If the aggregate commercial value of the product inspected for certification is less than \$1,250.00 - Twenty Five Dollars (\$25.00).

(2) Federal Phytosanitary Certificate, Processed Plant Products PPQ Form 578

- (A) If the aggregate commercial value of the product inspected for certification is \$1,250.00 or more - Fifty Dollars (\$50.00).
- (B) If the aggregate commercial value of the product inspected for certification is less than \$1,250.00 - Twenty Five Dollars (\$25.00).
- (3) Federal Phytosanitary Certificate for Re-export PPQ Form 579.
- (A) If the aggregate commercial value of the product inspected for certification is \$1,250.00 or more - Fifty Dollars (\$50.00).
- (B) If the aggregate commercial value of the product inspected for certification is less than \$1,250.00 - Twenty Five Dollars (\$25.00).
- (4) Ten Dollars (\$10.00) for the re-issuance of a Federal Phytosanitary Certificate.
- (b) The fee for each State Phytosanitary Certificate issued or renewed shall be Twenty Dollars (\$20.00) except there shall be no charge for the issuance of a certificate required by the Japanese Beetle Harmonization Plan unless a treatment is monitored by an authorized agent of the Board.
- (c) The fee for each grower, dealer, broker, and landscaper license issued or renewed and inspection conducted shall be as follows:
- (1) Growers license - Twenty five Dollars (\$25.00) for each business location.
 - (2) Growers inspection fee - One Dollar (\$1.00) per acre and per 1000 square feet of greenhouse area inspected.
 - (3) Dealers, broker license and landscapers fees -Thirty eight Dollars (\$38.00) for each business location.
 - (4) Landscaper or Personal Use Only license fee - One Hundred Dollars (\$100.00) for each business location.
 - (5) No fee for shall be charged for a grower's license issued to any scientific, agricultural, or horticultural club, ~~garden center~~, educational or eleemosynary institution, or any department or branch of the state or federal government.
 - (6) Failure to remit the license fee by the 15th of the month following the expiration month shall result in a penalty fee equal to the cost of the license.
- (d) A fee of Twenty-Five Dollars (\$25.00) shall be charged for any requested inspection or certification and shall be payable at the time of inspection and includes inspections and certificates issued for transporting plants.
- (e) All fees and monies collected under this program shall be paid to the Oklahoma Department of Agriculture, Food, and Forestry.

[OAR Docket #20-555; filed 7-7-20]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY

CHAPTER 37. FOOD SAFETY

[OAR Docket #20-556]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Eggs
35:37-1-2. Methods of grading [AMENDED]
Subchapter 3. Meat Inspection
Part 1. General Provisions
35:37-3-1. Incorporation by reference of federal meat inspection regulations [AMENDED]
35:37-3-3. Deleted regulations [AMENDED]
Subchapter 5. Poultry Products Inspection
Part 1. General Provisions
35:37-5-1. Definitions and incorporation by reference of federal poultry inspection regulations [AMENDED]
35:37-5-2. Deleted regulations and exemptions [AMENDED]
Subchapter 13. Milk and Milk Products
35:37-13-2. Incorporations by reference [AMENDED]
Subchapter 15. Organic Products
35:37-15-2. The Adoption of NOP Standards [AMENDED]

AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2), (28) and (34); 2 O.S. 6-181 et seq.; and 2 O.S. § 6-251 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 25, 2019

COMMENT PERIOD:

December 16, 2019, and ending January 15, 2020

PUBLIC HEARING:

January 15, 2020

ADOPTION:

February 5, 2020

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 14, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020.

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 14, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

7 CFR Parts 56 and 205 (2019 Version) and 9 CFR Parts 301 to 391; 416; 417; 418; 424; 430; 441; 442 and 500 (2019 Version), unless otherwise specified, and PMO "Grade A Pasteurized Milk Ordinance with Administrative Procedures - 2017 Recommendations," including Appendices A through T, unless otherwise specified.

Incorporating rules:

35:37-1-2
35:37-3-1
35:37-3-3
35:37-5-1
35:37-5-2
35:37-13-2
35:37-15-2

Availability:

See contact person below.

GIST/ANALYSIS:

The proposed rule amendments update citations to the Code of Federal Regulations and other procedures and regulations.

CONTACT PERSON:

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 1. EGGS

35:37-1-2. Methods of grading

Methods of egg grading shall be the same as those described in USDA "Regulations Governing the Voluntary Grading of Shell Eggs 7 CFR Part 56" (~~2008~~2019 Version).

SUBCHAPTER 3. MEAT INSPECTION

PART 1. GENERAL PROVISIONS

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

The Mandatory Meat Inspection Regulations found in Title 9 of the Code of Federal Regulations (CFR) (~~2018-2019~~ Revision), Parts 301 to 391; 416; 417; 418; 424; 430; 441; 442 and 500 for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:37-3-3. Whenever an official mark, form, certificate or seal is designated by federal regulations, the appropriate Oklahoma Department of Agriculture, Food, and Forestry form, certificate or seal shall be substituted.

35:37-3-3. Deleted regulations

The following sections of the Federal regulations governing the mandatory meat inspection of the USDA incorporated by reference under 35:37-3-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 9 CFR 302.2; 303.1(c); 304.1; 304.2(a); 304.2(c); 305.2(b); 307.4; 307.5; 307.6; 316.12; 316.13(c); 317.5; 317.7; 317.9; 317.13; 318.8; 318.12; 321; 322; 327; 329; 331; 335; 351; 352; 354; 355; 362; 381; 390; 391; 392; 439; and 590 (~~2018~~2019 Revision).

SUBCHAPTER 5. POULTRY PRODUCTS INSPECTION

PART 1. GENERAL PROVISIONS

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

(a) The Mandatory Poultry Inspection Regulations found in Title 9 of the Code of Federal Regulations (CFR) (~~2018~~2019 Revision), Parts 381; 416; 417; 418; 424; 430; 441; 442; and 500 for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:37-5-2. Whenever an official mark, form, certificate or seal is designated by federal regulations, the appropriate Oklahoma Department of Agriculture, Food, and Forestry mark, form, certificate or seal shall be substituted.

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

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

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

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

(a) The following sections of the Federal regulations governing the mandatory poultry inspection (9 CFR, Part 381; 416; 417; 418; 424; 441; 442; and 500), (~~2018~~2019 Revision) of the USDA incorporated by reference under 35:15-27-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 381.6; 381.10(a)(2), (5), (6), and (7); 381.10(b); 381.10(d)(2)(i); 381.13(b); 381.16; 381.17; 381.20; 381.21; 381.37; 381.38; 381.39; 381.96; 381.101; 381.103 through 381.112; 381.123(b)(1) and (4); 381.132(c); 381.133; 381.179; 381.185; 381.186; and 381.195 through 381.225.

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

- (1) The producers slaughter no more than two hundred and fifty (250) turkeys or their equivalent with a ratio of four (4) birds of other species, excluding ratites, to one (1) turkey during a calendar year;
- (2) The producers do not engage in buying or selling poultry products other than those produced from poultry raised on their own farms;

(3) The poultry and poultry products do not move in commerce. Poultry producers are prohibited from selling or donating uninspected poultry products to retail stores, brokers, meat markets, schools, orphanages, restaurants, nursing homes, and other similar establishments and are prohibited from sales or donation of uninspected poultry through any type of retail market or similar establishment owned or operated by the poultry producer;

(4) The producers submit a certificate of registration to the Board;

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

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

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

SUBCHAPTER 13. MILK AND MILK PRODUCTS

35:37-13-2. Incorporations by reference

(a) **Adopted references.**

(1) PMO. "Grade A Pasteurized Milk Ordinance with Administrative Procedures - ~~2015~~2017 Recommendations," including Appendices A through ~~RT~~ thereto, hereinafter referred to as the "PMO," as published in the Grade A Pasteurized Milk Ordinance, ~~2015~~2017 Revisions, by the Department of Health and Human Services, Public Health Service/Food and Drug Administration, Washington, D.C. is hereby incorporated by reference.

(2) Code of Federal Regulations. Where mention is made to any section or sections of the Code of Federal Regulations in the PMO, that section or sections shall be incorporated by reference. The State Board of Agriculture declares that, by incorporating the PMO by reference, it does not intend to create any inconsistency with the Oklahoma Milk and Milk Products Act, in the event there may be any inconsistency.

(b) **Exceptions.**

(1) Section 16, "Penalty" is not incorporated by reference.

(2) Section 17, "Repeal and Date of Effect" is not incorporated by reference.

(3) Section 5, "Certified Industry Inspection" is not incorporated by reference.

(4) Appendices E, "Examples of 3-out-of-5 Compliance Enforcement Procedures" is not incorporated by reference.

SUBCHAPTER 15. ORGANIC PRODUCTS

35:37-15-2. The Adoption of NOP Standards

The Department adopts or incorporates by reference the following parts of the official rules and regulations of the NOP, 7 CFR Part 205 (~~2014~~2019 Revision), except for OAC 35:37-15-1, or as the Department designates otherwise in specific cases:

(1) Subpart A - Definitions, except for those designated otherwise by this subchapter;

(2) Subpart B - Applicability;

(3) Subpart C - Organic Production and Handling Requirements;

(4) Subpart D - Labels, Labeling, and Market Information;

(5) Subpart E - Certification;

(6) Subpart F - General Requirements for Accreditation; and

(7) Subpart G - Administrative.

(A) Sections 205.600 through 205.607.

(B) Sections 205.660 through 205.663.

(C) Sections 205.670 through 205.672.

(D) Sections 205.680 through 205.681.

[OAR Docket #20-556; filed 7-7-20]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY

CHAPTER 40. MARKET DEVELOPMENT

[OAR Docket #20-557]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 21. Oklahoma Healthy Food Financing Program [NEW]

35:40-21-1. Purpose [NEW]

35:40-21-2. Definitions [NEW]

35:40-21-3. Applicant eligibility [NEW]

35:40-21-4. Project eligibility [NEW]

35:40-21-5. Evaluation and financing criteria [NEW]

35:40-21-6. Allowed use of project funds [NEW]

35:40-21-7. Applications for project funds [NEW]

35:40-21-8. Supplemental program information [NEW]

Subchapter 23. Made in Oklahoma [NEW]

35:40-23-1. Purpose [NEW]

35:40-23-2. Definitions [NEW]

35:40-23-3. Applicant eligibility [NEW]

35:40-23-4. Product eligibility [NEW]

35:40-23-5. Application [NEW]

35:40-23-6. Logo [NEW]

35:40-23-7. Renewal and revocation [NEW]

35:40-23-8. Product endorsement [NEW]

AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2); 2 O.S. § 5-201 et seq., and 2 O.S. § 5-9 et seq..

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rule amendments are proposed to provide financing for food retailers to provide healthy food in underserved communities which primarily serve low or moderate income communities pursuant to the provisions of Section 5-201 et seq. of Title 2 of the Oklahoma Statutes; and to promote foods and products produced in Oklahoma in a manner consistent with the provisions of Section 5-9 et seq. of Title 2 of the Oklahoma Statutes.

CONTACT PERSON:

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 21. OKLAHOMA HEALTHY FOOD FINANCING PROGRAM

35:40-21-1. Purpose

The purpose of the Oklahoma Healthy Food Financing Program is to provide financing for food retailers to provide healthy food in underserved communities which primarily serve low or moderate income communities. The Oklahoma Department of Agriculture, Food, and Forestry shall operate the Oklahoma Healthy Food Financing Program in a manner consistent with the provisions of Section 5-201 et seq. of Title 2 of the Oklahoma Statutes.

35:40-21-2. Definitions

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

"Board" means the State Board of Agriculture or its designee.

"Department" means the Oklahoma Department of Agriculture, Food, and Forestry, or its designee.

"Financing" means loans, grants, and forgivable loans.

"Grocery store" means a for-profit or not-for-profit self-service retail establishment that primarily sells meat, seafood, fruits, vegetables, dairy products, dry groceries, household products, and sundries.

"Low-income community" means a census tract, as reported in the most recent decennial census published by the United States Bureau of the Census, that has a poverty rate of at least twenty percent (20%) or in which the median family income does not exceed eighty percent (80%) of the greater of the statewide or metropolitan median family income.

"Moderate income community" means a census tract, as reported in the most recent decennial census published by the United States Bureau of the Census, in which the median family income is between eighty-one percent (81%) and ninety-five percent (95%) of the statewide or metropolitan median family income.

"Small food retailer" means a small retail outlet less than two thousand five hundred (2,500) square feet, which sells a limited selection of foods and other products.

"Underserved community" means a census tract, as reported in the most recent decennial census published by the United States Bureau of the Census, determined to be an area with low supermarket access by either the United States Department of Agriculture, as identified in the Food Access Research Atlas, or through a methodology that has been adopted for use by another governmental healthy food initiative.

35:40-21-3. Applicant eligibility

(a) Applicants eligible for financing shall include, but are not limited to, sole proprietorships, partnerships, limited liability companies, corporations, cooperatives, nonprofit organizations, nonprofit community development entities, universities, and government entities.

(b) Eligibility may be given to those applicants who:

- (1) Demonstrate the capacity to successfully implement the project;
- (2) Demonstrate the project is expected to be economically self-sustaining;
- (3) Demonstrate the ability to repay the debt; and
- (4) Agree, for a minimum of five (5) years, to comply with the following conditions:

(A) To accept the benefits of the United States Department of Agriculture's Supplemental Nutrition Assistance Program (SNAP) or other federal or state nutrition assistance programs;

(B) To apply for the United States Department of Agriculture's Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) or other federal or state nutrition assistance programs, and to accept the benefits, if approved;

(C) To allocate at least thirty percent (30%) of food retail space for the sale of perishable foods, which shall include fresh dairy, produce, meats, poultry, and fish;

(D) To comply with all data collection and reporting requirements established by the Board; and

(E) To promote the hiring of local residents.

35:40-21-4. Project eligibility

Projects eligible for financing shall be located in an underserved community and primarily serve low or moderate income

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communities. These projects shall include, but not be limited to:

- (1) Construction of new grocery stores;
- (2) Construction of small food retailers; and
- (3) Grocery store or small food retailer renovations, expansions, and infrastructure upgrades that improve the availability and quality of fresh produce and other healthy foods.

35:40-21-5. Evaluation and financing criteria

When an applicant and the applicant's project are eligible for financing, the Department shall evaluate the application and determine the overall ability to participate and the amount of financing after considering the following criteria:

- (1) The level of need of access to healthy foods in the area to be served;
- (2) The degree to which the project requires an investment of public financing to progress, create, or impact the access to healthy food;
- (3) The degree to which the project will have a positive economic impact on the underserved community, including creating or retaining jobs for local residents;
- (4) The degree to which the project will participate in state and local health department initiatives to educate consumers on nutrition and promote healthier eating; and
- (5) Other criteria the Board determines to be consistent with the purposes of the Healthy Food Financing Act.

35:40-21-6. Allowed use of project funds

Financing made available for projects shall only be expended for the following purposes:

- (1) Site acquisition and preparation;
- (2) Construction costs;
- (3) Equipment and furnishings;
- (4) Workforce training or security;
- (5) Pre-development costs, including market studies and appraisals;
- (6) Energy efficiency measures;
- (7) Working capital for first-time inventory and start-up costs; and
- (8) For small food retailers, the acquisition or leasing of refrigeration equipment, display shelving, or other one-time capital expenditure, at a cost of less than Five Thousand Dollars (\$5,000.00), for the promotion and display of perishable foods, which shall include a blend of dairy products, fresh produce, fresh meats and poultry, and fresh or frozen fish.

35:40-21-7. Applications for project funds

Applications for project funds are limited to the equivalent of twenty (20) typed, single-spaced, eight and one-half inch by eleven inch pages, including any attachments. Applications shall be submitted electronically to the Oklahoma Department of Agriculture, Food and Forestry.

35:40-21-8. Supplemental program information

(a) Loan proposals are not limited to a specific dollar amount. Grants shall be limited to Ten Thousand Dollars (\$10,000.00). The Department may recommend an increase or decrease in the amount of requested funding based on its findings and on its level of available funds.

(b) Proposals may be submitted at any time. Deadline dates for submissions are January 1st, April 1st, July 1st, and October 1st or the next regular business day if the Department offices are closed on the deadline date. Reviews of loan and grant requests shall be made on a quarterly basis.

(c) The Oklahoma Department of Agriculture, Food, and Forestry shall complete initial screening for completeness and eligibility of all proposals upon receipt. If revisions or corrections are necessary, the applicant may withdraw and resubmit if submitted by the deadline date. If the Department recommends a funding level less than the amount requested in the proposal, the Department shall confer with the applicant to determine whether the amount recommended would alter the project's feasibility. No individual may participate in, or vote on, the determination of an application relating to an organization in which the individual has a direct personal financial interest.

(d) Following approval of a loan or grant request by the Department, a loan or grant contract shall be executed between the Department and the borrower or grantee. This agreement shall specify the time line and budget, fund release schedule, and any other conditions specific to the individual proposal. The entire loan or grant amount may not be released at the time of the execution of the contract. The borrower or grantee shall submit interim reports, as required, to the Department that outline the project's progress, time lines, and budget compliance prior to the Department issuing any subsequent payments pursuant to the agreement.

(e) Financial documents, books, receipts, orders, expenditures, electronic data, and accounting procedures and practices of the borrower or grantee necessary to evaluate the use of loan or grant funds are subject to examination by the Department at any time for three (3) years following the termination of the project.

(f) The Department may limit the dissemination of information concerning a project, but does not assume any liability for inadvertent disclosure.

(g) If a grantee or loan recipient fails to comply with the terms of an agreement, including, but not limited to, failure to pay back loans pursuant to the terms outlined in the agreement or failure to submit reports in a timely manner, the grantee or loan recipient shall not participate in any events sponsored by any program of the Oklahoma Department of Agriculture, Food, and Forestry.

(h) Failure to complete the terms of the agreement shall result in an audit and collection activities by the Oklahoma Department of Agriculture, Food, and Forestry.

SUBCHAPTER 23. MADE IN OKLAHOMA

35:40-23-1. Purpose

The purpose of the Made in Oklahoma program is to promote foods and products and services produced in Oklahoma. The Oklahoma Department of Agriculture, Food, and Forestry shall operate the Made in Oklahoma program in a manner consistent with the provisions of Section 5-9 et seq. of Title 2 of the Oklahoma Statutes.

35:40-23-2. Definitions

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

"**Applicant**" means a person who is requesting membership into the Made in Oklahoma program.

"**Department**" means the Oklahoma Department of Agriculture, Food, and Forestry, or its designee.

"**Product**" means a product processed or manufactured to add value.

35:40-23-3. Applicant eligibility

(a) Applicants eligible for membership into the Made in Oklahoma program shall grow, process, or manufacture a product within the state of Oklahoma.

(b) Eligibility may be given to those applicants who are in compliance with other state and federal agencies.

35:40-23-4. Product eligibility

Products eligible to use the Made in Oklahoma logo shall:

- (1) Be processed or manufactured in an Oklahoma facility;
- (2) Meet or exceed all federal and State of Oklahoma standards and regulations; and
- (3) Include an Oklahoma address on each label.

35:40-23-5. Application

(a) Applications for membership into the Made in Oklahoma program shall be submitted to the Department.

(b) Each applicant shall submit a description of products, packaging, and proposed marketing materials. In addition, a label and sample of the product shall be provided.

(c) Each applicant shall submit a copy of any required licenses, health certifications or records of inspection by state or federal agencies from the previous year for the facilities and raw materials utilized in the applicant's products.

35:40-23-6. Logo

The Made in Oklahoma program logo shall be used only by a member of the Made in Oklahoma program. It shall be used only for promotion of eligible products as determined by the Department.

35:40-23-7. Renewal and revocation

(a) Made in Oklahoma program memberships shall be renewable on an annual basis. Applications for membership renewal shall be due on a date determined by the Department.

(b) Any person, firm, partnership, corporation, LLC, or other association who violates any provision of this section, gives false information in the application process, misrepresents certifications in the application process, or uses the Made in Oklahoma Program logo on an ineligible product shall be subject to immediate suspension or revocation of membership in the program and use of the Made in Oklahoma logo.

(c) Prior suspension or revocation of a Made in Oklahoma program membership may be cause for denial of a renewal application by the Department.

35:40-23-8. Product endorsement

The Department does not endorse and makes no warranty regarding any product determined eligible to use the Made in Oklahoma program logo.

[OAR Docket #20-557; filed 7-7-20]

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY
CHAPTER 44. AGRICULTURE POLLUTANT DISCHARGE ELIMINATION SYSTEM**

[OAR Docket #20-558]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Agriculture Environmental Permitting and AgPDES
Part 1. General Provisions
35:44-1-3. Date of federal regulations incorporated [AMENDED]
Subchapter 3. Permit Conditions and Requirements
35:44-3-3. Date of federal regulations incorporated [AMENDED]

AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2); 2 O.S. § 2-18.2; 2 O.S. § 2A-1 et seq.; 2 O.S. § 2A-21 et seq.; 27A O.S. § 1-3-101(D).

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INCORPORATIONS BY REFERENCE:

Incorporated standards:

40 CFR (2019 Revision) unless otherwise specified.

Incorporating rules:

35:44-1-3

35:44-3-3

Availability:

See contact person below.

Permanent Final Adoptions

GIST/ANALYSIS:

The proposed rule amendments update citations to the Code of Federal Regulations.

CONTACT PERSON:

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 1. AGRICULTURE ENVIRONMENTAL PERMITTING AND AGPDES

PART 1. GENERAL PROVISIONS

35:44-1-3. Date of federal regulations incorporated

When reference is made to 40 CFR it means, unless otherwise specified, Title 40 of the Code of Federal Regulations (~~2018~~2019 Revision).

SUBCHAPTER 3. PERMIT CONDITIONS AND REQUIREMENTS

35:44-3-3. Date of federal regulations incorporated

When reference is made to 40 CFR it means, unless otherwise specified, Title 40 of the Code of Federal Regulations (~~2018~~2019 Revision).

[OAR Docket #20-558; filed 7-7-20]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 55. COMMERCIAL PET BREEDERS AND ANIMAL SHELTERS

[OAR Docket #20-559]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Standards of Care

35:55-3-1. Incorporation by reference [AMENDED]

AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2); and 4 O.S. § 30.1 et seq.

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INCORPORATIONS BY REFERENCE:

Incorporated standards:

9 CFR (2019 Revision) unless otherwise specified.

Incorporating rules:

35:55-3-1

Availability:

See contact person below.

GIST/ANALYSIS:

The proposed rule amendments update citations to the Code of Federal Regulations.

CONTACT PERSON:

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 3. STANDARDS OF CARE

35:55-3-1. Incorporation by reference

(a) The following provisions of Title 9 of the Code of Federal Regulations and the requirements contained therein pertaining to Animal Welfare, Part 3 (Standards) are, unless otherwise specified, adopted and incorporated by reference in their entirety:

- (1) 3.1 (housing facilities, general)
- (2) 3.2 (indoor housing facilities)
- (3) 3.3 (sheltered housing facilities)
- (4) 3.4 (outdoor housing facilities)
- (5) 3.5 (mobile or traveling housing facilities)
- (6) 3.6 (primary enclosures), except for 3.6 (c)(1)(ii) and (c)(2)
- (7) 3.7 (compatible grouping)
- (8) 3.8 (exercise for dogs)
- (9) 3.9 (feeding)
- (10) 3.11 (cleaning, sanitization, housekeeping, and pest control)
- (11) 3.12 (employees)
- (12) 3.13 (consignments to carriers and intermediate handlers)
- (13) 3.14 (primary enclosures used to transport live dogs and cats)
- (14) 3.15 (primary conveyances [motor vehicle, rail, air, and marine])

- (15) 3.16 (food and water requirements)
- (16) 3.17 (care in transit)
- (17) 3.18 (terminal facilities)
- (18) 3.19 (handling)
- (b) When reference is made to a federal entity, it shall mean the state counterpart.
- (c) When reference is made to 9 C.F.R. it means, unless otherwise specified, the volume of 9 C.F.R. as published on July 1 (2018/2019).

[OAR Docket #20-559; filed 7-7-20]

**TITLE 38. OKLAHOMA BOARD OF
LICENSED ALCOHOL AND DRUG
COUNSELORS
CHAPTER 10. LICENSURE AND
CERTIFICATION OF ALCOHOL AND
DRUG COUNSELORS**

[OAR Docket #20-548]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 7. Application
38:10-7-2. [AMENDED]
Subchapter 9. Supervision
38:10-9-5. [AMENDED]
Subchapter 11. Fees
38:10-11-1. [AMENDED]
Subchapter 13. Continuing Education Requirements
38:10-13-2. [AMENDED]

AUTHORITY:

Oklahoma Board of Licensed Alcohol and Drug Counselors; 59 O.S., §1875-1 and 1884 (B).

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND
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N/A

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

Changes in Subchapter 7 are to more clearly define the scope of practice of the LADC/MH and be more consistent with the law in 59 O.S. § 1871 (10). The law says LADC/MH and the rule says LADC. Another change in Subchapter 7 is to take out the application fee amount and to make the application fee consistent with other application fees. Subchapter 9 on supervision of candidates is a language change to allow supervisors and supervisees to apply for an exception to extend the amount of supervision that can be done by video means for supervision in hardship cases. A fee schedule change in Subchapter 11 is to bring consistency to LADC/MH application fee amount with other credential application fees and to make the language more

consistent throughout (formally called co-occurring). Subchapter 13 changes continuing education requirements for candidates for licensure or certification. Candidates will be required to complete six (6) clock hours of continuing education one-year post graduation and until licensed or certified. The six hours must include a minimum of three (3) clock hours of ethics in mental health and substance abuse counseling.

CONTACT PERSON:

Richard D. Pierson, Executive Director, 101 NE 51st Street, Oklahoma City, Ok 73105. Phone 405-521-0779 or email rpierson@okdrugcounselors.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 7. APPLICATION

**38:10-7-2. Requirements for licensure or
certification**

(a) Licensed Alcohol and Drug Counselor.

(1) An application for a license to practice as a LADC shall be made to the Oklahoma Board of Licensed Alcohol and Drug Counselors in writing. Such application shall be on a form and in a manner prescribed by the Board. The application shall be accompanied by the fee required by the act, which shall be retained by the Board and not returned to the applicant.

(2) Each applicant shall

- (A) Be of good moral character;
- (B) Pass an oral and written examination;
- (C) Be at least twenty-one (21) years of age;
- (D) Not have engaged in, nor be engaged in, any practice or conduct which would be grounds for denying, revoking or suspending a license pursuant to the provisions of the Act;
- (E) Otherwise comply with the rules promulgated by the Board pursuant to the provisions of the Act.

(3) In addition to the requirements in subsection (a) (2), each applicant shall:

- (A) Have at least a master's degree in alcohol and substance abuse counseling or other clinical counseling field recognized by the Oklahoma Board of Licensed Alcohol and Drug Counselors from a college or university accredited by an accrediting body recognized by the U.S. Department of Education. The degree program must include, at a minimum, the courses and the practicum/internship listed in 59 O.S. § 1876 (D) (1) and;
- (B) Have successfully completed at least one (1) year of full-time supervised work experience. For the purpose of the Act, "one (1) year of full-time work experience" shall be defined as two thousand (2,000) hours of work experience, of which at least one thousand (1,000) hours shall consist of direct client contact providing behavioral health services to an individual and/or the individual's family. At least

five hundred (500) hours of the one thousand (1,000) direct client contact hours must be the provision of alcohol and drug counseling services; or

(C) Be a licensed mental health professional as defined in Section 1-103 of Title 43A of the Oklahoma Statutes and have completed a minimum of fifteen (15) hours of master's level substance abuse specific coursework, including, but not limited to, chemical addiction, counseling, alcohol/drug counseling theory, pharmacology of drugs and abuse, assessment and treatment of alcohol and drug problems, theories in family addiction and family addiction counseling. An applicant who qualifies under this subsection is not required to complete the supervised work experience.

(D) An applicant must complete all requirements for licensure, including passing the exams, within three (3) years of the date the application was accepted.

(E) Persons who meet the requirements in subsection (a) may include the assessment, diagnosis, and treatment of mental health disorders within the LADC/MH scope of practice as defined in 59 O.S. § 1871 (10). The designation LADC/MH (licensed alcohol and drug counselor/mental health) shall be noted on their license and wallet card.

(F) ~~Persons who were licensed as LADC or made application prior to January 1, 2012 and who meet the requirements in subsection (a) may make application applying~~ for the LADC/MH designation. Applicants must submit a completed application on the form prescribed by the Board and pay at the LADC/MH fee of one hundred forty dollars (\$140) which shall be retained by the Board and not returned to the applicant. The application must include:

- (i) An official transcript in a sealed envelope showing that the applicant has obtained the educational requirements;
- (ii) Proof that the applicant holds a valid license in good standing in one of the behavioral health professions listed in 59 O.S. § 1876 (F)(1);
- (iii) For applicants who do not meet the requirements in (a) (3) (A) or (a) (3) (B), proof that the applicant has a valid co-occurring disorders certification from a certification entity approved by the Board.

(G) The scope of practice of a LADC who does not have the MH designation may not include provision of services that focus solely on mental health disorders. The LADC may provide services for a client with no independent substance use disorder if services are focused on the client's exposure to a family member's substance abuse.

(b) Certified Alcohol and Drug Counselor.

(1) An application for certification as a CADC shall be made to the Oklahoma Board of Licensed Alcohol and Drug Counselors in writing. Such application shall be on

a form and in a manner prescribed by the Board. The application shall be accompanied by the fee required by the Act, which shall be retained by the Board and not returned to the applicant.

(2) Each applicant for certification shall:

- (A) Be of good moral character;
- (B) Pass an oral and written examination;
- (C) Be at least twenty-one (21) years of age;
- (D) Not have engaged in, nor be engaged in, any practice or conduct which would be grounds for denying, revoking or suspending a license pursuant to the provisions of the Act;
- (E) Otherwise comply with the rules promulgated by the Board pursuant to the provisions of the Act.
- (F) At a minimum, a bachelor's degree in a behavioral science field that is recognized by the Oklahoma Board of Licensed Alcohol and Drug Counselors as appropriate to practice as a certified drug and alcohol counselor in this state;
- (G) Have successfully completed at least two (2) years of full-time supervised work experience. For the purpose of the Act, "two years of full-time work experience" shall be defined as four thousand (4,000) hours of work experience of which at least two thousand (2,000) hours shall consist of direct client contact providing alcohol and drug counseling services to an individual and/or the individual's family;
- (H) Have successfully completed at least two hundred seventy (270) clock hours of education related to alcohol and drug counseling subjects, theory, practice or research;
- (I) Successfully completed, as a part of or in addition to the education requirements established in paragraph three of this subsection, a minimum of forty-five (45) clock hours of specialized training approved by the Board in identifying co-occurring disorders and making appropriate referrals for treatment of co-occurring disorders; and
- (J) Successfully completed at least three hundred (300) hours of supervised practicum experience in the field of drug and alcohol counseling.
- (K) complete all requirements for certification, including passing the examinations, within five (5) years of the date the application was accepted.

(c) Direct client contact hours, as referenced above in (a) and (b), are defined as activities in which a counselor provides services to a client or group of clients. These must be activities within the scope of the alcohol and drug counselor, such as assessment, intervention, screening, counseling, education. This does not include observation of others providing these services. Direct client contact also includes activities in which services are provided to the client's family members/caregiver/guardian, with or without the client physically present, such as family education and/or family counseling. This includes review of assessment and treatment results with these stakeholders, either individually or during group meetings. Direct client contact also includes communication with the client and/or family members/caregiver/guardian via email or telephone. Activities

that DO NOT count as direct contact include speaking or consulting with other professionals regarding the client, without the client and/or family member/caregiver/guardian present; collaborating with other professionals without the client and/or family member/caregiver/guardian present; time spent preparing materials, writing reports, planning for assessment or intervention, and so forth. Administrative duties without the client and/or family member/caregiver/guardian present, while important, are NOT direct contact. Observation of treatment or assessment sessions are NOT considered direct contact, if the counselor is only observing others providing services.

(d) **Post-Military Service Applicants.** The Board shall consider the equivalent education, training and experience completed by an applicant for certification or licensure while the applicant was a member of the United States Armed Forces or Reserves, National Guard of any state, the Military Reserves of any state, or the Naval militias of any state, and apply it in the manner most favorable toward satisfying the qualifications for certification or licensure. To determine whether education, training and experience completed by an applicant for certification or licensure while the applicant was a member of the military as described in the preceding paragraph, the Board may consider, but is not limited to, determinations made by institutions of higher education based on the Guide to the Evaluation of Educational Experiences in the Armed Services, published by the American Council on Education.

SUBCHAPTER 9. SUPERVISION

38:10-9-5. Supervisor Requirements

(a) **Qualifications.** To be eligible for Board approval to supervise LADC or CADC candidates, a Licensed Alcohol and Drug Counselor must be licensed and in good standing and:

- (1) If originally licensed in Oklahoma, must have practiced alcohol and drug counseling for at least two years after licensure; or
- (2) If licensed by endorsement from another state, must have practiced alcohol and drug counseling for at least one year beyond Oklahoma licensure; or
- (3) Also hold a license in good standing with supervision privileges in another behavioral health field as determined by the Board; or
- (4) Hold a current valid IC&RC Certified Clinical supervisor credential, and
- (5) Successfully complete the Board approved alcohol and drug counselor supervision training course, and
- (6) Pass the Oklahoma LADC Supervisor Examination(s)
 - (A) Examination Part A shall consist of a NAADAC clinical supervision exam, or the IC&RC Certified Clinical Supervisor exam, or other clinical supervision exam approved by the Board.
 - (B) Examination Part B shall consist of Oklahoma State Laws, Rules, and procedures.

(b) **Application Process.**

- (1) Complete an application form provided by the Board.

(2) Submit two letters of reference. At least one letter must be from a current Board approved LADC supervisor. The other shall be from another professional holding a current Oklahoma behavioral health license.

(3) Sign a supervision agreement and supervisor code of ethics.

(4) Pay an application processing fee.

(c) **Supervision Training course and Supervisor Examination.**

(1) The Supervision course shall consist of a fifteen hour Board approved workshop on counseling supervision in combination with thirty hours of directed individual study of Board approved counseling supervision literature for a total of forty-five contact hours. The workshop or class must have a minimum of four enrolled supervisor candidates.

(2) For persons who meet the qualifications in subsection (a)(3) or (4), or the supervision course shall consist of a seven and one-half hour Board approved advanced LADC supervisor training workshop and exam Part B-Oklahoma State Laws, Rules and procedures only.

(d) **Renewal of Supervisor Status.** To maintain Board approved supervisor status, LADC supervisors must complete, prior to June 30 of each year,

(1) Three (3) clock hours of continuing education in counseling supervision, and

(2) These hours are included in the twenty (20) continuing education hours required for licensure renewal.

(3) With the exception of the twenty hour requirements in 38:10-13-2(a), the Rules in subchapter 13 regarding continuing education requirements for licensure renewal shall also apply to continuing education requirements for supervision status.

(4) Approved supervisor designation will not be renewed until renewal fee has been paid and

(5) Continuing education requirements have been met.

(e) **Supervisor Responsibilities.**

(1) The supervisor is responsible for having and maintaining knowledge about the supervisee's practice whether in a private or agency setting.

(2) The supervisor is responsible for providing professional consultation and monitoring the supervisee's ethical and professional practices.

(3) The supervisor must provide an average of one hour per week of live, interactive and visual supervision until the candidate becomes licensed or certified. Group supervision is acceptable if such supervision does not exceed at least one half of the total supervisory time per evaluation period. Group size is limited to a maximum of six (6) supervisees.

(A) The phrase "an average of one hour per week of live, interactive and visual supervision " means one continuous hour in one day of each week of face-to-face or interactive video supervision relating to the supervisee's skills, knowledge and practices in providing alcohol and drug counseling to clients.

(i) Video supervision shall not exceed 1/8 of the total supervision time; 6 sessions for LADC or

12 sessions for CADC). ~~Video supervision must meet all Federal and State Laws of confidentiality unless approved by the Board as described in (ii).~~

(ii) Candidates and supervisors may apply for an exception to these video supervision limits on the basis of hardship. Any requests for such an exception will be reviewed on a case by case basis. In the case an exception is granted and approved by the Board, the maximum video supervision shall not exceed $\frac{3}{4}$ of the total supervision time (39 sessions for LADC and 78 for CADC.) Video supervision must meet all Federal and State laws of confidentiality.

(B) The supervisor must provide four hours of face-to-face supervision per calendar month, at the rate of one hour per week, or two hours per week, every other week.

(C) When unforeseen circumstances arise that result in a supervisor providing less than four hours per month, or less than two hours every other week of face-to-face contact, the supervisor and supervisee shall provide notice of such circumstances to the board, and shall submit a plan to make up the missed hours to the Board for approval. The plan may include designation of a back-up or alternate supervisor, providing that the supervisee has entered into a supervision contract with the alternate supervisor and such contract has been approved by the Board.

(D) Clinical staff meetings attended by supervisees or meetings with supervisees that consist of discussion of issues other than supervisee's skills, knowledge, and practices in providing alcohol and drug counseling to clients shall not be counted as group supervision.

(4) When the licensure supervisor is not a staff member of the supervisee's employer, the licensure supervisor will ensure that the employer, or its representative, is in accord with the arrangements for supervision. This is essential whether these arrangements are made by the agency or the supervisee and regardless of whether the agency contributes to the financial compensation of the supervisor. The supervisor is responsible for securing agreement from the agency administration as to the purpose and content of the desired supervision and the supervisor's specific role responsibilities and limitations. The supervisor is also responsible for learning agency functions and policies so that any supervisory suggestions are constructive and realistic within agency purposes and resources.

(5) The Supervisor must be available to the supervisee for consultation "on call " 24 hours a day, seven days a week, and arrange for alternate "on call " supervisor to provide consultation when the primary supervisor is unavailable.

(6) The supervisor must immediately notify the Board of any ethical or professional violations by supervisee.

(7) A supervisor for an applicant who provides community or home-based services shall, in addition to other

supervision requirements, conduct at least six (6) direct observations of the supervisee conducting counseling sessions in the client's home, school, or other remote location outside of the applicant's employer's office. The observations must be made periodically throughout the applicant's supervised work experience at least once every other month. Direct observation may be conducted via interactive live audio/video conferencing and shall be documented in a form approved by the Board. No more than three (3) of the direct observations per year may be conducted via interactive live audio/visual conferencing. Both the supervisor and the supervisee are responsible for ensuring that the interactive live audio-video conferencing complies with all applicable federal and state confidentiality laws and regulations.

(8) The supervisor must notify the Board in writing within three (3) business days of the date supervision is terminated. The supervisor must submit an evaluation of the supervisee within ten business days of the date of termination.

(9) A supervisor may not supervise more than a total of twenty (20) persons, including candidates and CADCs who are engaging in private or independent practice. A supervisor who wants to supervise more than twenty (20) persons must petition the Board for approval for each person above the maximum number. The petitions will be determined on a case-by-case basis depending on the circumstances of the request.

SUBCHAPTER 11. FEES

38:10-11-1. Schedule of fees

Fees are non-refundable and include:

(1) **Application fee.** One-hundred and seventy-five (\$175.00) dollars and shall be submitted with the application form.

(2) **Examination fee.** The fee shall be the amount set by the examination provider, and is paid by the applicant directly to the examination provider.

(3) **Initial license or certification fee.** One-hundred and twenty-five (\$125.00) dollars shall be submitted prior to the receipt of license or certificate. The initial license or certification notices shall invoice the licensed or certified person for the interim period between the original license or certification date and the following June 30 so that subsequent renewals shall be on a July 1 annual basis.

(4) **Renewal fee.** One-hundred and twenty-five dollars (\$125.00). Shall be submitted upon notification by the Board on or before June 30, and validates the license or certification for twelve (12) months.

(5) **Late renewal fee.** Twenty-five dollars (\$25.00) will be charged each month, if the license or certification is not renewed by June 30. This fee combined with the renewal fee shall not exceed \$200.00. The licensed or certified person must submit this fee as well as the renewal fee on or before the following June 30 to avoid revocation.

- (6) **Replacement fee.** Twenty-five dollars (\$25.00). Shall be submitted for the issuance of a license or certification to replace a license which has been lost, damaged, or is in need of revision.
- (7) **Inactive license or certification fee.** Twenty-five dollars (\$25.00). Payment of this fee renders the license or certification inactive and suspends all rights and privileges granted by the license or certification for a period of no more than two (2) years. If not renewed within the two (2) year period, license or certification is considered lapsed.
- (8) **Mailing list of licensed and certified counselors.** Thirty-five dollars (\$35.00).
- (9) **Written verification of licensure or certification.** Five dollars (\$5.00).
- (10) **Duplication of public records.** Twenty-five cents (\$.25) per page for un-certified copies; one dollar per page (\$1) for certified copies.
- (11) **Search fee for public records.** \$25 per hour.
- (12) **Investigation or prosecution.** At cost incurred.
- (13) **Returned check processing fee, or denied or non-payment of credit card fees.** Fifty Dollars (\$50.00).
- (14) **Probation.** Twenty-five dollars (\$25.00) per month.
- (15) **Board approved supervisor status designation.** Thirty-five Dollars (\$35.00) for initial application fee.
- (16) **Supervisor status designation annual renewal fee.** Twenty-five Dollars (\$25.00).
- (17) ~~Co-occurring disorders~~ **Certification LADC/MH application fee.** One Hundred Forty Seven-Five Dollars ~~(\$140.00)~~ **(\$175.00).**
- (18) **Co-occurring disorders Certification renewal fee.** Fifty Dollars (\$50.00).
- (19) **Application maintenance fee.** A candidate for certification or licensure shall pay an annual application maintenance fee of twenty-five dollars (\$25.00). The purpose of the fee is to defray the cost of monitoring the application for compliance with the supervision requirements. The fee shall be due and payable on or before December 31 of each year until the license is issued. The fee shall not be imposed until the following year for applications accepted by the Board from December 1 to December 31. An additional twenty-five dollar (\$25.00) late fee will be charged for each month the maintenance fee is past due for up to three months. If the maintenance fee and late fees are not paid in full on or before April 1, the application shall be void. Persons whose applications are void must submit a new application, pay the application fee, and shall be subject to the licensure and certification requirements currently in effect. The following requirements may carry over to the new application: (1) supervised work experience hours and continuing education hours completed within 2 years prior to the application void date; (2) practicum. This fee shall apply to all applications on file with the Board as of the effective date of the rule.
- (20) **Continuing education provider application fee -** \$200
- (21) **Licensee application fee for approval of continuing education program -** \$25

SUBCHAPTER 13. CONTINUING EDUCATION REQUIREMENTS

38:10-13-2. Continuing education standards

(a) **Continuing education hours required.** As a requirement for license or certification renewal, twenty (20) clock hours of continuing education units shall be required for each license or certification held. These hours must have been obtained during the previous renewal period July through June) and approved by the Board. At least three (3) hours must be categorized as ethics training as defined by the Board. At least ten (10) hours must be alcohol and drug specific as defined by the Board and only half or 10 hours can be done through online sources. For LADC/MH, the twenty (20) hours of continuing education hours must be on topics categorized by the Board as Co-Occurring, or consist of (10) hours on Mental Health topics and ten (10) hours on alcohol and drug specific topics as defined by the Board.

(b) **Candidates requirements for continuing education.** Candidates who have been in the licensure process for more than one year must have at least three hours of continuing education in ethics each successive year until licensed. For each year of candidacy after the first year, the candidate must also obtain three hours of continuing education in addition to the three hours of ethics.

(b) **Continuing education approval.** Approval of continuing education shall be at the discretion of the Oklahoma Board of Licensed Alcohol and Drug Counselors and shall be in accordance with standards acceptable to the profession of alcohol and drug counseling. Requirements for the providers of continuing education are addressed in OAC 38:10-13-7.

(e) **Armed services.** A licensed or certified person called to active duty in the armed forces of the United States for a period of time exceeding one hundred and twenty (120) days during a calendar year shall be exempt from obtaining the continuing education required during that calendar year.

(d) **Exemption.** A licensed or certified person experiencing physical disability, illness or other extenuating circumstances may request partial or complete exemption from the continuing education requirements. The licensee or certified person shall provide supporting documentation for the Board's review. Such hardship cases will be considered by the Board on an individual basis.

(e) **Prorating.** Licensees or certified persons upon initial certification will have their CEU hours prorated according to the date of their initial certification.

[OAR Docket #20-548; filed 7-7-20]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 10. PERSONNEL

[OAR Docket #20-489]

RULEMAKING ACTION:
PERMANENT final adoption

Permanent Final Adoptions

RULES:

- Subchapter 1. Purpose
- 40:10-1-1. Purpose [AMENDED]
- Subchapter 3. Breath-Alcohol Analysts
- 40:10-3-8. Qualifications and requirements for Independent breath-alcohol operators (initial permits) [REVOKED]
- 40:10-3-10. Qualifications and requirements for Independent breath-alcohol operators (renewal permits) [REVOKED]
- 40:10-3-12. Reinstatement of expired independent breath-alcohol analysis permits [REVOKED]
- 40:10-3-13. Revocation of breath-alcohol operator permits [NEW]
- 40:10-3-14. Appeal process [NEW]
- Subchapter 9. Blood Specimen Collectors
- 40:10-9-1. Persons authorized to withdraw blood [AMENDED]

AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §759

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 3, 2019

COMMENT PERIOD:

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Approved by Governor's Declaration on June 25, 2020.

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The rule changes clarify intent/purpose of the chapter. The rules revoke Independent Operator Permit language as breath testing device manufacturers no longer manufacture devices with additional breath sample collection technology. State statute requires independent breath tests to additionally provide a sample to the state at the time of such testing. The rule is obsolete due to the lack of instrumentation to fulfill statutory obligation. The rule allows blood withdraw personnel licensed outside state jurisdiction who would otherwise be recognized professionally as appropriately licensed to conduct blood draws. The rules clarify Board authority to revoke breath-alcohol operator permits and establish a formal appeal process to such actions against permits.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. PURPOSE

40:10-1-1. Purpose

The rules in this Chapter pertain to persons involved in various aspects of the conduct of tests for alcohol and other intoxicating substances under the provisions of Title 47 O.S., Sections 751-761 and 3 O.S., Section 303 and 63 O.S., Section

4210A, Oklahoma Statutes. These rules address standards and qualifications of breath-alcohol test operators and supervisors, forensic alcohol and drug analysts, specimen collectors and other personnel, and regulate initial issuance, renewal and reinstatement of permits for such persons.

SUBCHAPTER 3. BREATH-ALCOHOL ANALYSTS

40:10-3-8. Qualifications and requirements for Independent breath-alcohol operators (initial permits) [REVOKED]

~~Qualifications and requirements for breath-alcohol Independent operators (initial permits) are as follows:~~

- ~~(1) Residence within State of Oklahoma at time of application.~~
- ~~(2) Minimum age of 21 years.~~
- ~~(3) Good moral character.~~
- ~~(4) Graduation from a state accredited high school, or satisfactory passing of the "General Education Development Test", or equivalent educational background.~~
- ~~(5) Satisfactory completion, within 1 year prior to application for an Operator permit, of a course of instruction in breath-alcohol analysis acceptable to the Board of Tests for Alcohol and Drug Influence.~~
- ~~(6) Establishment, to the satisfaction of the Board of Tests for Alcohol and Drug Influence, of the applicant's competence to perform independent chemical analysis of breath for alcohol.~~

40:10-3-10. Qualifications and requirements for Independent breath-alcohol operators (renewal permits) [REVOKED]

~~Qualifications. Qualifications for Independent breath-alcohol operators (renewal permits) are as follows:~~

- ~~(1) Residence within State of Oklahoma at time of application.~~
- ~~(2) Minimum age of 21 years.~~
- ~~(3) Good moral character.~~
- ~~(4) Graduation from a state accredited high school, or satisfactory passing of the "General Education Development Test," or equivalent education background.~~
- ~~(5) Possession of a valid Independent Breath-Alcohol Analysis Operator Permit issued by the Board of Tests for Alcohol and Drug Influence within the preceding year upon compliance with:~~
 - ~~(A) Qualifications and Requirements for Initial Issuance of such Permits then in force, or~~
 - ~~(B) Qualifications and Requirements for Renewal of such Permits then in force.~~
- ~~(6) Satisfactory completion, within one (1) year prior to renewal of the Independent Operator Permit, of a re-qualification course of instruction in independent breath alcohol analysis acceptable to the State Director of Tests for Alcohol and Drug Influence.~~

(7) Establishment within one (1) year prior to renewal of the Independent Operator Permit, to the satisfaction of the Board of Tests for Alcohol and Drug Influence, of the applicant's competence to perform chemical analysis of breath for alcohol.

40:10-3-12. Reinstatement of expired independent breath-alcohol analysis permits [REVOKED]

~~Persons who otherwise meet the qualifications and requirements for issuance of a renewal Independent Breath Alcohol Analysis Operator or Independent Breath Alcohol Analysis Specialist Permit, respectively, but whose initial or renewal Permit has expired because of failure satisfactorily to complete a timely requalification course of instruction acceptable to the State Director of Tests for Alcohol and Drug Influence may regain eligibility for active and valid Permit status, for good cause and in the discretion of this Board, by the following Permit Reinstatement procedure:~~

- ~~(1) Documentation that a valid Independent Breath Alcohol Analysis Operator or Independent Breath Alcohol Analysis Specialist Permit was issued to the applicant under authority of this Board, of the issue and expiration dates of said Permit, and that said Permit had not been revoked for cause;~~
- ~~(2) Completion of a designated application form for Independent Permit Reinstatement, inclusive of all required information;~~
- ~~(3) Satisfactory completion of a requalification or retraining course of instruction in independent breath alcohol analysis operation and/or independent breath alcohol analysis specialist, as applicable, consisting of such theoretical and practical instruction and laboratory practice as deemed applicable and necessary by the State Director of Tests for Alcohol and Drug Influence in consultation with the instructional staff;~~
- ~~(4) Establishment, by written and practical examination, to the satisfaction of the Board of Tests for Alcohol and Drug Influence of the applicant's respective competence to perform, or to perform and conduct administrative maintenance of breath testing devices;~~

40:10-3-13. Revocation of breath-alcohol operator permits

Revocation refers to the immediate cancellation of a permit.

- (1) A breath alcohol operator permit may be revoked by the Board when, in the opinion of the Board, the operator no longer meets the requirements of these rules because of unreliability, incompetence, or violation of these rules, or in any case where, in the opinion of the Board, continuance of licensure would not uphold the scientific integrity of the breath testing program.
- (2) Upon revocation, the Board shall forward the notice and order of revocation of the breath alcohol operator permit to the operator and his/her employer specifying the basis for the revocation.

(3) The Board, in its sole discretion, shall determine the period of revocation.

(4) A revocation cancels any license issued to the breath alcohol operator for the period of revocation.

(5) During the period of revocation, the revoked breath alcohol operator shall cease any and all activities related to evidential breath testing in the state of Oklahoma.

(6) Licensure of a breath alcohol operator whose license has been revoked will require a written request from the applicant to the Board and successful completion of the original requirements for licensure outlined in this subsection.

(7) Revocation shall be for the purpose of maintaining the scientific integrity of the program and enforcing these rules.

40:10-3-14. Appeal process

An appeal of any action issued under the requirements in this title may be made in the following manner:

(1) The Director.

(A) A request for appeal must be received at the administrative offices of the Board within 30 days of the date of action.

(B) Upon proper submission, the Director shall issue an administrative order sustaining or overruling the action within 30 days.

(2) The Board *en banc*.

(A) A request for appeal of an administrative order shall be received at the administrative offices of the Board within 30 days of the date of the administrative order.

(B) Upon proper submission, the Board *en banc* shall issue a final administrative order sustaining or overruling the administrative order.

(3) Appeal. (An appeal of a final administrative order of the Board *en banc* may be made in accordance with the requirements in the Oklahoma Administrative Procedures Act, 75 O.S. 250, et seq.

SUBCHAPTER 9. BLOOD SPECIMEN COLLECTORS

40:10-9-1. Persons authorized to withdraw blood

(a) Authority to withdraw blood. Licensed medical doctors, licensed osteopathic physicians, registered nurses, licensed practical nurses, personnel licensed in accordance with 63 O.S. §1-2505 as Intermediate Emergency Medical Technician, Advanced Emergency Medical Technician, or Paramedic acting within the limits of protocols established by the applicable medical director and other persons designated by law (47 O.S., Section 752) or who otherwise hold a certification or designation as a phlebotomist and has been approved by the medical facility for which they are employed are authorized to withdraw blood for the purpose of determining the concentration of alcohol or other intoxicating substance therein, when acting at the request of a law enforcement officer

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or of an arrested person under the provisions of Title 47 and 3 O.S., Section 303 and 63 O.S., Section 4210A, Oklahoma Statutes.

(b) **Permits.** The current and valid license, registration, practice certificate or other official document entitling its holder to engage in the practice of the respective profession or practice, and issued by the respective Oklahoma healing arts licensing body to any qualified practitioner enumerated above is deemed by the Board of Tests for Alcohol and Drug Influence to be a valid Permit to Withdraw Blood under the provisions of Title 47 and 3 O.S., Section 303 and 63 O.S., Section 4210A, Oklahoma Statutes.

[OAR Docket #20-489; filed 6-29-20]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 15. LABORATORIES AND FACILITIES

[OAR Docket #20-490]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

40:15-1-1. Purpose [AMENDED]

40:15-1-2. Forensic alcohol analysis laboratories [AMENDED]

40:15-1-3. Forensic drug analysis laboratories [AMENDED]

AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §759

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

Incorporated standards:

Oklahoma Forensic Laboratory Accreditation Act

ISO/IEC 17025(International Organization of Standards / International Electrotechnical Commission)

Incorporating rules:

40:15-1-1

40:15-1-2

40:15-1-3

Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday, Board of Tests for Alcohol and Drug Influence, 3600 N. Martin Luther King Avenue, Building 9, Oklahoma City, OK 73136.

GIST/ANALYSIS:

The rule amendments clean up statutory reference and redefine laboratories recognized by the Board. The rules add exemptions to Board administrative rule for laboratories that are ISO/IEC 17025 accredited and their location. The

rule provides a pathway for independent blood testing at laboratories outside the state of Oklahoma.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

40:15-1-1. Purpose

The rules in this Chapter concern approval and regulation by the Board of forensic alcohol laboratories, forensic drug laboratories, and other facilities involved in tests for alcohol and other intoxicating substances under the provisions of Title 47 O.S., Sections 751-761 and 3 O.S., Section 303 and 63 O.S., Section 4210A, Oklahoma Statutes. They include qualifications and requirements for initial issuance and renewal of permits for such entities. All forensic laboratories and facilities that are ISO/IEC (International Organization of Standards/International Electrotechnical Commission) 17025 accredited, or as defined in 74 O.S. § 150.37 (Forensic Laboratory Accreditation Act) are exempt from these rules.

40:15-1-2. Forensic alcohol analysis laboratories

(a) ~~Initial approval~~**Approval.** Any laboratory in which analysis for alcohol of specimens of blood, hereafter termed "forensic alcohol analysis," is performed under the provisions of Title 47 ~~or Title 3 or Title 63~~ or 3 O.S., Section 303 or 63 O.S., Section 4210A, Oklahoma Statutes, shall possess at least the following qualifications and shall meet the following requirements. Any laboratory complying with such qualifications and requirements shall be deemed by this Board to be a Forensic Alcohol Laboratory approved by the Board of Tests for Alcohol and Drug Influence, and shall be entitled to issuance of a Forensic Alcohol Laboratory Permit. Such laboratory shall continue to satisfy such qualifications and requirements as a condition of the continued validity of such Permit.

(1) **Qualifications.** Qualifications for forensic alcohol analysis laboratories (initial permits) are as follows:

(A) ~~Location within the State of Oklahoma.~~**All forensic laboratories and facilities that are ISO/IEC (International Organization of Standards/International Electrotechnical Commission) 17025 accredited, or as defined in 74 O.S. § 150.37 (Forensic Laboratory Accreditation Act), or permitted by the Board of Tests, may perform testing regardless of location.**

(B) Possession of all current and valid Federal, State, and local licenses and permits required to engage in the activities and operations carried out by or in the laboratory, and compliance with all current Federal, State, and local requirements for such activities and operations.

(C) The laboratory shall be at least one (1) of the following:

(i) A clinical laboratory located within and operated and controlled by an institution which is currently licensed by the Oklahoma State Department of Health as a general hospital, and which is currently accredited as a general hospital by the Joint Commission on Accreditation of Healthcare Organizations. Such clinical laboratory shall be directed by a qualified doctoral-level director.

(ii) A clinical laboratory which is currently Federally licensed and/or approved under the implementing Federal regulations applicable to laboratories pursuant to the Federal Clinical Laboratory Improvement Amendments of 1988 (P.L. No. 100-578) for the performance of clinical chemistry and/or toxicology procedures, Title 42, Part 405 et al., Code of Federal Regulations, adopted in this Section by reference. Such clinical laboratory shall be directed by a qualified doctoral-level director.

(iii) A central or branch forensic laboratory operated and controlled by the Oklahoma State Bureau of Investigation.

(iv) A forensic laboratory operated and controlled by a county or municipal law enforcement agency.

(v) The Toxicology/Forensic Science Laboratories of The University of Oklahoma Health Sciences Center.

(D) The laboratory shall regularly employ or have on its permanent staff at least one (1) person holding a currently valid Forensic Alcohol Analysis Permit issued by the Board of Tests for Alcohol and Drug Influence.

(E) The laboratory shall have space, facilities, equipment, and apparatus adequate and appropriate for the performance of forensic alcohol analysis.

(2) **Requirements.** Requirements for forensic alcohol analysis laboratories (initial permits) are as follows:

(A) Submission of a properly completed application form for Initial Approval, obtainable from the Board, together with all supporting documentation specified therein.

(B) Maintenance of an adequate and appropriate quality assurance program and activities in forensic alcohol analysis, meeting nationally-recognized standards.

(C) Regular and satisfactory participation and performance in any program of proficiency testing in forensic alcohol analysis conducted by or on behalf of the Board of Tests for Alcohol and Drug Influence, or required by the Board.

(D) Regular and satisfactory participation and performance in any program of proficiency testing in clinical chemistry or toxicology in which the laboratory is voluntarily enrolled or required to be

enrolled as a condition of Federal or state licensure or approval.

(b) **Renewal of approval.** Laboratories which have been approved by the Board of Tests for Alcohol and Drug Influence for performance of forensic alcohol analysis and which hold a current valid Forensic Alcohol Laboratory Permit shall be eligible for renewal of such Permit upon satisfying the following qualifications and requirements. Such laboratory shall continue to satisfy such qualifications and requirements as a condition of the continued validity of such Permit.

(1) **Qualifications.** Qualifications for forensic alcohol analysis laboratories (renewal permits) are as follows:

(A) Possession of all qualifications stipulated in this Rule for Initial Approval as a Forensic Alcohol Laboratory.

(B) Possession of a valid Forensic Alcohol Laboratory Permit issued by authority of the Board of Tests for Alcohol and Drug Influence within the preceding twelve (12) months upon compliance with the Qualifications and Requirements then in force for, Initial Approval or for Renewal of Approval as a Forensic Alcohol Laboratory.

(2) **Requirements.** Requirements for forensic alcohol laboratories (renewal permits) are as follows:

(A) Submission of a properly completed application form for Renewal of Approval, obtainable from this Board, together with all supporting documentation specified therein.

(B) Continued satisfactory participation and performance in the quality assurance and proficiency testing programs and activities stipulated in this Section as requirements for Initial Approval.

(c) **General conditions of approval.** The following general and continued conditions of Approval apply to every Forensic Alcohol Laboratory.

(1) Every such Laboratory may be inspected periodically, during its normal working hours, by the State Director of Tests for Alcohol and Drug Influence or by the State Director's duly authorized representative(s). Such inspection may include examination of the Laboratory's pertinent files and records, as well as its facilities.

(2) Every such Laboratory shall maintain a current file of all methods and procedures employed in such Laboratory for forensic alcohol analysis.

(3) Every such Laboratory shall maintain and retain at least the following records for a period of at least three (3) years from the date of origin of such records:

(A) An up-to-date record of persons in its employ or on its staff who are or were engaged in the performance of forensic alcohol analysis. Such records shall include, at least, the inclusive employment dates, qualifications of each such person, and any continuing education or training pertinent to forensic alcohol analysis received by each such person within or outside of the Laboratory.

(B) Records of specimens received by and subjected to forensic alcohol analysis within the Laboratory under the provisions of Title 47 or Title 3 or

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Title 63, Oklahoma Statutes, including all pertinent dates and times, identification of such specimens, results obtained and reported, and the identity of the person(s) who performed each such analysis.

(C) Records of the internal and external quality assurance programs and proficiency testing activities and results, in or pertinent to forensic alcohol analysis, in which the Laboratory participates or has participated.

(4) Every such Laboratory shall be operated and shall perform its forensic alcohol activities in substantial compliance with applicable nationally-recognized standards of good laboratory practice.

(5) In every such Laboratory, forensic alcohol analysis shall be performed only by methods and procedures approved by the Board of Tests for Alcohol and Drug Influence, and only by persons holding valid Forensic Alcohol Analysis Permits.

(d) **Period of validity.** Forensic Alcohol Laboratory Approval and Forensic Alcohol Laboratory Permits shall be valid for one (1) year from the date of Approval or the date of Permit issuance, respectively, and shall be subject to earlier suspension, termination, or revocation at the discretion of the Board.

40:15-1-3. Forensic drug analysis laboratories

(a) ~~Initial approval~~**Approval.** Any laboratory in which analysis for drugs and other intoxicating substances ~~(as defined in 47 O.S., Section 75163 O.S. § 2-101, Oklahoma Statutes) of~~ specimens of blood, hereafter termed "forensic drug analysis," is performed under the provisions of Title 47 ~~or Title 3 or Title 63 or 3 O.S., Section 303 or 63 O.S., Section 4210A,~~ Oklahoma Statutes, shall possess at least the following qualifications and shall meet the following requirements. Any laboratory complying with such qualifications and requirements shall be deemed by this Board to be a Forensic Drug Laboratory approved by the Board of Tests for Alcohol and Drug Influence and shall be entitled to issuance of a Forensic Drug Laboratory Permit. Such Laboratory shall continue to satisfy such qualifications and requirements as a condition of the continued validity of such Permit.

(1) **Qualifications.** Qualifications for forensic drug analysis laboratories (initial permits) are as follows:

(A) ~~Location within the State of Oklahoma. All forensic laboratories and facilities that are ISO/IEC (International Organization of Standards/International Electrotechnical Commission) 17025 accredited, or as defined in 74 O.S. § 150.37 (Forensic Laboratory Accreditation Act), or permitted by the Board of Tests, may perform testing regardless of location.~~

(B) Possession of all current and valid Federal, State, and local licenses and permits required to engage in the activities and operations carried out by or in the laboratory, and compliance with all current Federal, State, and local requirements for such activities and operations.

(C) The laboratory shall be at least one (1) of the following:

(i) A clinical laboratory located within and operated and controlled by an institution which is currently licensed by the Oklahoma State Department of Health as a general hospital, and which is currently accredited as a general hospital by the Joint Commission on Accreditation of Healthcare Organizations. Such clinical laboratory shall be directed by a qualified doctoral-level director.

(ii) A clinical laboratory which is currently Federally licensed and/or approved under the implementing Federal regulations applicable to laboratories pursuant to the Federal Clinical Laboratory Improvement Amendments of 1988 (P.L. No. 100-578), for the performance of clinical chemistry and/or toxicology procedures, Title 42, Part 405 et al., Code of Federal Regulations, adopted in this Section by reference. Such clinical laboratory shall be directed by a qualified doctoral-level director.

(iii) A central or branch forensic laboratory operated and controlled by the Oklahoma State Bureau of Investigation.

(iv) A forensic laboratory operated and controlled by a county or municipal law enforcement agency.

(v) The Toxicology/Forensic Science Laboratories of The University of Oklahoma Health Sciences Center.

(D) The laboratory shall regularly employ or have on its permanent staff as least one (1) person holding a currently valid Forensic Drug Analysis Permit issued by the Board of Tests for Alcohol and Drug Influence.

(E) The laboratory shall have space, facilities, equipment, and apparatus adequate and appropriate for the performance of forensic drug analysis.

(2) **Requirements.** Requirements for forensic drug analysis laboratories (initial permits) are as follows:

(A) Submission of a properly completed application form for Initial Approval, obtainable from the Board, together with all supporting documentation specified therein.

(B) Maintenance of an adequate and appropriate quality assurance program and activities in forensic drug analysis, meeting nationally-recognized standards.

(C) Regular and satisfactory participation and performance in any program of proficiency testing in forensic drug analysis conducted by or on behalf of the Board of Tests for Alcohol and Drug Influence, or required by the Board.

(D) Regular and satisfactory participation and performance in any program of proficiency testing in clinical chemistry or toxicology in which the laboratory is voluntarily enrolled or required to be enrolled as a condition of Federal or state licensure or approval.

(b) **Renewal of approval.** Laboratories which have been approved by the Board of Tests for Alcohol and Drug Influence

for performance of forensic drug analysis and which hold a current valid Forensic Drug Laboratory Permit shall be eligible for renewal of such Permit upon satisfying the following qualifications and requirements as a condition of the continued validity of such Permit.

(1) **Qualifications.** Qualifications for forensic drug laboratories (renewal permits) are as follows:

(A) Possession of all qualifications stipulated in this Rule for Initial Approval as a Forensic Drug Laboratory.

(B) Possession of a valid Forensic Drug Laboratory Permit issued by authority of the Board of Tests for Alcohol and Drug Influence within the preceding twelve (12) months upon compliance with the Qualifications and Requirements then in force for Initial Approval or for Renewal of Approval as a Forensic Drug Laboratory.

(2) **Requirements.** Requirements for forensic drug analysis laboratories (renewal permits) are as follows:

(A) Submission of a properly completed application form for Renewal of Approval, obtainable from the Board, together with all supporting documentation specified therein.

(B) Continued satisfactory participation and performance in the quality assurance and proficiency testing programs and activities stipulated in this Section as requirements for Initial Approval.

(c) **General conditions of approval.** The following general and continued conditions of Approval apply to every Forensic Drug Laboratory.

(1) Every such Laboratory may be inspected periodically, during its normal hours, by the State Director of Tests for Alcohol and Drug Influence or by the State Director's duly authorized representative(s). Such inspection may include examination of the Laboratory's pertinent files and records, as well as its facilities.

(2) Every such Laboratory shall maintain a current file of all methods and procedures employed in such Laboratory for forensic drug analysis.

(3) Every such Laboratory shall maintain and retain at least the following records for a period of at least three (3) years from the date of origin of such records:

(A) An up-to-date record of persons in its employ or on its staff who are or were engaged in the performance of forensic drug analysis. Such records shall include, at least, the inclusive employment dates, qualifications of each such person, and any continuing education or training pertinent to forensic drug analysis received by each such person within or outside of the Laboratory.

(B) Records of specimens received by and subjected to forensic drug analysis within the Laboratory under the provisions of Title 47 or Title 3 or Title 63, Oklahoma Statutes, including all pertinent dates and times, identification of such specimens, results obtained and reported, and the identity of the person(s) who performed each analysis.

(C) Records of the internal and external quality assurance programs and proficiency testing activities and results, in or pertinent to forensic drug analysis,

(4) Every such Laboratory shall be operated and shall perform its forensic drug activities in substantial compliance with applicable nationally-recognized standards of good laboratory practice.

(5) In every such Laboratory, forensic drug analysis shall be performed only by methods and procedures approved by the Board of Tests for Alcohol and Drug Influence, and only by persons holding valid Forensic Drug Analysis Permits.

(d) **Period of validity.** Forensic Drug Laboratory Approval and Forensic Drug Laboratory Permits shall be valid for one (1) year from the date of Approval or the date of Permit issuance, respectively, and shall be subject to earlier suspension, termination, or revocation at the discretion of the Board.

[OAR Docket #20-490; filed 6-29-20]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 20. SPECIMENS

[OAR Docket #20-491]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

40:20-1-1. Purpose [AMENDED]

40:20-1-3. Collection, transfer, and retention of blood specimens [AMENDED]

AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §759

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N/A

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The amended rules clean up statutory reference and remove language pertaining to blood draws knowingly collected from persons with hemophilia or persons who are taking anticoagulant medications. The rule is obsolete, advances in medicine eliminate any risk to persons having blood withdrawn that are currently taking anticoagulant medications or whom have been diagnosed with hemophilia.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

40:20-1-1. Purpose

The rules in this Chapter provide procedures for the selection, collection, handling, storage, forwarding, and disposition of specimens of blood, breath or other materials which are to be analyzed for alcohol and other intoxicating substances under the provisions of Title 47 O.S., Sections 751-761 and 3 O.S., Section 303 and 63 O.S., Section 4210A, Oklahoma Statutes.

40:20-1-3. Collection, transfer, and retention of blood specimens

(a) **Collection of blood.** Collection of specimens of blood from living human subjects under the provisions of Title 47 and Title 3 Section 303 and Title 63 Section 4210A, Oklahoma Statutes shall be performed as set forth in this Section. The person, from whom blood is collected for analysis of the presence or concentration of alcohol, other intoxicating substances, or a combination thereof, is referred to as the "Tested Person" for the purposes of this Section.

(1) Collection of blood specimens - general conditions.

(A) Blood specimens shall be collected by persons authorized by Title 47, Section 752 of the Oklahoma Statutes, and these rules, to withdraw blood.

(B) ~~No blood shall be knowingly collected from any person with hemophilia or from any person who is taking anticoagulant medication(s).~~ However, ~~the~~The collection of blood from a person with hemophilia or from a person who is taking anticoagulant medications does not invalidate an otherwise valid test.

(2) Procedures, techniques, and precautions.

(A) Puncture site preparation and skin cleansing shall be performed without the use of alcohol.

(B) All blood specimens shall be collected directly in or immediately deposited into 10 milliliter (mL) glass vacuum tubes labeled by the manufacturer as containing 100 milligrams (mg) of sodium fluoride and 20 milligrams (mg) of potassium oxalate. Such containers are hereby approved for the collection of blood for analysis of the presence or concentration of alcohol, other intoxicating substances, or a combination thereof.

(C) Each tube containing a blood specimen shall be placed into a sealed container approved by the State Director of Tests for Alcohol and Drug Influence, and

bearing or containing at least the following information:

- (i) Full name of the subject from whom the blood specimen was obtained
- (ii) Date, time, and location where the blood specimen was obtained
- (iii) Name of the law enforcement agency (and unit thereof, if needed for further identification) responsible for obtaining and processing the blood specimen
- (iv) Signature, printed name and title of the qualified person who withdrew the blood specimen.

(b) Handling and disposition of state's blood specimen.

A blood specimen collected at the request of a law enforcement officer, hereafter termed "State's Blood Specimen," shall be handled and processed as set forth hereinafter.

(1) Each State's Blood Specimen in its sealed container and employing other shipping or transport enclosures as required, shall be promptly dispatched or forwarded by the law enforcement agency to a central or branch forensic laboratory of the Oklahoma State Bureau of Investigation, or to another official Forensic Alcohol Laboratory or Forensic Drug Laboratory approved by the Board, as appropriate, accompanied by a request for determination of the presence and/or concentration of alcohol and/or other intoxicating substance in such blood specimen, as appropriate. The selection of the approved laboratory shall be made by the law enforcement agency employing the arresting officer.

(2) The law enforcement agency may dispatch or forward the State's Blood Specimen to the approved laboratory of its choice by use of the U. S. Postal Service, personal delivery, or by any other appropriate means.

(3) The storage and dispatch or forwarding of the State's Blood Specimen shall be accomplished in such manner and by such means as to maintain the identity and integrity of specimens, maintain the chain of custody, to exclude tampering with and unauthorized access to or exchange or loss of specimens, and to provide the requisite security for evidentiary purposes.

(c) **Collection, transfers, and retention of retained blood specimens.** Whenever a State's blood specimen is collected under the provisions of Title 47 or 3 O.S., Section 303 or 63 O.S., Section 4210A, Oklahoma Statutes, at the direction of a law enforcement officer and or for the purpose of determining the concentration of alcohol or other intoxicating substance thereof, an additional and separate blood specimen, whenever possible, shall be collected at the same time and by the same qualified person withdrawing the State's blood specimen. The resulting additional specimen is hereafter termed "Retained Blood Specimen." Such Retained Blood Specimens shall be collected, retained, transferred, and analyzed as set forth hereinafter.

(1) Collection of Retained Blood Specimens.

(A) Whenever possible, the additional blood specimen shall be withdrawn from the tested person without performing additional venipunctures, and

shall be collected incident to and as a part of the entire blood collection process.

(B) The Retained Blood Specimen shall be collected in a manner identical to the State's Blood Specimen and as set forth heretofore in this Section.

(C) The tube containing the Retained Blood Specimen shall be placed into a sealed container, approved by the State Director of Tests for Alcohol and Drug Influence, and bearing or containing at least the following information:

- (i) Full name of the subject from whom the blood specimen was obtained
- (ii) Date, time, and location where the blood specimen was obtained
- (iii) Name of the law enforcement agency (and unit thereof, if needed for further identification) responsible for obtaining and processing the blood specimen
- (iv) Signature, printed name and title of the qualified person who withdrew the blood specimen.

(2) Transfer of Retained Blood Specimens to an approved retention laboratory.

(A) Each Retained Blood Specimen, in a sealed container and employing other shipping or transport enclosures as required, shall be promptly transferred by the law enforcement agency to a Retention Laboratory approved by the Board of Tests for Alcohol and Drug Influence and designated for that purpose by the Board.

(B) Each Retained Blood Specimen so transferred shall be accompanied by substantially the following information, clearly associated with a given specimen:

- (i) Name, location, address, and telephone number of the law enforcement agency (and unit thereof if needed for further identification) transferring the blood specimen
- (ii) Date of transfer of the blood specimen from the law enforcement agency to the Approved Retention Laboratory
- (iii) Full name of the subject from whom the blood specimen was obtained
- (iv) Date, time and location of blood specimen collection
- (v) Case or identification number assigned to the case or subject by the law enforcement agency
- (vi) Signature, printed name, and title of the authorized person initiating the transfer of the specimen from the law enforcement agency to the Approved Retention Laboratory.

(C) The law enforcement agency may transfer or forward the Retained Blood Specimen to the Approved Retention Laboratory designated by the Board by use of the U. S. Postal Service, personal delivery, or by any other appropriate means.

(D) The transfer or forwarding of the Retained Blood Specimen shall be accomplished in such manner and by such means as to maintain the identity and integrity of specimens, to exclude tampering with and unauthorized access to or exchange or loss of specimens, and to provide the requisite security for evidentiary purposes.

(E) Neither the tested person, nor any agent or attorney of such person, shall have access to the Retained Blood Specimen while it is in the custody of the law enforcement agency, or during the transfer process, or thereafter.

(3) Retention and storage of Retained Blood Specimens.

(A) Each Retained Blood Specimen, in a sealed envelope or other sealed container or enclosure, shall be kept and stored by the Approved Retention Laboratory designated by the Board for sixty (60) days from the date of collection, unless transferred prior thereto to a Board-approved Forensic Alcohol Laboratory or Forensic Drug Laboratory as hereinafter provided. After the expiration of sixty (60) days from the date of such collection, all such Retained Blood Specimens, other than those transferred to an approved Laboratory as hereinafter provided, may be promptly and safely destroyed by the Approved Retention Laboratory.

(B) Retained Blood Specimens shall be stored and kept in accordance with policies, practices, or procedures established by the Approved Retention Laboratory responsible for obtaining and storing these specimens and not inconsistent with the Rules of the Board of Tests for Alcohol and Drug Influence. Storage shall be carried out in such a manner and by such means as to maintain the identity and integrity of specimens, to exclude tampering with and unauthorized access to or exchange or loss of specimens, and to provide the requisite security for evidentiary purposes.

(C) Neither the tested person, nor any agent or attorney of such person, shall have access to the Retained Blood Specimen while it is in the custody of the Approved Retention Laboratory.

(4) Transfer of Retained Blood Specimens to a forensic alcohol laboratory or forensic drug laboratory.

(A) Upon written direction by the tested person or such person's agent to the Approved Retention Laboratory that has custody of the Retained Blood Specimen obtained from such person, received in accordance with such Approved Retention Laboratory's policies, practices and procedures and within sixty (60) days from the date of collection of the Retained Blood Specimen, the Approved Retention Laboratory shall promptly transfer the Retained Blood Specimen obtained from such person to any Forensic Alcohol Laboratory or Forensic Drug Laboratory, as appropriate, which is approved by the Board of Tests for

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Alcohol and Drug Influence and was selected by such person or such person's agent.

(B) The Approved Retention Laboratory may transfer the Retained Blood Specimen to the Forensic Alcohol Laboratory or Forensic Drug Laboratory by use of the U. S. Postal Service, personal delivery, or by any other appropriate means; provided, that neither the tested person nor any agent or attorney of such person shall have access to the Retained Blood Specimen during the transfer process, or thereafter.

[OAR Docket #20-491; filed 6-29-20]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 25. APPARATUS, DEVICES, EQUIPMENT, AND MATERIAL

[OAR Docket #20-492]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

40:25-1-2. Approved evidential breath-alcohol measurement devices
[AMENDED]

AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §759

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N/A

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The rule amendment appropriately defines the approved breath testing device as an automated analyzer as referenced in Title 47 O.S. §752 (F) that went into effect November 1, 2019 as a result of statutory amendments.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

40:25-1-2. Approved evidential breath-alcohol measurement devices

The Intoxilyzer 8000, an automated analyzer, is hereby approved for determining the presence or concentration of alcohol in subject's breath.

[OAR Docket #20-492; filed 6-29-20]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 30. ANALYSIS OF ALCOHOL IN BREATH

[OAR Docket #20-493]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

40:30-1-3. Breath-alcohol analysis with Board approved devices
[AMENDED]

40:30-1-3.1. Independent Breath-alcohol analysis with the Intoxilyzer
Model 5000-D [REVOKED]

AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §759

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N/A

GIST/ANALYSIS:

The rule amendment corrects language that was intended to be removed during Administrative Rule session 2019. The amended rule removes lingering language referencing "nitrogen-ethanol" dry gas canisters. The revoked rule removes Independent breath-alcohol analysis with the Intoxilyzer model 5000-D. The rule is obsolete and the Intoxilyzer 5000-D is not an approved instrument for evidential breath testing in the state.

CONTACT PERSON:

Joshua Smith, State Director of Tests, Board of Tests for Alcohol and Drug Influence, P.O. Box 36307, Oklahoma City, OK 73136-2307, 405-425-2460, Joshua.Smith@bot.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

40:30-1-3. Breath-alcohol analysis with Board approved devices

(a) **Approved method.** Analysis of breath specimens for the determination of the alcohol content therein may be accomplished by any method, technique, or instrument approved by the Board in accordance with OAC 40: 25-1-2.

(b) **Operating procedure(s).** Each such analysis shall include the following steps:

(1) Determination that the subject's mouth has no presence of any substantial loose material(s), foreign substance(s), or any such substance(s). Metal, porcelain, or hard plastic items need not be removed.

(2) Observation of the subject whose breath is to be tested sufficient to determine that, for a period of at least fifteen (15) minutes prior to the collection of the first breath specimen, and continuing through the second breath specimen, the subject shall not have ingested alcohol in any form or any other substance, vomited, or smoked. Such observation shall be carried out by the breath-alcohol analysis Operator or by any other qualified person.

(3) Analysis for alcohol of two (2) or more specimens of breath consisting substantially of expired alveolar air.

(4) A blank analysis preceding analysis of each breath specimen.

(5) Analysis of at least one control sample from a dry gas canister deployed by the agency in accordance with 40:25-1-3 to verify the calibration of the instrument at the time of the test. The results of each such control analysis must coincide with the corresponding vapor-alcohol concentration target value within plus or minus one-hundredths gram per two hundred and ten liters ($\pm 0.01\text{g}/210\text{L}$).

(6) The operator performing each such analysis shall properly complete a Breath-Alcohol Analysis Record and Report form prescribed and designated by the State Director of Tests for Alcohol and Drug Influence, and shall promptly forward one (1) copy thereof to the Oklahoma Department of Public Safety, and to other agencies and persons listed on the form.

(c) **Reporting results.** The results of each such breath-alcohol analysis shall be reported in terms of the concentration of alcohol in the subject's breath, in grams of alcohol per two hundred and ten liters of breath ($\text{g}/210\text{L}$), truncated to two (2) decimal places. Results of duplicate breath alcohol analyses, on the same subject on the same occasion, which are within three-hundredths grams per two hundred and ten liters of breath ($\pm 0.03\text{g}/210\text{L}$) shall be deemed to be in acceptable agreement and mutually confirmatory and ~~substantive~~ substantive. Results of analysis of all breath specimens shall be reported, but actions and interpretation of the results of such duplicate analyses shall be based upon the lowest such acceptable breath alcohol result obtained.

(d) **Maintenance.** Maintenance shall be performed on the CMI 8000—Intoxilyzer 8000, equipped with an ~~approved nitrogen-ethanol~~ dry gas canister ~~canister—mixture~~, at such time as the regulator of the ~~nitrogen-ethanol—pressurized dry gas canister~~ ~~canister~~ fails to provide a gas sample

for analysis or by the manufacturers stated expiration date, whichever occurs first. Such maintenance shall be performed by Board personnel, according to the procedure(s) prescribed by the State Director of Tests for Alcohol and Drug Influence.

40:30-1-3.1. Independent Breath-alcohol analysis with the Intoxilyzer Model 5000-D [REVOKED]

~~(a) **Approved method.** Analysis of breath specimens for the determination of the alcohol content therein by means of the of the Independent Model 5000 D (manufactured by CMI, Inc., Owensboro, Kentucky 42301 or its successors), is hereby approved as a method or technique for analysis of independent breath specimens for alcohol.~~

~~(b) **Operating procedure(s).** Each such analysis shall be performed in compliance with Operating Procedure(s) prescribed and approved by the State Director of Tests for Alcohol and Drug Influence.~~

~~(c) **Analysis.** Each such analysis shall include the following steps:~~

~~(1) Continuous observation of the subject whose breath is to be tested, for a period of at least fifteen (15) minutes prior to the collection of the first breath specimen, during which observation period the subject shall not have ingested alcohol or alcoholic beverages or any other substance, regurgitated, vomited, or smoked. Such bservation may be carried out by the breath alcohol analysis Operator or Supervisor or by any other qualified person.~~

~~(2) Analysis for alcohol of two (2) or more specimens of breath consisting substantially of expired alveolar air.~~

~~(3) A blank analysis preceding analysis of each breath specimen.~~

~~(4) Analysis for alcohol of at least one suitable reference or control sample of known alcohol concentration, such as air equilibrated at a known temperature with a reference solution of known ethyl alcohol content in an alcoholic breath simulator device approved by this Board. The results of each such control analysis must coincide with the corresponding vapor alcohol concentration target value within plus or minus one hundredths gram per two hundred and ten liters ($\pm 0.01\text{g}/210\text{L}$).~~

~~(5) The operator performing each such analysis shall provide a copy of the Intoxilyzer printout with each test attached to the Log of Tests and Maintenance Report prescribed and designated by the State Director of Tests for Alcohol and Drug Influence, and shall promptly forwarded one (1) copy of the print out thereof and within 10 days of the solution change, to the Administrative Offices of the Board of Tests for Alcohol and Drug Influence.~~

~~(d) **Reporting results.** The results of each such breath alcohol analysis shall be reported in terms of the concentration of alcohol in the subject's breath, in grams of alcohol per two hundred and ten liters of breath ($\text{g}/210\text{L}$), truncated to two (2) decimal places. Results of duplicate breath alcohol analyses, on the same subject on the same occasion, which are within three-hundredths grams per two hundred and ten liters of breath ($\pm 0.03\text{g}/210\text{L}$) shall be deemed to be in acceptable agreement and mutually confirmatory and substantive. All such results~~

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shall be reported, but actions and interpretation of the results of such duplicate analyses shall be based upon the lowest such breath alcohol result obtained.

(e) ~~Maintenance. Administrative Maintenance shall be performed as follows on the above listed equipment at least once during each thirty (30) day period and not later than thirty (30) days since the last prior such maintenance, or after the testing of twenty five (25) subjects, whichever occurs first, by a person possessing a valid Breath Alcohol Analysis Specialist permit issued by this Board:~~

(1) ~~A thorough inspection of the equipment for cleanliness and determination that it is in proper operating condition shall be performed.~~

(2) ~~The reference ethyl alcohol solution in the alcoholic breath simulator device shall be replaced with new solution and one (1) or more verification analyses performed with the new solution. Each verification analysis shall be performed in accordance with the Operating Procedure(s) prescribed by the State Director of Tests for Alcohol and Drug Influence. The result of each such verification analysis must coincide with the corresponding vapor alcohol concentration target value within plus or minus one hundredths gram per two hundred and ten liters ($\pm 0.01\text{g}/210\text{L}$).~~

(3) ~~The administrative maintenance performed, shall include; results of said verification analyses, the date of inspection, and a written record of the inspection will be entered in the applicable portions of the Intoxilyzer 5000 D Log of Tests and Maintenance Record (or equivalent) form prescribed and approved by the State Director of Tests for Alcohol and Drug Influence. One (1) copy of each such completed written inspection and maintenance record form shall be forwarded to the Administrative Offices of the Board, within 10 days of the solution change.~~

[OAR Docket #20-493; filed 6-29-20]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 35. ANALYSIS OF ALCOHOL IN BLOOD

[OAR Docket #20-494]

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RULES:

40:35-1-1. Purpose [AMENDED]

AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §759

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INCORPORATIONS BY REFERENCE:

Incorporated standards:

Oklahoma Forensic Laboratory Accreditation Act

ISO/IEC 17025 (International Organization of Standards / International Electrotechnical Commission)

Incorporating rules:

40:35-1-1

Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday, Board of Tests for Alcohol and Drug Influence, 3600 N. Martin Luther King Avenue, Building 9, Oklahoma City, OK 73136.

GIST/ANALYSIS:

The amended rule cleans up statutory reference. The amended rule adds an exemption to Board administrative rules for laboratories that are ISO/IEC 17025 accredited.

CONTACT PERSON:

Joshua Smith, State Director of Tests, Board of Tests for Alcohol and Drug Influence, P.O. Box 36307, Oklahoma City, OK 73136-2307, 405-425-2460, Joshua.Smith@bot.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

40:35-1-1. Purpose

The rules in this Chapter concern analysis of alcohol in specimens of blood under the provisions of Title 47 O.S., Sections 751-761 and 3 O.S., Section 303 and 63 O.S., Section 4210A, Oklahoma Statutes. They include designation by the Board of approved methods and procedures for blood-alcohol analysis, and apply to analysis of the State's blood specimens and to retained blood specimens. All forensic laboratories and facilities that are ISO/IEC (International Organization of Standards/International Electrotechnical Commission) 17025 accredited, or as defined in 74 O.S. § 150.37 (Forensic Laboratory Accreditation Act) are exempt from these rules.

[OAR Docket #20-494; filed 6-29-20]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 40. ANALYSIS OF OTHER INTOXICATING SUBSTANCES

[OAR Docket #20-495]

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RULES:

40:40-1-1. Purpose [AMENDED]

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ISO/IEC 17025(International Organization of Standards / International Electrotechnical Commission)

Incorporating rules:

40:40-1-1

Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday, Board of Tests for Alcohol and Drug Influence, 3600 N. Martin Luther King Avenue, Building 9, Oklahoma City, OK 73136.

GIST/ANALYSIS:

The amended rule cleans up statutory reference. The amended rule adds an exemption to Board administrative rules for laboratories that are ISO/IEC 17025 accredited.

CONTACT PERSON:

Joshua Smith, State Director of Tests, Board of Tests for Alcohol and Drug Influence, P.O. Box 36307, Oklahoma City, OK 73136-2307, 405-425-2460, Joshua.Smith@bot.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

40:40-1-1. Purpose

The rules in this Chapter concern analysis of blood and other specimens for "other intoxicating substances" (i.e., substances and drugs, other than ethyl alcohol) under the provisions of Title 47 O.S., Section 751-761 and Title 3 O.S., Section 303 and Title 63 O.S., Section 4210A, Oklahoma Statutes. They include standards, requirements, and conditions for performance of such tests, and prescribe specimens, parameters for initial and confirmatory analyses, quality assurance practices, and reporting practices. All forensic laboratories and facilities that are ISO/IEC (International Organization of Standards/International Electrotechnical Commission) 17025 accredited, or as defined in 74 O.S. § 150.37 (Forensic Laboratory Accreditation Act) are exempt from these rules.

[OAR Docket #20-495; filed 6-29-20]

**TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 50. IGNITION INTERLOCK DEVICES**

[OAR Docket #20-496]

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RULES:

- 40:50-1-1.1. Definitions [AMENDED]
- 40:50-1-3. Standards and specifications [AMENDED]
- 40:50-1-3.1. Violation reset [AMENDED]
- 40:50-1-3.2. Reporting requirements [AMENDED]
- 40:50-1-4.1. Installation requirements [AMENDED]
- 40:50-1-5. Maintenance and calibration [AMENDED]
- 40:50-1-6.1. Removal requirements [AMENDED]
- 40:50-1-8. Ignition interlock technician [AMENDED]

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The rule amendments add and remove definitions of various terms related to the ignition interlock device. The rules amend device standards and specifications relating to activation of the vehicle's horn. The rules amend device standards and specifications to define approved volume limitations and alternative configuration pathways for approval. The rules clean up and correct language related to maintenance and calibration. The rules update and define rules related to installations and removals. The rules clarify qualified applicants for ignition interlock technician licensure and approval/denial procedures.

CONTACT PERSON:

Joshua Smith, State Director of Tests, Board of Tests for Alcohol and Drug Influence, P.O. Box 36307, Oklahoma City, OK 73136-2307, 405-425-2460, Joshua.Smith@bot.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

40:50-1-1.1. Definitions

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

"Alcohol" means Ethyl Alcohol, also called ethanol.

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"Anti circumvention feature" means any feature or circuitry incorporated into the device that is designed to prevent activity that would cause the device not to operate as intended.

"Board" means the Administrative Offices of the Oklahoma Board of Tests for Alcohol and Drug Influence created by O.S. 47:759.

"Board en banc" means the sitting members of the Board as defined by O.S. 47:759 (A).

"Breath alcohol test" means the analysis of a person's expired alveolar breath to determine the alcohol concentration.

"Calibration" means the process of testing and adjusting a device to ensure accuracy.

"Circumvention" means to bypass the correct operation of an interlock device by starting the vehicle, by any means, without first providing a breath test or passing a confirmatory test.

"Confirmatory test" means a breath test required in response to a circumvention.

"Certification" means a status granted by the Board that permits a manufacturer to distribute a device in the state of Oklahoma.

"Data storage system" means a recording of all events monitored by the device.

"Director" means the position of the State Director of the Board as defined in O.A.C. 40:1-1-3.

"Fee" means a non-refundable administrative fee.

"Free restart" means a function of a device that will allow a vehicle to be restarted under the requirements in this title, without having to complete another breath alcohol test.

"Ignition interlock device" means a mechanism that prevents a vehicle from starting when the breath alcohol concentration of a breath alcohol test meets or exceeds the startup set point. Also referred to as "device".

"Installation Authority" means the Oklahoma agency or entity by statute or order requiring or authorizing installation of a device.

"Ignition Interlock Maintenance and Calibration Fee" means the fee collected from the participant, at the time of the performing calibration and maintenance as required by this title. This fee is to be remitted to the Board of Tests.

"License" means the permission granted by the Board to engage in specific activities of the ignition interlock program.

"Manufacturer" means the actual producer of the device.

"Manufacturer representative" means the individual designated by the manufacturer to act on behalf of or represent the manufacturer in all matters under the jurisdiction or consideration of the Board with respect to device certification.

"Missed service appointment" means the failure of the interlock participant to return for a scheduled maintenance and calibration service as defined by these rules.

"Monitor" means the agency, organization and/or person(s) designated by the Installation Authority to receive reports regarding ignition interlock program participants.

"Negative result" means a breath alcohol test result indicating the alcohol concentration is less than the specific point value for the purpose specified.

"Operable vehicle" means a motor vehicle with ability to drive forward under its own power and steer and can be legally driven on public roadways.

"Penalty Fail" means a breath alcohol test resulting in a positive result that meets or exceeds the specific point value for the purpose specified.

"Permanent lockout" means a condition wherein the device will not allow a breath alcohol test and therefore will not allow the vehicle to be started.

"Positive result" means a breath alcohol test result indicating the alcohol concentration meets or exceeds the specific point value for the purpose specified.

"Proper Record Maintenance" means the manufacturer's complete records on every participant for a period of five (5) years from the date of removal including, but not limited to, all data retrieved from the data storage system of a device. The Board, or its designee, shall have access to any and all records.

"Reciprocity" means the process by which the Board may defer to a foreign state's device standards and specifications when an interlock participant is required to meet an interlock requirement for more than one state simultaneously.

"Reference sample device" means any alcohol breath testing external control or device approved for use by the Board.

"Retest" means a breath alcohol test or tests required in accordance with O.A.C. 40:50-1-3(e).

"Startup set point" means an alcohol concentration at which, or above, the device would prevent the vehicle from starting.

"Tampering" means any act or attempt to alter, interfere, disable, defeat or circumvent the installation or operation of the device.

"Technical non-compliance" means the failure of the device to comply with one or more provisions of this title with regard to device performance that does not affect the device's ability to respond appropriately to a negative breath test or a breath test required by 40:50-1-3-(c), (e), or (g), or the ability of the device to satisfy the requirements of 40:50-1-3(b)(1) or 40:50-1-3(f).

"Vendor" means a licensed ignition interlock technician designated by the Manufacturer representative of a certified device to act on behalf of or represent the manufacturer in all matters under the jurisdiction or consideration of the Board, excluding matters related to device certification.

40:50-1-3. Standards and specifications

(a) The provisions in this subsection only apply to the use of a device pursuant to an Installation Authority.

(b) The device shall:

(1) Permit a free restart of the motor vehicle within two (2) minutes after the engine has shut off without requiring a further breath alcohol test.

(2) Have a data storage system of sufficient capacity to facilitate the recording and maintaining of all daily driving activities for the period of time elapsed from one maintenance and calibration to the next. All daily driving activity records in this data storage system shall be maintained by

the manufacturer or the licensed service center and shall be available to the Installation Authority, Monitor and/or the Board upon request.

(3) Display tamper seals and a warning label that states: "Any person attempting to physically disable, disconnect or wire around this device or who intentionally fails to return the device upon request by the owner may be guilty of a misdemeanor under Oklahoma law (47 O.S. §11-902a)." If the device consists of separate pieces (e.g. a handset and separate base unit) a separate warning label shall be placed on each piece.

(c) The startup set point value for the device shall be an alcohol concentration of 0.025 g/210L.

(d) The penalty fail point value for the device shall be an alcohol concentration of 0.025g/210L.

(e) A retest feature is required while a vehicle's engine is in operation.

(1) The first retest shall be required at a randomly variable interval ranging from five (5) to fifteen (15) minutes after passing the initial breath test and starting the vehicle's engine. Subsequent retests shall be required at a randomly variable interval ranging from fifteen (15) to forty-five (45) minutes from the previously requested test for the duration of the travel.

(2) The device shall allow five (5) minutes for the retest to be completed.

(3) The retest set point value shall be an alcohol concentration of 0.025 g/210L.

(4) A distinct audible and/or visual indicator shall come on to alert the driver that a retest is in progress. Once a retest is in progress, failure to deliver a negative result within the time frame allowed shall:

(A) ~~Activate the vehicle's horn to sound repeatedly or activate a unique~~ audible and/or visual indicator inside the passenger compartment of the vehicle, until the engine is shutdown.

(B) Record a retest violation in the data storage system, and

(C) Disable the free restart.

(f) The device shall have an approved anti circumvention feature(s) activated at all times.

(g) The device shall require a confirmatory test in response to a circumvention.

(1) The device shall allow two (2) minutes for the confirmatory test to be completed.

(2) The confirmatory test set point value shall be an alcohol concentration of 0.025 g/210L.

(3) An audible and/or visual indicator shall come on to alert the driver that a confirmatory test is in progress. Once a confirmatory test is in progress, failure to deliver a negative result within the time frame allowed shall:

(A) ~~Activate the vehicle's horn to sound repeatedly or activate a unique~~ audible and/or visual indicator inside the passenger compartment of the vehicle, until the engine is shutdown.

(B) Record a circumvention violation in the data storage system, and

(C) Disable the free restart.

(4) Once the confirmatory test is passed, the device shall enter the normal retest sequence as provided by these rules.

(h) A breath sample collection volume limit at or above 1.2 Liters unless an alternative configuration has been approved by the Board.

~~(hi)~~ In addition to the standards and specifications listed herein, the Board or its designee may impose additional requirements, as needed, depending upon design and functional changes in device technology and to ensure that the device functions properly and reliably.

40:50-1-3.1. Violation reset

(a) A violation reset shall be activated by any of the following:

(1) Three (3) penalty fails, at startup, within a fifteen (15) minute time frame.

(2) A circumvention.

(3) A retest violation.

(b) When a violation reset is activated, the device will initiate a unique audible and/or visual cue that will warn the driver that the device will enter a permanent lockout in five (5) days. This event will be uniquely recorded in the data storage system and will simultaneously start a countdown that culminates in the permanent lockout. A licensed ignition interlock technician shall remedy a permanent lockout in person. However, the Director may approve standards and procedures for an override lockout. For the purposes of this section, override lockout means a method of overriding a lockout condition by providing a breath sample indicating a negative result.

(c) Anytime a device is submitted pursuant to a violation reset the licensed ignition interlock technician shall perform a violation reset service consisting of, but not limited to:

(1) Performing ~~a calibration confirmation test~~ maintenance and calibration in accordance with this title, and

(2) Retrieving all data contained in the data storage system. Proper record maintenance shall be ensured as required in this title.

40:50-1-3.2. Reporting requirements

(a) Reportable violations are as follows:

(1) Three (3) penalty fails, at startup, within a fifteen (15) minute time frame.

(2) A circumvention.

(3) Three (3) retest violations constitute a reportable violation. Each retest violation thereafter constitutes a reportable violation.

(4) Removal of the device, ~~except:~~

~~(A) Upon receipt of documentation from the Installation Authority or Monitor authorizing said removal.~~

~~(B) The vehicle is being repaired. The program participant must inform the licensed service center at least every eight (8) days as to the anticipated date of completion of repairs, or~~

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~~(C) The vehicle is being replaced. In the event the vehicle is being replaced by another vehicle, the removal and reinstallation of the device in the subsequent vehicle must be accomplished within eight (8) days of the removal.~~

(5) Tampering.

~~(6) Missed service appointment, which shall be reported at the time the device enters, or should enter, permanent~~Permanent lockout.

(b) Reportable violations shall be reported to the Installation Authority and/or Monitor, in the form and/or format designated by the Board, within five business days, banking holidays excepted, after the maintenance and calibration service, violation reset service or removal of the device.

(c) The manufacturer shall ensure proper record maintenance.

(d) The manufacturer shall report to the Board, in the form and format designated by the Board:

(1) Device installations.

(2) Device removals.

(3) Any reportable violations.

~~(4) Vehicle transfers~~

~~(5) Device changes~~Maintenance and calibration performed on an ignition interlock device as required by these rules

~~(6) Program length change~~

40:50-1-4.1. Installation requirements

The device shall be installed according to the following guidelines:

(1) Original device installations shall only be performed in a service center duly licensed by the Board.

(2) The only person(s) allowed to install or observe the installation of the device are ignition interlock technicians duly licensed by the Board.

(3) A designated waiting area that is separate from the installation area is to be provided for the participant.

(4) Adequate security measures shall be taken to ensure that unauthorized personnel cannot gain access to proprietary materials or files of other participants.

(5) Installations shall be completed on operable vehicles, as defined in this title.

~~(56)~~ The ignition interlock technician shall perform maintenance and calibration on the device in accordance with this title.

~~(67)~~ Upon completion of an installation of a device and all the components required for the device to function as required by these rules, the licensed ignition interlock technician shall provide the participant with installation verification in the form and/or format designated by the Board.

~~(78)~~ Upon completion of the installation of a device required for compliance with an Installation Authority(s), the licensed ignition interlock technician shall:

(A) Provide the participant with installation verification in the form and/or format designated by the Board, and

(B) Remit the appropriate fee.

~~(89)~~ Outside the State of Oklahoma, upon completion of the installation of a device required for compliance with an Installation Authority(s), the technician who installs the device shall:

(A) Apply to the Director for authority to issue installation verification in the form and/or format designated by the Board, and

(B) Remit the appropriate fee.

40:50-1-5. Maintenance and calibration

(a) The maintenance and calibration of a device shall be completed according to the following guidelines:

(1) The device shall enter a permanent lockout if the device has not been checked for calibration accuracy within sixty-five (65) days subsequent to the last check for calibration accuracy.

(2) The maintenance and calibration of the device shall only be performed by ignition interlock technicians duly licensed by the Board who shall perform a visual inspection of the vehicle, the device, and the device's wiring to ensure no tampering or circumvention has occurred.

(3) The maintenance and calibration will consist of, but not be limited to, a check of the device to determine:

(A) The device is configured to the specifications required in this title.

(B) The anti circumvention features are activated and properly functioning.

(C) The device is in calibration.

(D) The device is installed in an operable vehicle as defined in this title.

(i) The device shall be subjected to a calibration confirmation test. This test shall consist of introducing a sample from a calibration standard approved by these rules into the device.

(I) Calibration standard(s) shall be within plus or minus (+/-) 0.005 g/210L of the stated alcohol concentration.

(II) Only dry gas calibration standards appearing on the *Conforming Products List of Calibrating Units for Breath Alcohol Testers* (77 FR 64588) published by the National Highway Traffic Safety Administration may be employed in the maintenance and calibration of the ignition interlock device.

(III) Calibration standards shall be operated in accordance with the manufacturer's recommendations, unless modified by the Board or its designee, and shall be maintained in proper working order. This includes, but is not limited to, any required altitude adjustment.

(IV) Preparatory documentation (such as a certificate of analysis) stating the alcohol concentration on the calibration gas standard must be available for inspection while the gas standard is being utilized.

(ii) The calibration confirmation test shall verify the accuracy of the ignition interlock device to be within plus or minus (\pm) 0.01 g/210L of the

stated alcohol concentration, unless modified by the Board en banc.

(iii) Should the ignition interlock device fail the calibration confirmation test:

(I) The ignition interlock device shall be recalibrated so as to restore accuracy before the device may be placed into service.

(II) That information shall be provided to the Board or its designee and/or the Installation Authority and/or the monitor upon request.

(iv) If the device fails to meet the requirements in this section, the device shall be removed from service and simultaneously replaced with a device that successfully meets the requirements in this section. All data contained in the data storage of the device being replaced shall be retrieved upon replacement. Records may be maintained electronically.

(b) The manufacturer's software utilized in a licensed service center by the licensed ignition interlock technician shall be capable of performing, documenting and reporting the result of this calibration confirmation test. All data contained in the data storage system shall be retrieved anytime the device is submitted to maintenance and calibration. Records may be maintained electronically. Upon completion of maintenance and calibration of the device, the licensed ignition interlock technician shall provide the participant a report showing the maintenance and calibration of the device.

40:50-1-6.1. Removal requirements

The device shall be removed according to the following guidelines:

(1) The only person(s) allowed to remove or observe the removal of the device are ignition interlock technicians licensed by the Board.

(2) A designated waiting area that is separate from the removal area is to be provided for the participant.

(3) Adequate security measures shall be taken to ensure that unauthorized personnel cannot gain access to proprietary materials or files of other participants.

(4) All data contained in the data storage system shall be retrieved in conjunction with removal of the device. Records may be maintained electronically.

(5) Upon completion of the removal of the device, harness, relay and all third party materials used to initially install the device, the licensed ignition interlock technician shall:

(A) Provide the participant a report showing the removal of the device, and

(B) Notify the Board in the form and/or format designated by the Board.

(C) Notify the installation and monitoring authority in the form and format designated by the Board.

40:50-1-8. Ignition interlock technician

(a) No person may perform any service(s) related to any device in this state without being duly licensed by the Board.

(b) An applicant who has been convicted of, or plead guilty or *nolo contendere*, to an alcohol related traffic offense or any offense classified as a felony, within five (5) years prior to the date of filing of the applicant's application for licensure as an ignition interlock technician may not be eligible for licensure. For purposes of this section, a conviction means the applicant was adjudicated guilty by a court of competent jurisdiction.

(c) An applicant must be at least eighteen (18) years of age.

(d) An applicant must possess a valid driver license without any requirements for ignition interlock.

(e) A vendor seeking licensure for an ignition interlock technician shall initiate an ignition interlock technician license application and remit the appropriate fee by accessing the Board website at www.ok.gov/bot.

(f) The applicant shall:

(1) Complete the ignition interlock technician license application.

(2) Complete and score an 80% or higher on a knowledge and skills examination administered by the Board.

(3) Submit a criminal history report certified within the immediately preceding thirty (30) days from either the Oklahoma State Bureau of Investigation or, if the applicant has not lived in Oklahoma for the immediately preceding five (5) years, a criminal background check from the agency responsible for keeping criminal history in the state or states of previous residence.

(g) Each application for licensure shall be for a single ignition interlock technician. Separate ignition interlock technician applications are required for additional ignition interlock technicians.

~~(h) The technician must utilize the ignition interlock management system for issuing, updating, and removing the installation verification form for any participant provided device related services.~~

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TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 55. SCREENING DEVICES

[OAR Docket #20-497]

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Subchapter 2. Drug Screening Devices

40:55-2-2. Approved devices [AMENDED]

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GIST/ANALYSIS:

The proposed rule updates company and/or device names previously approved.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 2. DRUG SCREENING DEVICES

40:55-2-2. Approved devices

The following devices are approved for use as drug screening devices:

- (1) Draeger Drug Test 5000
- (2) Alere DDS-2 or Abbott SoToxa

[OAR Docket #20-497; filed 6-29-20]

TITLE 55. BOARD OF GOVERNORS OF THE LICENSED ARCHITECTS, LANDSCAPE ARCHITECTS AND REGISTERED INTERIOR DESIGNERS OF OKLAHOMA CHAPTER 10. LICENSURE AND PRACTICE OF ARCHITECTS, LANDSCAPE ARCHITECTS AND REGISTRATION OF INTERIOR DESIGNERS

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RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions [AMENDED]
- Subchapter 3. Administrative Operations [AMENDED]
- Subchapter 5. Application and Eligibility for Licensing or Registration [AMENDED]
- Subchapter 7. Examination [AMENDED]
- Subchapter 9. Licensing and Registration [AMENDED]
- Subchapter 11. Rules of Professional Conduct [AMENDED]
- Subchapter 13. Organizational Practice [AMENDED]
- Subchapter 15. Violations [AMENDED]
- Subchapter 17. Continuing Education Requirements [AMENDED]

AUTHORITY:

Board of Governors of the Licensed Architects, Landscape Architects and Registered Interior Designers of Oklahoma; 59 O.S., Sections 46.1 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions to Subchapter 1 are expanding definitions and clean-up. Changes to Subchapter 3 include the additions of fee exemptions for active-duty military personnel and spouses (per SB670), and based on low income (per HB2933). Changes to Subchapter 5 include clean-up and updates to the current processes, as well as the deletion of "good moral character" (per HB1379). Changes in Subchapter 7 were made in order that the application and licensing processes by examination be better understood by the public. The changes in Subchapter 15 provide clarification for what constitutes a violation. All other Rule changes are simplification or clean-up items that do not change the interpretation or intent of the Rules.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

55:10-1-2. Terms defined by statute

Terms defined in the Act shall have the same meanings when used in this Chapter, ~~unless the context or subject matter clearly requires a different interpretation.~~

55:10-1-3. Definitions

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

"**Act**" means the currently enacted and effective legislation codified at 59 O.S., Section 46.1, et seq.

"**Applicant**" means an individual who has submitted an application for a License or Registration to the Board.

"**Architect**" means any person who is licensed in the practice of architecture by the State of Oklahoma as hereinafter defined. ~~means an individual who engages in the practice of architecture and, for the purpose of these Chapter 10 Rules, holds a License issued by the Board.~~

"Architect(s) of Record" means a Licensee currently licensed as an Architect or Landscape Architect and in good standing with this Board, that has met statutory and OAC 55:10 requirements, who is directly responsible to the Board for the firm practice, filings, paying all fees, penalties and submitting all documents.

"Architectural Intern" shall have the same meaning as "Intern Architect".

"ARE" means the current architect registration examination prepared by NCARB and adopted by the Board as the examination to be used in determining a Candidate's qualifications to practice architecture.

"AXP" means Architectural Experience Program, as defined by NCARB.

"Board" means the Board of Governors of the Licensed Architects, Landscape Architects and Registered Interior Designers of Oklahoma.

"Broadly Experienced" means a person who can demonstrate that the Board's equivalent education, training and examination standards have been met through a combination of education and comprehensive practice in responsible control in architectural, landscape architecture or interior design experience. This person is currently licensed or registered in the same profession in another jurisdiction and is in good standing. The person seeking licensure or registration may be required to have a personal interview by the Board and may, at the sole discretion of the Board, issue a license or registration.

"Building types" means the types of buildings found in O.S. 59, Section 46.21b of the Act.

"Candidate" means an individual who has been approved to sit for the examinations given by the Board, or who has passed said examinations, but has not been issued a License or Certificate of Registration.

"CE" means continuing education.

"Certificate of Authority" means the authorization granted by the Board for individuals to practice or offer to practice architecture or landscape architecture in the ~~state~~State through an Entity.

"Certificate of Registration" means the ~~authority~~authorization granted by the Board to an individual Registrant to ~~offer interior design services and~~ represent the individual as a Registered Interior Designer in the ~~state~~State.

"Certificate of Title" means the authorization granted by the Board to an Entity to use the title and offer services as a Registered Interior Designer.

"CEU" means a continuing education unit of one Contact Hour.

"CIDA" means Council of Interior Design Accreditation or its successor.

"CIDQ" means Council for Interior Designers Qualification, the organization administering examinations and setting model practice standards for the Registration of Interior Designers, or its successor.

"CLARB" means Council of Landscape Architectural Registration Boards or its successor.

"Contact Hour" as used in the continuing education requirements means one clock hour of not less than 50 minutes.

"Entity" means any group of individuals joined together to offer or contract for services to practice architecture, landscape architecture or use the term registered interior design or the title of Registered Interior Designer. Entity shall include individuals, partnerships, firms, associations, corporations, limited liability companies and limited liability partnership and any other business or professional group recognized under the Act and approved by the Board.

"Examination" means the current licensing and registration examinations administered by this Board, or its designee, for Architects, Landscape Architects or Registered Interior Designers.

"Fiscal Year" means July 1 through June 30.

"IDP" ~~means Intern Develop Program.~~

"IDEP" means the Interior Design Experience Program, as defined by CIDQ.

"Intern Architect" means an individual in the process of obtaining training acceptable to the Board in order to complete requirements and/or is currently testing to pursuing licensure.

"Intern Landscape Architect" means an individual in the process of obtaining credits acceptable to the Board in order to complete requirements and is currently testing to pursue licensing as a Landscape Architect.

"LAAB" means Landscape Architectural Accrediting Board or its successor.

"LARE" means the current Landscape Architect registration examination prepared by CLARB or its successor and adopted by the Board as the licensing examination to be used in determining a Candidate's qualifications to practice landscape architecture.

"Landscape Architect" means an individual licensed to practice landscape architecture in Oklahoma.

"Landscape Architectural Intern" shall have the same meaning as "Intern Landscape Architect".

"License" means License to practice architecture or landscape architecture issued by the Board and permission to use the title Architect or Landscape Architect.

"Licensee" means a licensed Architect or Landscape Architect that practices architecture or landscape architecture.

"NAAB" means the National Architectural Accrediting Board or its successor.

"NASAD" means the National Association of the Schools of Art and Design or its successor.

"NCARB" means National Council of Architectural Registration Boards or its successor.

"NCIDQ" means the current National Council of Interior Design Qualification exam, prepared by CIDQ or its successor and adopted by this Board used in determining a Candidate's qualifications to register as an interior designer.

"Prototypical Building" means any commercial building or space within a commercial building that is intended to be constructed in multiple locations and which conveys an owner's intended uniform business program, plan or image.

"Prototypical Plans" are technical submissions for prototypical buildings that are prepared by and under the responsible control of an architect licensed in any jurisdiction in the United States for use in the ~~state~~State of Oklahoma.

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"Reciprocal License" means a License granted by the Board to an individual to practice architecture or landscape architecture and granting use of the term Architect or Landscape Architect or any derivation of the word based on a current License in good standing in another jurisdiction meeting the requirements for licensing in this State.

"Reciprocal Registration" means a registration granted by the Board to an individual to use the title Registered Interior Designer or any derivation of the word based on the License or Registration in good standing in another jurisdiction meeting the requirements for Registration in this ~~state~~State.

"Registered Interior Designer" means an individual registered by the Board to use the title.

"Registered Interior Designer of Record" means a Registered Interior Designer in good standing with this Board, that has met statutory and OAC 55:10 requirements, and who is directly responsible to the Board for the activities, filings, paying all fees, penalties and submitting all documents for the Entity having been issued the Certificate of Title.

"Registrant" means an individual registered by the Board to use the title Registered Interior Designer, as a designation of the individual's profession.

"Registration" means the authority granted by this Board to a qualified individual to use the term Registered Interior Designer unless exempt by the Act from Registration.

"Resident State" means the state where the Applicant, Candidate, Licensee or Registrant legally resides.

"Responsible Control" shall have the meaning set forth in the Act.

"Rules" means this Oklahoma Administrative Code, Title 55, Chapter 10 Rules.

"Sole proprietorship" means the only owner of a firm, licensed or registered as an individual by the Board.

"Sponsor" means an individual, organization, association, institution or other entity that provides an educational activity for the purpose of fulfilling the continuing educational requirements of the Board.

"Technical submissions" has the same meaning as in the Act.

"UNE" means the former Landscape Architect licensing examination, prepared by CLARB and adopted by the Board as the licensing examination.

SUBCHAPTER 3. ADMINISTRATIVE OPERATIONS

55:10-3-11. NCARB, CLARB and CIDQ memberships and programs

The Board may maintain membership in NCARB, CLARB and/or CIDQ or their successors and their regional conferences. It is the intention of the Board, to the extent permitted under Oklahoma law, to support NCARB, CLARB and/or CIDQ or their successors programs. This Board will cooperate with NCARB, CLARB and/or CIDQ in furnishing transcripts of records, administering examinations and rendering assistance in establishing uniform standards of professional qualification.

55:10-3-13. Fees and penalties

(a) Schedule of fees and penalties are as follows:

- (1) Initial and subsequent biennial License, Registration or renewal fee -- \$325.00
- (2) Reciprocal License or Registration application fee -- \$100.00
- (3) Examination & Retake application fee -- \$50.00
- (4) Examination -- Actual Cost
- (5) Late payment penalty -- \$25.00
- (6) Returned (insufficient funds) check fee -- \$25.00
- (7) Reinstatement penalty -- \$200.00
- (8) Certificate of Authority and Certificate of Title application or renewal fee -- \$325.00; revisions--\$100.00
- (9) Duplicate certificate -- \$25.00
- (10) Roster-- \$.25 per page or electronic copy \$25.00
- (11) Transcript of hearing-- Actual Cost plus \$25.00
- (12) Copy of public records-- \$.25 per page
- (13) Emeritus License -- All fees waived
- (14) CE reinstatement penalty-- \$1000.00 (per biennial renewal period of noncompliance)
- (15) Civil penalties -- Set by the Act
- (16) Manual processing fee-- \$25.00 per transaction
- (17) File Transfer fee-- \$75.00
- (18) Readmission Application fee-- \$100.00

(b) **Fee exemption based on temporary military deployment.** The Board shall waive all fees, penalties and continuing education, if applicable, during the time Licensees, Registrants or Candidates are called to active military duty in the armed forces of the United States and deployed to a temporary military assignment. In order to obtain this exemption, the Licensees, Registrants or Candidates are required to submit to the Board office military documentation of such deployment. Upon receipt, the staff shall make a note to the file and the Licensees, Registrants or Candidates shall be placed on active military status for the duration of the above mentioned deployment. At the end of the temporary deployment, the Licensees, Registrants or Candidates shall submit to the Board office within ninety (90) days, military documentation that the individual has returned from deployment. The individual will ~~than~~then be returned to regular active status. All fees, penalties and continuing education, if applicable, will be waived until the beginning of the next biennial License or Registration period. This exemption from fees and penalties shall also apply to the Certificate of Authority or the Certificate of Title if the Licensee is the only Architect of Record or the Registrant is the only Registered Interior Designer of Record associated with the Entity.

(c) **Fee exemption for active duty military personnel and spouses.** The Board shall waive the application and license or registration fee for active duty military personnel and their spouse for the first period of issuance upon satisfactory documentation of formal notice, orders for military transfer or honorable discharge to this state.

(d) **Fee exemption based on low income.** The Board shall grant a one-time waiver of any fees associated with the license or registration upon presentation of satisfactory documentation that an applicant is a low-income individual. This waiver shall not include fees charged by NCARB, CLARB, CIDQ or

any other outside organization, nor shall it include any fines or costs assessed as a result of any disciplinary action. Documentation must verify that the individual is enrolled in a state or federal public assistance program, including but not limited to, the Temporary Assistance for Needy Families, Medicaid or the Supplemental Nutrition Assistance Program, or whose household adjusted gross income is below one hundred forty percent (140%) of the federal poverty line or a higher threshold to be set by the executive branch department that oversees business regulation.

(e-e) **Readmission Application fee.** This fee applies to individuals who are re-applying for their License or Registration to be reinstated for any reason, or changing from emeritus to active status. This fee does not apply to OAC 55:10-3-13 (b), Certificates of Authority or Certificates of Title.

SUBCHAPTER 5. APPLICATION AND ELIGIBILITY FOR LICENSING OR REGISTRATION

55:10-5-2. Documents required for a License or Registration by exam

Every individual applying for an initial or reciprocal License or Registration by examination shall submit (i) an original application to the Board, accompanied by the applicable fees in 55:10-3-13, a 2" x 3" passport quality photograph, original college transcript, letter of good standing and examination grades from initial state, proof of citizenship or alien status, and the required reference forms verifying all training experience, or (ii) transmit a record through NCARB, CLARB or CIDQ or their successors, copies of these documents, and an original Oklahoma application. Information submitted will be verified and evaluated and subsequent submissions may be required of the Applicant. The forms must be complete and properly executed over the signature of the Applicant. Incomplete applications are withdrawn after one (1) year from the date of receipt by the Board and the Applicant will be required to reapply.

55:10-5-4. Evaluation criteria

(a) In the Board's evaluation of education and experience credits required, the application shall be subject to the following education and training requirement standards for the applicable profession:

- (1) for Architects, as established by this Board based upon the current "NCARB Handbook for Interns and Architects," "NCARB Education Standard Guidelines", Architect Registration Examination Guidelines and "Intern Development Architectural Experience Program Guidelines", the Act, these Rules, and equivalent standards; determined by the Board in the standards and requirements for Architects set forth in OAC 55:10-5-4.1 and/or in compliance with O.S. 59, Section 4100 et seq;
- (2) for Landscape Architects, as established by current CLARB standards, the Act, these Rules and/or equivalent standards determined by the Board;

(3) for Registered Interior Designers, as established by current CIDQ standards, the Act, these Rules and/or equivalent standards determined by the Board. See OAC 55:10-5-10.

(b) Rejections of applications will include evaluation reports and instructions for completing requirements.

(c) The order upon which a ~~an~~ Candidate ~~Applicant~~ completes education, examination, and/or training may, at the sole discretion of the Board, be considered to have met or not met their requirements.

55:10-5-4.1. Equivalent education and training standards for Architects

(a) **Education and training equivalent requirements for licensing.** This is a State of Oklahoma program to lead national and/or international applicants into meeting licensing and acceptable training standards through equivalent and/or alternative standards and methods. The requirements set out in this paragraph for education and training along with the Board's current Rules will be used to meet these goals. The standard is a five (5) year professional education from an NAAB accredited degree in architecture and completion of the NCARB ~~Intern Development Program (IDP)~~ Architectural Experience program (AXP) plus the passage of the NCARB examinations and examinations required by the Board. Education and training may be gained in a variety of ways. The following paragraphs identify and explain those education and training equivalents and alternatives. A person seeking licensure is required to have five (5) years of education credits established below or an NAAB accredited degree in architecture and complete a national and/or international diverse training program or equivalent practical training acceptable to the Board in its sole discretion. Education and training may be gained in a variety of ways. A candidate for licensure must hold an NAAB accredited degree in architecture or meet the alternate education criteria adopted here, unless the candidate had been licensed by a member board or had accumulated at least five (5) years of education credits in accordance with these standards.

(1) Education and training equivalents and alternatives.

(A) Education credits allowed toward the first professional degree in architecture, or credits toward the first professional degree, where the degree program has been accredited by the National Architectural Accrediting Board (NAAB) not later than two (2) years after termination of enrollment.

- (i) 75% credit allowed first two (2) years
- (ii) 100% credit allowed succeeding years
- (iii) Five (5) years maximum credit allowed

(B) Education credits allowed toward the first professional degree in architecture, or credits toward that degree, where the degree program has not been accredited by NAAB within two (2) years of graduation.

- (i) 75% credit allowed first two (2) years
- (ii) 75% credit allowed succeeding years
- (iii) Four (4) years maximum credit allowed

(C) Education credits allowed toward a foreign bachelor degree in architecture or credits toward that degree accredited by a national or internationally recognized accrediting council or entity acceptable to the Board as equivalent to (a)(1)(A) of this section, in its sole discretion.

- (i) 75% credit allowed first two (2) years
- (ii) 100% credit allowed succeeding years
- (iii) Five (5) years maximum credit allowed

(D) Education credits allowed toward any other pre-professional related bachelor degree

- (i) Three (3) years maximum credit allowed

(E) Education credits allowed for diversified experience directly related to architectural work as an employee in the office of a licensed architect.

- (i) 50% credit allowed first two (2) years
- (ii) 50% credit allowed succeeding years
- (iii) Five (5) years maximum credit allowed
- (iv) 100% training credits allowed; no limit

(F) Education credits allowed for diversified experience, practicing as a principal, with verified record of substantial practice, directly related to architectural work.

- (i) 50% credit allowed first two (2) years
- (ii) 50% credit allowed succeeding years
- (iii) Five (5) years maximum credit allowed
- (iv) 100% training credits allowed; no limit

(G) Education credits allowed for diversified experience as an employee of an organization (other than offices of licensed architects) when the experience is related to architectural work and is under the personal supervision of a licensed architect.

- (i) 50% credit allowed first two (2) years
- (ii) 50% credit allowed succeeding years
- (iii) Four (4) years maximum credit allowed
- (iv) 100% training credits allowed; two (2) year maximum limit

(H) Education credits allowed for experience as an employee of an organization (other than offices of licensed architects) when the experience is in a foreign country or on a military installation and directly related to architectural work but is not under direct supervision of a licensed architect in good standing in the United States or Canada, but rather a foreign credential entity or the military. And equates to (a)(1)(E) of this section by the Board in its sole discretion.

- (i) 50% credit allowed first two (2) years
- (ii) 50% credit allowed succeeding years
- (iii) Five (5) years maximum credit allowed
- (iv) 100% training credits allowed; no limit

(I) Education credits allowed for experience, other than (a)(1)(E-H) of this section, directly related to on-site building construction operation or experience involving physical analyses of existing buildings.

- (i) No education credits allowed
- (ii) 50% training credits allowed; six (6) month maximum limit

(J) Education credits allowed for non-diversified experience in architecture under the direct supervision of a licensed architect or engineer.

- (i) No education credits allowed
- (ii) 50% training credits allowed; six (6) month maximum limit

(K) Education credits allowed for a Master or Doctoral degree in architecture (except where the degree is the first professional degree) where it is a second accredited professional degree.

- (i) No education credits allowed
- (ii) 100% training credits allowed; one (1) year maximum limit

(L) Education credits allowed full time teaching or research in an NAAB accredited architectural program.

- (i) No education credits allowed
- (ii) 100% training credits allowed; one (1) year maximum limit

(M) Education credits allowed other education or training experience. See (b)(5)(B) of this section.)

(b) Explanation of Requirements.

(1) Licensing Standards

(A) To be granted licensure, an applicant must:

- (i) Be at least twenty-one (21) years of age;
- (ii) Hold a high school diploma or equivalent;
- ~~(iii) Be of good character as verified by employers, architects, NCARB member boards or foreign accrediting entities;~~

~~(iv-iii)~~ Hold an NAAB accredited degree in architecture or have at least five (5) years of education credits using these standards and the Board's current Rules;

~~(v-iv)~~ Have at least three (3) years of diversified acceptable training credits;

~~(vi-v)~~ Hold a current registration to practice architecture issued by an NCARB member board or foreign accrediting entity;

~~(vii-vi)~~ Have passed the NCARB Architect Registration Examination (ARE), the NCARB Professional Examination (and the Qualifying Test or the Equivalency Examination when applicable by NCARB standards) or the NCARB 7-part, 36-hour Examination; provided such examinations and the grading procedures applied were in accordance with NCARB standards current at the time the applicant sat for the examinations or

~~(viii-vii)~~ Have passed an acceptable foreign examination comparable to the United States examinations at the sole discretion of the Board; and (viii) Take and pass an examination on the Oklahoma Act and these Rules.

(B) Licensing standard deficiencies.

- (i) Applicants meeting all the requirements of (b)(1)(A)(i-vi, viii) of this section may nonetheless be granted licensure if the applicant has accumulated ten or more years of excess training credits (earned as described in (b)(2)(A) of this section)

and has passed an examination given by the Board at their discretion.

(2) **Examination Deficiencies.**

(A) Prior to July, 1973, the NCARB written examination was a 7-part examination of thirty-six (36) hour duration, but some NCARB member boards administered examinations of a shorter duration. Compensation for each one-hour deficiency in duration in the 7-part examination may be achieved by one (1) year of excess training credits. Excess training credits may be earned only after initial licensing by accumulating training credits in excess of those required for initial licensing. Applicants who have earned, under (a)(1)(F) of this section, ten (10) or more years of excess training credit (in the manner described in the preceding sentence) and have received their initial license by written examination, regardless of hour duration, are eligible for licensure.

(B) The Board may waive deficiencies in the applicant's examination procedure arising from examination transitions, if, in its judgment, such deficiencies are minor in nature or, if substantial, have been adequately compensated for by some equivalent proof of the applicant's competency.

(C) The transition rules relating to the implementation of any NCARB examinations will be followed by this Board.

(3) **Education credits.** Education credits shall be subject to the following conditions:

(A) No education credits may be earned prior to graduation from high school.

(B) Applicants with the degree specified in (a)(1)(A-D) of this section will be allowed the credit shown in the Maximum Credit Allowed column, regardless of the length of the degree program. Applicants without the degree specified in (a)(1)(A-B) of this section may not accumulate more than three (3) years of education credits in the aggregate from all degree programs.

(C) Thirty-two (32) Semester credit hours or forty-eight (48) quarter credit hours are considered to be one (1) year. Fractions of a year of one-half or greater will be considered one-half year, and smaller fractions will not be counted.

(D) Foreign education credits will be granted only under classifications in (a)(1)(C-D) of this section, unless the Board determines the degree is equivalent to the NAAB educational requirements. Any cost of translation and evaluation will be borne by the applicant.

(4) **Training Credits.**

(A) Training credits shall be subjected to the following conditions:

(i) No training credits may be earned prior to accumulating three (3) education credits

(ii) Every applicant must earn at least one (1) year of training credit under (a)(1)(E-G) of this

section, and must earn it after earning five (5) years of education credits

(iii) To earn credit under (a)(1)(K) or (L) of this section, an applicant's credit hours must be in subjects evaluated by the Board as directly related to architecture. Twenty (20) semester credit hours or thirty (30) quarter credit hours of teaching or equivalent time in research will equal one (1) year.

(iv) No credit used as an education credit may be used as a training credit

(v) Organizations will be considered to be "offices of licensed architects" if: (a) the architectural practice of the organization in which the applicant works is in the charge of a licensed person practicing as a principal and the applicant works under the personal supervision of a licensed architect; and (b) the organization may engage in construction.

(vi) An organization (or affiliate) is engaging in construction if it customarily engages in either of the following activities: (a) undertakes to provide labor and/or material for all or any significant portion of a construction project, whether on lump sum, cost plus or other basis of compensation, or (b) agrees to guarantee to an owner the maximum construction cost for all or any significant portion of a construction project.

(vii) A person practices as a "principal" by being (a) a licensed architect and (b) the person in charge of the organization's architectural practice, either alone or with other licensed architects, landscape architects and/or engineers.

(viii) In evaluation training credits the Board prior to licensing, the Board requires the applicant to substantiate training experience by comparing this experience to the training requirements as indicated in these standards and the Board's current Rules.

(5) **General evaluation criteria.**

(A) To earn full education and/or training credits under (a)(1)(E-J) of this section, an applicant must work at least thirty-two (32) hours per week for a minimum period of six (6) consecutive weeks. An applicant may earn one-half the credit specified under (a)(1)(E) of this section for work of a least fifteen (15) hours per week in periods of six (6) or more consecutive weeks; no credit will be given for part-time work in any category other than (a)(1)(E-G) of this section.

(B) Other education and training may be substituted for the requirements outlined above, only insofar as the Board considers them to be equivalent to the required qualifications.

(C) In evaluation credits, the Board may, prior to licensure, require substantiation of the quality and character of the applicant's experience, notwithstanding the fact that the applicant has complied with the technical education and training requirements set forth above.

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55:10-5-4.2. Equivalent education and training standards for Landscape Architects

(a) **Education and training equivalent requirements for licensing.** This is a State of Oklahoma program to lead national and/or international applicants into meeting licensing and training standards through equivalent and/or alternative standards and methods. These paragraphs for education and training will be used to meet these goals. The standard is a five year professional education from an LAAB accredited degree program in landscape architecture and completion of the Board's training standards along with passage of the CLARB examinations or equivalent examinations and examinations required by the Board. Education and training may be gained in a variety of ways. The following paragraphs identify and explains those education and training equivalents and alternatives. A person seeking licensure is required to have five years of professional education credits established below or an LAAB accredited degree in landscape architecture and complete a national and/or international diverse training program or equivalent practical training acceptable to the Board in its sole discretion. Education and training may be gained in a variety of ways. A candidate for licensure must hold an LAAB accredited degree in landscape architecture or meet the alternate education criteria adopted here, unless the candidate had been licensed by a member board or had accumulated at least five years of education credits in accordance with these standards.

(1) Experience Description and Education Credits.

(A) Education credits allowed toward first professional degree in landscape architecture, or credits toward the first professional degree, where the degree program has been accredited by the Landscape Architectural Accrediting Board (LAAB) not later than two years after termination of enrollment.

- (i) 75% credit allowed first two (2) years
- (ii) 100% credit allowed succeeding years
- (iii) Five (5) years maximum credit allowed

(B) Education credits allowed toward first professional degree in landscape architecture, or credits accredited by LAAB within two (2) years of graduation.

- (i) 75% credit allowed first two (2) years
- (ii) 75% credit allowed succeeding years
- (iii) Four (4) years maximum credit allowed

(C) Education credits allowed toward a foreign bachelor degree in landscape architecture or credits toward that degree accredited by a national or internationally recognized accrediting council or entity acceptable to the Board as equivalent to (a)(1)(A) of this section, in its sole discretion.

- (i) 75% credit allowed first two (2) years
- (ii) 100% credit allowed succeeding years
- (iii) Five (5) years maximum credit allowed

(D) Education credits allowed toward any other pre-professional related bachelor degree or credits toward that degree.

- (i) Three (3) years maximum credit allowed

(E) Education credits allowed for diversified experience directly related to landscape architecture as an employee in the offices of a licensed or credentialed landscape architect

- (i) 50% credit allowed first two (2) years
- (ii) 50% credit allowed succeeding years
- (iii) Five (5) years maximum credit allowed
- (iv) 100% training credits allowed; no limit

(F) Education credits allowed for diversified experience, practicing as a principal, with a verified record of substantial practice, directly related to landscape architecture work.

- (i) 50% credit allowed first two (2) years
- (ii) 50% credit allowed succeeding years
- (iii) Five (5) years maximum credit allowed
- (iv) 100% training credits allowed; no limit

(G) Education credits allowed for diversified experience as an employee of an organization (other than offices of a licensed landscape architect) when the experience is related to landscape architecture work and is under the personal supervision of a licensed landscape architect, architect, civil engineer or credentialed planner in good standing

- (i) 50% credit allowed first two (2) years
- (ii) 50% credit allowed succeeding years
- (iii) Four (4) years maximum credit allowed
- (iv) 100% training credits allowed; two (2) year maximum limit

(H) Education credits allowed for experience as an employee of an organization (other than offices of licensed landscape architects) when the experience is in a foreign country or on a military installation and directly related to landscape architectural work but is not under direct supervision of a licensed engineer, architect, landscape architect or credentialed planner in good standing in the United States or Canada, but rather a foreign credential entity or the military and equates to (a)(1)(E) of this section, by the Board in its sole discretion.

- (i) 50% credit allowed first two (2) years
- (ii) 50% credit allowed succeeding years
- (iii) Five (5) years maximum credit allowed
- (iv) 100% training credits allowed; no limit.

(I) Education credits allowed for experience, other than (a)(1)(E-H) of this section, directly related to on-site building construction, maintenance, or installation operations

- (i) No education credits allowed
- (ii) 50% training credits allowed; one (1) year maximum limit

(J) Education credits allowed for non-diversified experience in landscape architecture under the personal supervision of a licensed landscape architect, architect, engineer or credentialed planner in good standing.

- (i) No education credits allowed
- (ii) 50% training credits allowed; one (1) year maximum limit

(K) Education credits allowed for a Master or Doctoral degree in landscape architecture (except where the degree is the first professional degree) where it is a second accredited professional degree.

- (i) No education credits allowed
- (ii) 100% training credits allowed; one (1) year maximum limit

(L) Education credits allowed for full time teaching or research in an LAAB accredited landscape architect program.

- (i) No education credits allowed
- (ii) 100% training credits allowed; one (1) year maximum limit

(M) Education credits allowed for other education and experience. See (b)(5)(B) of this section.

(b) **Explanation of requirements.**

(1) **Licensing standards.**

(A) To be granted licensure, an applicant must:

- (i) Be at least twenty-one (21) years of age;
- (ii) Hold a high school diploma or equivalent;
- ~~(iii) Be of good character as verified by employers, landscape architects, CLARB member boards or foreign accrediting entities;~~

~~(iv-iii)~~ Hold an LAAB accredited degree in landscape architecture or have at least five (5) years of education credits using these standards and the Board's current Rules;

~~(v-iv)~~ Have at least three (3) years of diversified acceptable training credits;

~~(vi-v)~~ Hold a current registration to practice landscape architecture issued by a CLARB member board or foreign accrediting entity;

~~(vii-vi)~~ Have passed the CLARB Landscape Architect Registration Examination (LARE), the CLARB Uniform National Examination (UNE) or a state administered examination prior to national testing methods; provided such examinations and the grading procedures applied were in accordance with CLARB standards and/or this ~~state's~~ State's standards current at the time the applicant sat for the examinations; ~~or~~

~~(viii-vii)~~ Have passed an acceptable foreign examination comparable to the United States examinations at the sole discretion of the Board; ~~and~~ (viii) Take and pass an examination on the Oklahoma Act and these Rules and an examination on Oklahoma plant materials.

(B) Licensing standard deficiencies.

- (i) Applicants meeting all the requirements of (b)(1)(A)(i-vi, viii) of this section may nonetheless be granted licensure if the applicant has accumulated ten or more years of excess training credits, earned as described in (b)(2)(A) of this section and has passed an examination given by the Board at their discretion.

(2) **Examination deficiencies.**

(A) Some CLARB member boards administered examinations of a shorter duration. Compensation

for each one-hour deficiency in duration of an examination may be achieved by one year of excess training credits. Excess training credits may be earned only after initial licensing by accumulating training credits in excess of those required for initial licensing. Applicants who have earned, under (a)(1)(F) of this section, ten or more years of excess training credit (in the manner described in the preceding sentence) and have received their initial license by written examination, regardless of hour duration, are eligible for licensure.

(B) The Board may waive deficiencies in the applicant's examination procedure arising from examination transitions, if, in its judgment, such deficiencies are minor in nature or, if substantial, have been adequately compensated for by some equivalent proof of the applicant's competency.

(C) The transition rules relating to the implementation of any CLARB examinations will be followed by this Board.

(3) **Education credits.** Education Credits shall be subject to the following conditions:

(A) No education credits may be earned prior to graduation from high school

(B) Applicants with the degree specified in (a)(1)(A-D) of this section, will be allowed the credit shown in the Maximum Credit Allowed column, regardless of the length of the degree program. Applicants without the degree specified in (a)(1)(A) or (B) of this section, may not accumulate more than three (3) years of education credits in the aggregate from all degree programs.

(C) 32 Semester credit hours or 48 quarter credit hours are considered to be one (1) year. Fractions of a year of one-half or greater will be considered one-half year, and smaller fractions will not be counted.

(D) Foreign education credits will be granted only under classifications in (a)(1)(C-D) of this section, unless the Board determines the degree is equivalent to the LAAB educational requirements. Any cost of translation and evaluation will be borne by the applicant.

(4) **Training credits.**

(A) Training credits shall be subjected to the following conditions:

(i) No training credits may be earned prior to accumulating three (3) education credits

(ii) Every applicant must earn at least one year of training credit under (a)(1)(E-G) of this section, and must earn it after earning five (5) years of education credits

(iii) To earn credit under (a)(1)(K) or (L) of this section an applicant's credit hours must be in subjects evaluated by the Board as directly related to landscape architecture. 20 semester credit hours or 30 quarter credit hours of teaching or equivalent time in research will equal one (1) year.

(iv) No credit used as an education credit may be used as a training credit

(v) Organizations will be considered to be "offices of licensed landscape architects" if:

(I) the landscape architectural practice of the organization in which the applicant works is in the charge of a licensed person practicing as a principal and the applicant works under the personal supervision of a licensed landscape architect, architect or engineer; and

(II) the organization may engage in construction.

(vi) An organization (or affiliate) is engaging in construction if it customarily engages in either of the following activities:

(I) undertakes to provide labor and/or material for all or any significant portion of a construction project, whether on lump sum, cost plus or other basis of compensation, or

(II) agrees to guarantee to an owner the maximum construction cost for all or any significant portion of a construction project.

(vii) A person practices as a "principal" by being:

(I) a licensed landscape architect, and

(II) the person in charge of the organization's landscape architectural, architectural or engineering practice, either alone or with other licensed architects, landscape architects and/or engineers.

(viii) In evaluating training credits prior to licensing, the Board requires the applicant to substantiate training experience by comparing this experience to the training requirements as indicated in these standards and the Board's current Rules.

(5) General evaluation criteria.

(A) To earn full education and/or training credits under (a)(1)(E-J) of this section, an applicant must work at least 32 hours per week for a minimum period of six (6) consecutive weeks. An applicant may earn one-half the credit specified under (a)(1)(E) of this section, for work of at least 15 hours per week in periods of six (6) or more consecutive weeks; no credit will be given for part-time work in any category other than (a)(1)(E-G) of this section.

(B) Other education and training may be substituted for the requirements outlined above, only insofar as the Board considers them to be equivalent to the required qualifications.

(C) In evaluation credits, the Board may, prior to licensure, require substantiation of the quality and character of the applicant's experience, notwithstanding the fact that the applicant has complied with the technical education and training requirements set forth above.

55:10-5-5. Registered Interior Designer application deadlines [REVOKED]

~~Interior Design applications for initial Registration received later than June 1st for the fall exams or December 1st for the spring exams will be continued to the next examination schedule. All applications, fees and notifications must reach this office by 4:30 p.m. on the due date and postmarks will not be accepted.~~

55:10-5-6. Active and inactive applications [REVOKED]

~~Applications for examination for current Landscape Architect Candidates testing on the five (5) year time period shall remain active for the five (5) years examination period only. At the end of the five (5) year period, these Candidates shall reapply as a new Candidate and begin testing under the current and changing provisions of CLARB or as modified by this Board in its sole discretion. Candidates testing on the five (5) year rolling clock shall remain active for one (1) year after the last examination section was passed. Beginning July 1, 2012, new Candidates and those with expired rolling clock authorizations shall begin testing by CLARB's current and changing provisions or as modified by this Board in its sole discretion. Registered Interior Design Candidates shall remain active for one (1) year after the last examination was taken and must reapply. Any Candidate experiencing physical disability, illness or other extenuating circumstances may request exemption or extension from the examination retention requirements. The individual shall provide supporting documentation for the Board's review. Such hardship cases will be considered by the Board on an individual basis. Incomplete applications are withdrawn after one (1) year and the Applicant will be required to reapply. Applicants and Candidates called to active military duty in the armed forces of the United States and deployed to a temporary military assignment, shall be exempt from the retention period for the duration of the temporary deployment under Section 55:10-7-1. Beginning July 1, 2009, all Architect Candidates shall test under the current and changing provisions set out by NCARB or its successor or modified by this Board in its sole discretion.~~

55:10-5-7. Qualifications for an Architect License

(a) **General requirements.** An Applicant for an initial License to practice architecture in Oklahoma shall be an individual of ~~good moral character~~ and not less than 21 years of age. Further, the Applicant shall have a professional degree from an NAAB accredited program in a school of architecture or an equivalent degree, ~~and provide evidence of acceptable training in architecture as noted in Section 55:10-5-4. The Board requires completion of complete the HDP AXP program, and pass all sections of the ARE~~ prior to licensing. The Board may accept an Architect who is Broadly Experienced meeting the Board's equivalent standards of acceptable education and experience and licensed in good standing in another jurisdiction or country who has also passed the NCARB examinations or its equivalent, as determined by the Board in its sole discretion and the Board's Act and Rules examination.

(b) **Equivalent Education and Training.** The Board may, in its discretion, accept applications for an initial License to practice architecture from Applicants who are not graduates as required in Section 55:10-5-4, who furnishes evidence acceptable to the Board of having completed an equivalent educational and training program.

~~(c) **State Exam Required.** All Applicants shall take and pass an examination on the Act and these Rules. All Applicants shall take and pass an examination on the Act and these Chapter 10 Rules, as well as pass NCARB's examination or its equivalent prior to receiving a License in the State.~~

55:10-5-8. Qualifications for a Landscape Architect License

~~(a) **General requirements.** An Applicant for an initial License to practice landscape architecture shall be an individual of good moral character and not less than 21 years of age.~~

~~(b-a) **Education and training requirements.** General requirements. An Applicant for an initial License to practice landscape architecture shall be an individual not less than 21 years of age. Applicants shall have a professional degree from a LAAB accredited program in a school of landscape architecture or an equivalent educational program, and provide evidence of three (3) years of acceptable training credits as provided in Section 55:10-5-4 or as established by CLARB, and pass all sections of the LARE. The Board may accept a Landscape Architect who is Broadly Experienced meeting the Board's equivalent standards of acceptable education and experience and licensed in good standing in another jurisdiction or country who has passed the CLARB examinations or its equivalent, as determined by the Board in its sole discretion and the Board's Act and Rules examination.~~

~~(e-b) **Training credits.**~~

(1) Training credits may not be counted prior to completion of the third year of college or a pre-professional degree. Thirty-two (32) semester credit hours or forty-eight (48) quarter credit hours are considered to be one (1) year. Fractions of one-half or greater will be considered one-half year and smaller fractions will not be counted. To earn full training credits, an Applicant must work at least (32) to (35) hours per week for a minimum of two consecutive months. A Candidate may earn one-half the credit specified for work of at least fifteen (15) hours per week for a minimum of four consecutive months. Training credits may also be earned by any person who works outside the U.S. or Canada if the person is under the Responsible Control of a person credentialed to practice landscape architecture, architecture, engineering or planner and the supervision person is not registered in a U.S. or Canadian jurisdiction.

(2) Training credits are defined as follows:

(A) Diversified landscape architectural experience under the Responsible Control of a licensed Landscape Architect.

- (i) 100% credit
- (ii) No limit to credit
- (iii) Practicing as a principal in good standing as a landscape architecture for six (6) years full

time, shall be deemed to have satisfied the training requirement.

(B) Diversified landscape architectural experience under the Responsible Control of a licensed Architect, engineer or credentialed planner in good standing.

- (i) 100% credit
- (ii) Two (2) years maximum credit

(C) Landscape architectural experience directly related to on site construction, maintenance, or installation operations.

- (i) 50% credit
- (ii) 1 year maximum credit

(D) Non-diversified experience in landscape architecture under the Responsible Control of a licensed Landscape Architect, engineer, Architect or credentialed planner in good standing.

- (i) 50% credit
- (ii) One (1) year maximum credit

~~(d-c) **State exams required.** All Applicants shall take and pass an examination on the Act and these Rules as well as and an examination on Oklahoma plant materials, and CLARB's examination or its equivalent prior to receiving a License in the State.~~

55:10-5-10. Qualifications for Registration as an-a Registered Interior Designer

(a) **General requirements.** All individuals applying for Registration as a Registered Interior Designer shall:

- (1) Obtain all required education and training prior to Registration.
- (2) Hold an accredited professional degree in interior design accredited by the Council of Interior Design Accreditation or its successor, obtain two (2) years or 3,520 hours of acceptable training as defined by this Subsection and pass the examinations for Registration as a Registered Interior Designer administered by CIDQ or its successor; or
- (3) Obtain an equivalent education to an accredited professional degree in interior design, as determined by the Board, obtain two (2) years or 3,520 hours of acceptable training and experience hours as defined by this Subsection and pass the examinations for Registration as an Interior Designer administered by CIDQ or its successor; or
- (4) Have been issued a valid Registration from another state, jurisdiction or foreign country provided the requirements for Registration are equivalent to the requirements of this ~~state~~ State as determined by the Board; or
- (5) Have a degree from a program accredited by CIDA or its successor. An applicant, who has completed the program within two (2) years of the program acquiring this accreditation, shall be considered to have obtained an accredited education program in interior design.

(b) **Equivalent education and defining training requirements.** The following education, training and experience may be considered to be equivalent to the requirements of OAC 55:10-5-10(a) as determined by the Board in its sole discretion:

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- (1) A baccalaureate degree in programs of no less than 120 semester or 180 quarter passing credit hours of which 60 semester or 90 quarter hours, respectively, are interior design-related; and a total of no less than 3,520 hours of interior design acceptable training as defined herein;
 - (2) Certificate, degree or diploma with a minimum passing credit of 60 semester hours or 90 quarter passing credit hours respectively in interior design related coursework and obtain 5,280 hours of acceptable training; or
 - (3) Meet the educational standards set forth by the National Association of the Schools of Art and Design and other similar institutions provided the educational program has a minimum of 40 semester passing credit hours or 60 passing quarter credit hours in Interior Design related coursework and 7,040 hours of acceptable training.
 - (4) Thirty (30) passing semester hours from a Board approved program shall equal one (1) year of education towards the first accredited professional degree in interior design or its equivalent program.
 - (5) One (1) year of education credit hours from a Board approved program earned in an interior design program or its equivalent degree program shall equal two (2) years of acceptable training and experience.
 - (6) Four (4) years from a Board approved program shall be an equivalent standard for the first professional degree in interior design or its equivalent when computing the fifteen (15) years experience and training to equate towards the training and experience requirement in O.S. 59, Sections 46.39 through 46.40 of the Act.
 - (7) A second accredited professional degree in interior design or its equivalent shall count as one year of education for two (2) years of training and experience.
 - (8) The Board may accept a Registered Interior Designer who is Broadly Experienced meeting the Board's equivalent standards of acceptable education and experience and Registration who has passed the CIDQ examinations or an equivalent examination as determined by the Board in its sole discretion and the Board's Act and Rules examination.
- (c) **Education content requirements.** Educational instruction shall include, but is not limited to, the following:
- (1) Building and Interior Systems
 - (2) Business and Professional Practices, Management and Ethics
 - (3) Codes and Ordinances
 - (4) Basic and Creative Arts
 - (5) Color Theory
 - (6) Interior Design
 - (7) Technical Knowledge
 - (8) History and theory of Art, Architecture and Design
 - (9) Human Factors
 - (10) Lighting
 - (11) Materials and Finishes
 - (12) Communication Skills
 - (13) Furnishings
- (d) **Training and experience categories.** Training and experience credits shall be awarded for work performed in the following areas:
- (1) Programming
 - (2) Schematic Design
 - (3) Design Development
 - (4) Contract Documents
 - (5) Contract Administration
 - (6) Professional Practice
- (e) **Training and experience requirements.** The Board may accept as evidence of diversified training and experience in interior design as stated in this Subsection:
- (1) Applicants having obtained the first CIDA professional accredited degree in interior design or its equivalent shall have 2 years of acceptable training and experience hours, as determined by the Board in its sole discretion. One year shall equal 1760 hours of training and experience.
 - (2) Applicants may earn one (1) year of training and experience hours after completing 96 semester passing credit hours toward the first professional degree in interior design.
 - (3) On January 1, 2007, all individuals beginning their training and experience shall obtain credits after all educational requirements have been met for those individuals with equivalent education equating to the first accredited professional degree in interior design.
 - (4) Applicants with acceptable education and experience may take the examination to become a Registered Interior Designer, regardless of the order in which each was obtained when training and experience requirements are met and if training began prior to January 1, 2007.
 - (5) Training and experience hours shall be awarded based on working full time for at least two (2) consecutive months with thirty-two (32) hours per week or more in interior design or architecture. Part time training and experience hours shall be calculated at the rate of fifty percent (50%) for less than thirty-two (32) hours per week and more than fifteen (15) hours per week working for a least (4) consecutive months. Working less than fifteen (15) hours per week will not qualify for training and experience hours. Two (2) years of full time acceptable training and experience under a Registered Interior Designer or Architect offering services as registered interior design shall equal one (1) year of equivalent education in interior design.
 - (6) Applicants beginning their training and experience after January 1, 2008, shall be under the Responsible Control of a Registered Interior Designer, an interior designer registered or licensed in another jurisdiction, or an Architect, licensed in any jurisdiction. ~~If the individual is not registered or licensed in a jurisdiction, then all work shall be under the Responsible Control of an CIDQ certificate holder.~~
 - (7) The Board, in its sole discretion, shall determine whether all education, training and experience for Applicants are acceptable or not and whether or not it satisfies the requirements for Registration.
 - (8) If the individual is not registered or licensed in a jurisdiction then all work shall be under the Responsible Control of a CIDQ certificate holder.

(9) Training and experience hours shall be submitted on the Board's forms or equivalent. It is the responsibility of the Applicant to obtain all required signatures. All Board forms are to be returned directly to the Board office by the employer, as they are confidential records.

(10) Training outside the U.S. or Canada under the Responsible Control of an individual credentialed by entities similar to CIDQ or NCARB or their successors in a foreign jurisdiction or country.

(f) **Grandfather requirements.** Any Applicant who submits a properly completed and acceptable application for Registration and pays all applicable fees shall be issued a Certificate of Registration provided the requirements below have been met:

(1) An Applicant has submitted evidence of education and training the Board deems equivalent to an accredited professional degree in interior design, satisfied training requirements, if applicable and has passed the examinations administered by CIDQ or its successor; or

(2) Without limitation to application deadlines, an Applicant may apply who has obtained fifteen (15) years of diversified and acceptable training and experience in the practice of interior design as determined by the Board prior to July 1, 2007, and the Applicant is not registered under this Act and not exempt from the requirements for Registration in order to use the title "Registered Interior Designer" and provide services as registered interior design. The Applicant shall be exempt from passing the CIDQ examinations and fulfilling any additional education or training requirements as determined by the Board. The Applicant may use any combination of education, training and experience as acceptable and determined by the Board to equate to the fifteen (15) years of experience. Thirty (30) passing education hours equals one (1) education credit year used toward obtaining the first accredited professional degree in interior design or an equivalent degree as determined by the Board or may equal two (2) years of diversified and appropriate experience when calculating the required fifteen (15) years of experience. Additionally, the Applicant obtaining a second accredited professional degree in interior design or an equivalent degree as determined by the Board may use this education in addition to other education or training.

(g) **Exemption from Registration.** An individual holding a current Architect License is exempt from Registration and does not have the right to use the term Registered Interior Designer unless the individual is registered.

(h) **State Exam Required.** All Applicants shall take and pass an examination on the Act and these Rules.

55:10-5-11. Changing resident state and applying for a Reciprocal License or Registration

(a) All individuals applying for a reciprocal License or Registration shall satisfy the requirements contained in the Act and these Rules and submit an acceptable and complete application for the License or Registration requested and enclose the necessary fees payable by check, cashier's check, money order, credit card, if applicable or certified funds when

submitted. Prior to being issued a License or Registration, all Applicants shall take and pass an examination on the Act and these Rules. The Secretary-Treasurer shall have the power at his/her discretion, to approve all reciprocal applications that meet the statutory requirements of the Act and Rules in this Chapter without full Board action. The License or Certificate of Registration will follow at a later date.

(b) A License certificate shall be issued and will authorize the individual to engage in the practice of architecture or landscape architecture and use the title Architect or Landscape Architect in this ~~state~~State until the 30th day of June of the biennial License period. A Certificate of Registration shall be issued and will authorize the individual to use the title Registered Interior Designer or offer services as registered interior design until the 30th day of June of the biennial Registration period. No License or Certificate of Registration shall be issued for longer than two (2) years.

(c) Any reciprocal License or Registration which is denied, suspended, revoked or refused to be renewed, by any state in which the Licensee or Registrant has obtained a License or Registration, or in which a certification is withdrawn by NCARB, CLARB or CIDQ or their successors shall be cause to suspend, revoke or refuse to renew the License or Registration by this Board.

~~(d) The Licensee or Registrant may change the resident state to Oklahoma by qualifying and applying for a transfer of the individual's official records to this Board and paying all applicable fees in 55:10-3-13.~~

~~(e)~~ Applications for an architectural License by reciprocity shall comply with (a) of this Section and be through NCARB or directly through the Board and only to those individuals whose states, jurisdictions, countries or territories have similar requirements and equivalent standards and extend the same privilege to this ~~state's~~State's Applicants. Upon approval, a letter confirming the individual's qualifications will be sent and the Board will assign a License number.

~~(f)~~ Applications for a Landscape Architect License by reciprocity will be through submission of a CLARB record or its successor or directly through the Board, complying with (a) of this Section and showing licensure by the UNE, the LARE or its successor in any other state, jurisdiction, country or territory whose requirements for licensing are at least equivalent to the requirements of this ~~state~~State and extend the same privilege of reciprocity to Landscape Architects licensed in this ~~state~~State. The Applicant shall be required to pass an examination on Oklahoma plant material. Upon approval, a letter confirming the individual's qualifications will be sent and the Board will assign a License number.

~~(g)~~ Applications for an Interior Design Registration by reciprocity shall comply with (a) of this section through submission of an CIDQ record or its successor or directly through the Board and only to those individuals whose states, jurisdictions, countries or territories have similar requirements and equivalent standards and extend the same privilege to this ~~state's~~State's Registrants. Upon approval, a letter confirming the individual's qualifications will be sent and the Board will assign a Registration number.

(h-g) Rejections of applications for a License or Registration by reciprocity will be by letter explaining the reasons, and outlining procedures under which reconsideration may be possible.

SUBCHAPTER 7. EXAMINATION

55:10-7-1. Examination required for Candidates

(a) ~~Approved Candidates for initial Landscape Architect licensing shall individually appear and pass the required examinations. Candidates may take any section of the examinations that has not been previously passed. After June 30, 1999, current Candidates shall have a six (6) year time frame to pass all sections of the examination. Any Candidate failing to obtain a passing score on all sections of the examinations within the six (6) year period, shall forfeit all credits for section(s) of the examinations previously passed. These Candidates shall re-apply as a new Candidate after their six (6) year testing period ends and begin testing under the new five (5) year rolling clock.~~

(b) ~~Beginning July 1, 2007, all new Candidates for licensing as Landscape Architects shall begin on a five (5) year rolling clock. The clock begins from the date the Candidate passes the first section. The passing grade for any section shall be valid for five (5) years only, after which time the section shall be re-taken if the remaining sections have not been passed within the five (5) year period. If a Candidate fails to pass all remaining sections within the initial five (5) year period, the Candidate is given a new five (5) year period from the date of the second oldest passed section and so on. After passage of all sections of the examinations within five (5) years, and prior to licensing, all Candidates shall take and pass an examination on the Act and these Rules. In addition, Landscape Architect Candidates shall take and pass an examination on Oklahoma plant materials prior to licensing. Beginning July 1, 2012, all new Candidates and those with expired rolling clock authorizations shall begin taking and passing the CLARB examinations on their current and changing provisions.~~

(c) ~~Beginning July 1, 2009, all Architect Candidates shall individually appear and pass the required examinations and retain or forfeit grades according to the current policies and procedures adopted by NCARB and this Board.~~

(d) ~~Candidates for Registration as Interior Designers shall be required to take and pass the CIDQ examination on interior design, unless exempt by the Act. Candidates shall submit a properly completed and acceptable application, documentation and applicable fees to the Board. Evaluation and determination of qualifications prior to beginning testing shall be determined by the Board in its discretion according to current CIDQ standards, the Act and these Rules. Upon approval by the Secretary-Treasurer of the Board or by the Board, CIDQ and the Candidate shall be notified of the Board's decision for entrance into the examination. Upon completing the examination, the Candidate shall contact CIDQ and have them send a letter to the Board indicating the Candidate has passed the entire examination. Prior to Registration, the Candidate shall take and pass an examination on the Act and these Rules. Upon payment of the Registration fee and properly completed and~~

~~acceptable updating of the application, the Board may issue the Registration.~~

(a) **Architect Candidates.** All Architect Candidates are required to take the ARE exam, as developed by NCARB. Prior to taking the ARE exam, Candidates are required to apply with this Board for approval and must already be enrolled in AXP by establishing a council record with NCARB. Upon completing the ARE, the candidate shall take an examination on the Act and these Rules. Each candidate shall pass the required examinations and retain or forfeit grades according to the current policies and procedures adopted by NCARB and this Board.

(b) **Landscape Architect Candidates.** All Landscape Architect Candidates are required to take the LARE exam, as developed by CLARB and approved for administration on specific dates. Prior to taking the LARE exam, Candidates are required to apply with this Board for approval and must establish a council record with CLARB. Upon completing the LARE candidates shall take and pass an examination on the Act and these Rules and be tested upon their knowledge of Oklahoma plant material. Each candidate shall pass the required examinations and retain or forfeit grades according to the current policies and procedures adopted by CLARB and this Board.

(c) **Registered Interior Design Candidates.** All Candidates for Registration as an Interior Designer must take the NCIDQ exam, as developed by CIDQ. Prior to begin taking the NCIDQ exam, Candidates are required to apply with this Board for approval. Upon completing the examination, the candidate shall take and pass an examination on the Act and these Rules. Each candidate shall pass the required examinations and retain or forfeit grades according to the current policies and procedures adopted by CIDQ and this Board, unless exempt by the Act.

(e-d) **Active Military Duty Candidates.** Any Candidate on active military duty deployed to a temporary military assignment, shall be exempt from the retention period for the duration of the temporary deployment and is allowed to carry forward all passing scores into the individual's current examination cycle, as if the person had not been deployed. In order to qualify for this exemption, the Candidate shall submit military documentation of the deployment to the Board office and the staff shall place the Candidate on military active status. Upon return from the temporary military deployment, the Candidate shall submit to the Board office within ninety (90) days, military documentation that the individual has returned from deployment. The Candidate shall then be returned to regular active status for examination without losing any credits for sections passed in the current examination cycle.

(f-e) **Testing extensions.** A Candidate shall not forfeit any examination time or passing score in the current testing cycle if the Board has granted an extension of time to take the examinations due to a hardship. All current passing scores in the current testing cycle will be carried into the extended time.

(g-f) **Failure to appear for testing.** All Candidates failing to appear to examination ~~one year five years~~ after being approved to start testing are required to reapply for admission to the examinations, except for those Candidates on temporary military deployment, who are exempt under 55:10-7-1 or those persons granted a hardship by the Board.

55:10-7-2. Examination notifications [REVOKED]

~~Examination information, formats, dates, times and places will be announced in notices mailed to Landscape Architect Candidates, at their last known address. NCARB, CLARB or CIDQ will notify all Candidates of all pertinent examination information at the Candidate's last known address.~~

55:10-7-3. Examination [REVOKED]

~~Examinations offered may be developed by NCARB, CLARB or CIDQ, and approved for administration on specified dates. Landscape Architect Candidates and reciprocal Applicants shall, in addition to other CLARB testing materials, be tested upon their knowledge of Oklahoma plant material. All Applicants shall take and pass an examination on the Act and these Rules prior to being licensed or registered in the state.~~

55:10-7-4. Deadlines for submissions Examination applications and fees

~~(a) All Architect Candidate examination applications and fees and notifications must be submitted prior to testing. Landscape Architect Candidates and Registered Interior Designer Candidates applications must reach be Board-approved by this office at least 10 days prior to the closing of the scheduling exam period as established by CLARB and CIDQ by 4:30 p.m. on the due date and postmarks will not be accepted.~~

~~(b) All incomplete candidate applications are withdrawn after one (1) year from the date of receipt by the Board and the Applicant will be required to reapply.~~

~~(c) Any Candidate experiencing physical disability, illness or other extenuating circumstances may request exemption or extension from the examination retention requirements. The individual shall provide supporting documentation for the Board's review. Such hardship cases will be considered by the Board on an individual basis.~~

55:10-7-5. Examination fee refunds [REVOKED]

~~The Board may return examination fees paid to the Board by an Applicant whose application to take the examination has been rejected or for other extenuating circumstances approved by the Board. No refund of the examination application fee shall be returned to any Applicant who takes any section of the examination or who voluntarily withdraws after his/her application to take the examination has been approved.~~

55:10-7-6. Grading

~~Exams will be graded and scored generally in accordance with NCARB, CLARB or CIDQ procedures, except as directed by the Board. Minimum passing scores are adopted as recommended by NCARB, CLARB or CIDQ. Minimum passing scores on the landscape architectural plant material and the Act and Rules examinations shall be 75%. Examination Candidates will pass or fail in accordance with the current NCARB, CLARB or CIDQ grading procedures.~~

55:10-7-7. Reexamination

(a) Candidates shall reapply to continue testing if their application was placed on inactive status except for those Candidates on temporary military deployment or the Board has granted an extension of their time to take the examinations due to a hardship. ~~This consists Candidates must submit of filing a new updated application and paying pay the fees which may be processed by the Board's staff without Board approval.~~

(b) ~~Beginning July 1, 2007, all new Candidates for licensing as Landscape Architects shall begin on the five (5) year rolling clock, as described in 55:10-7-1 and shall continue to retest under those provisions until the entire sections of the examinations have been passed within the five (5) year period. If a Candidate fails to pass all remaining sections within the initial five (5) year period, the Candidate is given a new five (5) year period from the date of the second oldest passed section and so on. No passing score is valid for longer than five (5) years.~~

(c) ~~Interior Design Candidates shall be permitted to retest according to the guidelines of CIDQ.~~

SUBCHAPTER 9. LICENSING AND REGISTRATION

55:10-9-1. The License or Registration

A License or Registration shall be issued to individuals meeting all requirements of the Act and the Rules of the Board. Such License or Registration shall identify the individual by name, License or Registration number, designate an effective date, confirm the individual's qualifications and acknowledge the individual's right to practice architecture, landscape architecture or offer interior design services as a ~~registered interior designer~~ Registered Interior Designer or use the titles Architect, Landscape Architect, Registered Interior Designer or other restricted titles defined by the Act or the Rules, as the case may be, in the ~~state~~State. Every ~~Architect~~architect unlicensed in the ~~state~~State, shall ~~apply to the Board for licensing within obtain a License~~ ten (10) working days after notification of selection (whether notified orally or in writing) prior to signing a contract as the Architect by the client/owner. Such Architect shall be licensed in the state prior to signing a contract or engaging in the practice of architecture, as defined by the Act.

55:10-9-5. Suspension, revocation, or refused renewal of a License or Registration

(a) **Surrender of License or Registration.** Upon notice of the Board, Licenses or Registrations suspended, revoked or refused by the Board to be renewed for cause, as defined in (b) of this Section, shall be surrendered immediately in the manner prescribed by that notice.

(b) **Cause defined.** Cause shall be defined as any violation of the Act and the Board's current Rules in this Chapter. Cause shall also be defined as another state refusing to renew the Architect's, Landscape Architect's License or ~~Registered Interior Designer's~~ interior designer's Registration, not meeting continuing education requirements, if applicable, suspension or

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revocation of a License or Registration or NCARB, CLARB or CIDQ withdrawing the certification of the individual Licensee or Registrant.

55:10-9-6. Biennial License or Registration required

~~(a) All Licenses and Registrations must be renewed biennially, in order. The Act requires all Architects, Landscape Architects and Registered Interior Designers desiring to practice or use the professional titles in Oklahoma, to biennially renew the License or Registration with the Board and pay a biennial License or Registration renewal fee in 55:10-3-13. Notices will may be sent to all Licensees and Registrants at the last known address of record; however, it is the responsibility of each individual Licensee or Registrant to insure the renewal fees and completed applications are received by at the Board office, properly completed and acceptable only by mail or hand delivery by or before 4:30 p.m. or online by 11:59p.m. CST on June 30th of the renewal year to avoid penalties. Postmarks will not be accepted. Upon receipt by the Board of the individual's and if applicable, Entity's renewal forms, continuing education forms, if applicable, and fees and compliance with the Board's current Act and Rules in this Chapter, the License or Registration shall be renewed. No License or Registration will be issued for longer than a 2-(two)-two (2) year period.~~

~~(b) Licensees or Registrants called to active military duty in the armed forces of the United States and deployed to a temporary military deployment shall comply with OAC 55:10-3-13.~~

55:10-9-7. Emeritus status requirements

Licensees and Registrants who are residents of Oklahoma and who have been licensed or registered in this ~~state~~State for ten (10) consecutive years, ~~are~~ sixty-five (65) years of age or older, and ~~are~~ retired from active practice, providing services as interior design, or other related professional activities, may request emeritus status by filing the application showing compliance with this Section. If the Rules of this Chapter have been met, all fees and penalties for biennial License or Registration shall be waived by the Board. Emeritus status Licensees and Registrants are also exempt from continuing education requirements unless they reinstate their License or Registration to active status in accordance with OAC 55:10-9-9. At that time, they shall complete the continuing education requirements for the current licensing period.

55:10-9-10. Reinstatement of canceled License or Registration

~~(a) Reinstatement of any License or Registration within three (3) years. Licenses or Registrations canceled for non-payment of fees and/or failure to comply with continuing education requirements, if applicable, may be renewed reinstated at any time within three (3) years, from the date of the cancellation, upon compliance with the Act and the Board's current Rules and upon after paying the Board all fees and penalties as prescribed in 55:10-3-13, and meeting all continuing education requirements, which shall have been accrued at the time of the cancellation reinstatement and which would have been paid at the time of reinstatement had not the License~~

~~or Registration been suspended and revoked, together with the amount of penalties prescribed in 55:10-3-13. Additionally, no License or Registration shall be reinstated unless the individual has completed all past continuing education requirements, where applicable for the three (3) years and paid to the Board the penalties for reinstatement set forth in OAC 55:10-3-13. These Licenses and Registrations Reinstatements may be reinstated approved by the Board's staff upon compliance with the Act and Rules of the Board without Board action.~~

~~(b) Reinstatement of initial License or Registration after three (3) years. For those Architects, Landscape Architects or Registered Interior Designers licensed or registered initially in Oklahoma that allow their License or Registration to remain cancelled for a period exceeding three (3) consecutive years, such former Licensee or Registrant may have the License or Registration reinstated in a manner as determined by the Board consistent with the Act and these Rules, after reapplying and paying a readmission application fee. Additionally, the Licensee or Registrant shall meet all continuing education requirements where applicable, that would have been otherwise required, and pay all back fees and penalties.~~

~~(c) Reinstatement of Reciprocal Licenses or Registrations after three (3) years. Any Architect or Landscape Architect licensed to practice in Oklahoma by reciprocity must, after his/her reciprocal License has been canceled for more than three (3) years, must re-apply through the means of which the initial License was granted or demonstrate a current License in another jurisdiction, meet all continuing education where applicable that would have been required, and pay a readmission application fee and all back fees and penalties. Registered Interior Designers must re-apply and prove a current Registration in another jurisdiction or through CIDQ, pay a readmission application fee, meet all continuing education requirements where applicable, that would have been otherwise required, and pay all back fees and penalties.~~

~~(d) Returning from temporary military deployment. Licensees or Registrants returning from temporary military deployment shall notify the Board office consistent with OAC 55:10-3-13(b)~~

55:10-9-11. Reinstatement of a License or Registration based on cause

A License or Registration suspended, refused to be renewed, penalties levied, orders issued or revoked for cause, may be reinstated only by Board action and only then in the manner determined by the Board. Requests for reinstatement of a license or registration revoked for cause shall be addressed to the Board, showing why such reinstatement is justified. Request for reinstatement may be filed by re-applying, paying a readmission application fee after all appeals have been exhausted and the further passage of six (6) months. The request shall show the Board that the public interest will not suffer by reason of the reinstatement and should be addressed to the Secretary Treasurer at the Board office. The Board has the sole discretion as to whether to reinstate the License or Registration, deny the reinstatement and require the payment of all back fees, penalties and meet continuing education requirements if applicable.

SUBCHAPTER 11. RULES OF PROFESSIONAL CONDUCT

55:10-11-2. Good moral character [REVOKED]

~~The Act requires all Licensees to be of good moral character. Among items considered as defining the lack of good moral character are:~~

- ~~(1) Practicing architecture or landscape architecture without a License in violation of any jurisdiction regulation.~~
- ~~(2) Conviction of a felony.~~
- ~~(3) Misrepresentations or falsifications of fact in an application for licensing or any other document filed with the Board.~~
- ~~(4) Individual cases may require consideration of other items that define the lack of good moral character.~~

55:10-11-3. Competence

(a) In engaging in the practice of architecture or landscape architecture, a Licensee or Entity shall act with care and competence, and shall apply the technical and tactical knowledge and skill which is ordinarily applied by licensed Architects and Landscape Architects of good standing. The Licensee or Entity shall not directly or indirectly indulge in exaggerated, misleading, deceptive or false statements or claims about professional qualifications.

(b) In designing a project, a licensed Architect or Landscape Architect shall follow all applicable ~~state~~State and municipal building laws, codes and regulations. While a Licensee of these professions may rely on the advice of other professions as to the intent and meaning of such laws, codes and regulations, once having obtained such advice, the Licensee shall not intentionally or negligently design a project in violation of such laws, codes and regulations. When two or more codes are in conflict, the standard of practice is to use the most restrictive.

(c) A licensed Architect or Landscape Architect shall undertake to perform professional services only when he or she together with those engaged as consultants, is qualified by licensing, education, training and experience in the specific technical and tactical areas required. The Licensee shall establish by agreement, the nature and extent of services to be provided and the compensation to be paid.

(d) No individual shall be permitted to engage in the practice of architecture or landscape architecture if, after a hearing, in the Board's judgment, such individual's professional competence is found to be substantially impaired by mental disabilities. An individual may apply for reinstatement through the procedures established by the Rules in this Chapter.

55:10-11-5. Full disclosure

(a) A Licensee or Entity making public statements on architectural or landscape architectural questions, shall disclose when he/she or it is being compensated for making such statements.

(b) A Licensee or Entity shall accurately represent to a prospective or existing client or employer his/her/its qualifications and the scope of responsibility in connection with work

for which he/she/it is claiming credit. An individual leaving employment shall obtain written permission from the employer to take or copy plans and specifications when they leave the Entity.

(c) If, in the course of his/her/its work on a project, the Licensee or Entity becomes aware of a decision taken by his/her/its employer or client, against such Licensee's or Entity's advice, which violates applicable ~~state~~State or municipal building laws, codes or regulations, and which will, in the Licensee's or Entity's judgment, materially and adversely affect the health, welfare and safety to the public of the finished project, the Licensee or Entity shall:

- (1) report the decision to the local building inspector or other public official charged with the enforcement of the applicable ~~state~~State or municipal building laws, codes or regulations;
- (2) refuse to consent to the decision;
- (3) in circumstances where the Licensee or Entity reasonably believes that other such decisions will be taken, notwithstanding her/his/its objection, terminate services with respect to the project. In the case of a termination in accordance with (c) of this Section, the Architect, Landscape Architect or Entity shall have no liability to his/her/its client or employer on account of such termination.

(d) A Licensee or Entity shall not deliberately make a materially false statement or fail deliberately to disclose a material fact requested in connection with an application for a License, Registration, renewal or contract with a client/owner.

(e) A Licensee or Entity shall not assist the application for an individual or Entity known by the Registrant or Entity to be unqualified in respect to education, training, experience or character.

(f) A Licensee or Entity, shall report such knowledge to the Board.

~~(g) The Architect, Landscape Architect or Entity contracting to provide professional services shall disclose whether or not they carry liability insurance or are bonded for the project. If insurance or a bond is canceled during the term of a contract, or any extension thereof, the client/owner shall be notified in writing of the cancellation.~~

55:10-11-6. Compliance with laws

(a) A Licensee or Entity shall not, while engaging in the practice of his/her/its profession, knowingly violate any ~~state~~State or federal criminal law.

(b) A Licensee or Entity shall neither offer nor cause to be offered any payment or gift to a government official, elected or appointed, with the intent of influencing the official's judgment in connection with a prospective or existing project in which the Licensee or Entity is interested.

(c) A Licensee or Entity shall comply with the licensing laws, rules and/or regulations governing his/her/its professional practice in any jurisdiction.

55:10-11-7. Professional conduct

An Architect, Landscape Architect or Entity shall preserve the confidences of the client or employer. A Licensee or Entity may make contributions of service or anything of value to those endeavors which he/she/it deems worthy. A Licensee or Entity has the right to participate in the political process and to contribute time and money to political campaigns. In making political contributions, the Licensee or Entity shall do so publicly.

(1) Each office maintained for the preparation of drawings, specification, reports or other professional work shall have a Licensee in that office having Responsible Control of the work.

(2) A Licensee shall not sign or seal drawings, specifications, reports or other professional work for which he/she does not have Responsible Control. ~~Provided, however, that in the case of the portions of such professional work prepared by the Licensee's licensed consultants, licensed under this or another professional license in Oklahoma, the Licensee may dually sign and seal that portion of the professional work if the licensed Architect or Landscape Architect has additionally coordinated its preparation and intends to be responsible for its adequacy. Prototypical submissions plans are an exception to the rule as noted in OAC 55: 10-11-9(e) (f) if they are not complete for construction when leaving the original architect's office.~~

(3) A Licensee or Entity shall neither offer nor make any gifts, other than gifts of nominal value including, for example, reasonable entertainment and hospitality, with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the Licensee or Entity is interested. Intent of influence means influence, direct or indirect, which induces or tends to induce consideration or action with respect to any prospective work on any basis other than the merits of the matter.

(4) A Licensee or Entity shall not engage directly or indirectly an agent or representative to solicit work on his/her/its behalf whose compensation is contingent, in whole or in part, upon obtaining professional work for the Entity, Architect or Landscape Architect.

(5) A Licensee or Entity shall not make false statements about the professional work, or maliciously injure or attempt to injure the prospects, practice or employment position of others.

(6) A Licensee or Entity shall not furnish limited services in such a manner as to enable owners, draftsmen, or others to evade public health and safety requirements.

(7) A Licensee or Entity provides a service to the client, as well as a product and/or drawings and as such is only responsible for the design of the facility represented by the products and/or drawings he or she completed, signed, sealed and dated for a specific client and location. Should the client or any other individual modify or change locations of the facility or make changes to the design without the authorization of the Licensee, the Licensee is only responsible and liable for the project as he/she signed,

sealed and dated it and the site at the original location. A Licensee is allowed to review and adapt documents already sealed by the original Licensee when modifying the plan and/or bringing the plan up to the current code requirements at the same location as the original site. In this case, the Licensee is required to sign, seal and date only the modifications to the original documents and shall only be responsible for his/her new modifications.

(8) Nothing contained in 55:10-11-7-(7) shall apply to prototype plans, where the Licensee is allowed to review and adapt a prototypical technical submission, making changes to adapt in whole or in part to a different location and/or bring the plan up to the current code requirements. In this case, the Licensee is required to sign, seal and date the adapted, integrated documents and the licensee assumes full responsibility for the documents, in their entirety, as if fully prepared by or under the licensed architect's responsible control.

55:10-11-8. Licensee's seal

(a) **Seal required.** Every individual authorized to practice architecture or landscape architecture by a License shall procure a seal with which to identify all technical submissions, addenda, field orders and other documents of service issued by the Licensee for use in this ~~state~~ State. This seal may be purchased from any company of the Licensee's choice or computer generated.

(b) **Type of seal.** The seal required shall be of a type that makes an image on the surface of original documents and duplications of original documents. The use of a rubber stamp or electronic image producing an accurate and legible image of the seal is permissible.

(c) **Design of seal.** The seal of a licensed Architect shall contain his/her name, Oklahoma License number and the words, "Licensed Architect, State of Oklahoma." The seal of a licensed Landscape Architect shall contain his/her name, Oklahoma License number and the words, "Licensed Landscape Architect, State of Oklahoma." Examples of acceptable forms for the design of seals are available from the Board.

55:10-11-9. Authorized use of seal

(a) **Seal declares authorship.** The seal appearing on any technical submission shall be a prima facie evidence in 55:10-15-1 that said technical submission was prepared by or under the individual named on said seal. Changes made to a signed, sealed and dated end of point product or service that are not designed by the original Licensee and that are not authorized or indicated by the seal of another Licensee on the changes, exempts the original Licensee from any authorship or liability concerning any changes made, including making site changes without the knowledge of the Licensee.

(b) **Location of seal, signature and date.** The seal impression or image shall be across the signature that may be generated electronically of the Licensee responsible to this Board for authorship of the documents thus identified. The handwritten or electronically generated date the signature is affixed shall accompany the signature.

(c) **Use of seal is individual act.** Authorized use of the prescribed seal is an individual act. The Licensee is responsible for its security when not in use.

(d) **Use or attempted use of seal by unauthorized individuals.** No individual, other than the Licensee represented, shall use or attempt to use the prescribed seal, and no unregistered individual or Entity shall be authorized to use the prescribed seal, except as described in (c) above. Use, reproduction distribution or attempted use of the seal shall include using a set of construction documents to construct a structure on another site without the permission of the original Licensee or making unauthorized copies, modifications or incorporating any portion of the specifications into another work without the use of a Licensee's seal, signature and date authorizing such modifications. Prototype building plans are not required to carry the seal, signature and date of the original Licensee ~~if they are not complete~~, but must prior to their issue in Oklahoma be marked and qualified by a written statement to the effect of: "Prototypical design submissions not for regulatory approval or construction." These submissions do not comprise a final, comprehensive set of design and construction documents and are not intended for use on any specific project without the appropriate review, modifications and integration into the work of a licensed architect engaged to provide professional architectural services for the specific project."

(e) **Entire Contract.** Any licensed Architect or Landscape Architect preparing documents that would be considered to fulfill an entire contract with a client being the end point of service, whether or not the plans are complete, shall sign, seal and date those documents. The Licensee may add any words on the documents that he/she/it chooses to indicate an incomplete document and not for construction notice.

(f) **Technical submissions.** Architects and Landscape Architects are permitted to review and adapt portions of technical submissions if:

- (1) the seal of the original Architect or Landscape Architect appears on the submissions to authenticate authorship.
- (2) the succeeding Architect or Landscape Architect clearly identifies all modifications to the submissions.
- (3) the succeeding Architect or Landscape Architect assumes responsibility and liability for the adequacy of the design on the modifications.
- (4) the documents are prototypical technical submissions. An architect may sign and seal technical submissions prepared by another ~~architect licensed in any state, jurisdiction, country or territory~~ person if the signing and sealing architect has reviewed the ~~other architect's~~ work and has integrated the work into his/her own technical submissions and the other ~~architect's~~ technical submissions are prototypical building documents. Any licensed architect signing or sealing technical submissions integrating the work of another ~~architect~~ into the licensed architect's own work as permitted above shall maintain ~~and make available to the Board upon request for at least ten (10) years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the licensed architect's review of and integration of~~

~~the work of such other architect's work into his/her own technical submissions, and that such review and integration met the required professional standard of care. In applying his or her seal, the Oklahoma licensed architect assumes full responsibility in its entirety for the documents as if fully prepared by or under the Oklahoma licensed architect's responsible control.~~

55:10-11-10. Required use of seal, signature and date on documents and retention period

(a) All Licensees shall affix their seal, signature and date, to all original ~~working~~ drawings, and to the original cover sheet and the page identifying all specification pages covered, including all addenda and field changes.

(b) In the absence of sheets or covers identifying all sheets or pages bound, all original contract documents of service must have the seal, date and signature of the Licensee responsible. ~~In addition, the Licensee shall identify on the page or covers of sheets or pages bound, by name and License number the consultants used on the project and the sections the consultants worked on.~~

(c) An Architect, Landscape Architect or Entity shall retain a copy of all technical submissions produced for a minimum of ten (10) years following the date of preparation. Should the submissions be retained by electronic means, all submissions shall be updated into current versions so they are accessible at all times and can be printed out in a legible format.

55:10-11-12. Prohibited use of seal

(a) **Prohibition on sealing documents.** No Licensee shall affix or attempt to affix the seal, signature or dates to sketches, ~~working~~ drawings, specifications or other documents developed by unlicensed persons that are not employees in their offices or professional consultants except as stated in OAC 55:10-11-9(e) (f).

(b) **Prohibited acts using seal.** No Licensee shall affix the seal, signature or date to documents unless:

- (1) such documents were developed and prepared under a Licensee's Responsible Control;
- (2) the Licensee had full authority to determine their development; and
- (3) the Licensee has reviewed and adopted, in whole or in part, architectural or landscape architectural portions and has either coordinated their preparation ~~and~~ or integrated them into the work.

SUBCHAPTER 13. ORGANIZATIONAL PRACTICE

55:10-13-1. Individual and group practice

Individual Licensees or Registrants holding current Licenses or Registration may organize or engage in individual or group practice of architecture, landscape architecture or organize in an Entity for the purposes of representing themselves as a Registered Interior Designer or offering services as registered interior design allowed by statutes of this ~~state~~ State and which

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are in compliance with the Act and the Board's current Rules in this Chapter. The Secretary-Treasurer of the Board may approve these applications without full Board action.

55:10-13-2. Licensee required in each office [REVOKED]

~~Each Entity where architectural or landscape architectural services are offered or performed for execution in Oklahoma shall have a current Oklahoma licensed Architect or Landscape Architect in Responsible Control who is listed on the Certificate of Authority as an Architect of Record.~~

55:10-13-4. Certificate of Authority or Certificate of Title required [REVOKED]

~~Excluding sole proprietorships practicing or using a title of profession under the name of the Architect, Landscape Architect or Registered Interior Designer only, all entities, including entities using a fictitious name, practicing, offering to practice or contracting to provide architectural or landscape architectural services or using the title of Registered Interior Designer or offering services through a as registered interior design for use in the State of Oklahoma shall file an application with the Board, pay applicable fees and penalties in OAC 55:10-3-13 and, if qualified, be issued a Certificate of Authority or Certificate of Title by the Board. Certificates of Authority or Certificates of Title may be granted by the Board to any Entity which meets the criteria of the Act and these Rules and approved by the Secretary-Treasurer of the Board.~~

55:10-13-5. Establishing criteria for issuance of Certificate of Authority or Certificate of Title required

The Board may grant a Certificate of Authority to practice architecture or landscape architecture through individual Licensees or a Certificate of Title to represent the person as a Registered Interior Designer or to offer services of registered interior design through Registrants to those firms meeting the following criteria:

- (1) An application for any entity, including branch offices, is filed and approved by the Secretary-Treasurer of or the Board or the Board.
- (2) At least one general partner, or director, officer, shareholder, manager, member or principal is a licensed Architect or Landscape Architect and designated as being responsible for the practice of the profession in the State of Oklahoma or is registered as a Registered Interior Designer offering services of registered interior design and responsible for the Entity. If a firm is offering multiple professions, the firm shall have at least one general partner, director, officer, shareholder, principal or for a limited liability company, a manager or member who is licensed or registered in each profession and is designated as being responsible for the activities of each profession, as the Architect, Landscape Architect, or Registered Interior Designer of Record.
- ~~(3) The firm's practice of architecture or landscape architecture in any office (e.g., branch office) is under the~~

~~Responsible Control of a resident licensed Architect or Landscape Architect and such individual supervises its activities and is listed in the Certificate of Authority as an Architect of Record. The branch office is required to obtain its own Certificate of Authority.~~

~~(43) All technical submissions, original working drawings, original cover sheet and the page identifying all specification pages covered, all addenda and field changes shall be signed, sealed and dated by an Architect of Record defined in 55:10-1-3. Prototypical technical submissions refer to 55:10-11-7(8) and 55:10-11-9(d)(f)(4).~~

~~(5) The Certificate of Authority or the Certificate of Title shall identify the individual(s) Oklahoma licensed Architect(s) or Landscape Architect(s) or Registered Interior Designer(s), who shall be an Architect of Record or a Registered Interior Designer of Record and in responsible charge of the professional activities of the Entity; and~~
~~(64) Compliance with the Board's Rules in this Chapter and the Act shall not alleviate other members, officers, shareholders, managers, principals, directors, partners or employees from direct responsibility and liability by reason of employment or relationship with the Entity to the Board.~~

~~(75) The Certificate of Authority or Certificate of Title issued by the Board is subject to powers of renewal, suspension, revocation, denial, refusal to renew, levying criminal or civil penalties, vested in the Board by the Act and does not preclude the Board from using any other legal procedures necessary to carry out its powers and duties.~~

~~(8) A duplicate Certificate of Authority or Certificate of Title may be issued to an Entity provided:~~

- ~~(A) the current License or Registration renewal of the Architect(s) of Record or the Registered Interior Designer(s) of Record is current and in good standing and the Certificate of Authority or Certificate of Title is current and in good standing;~~
- ~~(B) a written request for a replacement or duplicate Certificate of Authority or Certificate of Title is received; and~~
- ~~(C) the fee is paid as prescribed in 55:10-3-13.~~

55:10-13-6. Biennial renewals required for Certificate of Authority or Certificate of Title

(a) **Biennial renewal requirements.** An Entity desiring to practice Architecture, Landscape Architecture or use the title Architect or Landscape Architect through a Certificate of Authority or an Entity desiring to represent themselves as a Registered Interior Designer or offer services of registered interior design through a Certificate of Title, must submit the proper fees and applicable penalties in 55:10-3-13 and forms for application and renewal biennially. No Certificate of Authority or Certificate of Title shall be issued for longer than a two (2) year period. The renewal forms, required information and fees shall be due with the Licensee's or Registrant's individual renewal which are due by mail or hand delivery to the Board office by 4:30 p.m. or online by 11:59p.m. CST on or before June 30 of the renewal year to avoid penalties. Postmarks will not be accepted.

(b) **Late payment and reinstatement penalties.** Failure to biennially renew and remit payment of the renewal fee for the Certificate of Authority or Certificate of Title on June 30 of the renewal year will result in a late payment and reinstatement penalties in 55:10-3-13 and cancellation of the certificate.

(c) **Renewal exemption based on temporary military deployment.** The exemption from fees and penalties shall apply to the Certificate of Authority or the Certificate of Title if a Licensee is the only Architect of Record or a Registrant is the only Registered Interior Designer of Record associated with the Entity. Licensees or Registrants who are called to active military duty in the armed forces of the United States and deployed to a temporary military assignment are exempt from paying all renewal fees and penalties in OAC 55:10-3-13.

55:10-13-7. Failure to biennially renew a Certificate of Authority or Certificate of Title

(a) Failure to biennially renew the Entity and remit payment of the renewal fee and applicable penalties, submit an acceptable and complete application and other required documents or information for the Certificate of Authority or Certificate of Title on June 30 of the renewal year will result in automatic cancellation and revocation of the certificate.

(b) Automatic cancellation and revocation of the Certificate of Authority or Certificate of Title will result in the Entity paying late payment and reinstatement penalties in addition to all other fee requirements in OAC 55:10-3-13.

(c) Notices of suspension or revocation will be sent to the last known address of the Entity failing to biennially ~~License~~ license or ~~Registrant~~ register and remit renewal fees and penalties.

55:10-13-8. Reinstatement of canceled Certificate of Authority or Certificate of Title

(a) ~~Reinstatement for nonpayment of fees within three (3) years.~~ A Certificate of Authority or Certificate of Title canceled for nonpayment of fees may be ~~renewed-reinstated at any time within three (3) years upon submission of an updated acceptable and complete application form, after paying all fees and penalties accrued at time of reinstatement, provided the Entity currently meets all statutory requirements, the Rules of this Chapter and payment to the Board of the fees and penalties in OAC 55:10-3-13 have been paid, which have been accrued by the Entity at the time of reinstatement. Reinstatements may be approved by Board staff upon compliance with the Act and Rules without Board action.~~

(b) **Reapplication after three (3) years.** Entities whose Certificate of Authority or Certificate of Title has been cancelled for three years or more shall submit a new Certificate of Authority or Certificate of Title application, along with all required documents and fees.

(b-c) ~~Reinstatement of Certificate of Authority or Certificate of Title for cause.~~ A Certificate of Authority or Certificate of Title suspended, denied, refused to be renewed, penalties levied, orders issued or revoked for cause may be reinstated only by Board action and only then in the manner determined by such Board action. Requests for reinstatement

of the Certificate of Authority or Certificate of Title revoked for cause shall be addressed to the Board and shall show cause why such reinstatement is justified. ~~Request for reinstatement may be filed by re-applying after all appeals have been exhausted and the further passage of six (6) months of suspension, refusal to renew, penalties levied, orders issued or revoked for cause. The request shall show the Board that the public interest will not suffer by reason of the reinstatement and should be addressed to the Secretary-Treasurer at the Board office. The Board has the sole discretion as to whether to reinstate the Certificate of Authority or Certificate of Title, deny the reinstatement and require the payment of all back fees and penalties.~~

(e-d) **Reinstatement based on temporary military deployment.** Entities given an exemption from paying fees and penalties because the only Architect of Record or Registered Interior Designer of Record was deployed on a temporary military deployment in the armed forces of the United States, shall notify the Board office consistent with OAC 55:10-3-13.

55:10-13-13. Authority to use professional titles

(a) Only individuals holding current Licenses or Registrations in Oklahoma and entities holding a current Certificate of Authority or Certificate of Title issued by the Board are authorized to employ the titles Architect, Landscape Architect or Registered Interior Designer or use any various construction of these words, in describing or identifying services, contracting or executing work.

(b) No unlicensed individuals or entities have authority to contract or execute architectural or landscape architectural services or offer services of registered interior design in this ~~state~~ State unless they comply the Act and these Rules.

55:10-13-16. Use of deceased or retired names in titles of firm name

Use of the names of deceased or retired licensed or registered partners or directors in a firm name is permissible. Stationary, advertisements, business cards and similar items circulated to the public, shall indicate the status and year the individual retired or died. Retired individuals may also be listed as consulting Architects, Landscape Architects or Registered Interior Designers. Example:

Doe, Smith & Jones	
Architects and Registered Interior Designers	
John Doe	Fred Jones
Deceased, Architect	Registered Interior Designer
1988-2016	2017

55:10-13-17. Use of multiple surnames in titles of firm name

Use of multiple surnames in titles of firms is permissible so long as one surname is a licensed Architect, Landscape Architect or Registered Interior Designer. Other surnames shall be names of related licensed or registered professions (e.g., engineer - structural, mechanical, electrical, civil, or land

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surveyor). ~~Example (where Doe is a licensed Architect, and Smith and Jones are licensed structural engineers):~~

~~Doe, Smith & Jones~~

~~Architects & Engineers~~

55:10-13-18. Use of full name in title of firm name

Use of a full name in the title of a firm is permissible so long as the full name is the name of a licensed Architect, Landscape Architect or a Registered Interior Designer or a deceased licensed Architect or Landscape Architect or Registered Interior Designer. ~~Example (where John C. Doe was a licensed Architect):~~

~~John C. Doe Company~~

~~Architects~~

~~John C. Doe (1988-2040)~~

55:10-13-19. Use of departed surname in title of firm name

Use of a surname of an individual who has left a firm is permissible by written agreement for a period of two (2) years, ~~so long as all stationary, advertising, business cards and similar items note that individual's inactive status with the firm, the year and a current licensed Architect, Landscape Architect or Registered Interior Designer who is a general partner or director appears on all stationary, advertising, business cards and similar items. Example:~~

~~Doe & Smith~~

~~Architects & Engineers~~

~~John Doe, Architect David Williams~~

~~Inactive 2020 Engineer~~

55:10-13-20. Use of fictitious name in title of firm name

Fictitious names of firms are permissible so long as at least one Architect of Record or Registered Interior Designer of Record as defined in 55:10-1-3, has Responsible Control for the activities of the firm ~~and the individual's name appears on all stationary, business cards and similar items. Example:~~

~~The Gold Star Group~~

~~Architects & Engineers~~

~~John Brown, Architect~~

55:10-13-21. Use of single surname in title of firm name

Use of a single surname is permissible so long as that surname is a licensed Architect, Landscape Architect, Registered Interior Designer, or related professional (e.g., engineer, structural, mechanical, electrical, or civil, or land surveyor).

~~The entity shall also list the name of the licensed Architect, Landscape Architect, or Registered Interior Designer responsible for the activities of the firm and the individual's name appears on all stationary, business cards and similar items. Example (where Jones is a licensed related professional):~~

~~The Jones Group~~

~~Architects & Engineers & Land Surveyors~~

~~John Doe, Architect~~

SUBCHAPTER 15. VIOLATIONS

55:10-15-1. Prima facie evidence

(a) Prima facie evidence shall be construed or attempting to construe to practice, perform or offer architecture, landscape architecture or services as interior design within the meaning and intent of the Act by display or verbal claim, sign, advertisement, contract, card or other printed, engraved, or written instrument or device, or by electronic means bearing an individual's or entities name or in any other way represent to be licensed or registered under the Act. Prima facie evidence is also defined as an individual or Entity representing as able to contract, offer, perform services or use the restricted titles defined under the Act as requiring a License, Registration, Certificate of Authority or a Certificate of Title. Any such action noted by this Section shall be sufficient to justify an injunction or any other order or a conviction without evidence of a general course of conduct. The Board shall determine if other legal procedures and penalties are necessary and shall have the power to proceed with any and all legal procedures in addition to the injunction or other such orders issued.

(b) The following actions shall not be violations under 59 O.S. 46.1 et seq. and the Rules of the Board: Advertising in national publications or electronic media, provided there is no offering of professional services in jurisdictions where not licensed.

55:10-15-2. Grounds for violations and penalties

Grounds for probation, denial, revocation, suspension, refusal to renew, orders, injunctions, civil and/or criminal penalties are as follows:

- (1) Fraud, deception or misrepresentation in applying for a License, Registration, Certificate of Authority, Certificate of Title or in taking the examinations (see 55:10-15-4);
- (2) Noncompliance with statutory requirements or Rules in this Chapter for qualifying for a License or Registration;
- (3) Violating the Act or any Rule in this Chapter, regulation or order issued by the Board, including the unlicensed practice of architecture or landscape architecture;
- (4) Conviction of a felony;
- (5) Violating any ~~other~~ jurisdiction's registration or licensing laws, requirements or rules and regulations;

- (6) Mental impairment;
- (7) Gross incompetence (see 55:10-15-5);
- (8) Recklessness on the part of the Licensee in designing, planning or observing the construction or alteration of a project or building (see 55:10-15-6);
- (9) Dishonest practice (see 55:10-15-7);
- (10) Failure to maintain a License or Registration in good standing in one additional jurisdiction for reciprocal Licensees or Registrants;
- (11) Loss of NCARB, CLARB or CIDQ certification for reciprocal Licensees or Registrants based on cause;
- (12) Nonpayment of fees, penalties, failure to complete continuing education requirements, when applicable, or failure to file acceptable and properly completed required documents with the Board will result in automatic revocation;
- (13) Unauthorized or misuse of seal which shall include sealing, dating and signing any or all documents not prepared under a Licensee. Prototype plans are an exception to this rule as noted in OAC 55:10-11-9 (e) (f).
- (14) Aiding and/or abetting unlicensed practice of architecture or landscape architecture.
- (15) Sealing, signing and/or dating plans and/or specifications not prepared in accordance with the Act and/or these Rules.
- (16) Giving false or forged evidence or documents submitted to the Board or generated in the practice of architecture or landscape architecture.
- (17) Presenting the License or Registration of another as the individual's or Entity's own.
- (18) Concealing information relative to any violation of the Act or the Board's Rules.
- (19) Inappropriate behavior on the part of an Applicant during the examination period.

SUBCHAPTER 17. CONTINUING EDUCATION REQUIREMENTS

55:10-17-3. Noncompliance and sanctions

The continuing education requirements contained in this Section will apply to every Architect and Landscape Architect, as a condition for renewing of his/her license, and Registered Interior Designers ~~and/or the Certificate of Authority and Certificate of Title~~. Failure to fulfill the continuing education requirements, or file the required biennial report and affidavit, properly completed and signed, or to pay all required fees by June 30th of the renewal year, shall result in non-renewal of an Architect's or Landscape Architect's License, and Registered Interior Designers certificate ~~and/or Certificate of Authority or Certificate of Title~~.

[OAR Docket #20-647; filed 7-17-20]

TITLE 85. STATE BANKING DEPARTMENT CHAPTER 10. SUPERVISION, REGULATION AND ADMINISTRATION OF BANKS, TRUST COMPANIES, AND THE OKLAHOMA BANKING CODE

[OAR Docket #20-577]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Requirements, Standards and Procedures for an Internal Control Program

85:10-5-2 [AMENDED]

85:10-5-3 [AMENDED]

85:10-5-3.1 [AMENDED]

85:10-5-4 [AMENDED]

Subchapter 9. New Banks, Branches, and Other Facilities

85:10-9-6 [AMENDED]

AUTHORITY:

State Banking Board; 6 O.S., § 203

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n/a

GIST/ANALYSIS:

The amended rules eliminate obsolete language, strengthen an institution's internal controls, and relieve regulatory burden associated with closing a branch facility when an institution also maintains another branch nearby.

The amendments to Subchapter 5 address the requirements of an institution's internal control program. Some amendments are for the purpose of clarifying typographical changes without substantive effect. The purpose of adding subsection (g) to rule 85:10-5-2 is to codify an existing interpretation of the State Banking Department. The changes to rules 85:10-5-3, 85:10-5-3.1, and 85:10-5-4 are for the purpose of strengthening the internal controls at regulated institutions, eliminating obsolete or unnecessary requirements, and to clarify ambiguous terminology. For example, in rule 85:10-5-3.1, some existing internal control requirements are deleted and a new subsection (c) is added to list requirements more relevant for the safety and soundness of the institution. The changes to rule 85:10-5-4 reflect the types of reports that a board of directors should review at each meeting.

The amendment to rule 85:10-9-6 removes the requirement for regulatory approval when a bank closes a branch but maintains another branch within two miles of the closed branch.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

Permanent Final Adoptions

SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 5. REQUIREMENTS, STANDARDS AND PROCEDURES FOR AN INTERNAL CONTROL PROGRAM

85:10-5-2. Internal control program

- (a) The internal control program set forth in this subchapter must be administered by the control officer or auditor with a record maintained as to the date upon which each recommended procedure was performed and a notation as to any exceptions disclosed.
- (b) The control officer or auditor must be accountable directly to the board of directors or committee thereof.
- (c) The adoption of a sound internal control program is a primary responsibility of the bank's board of directors. ~~They~~The board cannot delegate this duty. ~~They~~The board shall appoint a control officer or auditor to administer such a program, but the ultimate accountability for the degree of effectiveness with which the program functions is the board's responsibility. Neither supervisory examination nor insurance, or a combination thereof, can take the place of an internal control program.
- (d) In order to obtain the maximum protection economically feasible it is necessary that all concerned be continually aware of the fundamental principles with respect to sound internal checks and controls and internal auditing. An objective in any bank or trust company control program is to discourage fraud, not necessarily to discover its existence. A program of safeguards must be implemented to meet this primary objective.
- (e) The internal control program should contain the institution's policy for annual examination by the board of directors and, further, should contain a provision for annual review as to adequacy and compliance.
- (f) The failure of a bank or trust company to meet the requirements of this subchapter does not by itself establish or diminish any private right of action otherwise available under other state or federal law against a bank or trust company.
- (g) Any bank that complies fully with Title 12 Part 363 of the Code of Federal Regulations will be deemed to have complied with the provisions of this subchapter.

85:10-5-3. Minimum control elements for bank internal control program

All internal control programs adopted by banks shall contain as a minimum the following:

- (1) A requirement that each officer and employee, when eligible for vacation, be absent from the institution at least five consecutive ~~business~~banking days each calendar year, unless otherwise approved in writing by the bank's bonding company for bank officers and employees generally and then each officer and employee who may be excepted from this requirement must be specifically approved by the bank's board of directors and it shall be recorded in the board of director's minutes, that the officer

or the employee may be absent less than the five consecutive banking days. During the absence of an officer or employee, the duties of the absent officer or employee must be performed by other bank officers and employees.

- (2) A requirement that periodic reports be made to the board of directors, ~~said report to which must~~ contain at least the minimum ~~as set out in~~information described in 85:10-5-4.

(3) Require the control officer or auditor to periodically, as frequently as necessary but no less often than stated herein, perform or supervise performance of:

(A) Daily - Review all master file changes, by not less than two persons.

(B) Quarterly - on a surprise basis, count tellers' cash, including vault cash, review bait money, and ensure that established procedures are being followed.

(C) Monthly - On a surprise basis, prove to the general ledger and verify validity of all cash items ~~and cash collections, and report to the board of directors those cash items and cash collections which are in excess of the minimum amount established by the Board.~~ Also, all cash items held over 30 days that are not being currently worked for collection, ~~should~~must be charged off. The collection effort of these items should be documented in writing.

(D) Monthly - On a surprise basis, balance overdrafts to general ledger, scrutinize for large recurring overdrafts and report to the board of directors those overdrafts which are in excess of the minimum amount established by the board.

(E) Monthly - Review and prove to the general ledger:

(i) All customer deposit accounts, including demand, savings, time certificates and cashier's checks.

(ii) Official checks.

(iii) All loans.

~~(iv) Internal accounts used for bank purposes.~~

(F) Monthly - Reconcile all correspondent bank accounts. Explain any item outstanding over fifteen (15) days and document resolution efforts.

(G) Monthly - Review teller's over/short.

~~(H) Quarterly - Reconcile all unissued consign-ment items.~~

~~(I) Quarterly - Reconcile Treasury Tax and Loan Account.~~

~~(H)~~ Quarterly - Review all officer and employee accounts in the institution and report any unexplained items to the board of directors or committee thereof.

~~(K)~~ Monthly - Reconcile and prove to the general ledger all investment accounts.

~~(L)~~ Monthly - Verify the unrealized gains or losses on securities account and associated tax account.

~~(M)~~ Quarterly - Prove to the general ledger those accounts which have been determined by institution policy to be inactive or dormant. ~~Review the operations for compliance to institution policy.~~ Each time activity occurs in an inactive or dormant account that

activity should be reviewed to establish the authenticity of the entry.

~~(NL)~~ Quarterly - Balance and verify all remaining asset and liability accounts which have had activity since last verification.

~~(QM)~~ Monthly - Balance to general ledger and verify all accruals including but not limited to loans, investments, and time deposits.

(4) Establish the maximum cash exposure the institution will have. This should include not only the total but the maximum amounts to be in each teller's unit.

(5) Establish a procedure for security of vault cash and for collateral held by the bank or trust company.

(6) Establish a procedure for dual control for the reserve stocks of all official checks, consigned items, and the reserve stocks of other items in the bank.

(7) All requirements of this section that are met, should be documented, in writing, so that evidence exists that will substantiate to an examiner that this Section's requirements are being met.

85:10-5-3.1. Internal control program for fiduciary activities of trust departments and trust companies

~~(a) Each trust department and trust company should establish an appropriate system of notification to prompt and aid in the administration of fiduciary accounts.~~

~~(ba) Where applicable, the following items, at a minimum, shall be performed by all trust departments and all trust companies conducting fiduciary activities to assure the maintenance of sufficient internal audits, and reviews and appointments, and reports audits and reviews, approvals and appointments, and board/committee reporting. Documentation must be maintained to show that each item was completed as required.~~

~~(b) The following internal audits and reviews must be completed at the frequency specified:~~

~~(1) A daily review of master file changes.~~

~~(2) A monthly review of overdrafts and uninvested cash balances that exceed a reasonable minimum established by the institution.~~

~~(3) A monthly review of uninvested cash balances that exceed a reasonable minimum established by the institution.~~

~~(4) A monthly review of past due loans held in trust accounts to assure proper collection efforts.~~

~~(5) A monthly verification to assure that all opened and closed accounts received appropriate review within 60 days of opening or closing.~~

~~(6) A monthly reconciliation of trust department or trust company deposit accounts deposit operating accounts and any suspense accounts.~~

~~(7) A semi-annual verification of dual control procedures vault and safe deposit box review for all trust assets held on premises.~~

~~(8) Annually assure that a notification or prompt system has been established for the following items, at a minimum:~~

~~(A) Annual reviews of all fiduciary accounts.~~

~~(B) Premiums due for property insurance.~~

~~(C) Payment of real estate taxes.~~

~~(D) Performance of annual real estate inspections.~~

~~(E) Performance of tri-annual real estate appraisals.~~

~~(5) A quarterly review of trust accounts (a reasonable sample determined by management) for appropriate administration, asset management, documentation, and compliance with governing instruments, laws, internal policies, and sound fiduciary standards.~~

~~(c) All trust departments and all trust companies conducting fiduciary activities shall on an annual basis perform the following reviews and make the following appointments. Documentation must be maintained to show that each item was completed as required. The following reviews and appointments must be made on an annual basis:~~

~~(1) A review and approval of trust department policies, including account investment criteria.~~

~~(2) An annual appointment Appointment of individuals or committees with authority to approve discretionary account distributions over a reasonable minimum established by the institution.~~

~~(3) An annual appointment Appointment of individuals with authority to sign trust department checks, including dual signature requirements.~~

~~(d) The following reports must be provided to the institution's board, or committee of the board, at the frequency specified:~~

~~(1) A monthly report of all opened and closed accounts.~~

~~(2) A quarterly report of the status of all outstanding litigation, efforts taken since the last report to resolve the litigation, and any expected exposure to the institution.~~

~~(3) A quarterly report of any new formal complaints directed at the trust company or trust department.~~

~~(4) A quarterly report of any new settlements or other amounts paid to settle disputes.~~

~~(5) A quarterly report of assets with stale pricing dates that exceed generally accepted fiduciary standards.~~

~~(6) A quarterly report of any new audits conducted including management responses to any recommendations.~~

~~(7) A quarterly report of "watch list" accounts that warrant increased attention.~~

~~(8) A quarterly report of trust department or trust company profitability.~~

85:10-5-4. Reports

~~(a) Bank reports.~~ Reports which the internal control program shall require to be made monthly, except as otherwise provided, to the bank's board of directors or committee thereof shall consist of, at a minimum, the following:

~~(1) A report containing either:~~

~~(A) all expense items over a reasonable minimum amount established by the board of directors, or~~

~~(B) if a formal budget has been previously approved by the board of directors, any substantial deviations or changes (as determined by the board of directors) in budget items showing the board-approved budget compared to actual income and expenses for the calendar year and the current month~~

with explanations for any significant deviation or change.

(2) A report from the control officer or auditor that the internal minimum control elements have been performed with explanations for and any differences, outages or shortages determined thereby.

~~(3) A report containing all cash items, cash collections, and overdrafts, as of the surprise date, which are in excess of a minimum amount established by the board, including the date the cash item, cash collection or overdraft commenced.~~

~~(4) A report of income and expense since the beginning of the institution's accounting period, together with a comparison for the same period of the previous year.~~

~~(5) A quarterly report of the institution's liquidity position, rate sensitivity analysis, and volatile liability dependence position as of the last business day of the previous quarter detailing board-approved liquidity performance measures and explanations for any significant deviations.~~

~~(6) A quarterly report of the progress being made and current status of all internally and externally classified loans in excess of 5% of the institution's capital, until the board of directors has determined the loan has either been paid in full or its condition significantly improved to no longer be classified all criticized and classified loans.~~

~~(7) A report of all outstanding loans made to officers, employees and directors and their business interests or affiliates since the last report.~~

~~(8) Investments purchased or sold since the last report.~~

~~(9) A quarterly report detailing the bank's analysis of the Allowance for Loan and Lease Losses or Allowance for Credit Losses.~~

~~(10) All charge-offs or other losses the bank has sustained since the last report.~~

~~(11) All past due loans. A loan or category of loans shall be considered "past due" according to guidelines that may be established by the board of directors.~~

~~(12) All overdrafts which exceed a time period and/or amount to be set by the board of directors.~~

~~(13) All loans since the last report for which cause the aggregate indebtedness from a single borrower to exceed the lesser of 20% of the bank's capital or such lesser percentage as set by the bank's board of directors. A report showing the aggregate indebtedness of any single borrower that exceeds 25 percent of the bank's capital and reserves. This report shall be made to the bank's entire board of directors.~~

~~(b) **Trust reports.** All trust departments and all trust companies conducting fiduciary activities shall on a quarterly basis prepare the following written reports for review by the board of directors or committee thereof:~~

~~(1) A report of all existing and threatened litigation.~~

~~(2) A report of trust department profitability.~~

~~(3) A report of all exceptions involving the aforementioned requirements.~~

SUBCHAPTER 9. NEW BANKS, BRANCHES, AND OTHER FACILITIES

85:10-9-6. Branch closing

(a) A bank may discontinue a branch office with the approval of the Commissioner. In order to gain approval, the bank must:

(1) submit to the Commissioner a resolution of its board of directors authorizing the closing;

(2) post a notice of the closing at both the branch location and the main office of the bank for thirty (30) days prior to the closing. Said notice shall state the effective date of the closing and indicate the location of the bank's closest office;

(3) submit to the Commissioner an affidavit stating that the notice posting requirement has been met;

(4) either publish notice of the closing once a week for two (2) weeks in a legal newspaper in general circulation in the community where the branch is located or furnish written notice to depositors and safe deposit box holders at the branch to be closed; and

(5) submit to the Commissioner a copy of the notices required by subsections (a)(2) and (a)(4) of this Section.

(b) The Commissioner shall approve the branch closing absent compelling reasons for denial.

(c) The requirements of subsection (a) of this section do not apply when:

(1) the bank posts notice of the closing at both the branch location being closed and the main office of the bank for thirty (30) days prior to the closing; and

(2) the bank operates an existing branch location within two miles of the branch being closed.

(3) The notice posted pursuant to this subsection must include the date of the closing and information (including address and operating hours) of the nearest operating branch location of the bank.

[OAR Docket #20-577; filed 7-9-20]

TITLE 86. STATE BOARD OF BEHAVIORAL HEALTH LICENSURE

CHAPTER 10. LICENSED PROFESSIONAL COUNSELORS

[OAR Docket #20-514]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Rules of Professional Conduct

86:10-3-4. [AMENDED]

Subchapter 9. Academic Requirements

86:10-9-1. [AMENDED]

Subchapter 25. Licensure by Endorsement

86:10-25-3. [AMENDED]

Subchapter 31. Post-Military Service Occupation, Education and Credentialing Rules

86:10-31-1. [AMENDED]

86:10-31-3. [AMENDED]

AUTHORITY:

State Board of Behavioral Health Licensure; 59 O.S. 2011; 59 O.S. 2001, Section 1901 et. seq]

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n/a

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n/a

GIST/ANALYSIS:

The following permanent rules interpret the Oklahoma Licensed Professional Counselor Act, (59 O.S. 1991, Sections 1901 et seq.)

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 3. RULES OF PROFESSIONAL CONDUCT

86:10-3-4. Professional standards

(a) **Violations of other laws.** It shall be unprofessional conduct for an LPC to plead guilty to or no contest to or be convicted of a state or federal ~~statute~~felony crime if the violation ~~directly~~substantially relates to the ~~duties and responsibilities~~practice of the counselor or if the violation involves moral turpitude ~~practice of the counselor or if the violation involves moral turpitude~~ counseling and poses a reasonable threat to public safety.

(b) **Drug and alcohol use.** LPCs shall not render professional services while under the influence of alcohol or other mind or mood altering drugs.

(c) **Sexual conduct.**

(1) **Current and previous clients.** Sexual conduct with current and previous clients is prohibited.

(2) **Supervisees.** LPCs shall not engage in sexual conduct with supervisees and shall not supervise persons with whom they have had a sexual relationship within the previous five (5) years. LPCs shall not engage in sexual contact with supervisees they have supervised within the previous five (5) years.

(d) **Updating.** LPCs shall notify the Board of any change in their contact information, including ~~by~~but not limited to: mailing address, telephone number, place of employment, name and email address, within fourteen (14) days of the change.

(e) **Candor to the Board.** A LPC or applicant for LPC licensure, in connection with a license application or an investigation conducted by the Board or the Board's designee pursuant to OAC 86:10-29-1 through 15, shall not:

- (1) knowingly make a false statement of material fact;
- (2) fail to disclose a fact necessary to correct a misapprehension known by the LPC, LPC candidate or applicant for licensure to have arisen in the application or the matter under investigation; or
- (3) fail to respond to a demand for information made by the Board or any designated representative thereof.

SUBCHAPTER 9. ACADEMIC REQUIREMENTS

86:10-9-1. Graduate hours and degrees required

Each applicant shall possess at least a master's degree in counseling, or a mental health related graduate degree deemed substantially content-equivalent. All graduate course work applied toward licensure shall be from a regionally accredited college or university recognized by the United States Department of Education. At least sixty (60) semester credit hours or ninety (90) quarter credit hours of graduate counseling-related course work, including internship, shall be earned. In order to be considered acceptable, the graduate degree(s) shall:

- (1) follow a planned, sequenced mental health program of study which is reflected in the university catalog and approved by the governing authority of the college or university;
- (2) include a program whose primary focus is clearly to prepare the applicant for a career in counseling; and
- (3) be listed in the college or university catalog; or
- (4) be accredited by the Council for Accreditation of Counseling & Related Education Programs (CACREP).

SUBCHAPTER 25. LICENSURE BY ENDORSEMENT

86:10-25-3. License by endorsement

The Board shall issue a license by endorsement to an applicant who is licensed or certified as a professional counselor by another state or territory of the United States or the District of Columbia and who meets the following:

- (1) The applicant's professional counselor license in the other jurisdiction is active and in good standing which allows the applicant to practice independently without supervision. The applicant shall have no history of suspension or revocation action against the license and fulfills all the requirements located in OAC 86:10-5;
- (2) The applicant fulfills the requirements of Title 59 of the Oklahoma Statutes, Section 1906(A) and (B)(1)(3)(4);

(3) The applicant must have at least a masters degree in a counseling or a mental health related field from a regionally accredited college or university;

(4) ~~The applicant must show proof of one of the following:~~

~~(A) has held a license in another jurisdiction for at least five years; or~~

~~(B) satisfies the requirements located at Title 59 Oklahoma Statutes, Section 1906 (C); and~~

(5) The applicant successfully completes the Oklahoma Legal and Ethical Responsibilities Examination.

SUBCHAPTER 31. POST-MILITARY SERVICE OCCUPATION, EDUCATION AND CREDENTIALING RULES

86:10-31-1. Education, training and experience completed as a member of the Armed Forces of the United States pursuant to 59 O.S. § 4100.4(A)

(a) If an applicant otherwise qualifies for licensure, the Board shall issue an appropriate license to applicants who present satisfactory evidence of equivalent education, training and experience completed by the applicant as a member of the Armed Forces or Reserves of the United States, National Guard of any state, the Military Reserves of any state, or the Naval Militias of any state.

(b) Active-duty military service members seeking to make application for licensure may do so without payment of application fee.

86:10-31-3. Reciprocal licensing of spouses of active-duty members of the Armed Forces of the United States

The procedure to expedite endorsement of licensure pursuant to Section 4100.5 of Title 59 of the laws of the State of Oklahoma for applicants who are licensed in another state and who are the spouse of an active-duty member of the Armed Forces of the United States is as follows:

(1) A license shall be issued to the applicant if the requirements for licensure of the other state are substantially equivalent to those required by this state;

(2) If specific licensure requirements in this state were not required in the state in which the Applicant was licensed, a temporary license for a set period of time shall be issued to Applicants to allow the person to work as a licensed professional counselor while completing those requirements.

(3) Applicants who are licensed in another state and who are the spouse of an active-duty member of the Armed Forces of the United States seeking to make application for licensure may do so without payment of application fee.

[OAR Docket #20-514; filed 7-1-20]

TITLE 86. STATE BOARD OF BEHAVIORAL HEALTH LICENSURE

CHAPTER 15. LICENSED MARITAL AND FAMILY THERAPISTS

[OAR Docket #20-515]

RULEMAKING ACTION:

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RULES:

Subchapter 3. Rules of Professional Conduct

86:15-3-1. [AMENDED]

86:15-3-3. [AMENDED]

Subchapter 5. Application for Licensure

86:15-5-3. [AMENDED]

Subchapter 9. Supervised Experience Requirements

86:15-9-3. [AMENDED]

Subchapter 13. Issuance and Maintenance of License

86:15-13-4. [AMENDED]

86:15-13-8. [AMENDED]

Subchapter 17. Post-Military Service Occupation, Education, and Credentialing Rules

86:15-17-1. [AMENDED]

86:15-17-3. [AMENDED]

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The following permanent rules interpret the Oklahoma Licensed Marital and Family Therapist Act, (59 O.S. 1991, Sections 1901 et seq.)

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 3. RULES OF PROFESSIONAL CONDUCT

86:15-3-1. Responsibility to clients

- (a) LMFTs are dedicated to advancing the welfare of families and individuals, including respecting the rights of those persons seeking their assistance, and making reasonable efforts to ensure that their services are used appropriately.
- (b) LMFTs shall not, in the rendering of their professional services, participate in, condone, or promote discrimination based on age, culture, disability, ethnicity, race, religion/spirituality, gender, gender identity, sexual orientation, marital status/partnership, language preference, socioeconomic status, or any basis proscribed by law. LMFTs do not discriminate against clients, students, employees, supervisees, or research participants in a manner that has a negative impact on these persons.
- (c) LMFTs are cognizant of their potentially influential position with respect to clients, and they shall not exploit the trust and dependency of such persons. LMFTs therefore shall avoid extra therapeutic relationships with clients that could impair their professional judgment or increase the risk of exploitation. When extra-therapeutic relationships cannot be avoided, LMFTs shall take appropriate professional precautions to insure that judgment is not impaired and that no exploitation occurs. Examples of such extra therapeutic relationships include, but are not limited to, business or close personal relationships with clients.
- (d) LMFTs shall not undertake to provide therapy to any person with whom the LMFT has had any prior sexual conduct, as defined by the Board. LMFTs shall not undertake to provide therapy to any person with whom the LMFT has had familial, any prior social, financial, business, professional, close personal, or other non-therapeutic relationship with a client, or engage in any activity with another person that interferes or conflicts with the LMFTs professional obligation to a client within the previous five (5) years. Sexual intimacy with clients is prohibited.
- (e) Sexual conduct with current or former clients is prohibited.
- (f) LMFTs shall not use their professional relationship with clients to further their own interests.
- (g) LMFTs respect the right of clients to make decisions and help them to understand the consequences of those decisions. LMFTs shall clearly advise a client that a decision on marital status is the responsibility of the client.
- (h) LMFTs shall continue therapeutic relationships only so long as it is reasonably clear that clients are benefiting from the relationship.
- (i) LMFTs shall assist persons in obtaining other therapeutic services if a marital and family therapist is unable or unwilling, for appropriate reasons, to see a person who has requested professional help.
- (j) LMFTs shall not abandon or neglect clients in treatment without making reasonable arrangements for the continuation of such treatment by other appropriate professionals as necessary and indicated.
- (k) When an LMFT becomes cognizant of a disability or other condition that may impede, undermine or otherwise interfere with the LMFTs duty of responsibility to the client, including a suspension of the LMFTs license or any other

situation or condition described in subchapter 3 of these rules, the LMFT shall promptly notify the client in writing of the presence or existence of the disability or condition and take reasonable steps to timely terminate the therapeutic relationship consistent with the provisions of paragraphs (g) and (h) herein.

- (l) LMFTs shall obtain informed consent of clients before taping, recording, or permitting third party observation of their activities.

86:15-3-3. Professional competence and integrity

- (a) LMFTs are dedicated to maintaining high standards of professional competence and integrity.
- (b) LMFTs are presumed to have violated high standards of integrity or competence and it shall be unprofessional conduct if they:
 - (1) ~~are convicted of a felony;~~
 - (2) ~~are convicted of a misdemeanor (related to their qualifications or functions); or~~
 - (3) ~~engage in conduct which could lead to conviction of felonies, or misdemeanors related to their qualifications or functions.~~
 - (4) ~~It shall be unprofessional conduct for a LMFT to plead guilty to or no contest to or be convicted of a state or federal statute felony crime if the violation directlysubstantially relates to the duties and responsibilitiespractice of the therapist or if the violation involves moral turpitude therapy and poses a reasonable threat to public safety.~~
 - (5) ~~have their licenses or certificates suspended or revoked; or~~
 - (6) ~~are no longer competent to practice marital and family therapy because they are impaired due to physical or mental causes or the abuse of alcohol or other substances.~~
- (c) LMFTs shall seek appropriate professional assistance for their own personal problems or conflicts that are likely to impair their work performance and their clinical judgment.
- (d) LMFTs, as teachers and supervisors, are dedicated to maintaining high standards of scholarship and presenting information that is accurate.
- (e) LMFTs shall remain abreast of new developments in family therapy knowledge and practice through both educational activities and clinical experiences.
- (f) LMFTs shall not engage in sexual or other harassment or exploitation of clients, students, trainees, supervisees, employees, colleagues, research subjects, or actual or potential witnesses or complainants in ethical proceedings.
- (g) LMFTs shall not attempt to diagnose, treat, or advise on problems outside the recognized boundaries of their competence.
- (h) LMFTs shall prevent the distortion or misuse of their clinical and research findings.
- (i) LMFTs are aware that, because of their ability to influence and alter the lives of others, they must exercise special care when making public their professional recommendations and opinions through testimony or other public statements.

- (j) LMFTs shall protect the welfare of the client by storing and/or destroying, when appropriate, client files.
- (k) LMFTs shall not, under normal circumstances, offer professional services to clients concurrently receiving services from another professional except with the knowledge of the professional.
- (l) LMFTs shall display their original, current license certificate in a prominent place in the primary location of their practice.
- (m) LMFTs shall notify the Board of any change in their contact information, including but not limited to: mailing address, telephone number, place of employment, and name and email address, within fourteen (14) days of the change.
- (n) LMFTs and LMFT Candidates may perform forensic services, which may include, but are not limited to, assessments, interviews, consultations, custody evaluations, reports, or expert testimony, or other such activity that is undertaken or conducted by the candidate or licensee in contemplation that the results may, or are intended to be, later furnished to a trier of fact or other decision maker, only under the following conditions:
 - (1) LMFTs and LMFT Candidates must demonstrate competence by education or experience in the subject matter relevant to the issues in question, as determined by the court.
 - (2) LMFTs and LMFT Candidates shall provide a written notice and make reasonable attempts to obtain a signature acknowledging receipt of such notice, from each person or persons who is the subject of the forensic services. This written notice shall include:
 - (A) a description of what procedure will be followed in the evaluation process;
 - (B) how such information, interpretations, conclusions, and recommendations will be distributed;
 - (C) fee arrangements; and
 - (D) explanation of the role of the evaluator if subsequently called upon to provide expert testimony before a trier of fact
 - (3) LMFTs and LMFT Candidates shall maintain written records, in a form or format that is legible or readable to third persons, of all contacts and information received and used in the preparation of their report.
 - (4) LMFTs and LMFT Candidates must conduct a thorough examination of the person who is the subject of their forensic analysis, and such other person or persons who has/have a legally recognizable right in the subject matter of the proceeding.
 - (5) LMFTs and LMFT Candidates must base their findings and conclusions only upon information gained by appropriate and lawful means. Interviews of minor children shall be preceded by written consent from the joint-custodial parents or from the custodial parent or from the legal guardian or from the legal custodian appointed by the Court.
 - (6) LMFTs and LMFT Candidates who provide therapy services for a client shall only provide fact witness testimony, which may include diagnostic impressions, treatment plans and other factual clinical information

ordinarily included in a treatment file. Fact witness testimony by LMFTs and LMFT Candidates shall not include opinions or recommendations pertaining to matter subject to a decision by the Court, in forensic matters involving that client, unless otherwise required by law or court order. LMFTs and LMFT Candidates who provide mediation, parent coordinating assistance or any other neutral participation, may not undertake to provide therapy concurrently or subsequently to any person(s) involved or directly affected by the LMFT's or LMFT Candidate's role as a neutral participant. Fact witness testimony means evidentiary statements that are limited to direct observations by the LMFT or LMFT Candidate and shall not include conclusions, opinions or recommendations.

- (7) Assessments, interviews, consultations, custody evaluations, reports or other activity not performed in contemplation that the results would be furnished to a trier of fact or decision maker, must be kept confidential and cannot be utilized in the formation or publication of an opinion by the candidate or licensee.
- (o) An LMFT, LMFT candidate, or applicant for LMFT licensure, in connection with a license application or an investigation conducted by the Board pursuant to OAC 86:15-15-1 through 15, shall not:
 - (1) knowingly make a false statement of material fact; LMFT, LMFT candidate or applicant for licensure to have arisen in the application or the matter under investigation; or
 - (2) fail to disclose a fact necessary to correct a misapprehension known by the LMFT, LMFT candidate or applicant for licensure to have arisen in the application or the matter under investigation; or
 - (3) fail to respond to a demand for information made by the Board or any designated representative thereof.
- (p) No person may engage in the private or independent practice of marital and family therapy work or open a facility with the intent of providing private or independent therapy practice unless that person:
 - (1) is licensed under this Act as a Licensed Marital and Family Therapist; and,
 - (2) has met all requirements of OAC 86:15-9-4 and all of the LMFT Regulations; and
 - (3) has continued to meet all continuing education requirements set forth in Subchapter 13 of this Chapter.

SUBCHAPTER 5. APPLICATION FOR LICENSURE

86:15-5-3. Academic and experience requirements

- (a) **Fulfillment of Section 1925.6, subsection B of the LMFT Act.** Persons applying for licensure must have fulfilled the requirements listed in Section 1925.6, Subsection B of the LMFT Act.
- (b) **Academic requirements.** Applicants must possess at least a masters degree in marital and family therapy or in a mental health, behavioral science, or counseling related field from a college or university accredited by one of the following

six regional accrediting associations recognized by the U.S. Department of Education: The New England Association of Schools and Colleges, The Middle States Association of Colleges and Schools, The North Central Association of Colleges and Schools, The Northwestern Association of Schools and Colleges; The Western Association of Schools and Colleges, or The Southern Association of Colleges and Schools which is content-equivalent to a graduate degree in marital and family therapy. ~~In order to qualify as a "content equivalent" degree, a graduate transcript must document the minimum number of graduate hours and knowledge areas listed below. Academic courses (3 semester hours or 4 quarter credit hours) must include a minimum of 45 class hours for each course. or;~~

(c) **Degree requirements.** Applicants must possess at least a masters degree in marital and family therapy or in a mental health, behavioral science, or counseling related field from a degree program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE).

(d) **Coursework requirements.** In order to qualify as a "content-equivalent" degree, a graduate transcript must document the minimum number of graduate hours and knowledge areas listed below. Academic courses (3 semester hours or 4 quarter credit hours) must include a minimum of 45 class hours for each course.

(1) Theoretical Foundations of Marital and Family Systems - any course which deals primarily in areas such as family life cycle; theories of family development; marriage and/or the family; sociology of the family; families under stress; the contemporary family; family in a social context; the cross-cultural family; youth/adult/aging and the family; family subsystems; individual, interpersonal relationships (marital, parental, sibling). (3 courses: 9 semester or 12 quarter hours.)

(2) Assessment and Treatment in Marital and Family Therapy -any course which deals primarily in areas such as family therapy methodology; family assessment; treatment and intervention methods; overview of major clinical theories of marital and family therapy such as: communications, contextual, experiential, object relations, strategic, structural, systemic, transgenerational. (3 courses: 9 semester or 12 quarter hours.)

(3) Human Development - any course which deals primarily in areas such as human development; personality theory; human sexuality, psychopathology; at least one of which must be in psychopathology or abnormal human behavior. (3 courses: 9 semester or 12 quarter hours.)

(4) Ethics and Professional Studies - any course which deals primarily in areas such as professional socialization and the role of the professional organization; legal responsibilities and liabilities; independent practice and interprofessional cooperation; ethics; family law. (1 course: 3 semester or 4 quarter hours.)

(5) Research - any course which deals primarily in areas such as research design, methods, statistics; research in marital and family studies and therapy. (1 course: 3 semester or 4 quarter hours.)

(6) Practicum/Internship (at least 300 clock hours.)

~~(ee)~~ **International degrees.** For applicants with international degrees, the Board shall review the applications of applicants for licensure under this Chapter who have received a post-secondary degree from an educational institution outside the United States. The Board shall determine whether the applicant's experience, command of the English language, and completed academic program meet the standards of an academic program of an accredited educational institution.

~~(fd)~~ **Experience requirement.**

(1) Applicants must complete two (2) calendar years of work in marital and family therapy following the receipt of the qualifying degree.

(2) These two years must be completed under a supervisor approved by the Board.

~~(ge)~~ **Examination.** Applicants must achieve a passing score on the LMFT examinations.

SUBCHAPTER 9. SUPERVISED EXPERIENCE REQUIREMENTS

86:15-9-3. Supervisor qualifications

(a) In order to be approved as a supervisor for therapists seeking MFT licensure, an individual must:

(1) be an American Association for Marriage and Family Therapy approved Supervisor familiar with Oklahoma LMFT Act and Rules duly promulgated, or

(2) be an LMFT

(A) with two (2) years of experience in marital and family therapy beyond the number of years of experience required for licensure and

(B) who has successfully completed a graduate course in therapist supervision (at least 45 contact hours) or equivalent course of study acceptable to the Board. This equivalent course of study should consist of workshops in marriage and family therapy supervision in combination with directed study of the marriage and family therapy supervision literature. Fifteen (15) of the 45 clock hours should be in a class or workshop format which includes a minimum of four supervisors-in-training; the other 30 clock hours should be reserved for the directed study. Directed study must be approved and monitored by an Approved Supervisor.

~~(b) If continuing education requirement is not met within one (1) year of expiration, approved supervisor status will be permanently expired and the LMFT must re-apply and meet all requirements, including passing the Oklahoma LMFT Examination, in this Subchapter to become an approved supervisor.~~

~~(eb)~~ An active approved supervisor may request inactive status by submitting a request in writing to the Board. An inactive approved supervisor shall not provide any activities described in Subchapter 9 of this Chapter.

~~(dc)~~ An inactive approved supervisor may reactivate by submitting the required therapy supervision continuing education due by the end of the current renewal period. If approved supervisor status has been inactive for three (3) or more years,

the supervisor must retake and pass the Oklahoma LMFT Examination before approved status is reinstated.

(ed) An active approved supervisor status may be retired by informing the Board in writing. Retired approved supervisor status shall not be reinstated but does not prevent a person from applying for approved supervisor status at a future date.

(fe) No ~~re-application~~ application for a revoked approved supervisor status, as a result of administrative proceeding, shall be considered for a period of five (5) years following the revocation.

(gf) Effective October 1, 2015, a supervisor may not supervise more than a total of twelve (12) candidates for licensure at a time. A supervisor who wants to supervise more than twelve (12) candidates must petition the Board for approval for each person above the maximum number. The petitions will be determined on a case-by-case basis depending on the circumstances of the request.

SUBCHAPTER 13. ISSUANCE AND MAINTENANCE OF LICENSE

86:15-13-4. Continuing education

(a) **Purpose.** The purpose of the requirements in this Section is to establish the continuing education requirements necessary for license renewal.

(b) **Number of hours required.**

(1) Licensees shall complete and furnish documentation to the Board of twenty (20) clock hours of acceptable continuing education per year. One college credit hour is equal to fifteen (15) clock hours.

(2) A minimum of three (3) clock hours of continuing education hours must be in mental health ethics from programs pre-approved by the Board or its designee. Continuing education in mental health ethics is acceptable as meeting the pre-approval requirements by the Board when the continuing education program:

(A) Addresses ethics issues specifically pertaining to the practice of therapy, as defined in Section 1925.2(7) of this Act;

(B) Addresses regulations as promulgated in Subchapter 3 of this Chapter; and

(C) Meets all requirements of subsections (b) through (e) of OAC 86:15-13-4 of this Chapter.

(D) Beginning renewal year 2009, the three clock hours of mental health ethics continuing education must be accrued in a face-to-face setting.

(E) Current LMFT Board members shall receive clock hours of acceptable continuing education in mental health ethics for attendance and participation in Board or Committee meetings.

(3) Approved LMFT Supervisors are required to complete a minimum of three (3) clock hours, ~~every three (3) years~~, of continuing education in therapy supervision specific to Oklahoma law provided by the Board or its designee. Continuing education in Therapy Supervision is acceptable as meeting the pre-approval requirements by the Board when the continuing education program:

(A) Addresses issues specifically related to the practice of therapy supervision pursuant to regulations promulgated in Subchapter 9 of this Chapter; and

(B) Contains content in one or more of the following knowledge areas:

(i) Overview of a supervision model;

(ii) Supervisors' areas of focus and roles in supervision;

(iii) Supervisors' process and practical application;

(iv) Ethical dilemmas involved in therapy supervision;

(v) Methods of effectively addressing and preventing ethical dilemmas in therapy supervision;

(vi) Overview of AAMFT standards of supervision; or

(vii) Overview of Oklahoma LMFT Rules and Regulations regarding therapy supervision; and

(C) Meets all requirements of subsections (b) through (e) of OAC 86:15-13-4 of this Chapter.

(c) **Acceptable continuing education.** Continuing education is acceptable to the Board when it:

(1) approximates the content of any of the academic areas listed under Subchapter 5 of this Chapter and;

(2) is presented by a person who meets one of the following qualifications:

(A) is licensed or certified by therapy related professions;

(B) is a licensed or certified member of a non-therapy field (i.e. medicine, law) if the content of the presentation is therapy related and falls within the presenter's area of training;

(C) has experience teaching, at the graduate level, in a regionally accredited college or university from any of the knowledge areas listed in OAC 86:15-5-3 of this Chapter;

(D) the person is presenting or has presented at a national mental health conference provided by the American Association for Marriage and Family Therapy (AAMFT), American Psychological Association (APA), American Counseling Association (ACA), or any of its divisions, National Association for Social Workers (NASW), the Association for Addiction Professionals (NAADAC), or other nationally recognized professional organization in the mental health field;

(E) is presenting in a program sponsored or provided by a state or federal government agency with responsibility for mental health and substance abuse services; and

(3) takes place in the context of one of the following:

(A) a college course, in-service training, institute, seminar, workshop, conference or a Board pre-approved technology-assisted distance learning or home-study course;

(B) a national mental health conference provided by the American Association for Marriage and Family

Therapy (AAMFT), American Psychological Association (APA), American Counseling Association (ACA), or any of its divisions, National Association for Social Workers (NASW), the Association for Addiction Professionals (NAADAC), or other nationally recognized professional organization in the mental health field;

(C) a program approved or offered by a state or federal government agency with responsibility for mental health and substance abuse services; or

(D) Board or Committee meetings, for current Board members.

(d) **Continuing education accrual from teaching.** Continuing education may also be accrued when the LMFT teaches in programs such as institutes, seminars, workshops, and conferences, when the content conforms to OAC 86:15-13-4(c) of this subchapter, provided that such teaching is not required as part of the LMFT's regular employment. Two hours of C.E. is credited for each hour taught.

(e) **Continuing education accrual from technology-assisted distance learning or home-study courses.** Continuing education may be accrued when the LMFT completes technology-assisted distance learning or home-study programs that are approved by the Board. No more than ten (10) hours of continuing education may be accrued per renewal period through technology-assisted distance learning or home-study courses.

(f) **Professional audience.** Continuing education, whether received or presented by the LMFT must be targeted toward a professional audience.

(g) **Documentation of attendance.** LMFT's shall retain verification of attendance documents for all C.E. hours claimed for a period of two (2) years. Acceptable C.E. verification of attendance documents are:

(1) an official continuing education validation form furnished by the presenter, or,

(2) a letter on the sponsoring presenter's letterhead giving the name of the program, location, dates, subjects taught, total number of hours attended, participant's name and presenter's name and credentials, or,

(3) an official college transcript showing courses or audit credit, or

(4) For teaching a letter on sponsoring agency's letterhead giving the name of the program, location, dates, subject taught and total number of hours taught.

(h) **Submission of continuing education roster.** LMFT's shall submit a Continuing Education Roster, on official Board forms, (not individual verification of attendance documents) with the license renewal fee. Rosters may be obtained from the LMFT office. The Continuing Education Roster shall include the name of the licensee, signature and signature date of the licensee, total clock hours of workshop(s), name of workshop(s), sponsoring agency of workshop, date of workshop, and the number of hours of each workshop. Only C.E. accrued in the preceding license renewal period is acceptable.

(i) **Audit of continuing education submissions.** In November of each year, the Board will randomly select from two (2) to twenty-five (25) percent of the number of LMFT's

on active status the previous year for an audit of their claimed Continuing Education credits. These selected LMFT's must then provide the Board with verification of all credits claimed on their Continuing Education Roster on or before the renewal deadline. The Board may, at its discretion, audit and require verification of any credits claimed which it may consider questionable or fraudulent.

(j) **Penalty for failure to submit continuing education.** Failure to fulfill the C.E. requirement by the renewal date renders the license in suspension. All rights granted by the license are null and void until the requirement is fulfilled and a late renewal fee is paid. The LMFT has 12 months from the date of suspension to become reinstated. If not reinstated, the license shall be revoked.

(k) **Submission of fraudulent continuing education.** The submission of fraudulent C.E. hours will be reviewed by the License Committee for disciplinary action and may result in suspension or revocation of license.

(l) **Responsibility.** The licensee is ultimately responsible for providing or arranging for sponsors to provide the information necessary for the Board to make a determination of the suitability of the program for continuing education requirements.

(m) **Continuing Education Rosters for LMFT Approved Supervisors.** (1) Effective January 1, 2020, approved LMFT Supervisors are required to complete a minimum of three (3) clock hours of continuing education in therapy supervision each renewal period. Approved Supervisor designation will not be renewed until the continuing education requirement for each missed renewal period is met.

(2) Every year, LMFT Approved Supervisors are required to submit three (3) hours of continuing education in therapy supervision on the LMFT Approved Supervisor Continuing Education Roster.

(3) The LMFT Approved Supervisor Continuing Education Roster shall include name of licensee, signature and signature date of licensee, total clock hours of workshop(s), name of therapy supervision workshop, sponsoring agency of workshop(s), date of workshop(s), and number of hours of each workshop.

(4) If continuing education requirement is not met within five (5) years of expiration, approved supervisor status will be permanently expired and the LMFT must ~~re-apply~~ apply and meet ~~the~~ the requirements in ~~the~~ the Subchapter ~~9~~, including the retaking of ~~86:15-9-3(B)~~ 86:15-9-3(a)(2)(B) to become an approved supervisor.

86:15-13-8. Licensure by endorsement

The Board may grant a license by endorsement, in accordance with Section 1925.9 of the LMFT Act.

(1) **Submission of Out-of-State License Verification Form.** An applicant for licensure by endorsement must submit the Out-of-State License Verification Form and may be required to submit a copy of the statute and rules of the agency issuing the license and the name and address of the licensing agency.

(2) **Licensing procedures.** An applicant must submit all application materials as described in OAC 86:15-5-2(b)(1), (2), (3), (5) and (6).

(3) The Board shall issue a license by endorsement to an applicant who is licensed or certified as a marital and family therapist in another jurisdiction and who meets the following:

(A) The applicant's marital and family therapy license in the other jurisdiction is active and in good standing with no history of suspension or revocation action against the license.

(B) The applicant fulfills the requirements of Section 1925.6 (A), (B), (C) of the LMFT Act;

(C) The applicant must have at least a masters degree in marital and family therapy, or in a mental health, behavioral science, or counseling related field, or a content-equivalent degree from a regionally accredited college or university;

(D) The applicant takes and passes the examination as provided in Section 1925.7, unless the applicant has passed a written, marital and family therapist examination that, in the judgment of the Board, is substantially equivalent to the examination established by the Board; and

(E) The applicant takes and passes the Oklahoma LMFT Examination.

(4) If the Applicant cannot meet the requirements of Paragraph (3) of this section, the Board shall issue a license by endorsement to an applicant who is licensed or certified as a marital and family therapist in another jurisdiction and who meets the following:

(A) The applicant's marital and family therapy license in the other jurisdiction is active and in good standing which allows the applicant to practice independently without supervision and shall have no history of suspension or revocation action against the license;

~~(B) The applicant must show proof of practice in marital and family therapy for five (5) years prior to application in Oklahoma;~~

~~(C)~~ The applicant fulfills the requirements of Section 1925.6 (A), ~~and~~ (B), ~~(C)~~ of the LMFT Act;

~~(D)~~ The applicant must have at least a masters degree in marital and family therapy or in a mental health, behavioral science, or counseling related field from a regionally accredited college or university;

~~(E)~~ The applicant takes and passes the Oklahoma LMFT Examination as described in OAC 86:15-7-2(2) of this Chapter.

~~(F)~~ The applicant meets the requirements in OAC 86:15-5-1(b).

(5) The applicant must meet the requirements in OAC 86:15-5-2(a), ~~(2)~~, ~~and~~ ~~(3)~~ ~~and~~ ~~(4)~~.

SUBCHAPTER 17. POST-MILITARY SERVICE OCCUPATION, EDUCATION, AND CREDENTIALING RULES

86:15-17-1. Education, training and experience completed as a member of the Armed Forces of the United States pursuant to 59 O.S. § 4100.4(A)

(a) If an applicant otherwise qualifies for licensure, the Board shall issue an appropriate license to applicants who present satisfactory evidence of equivalent education, training and experience completed by the applicant as a member of the Armed Forces or Reserves of the United States, National Guard of any state, the Military Reserves of any state, or the Naval Militias of any state.

(b) Active-duty military service members seeking to make application for licensure may do so without payment of application fee.

86:15-17-3. Reciprocal licensing of spouses of active-duty members of the Armed Forces of the United States

The procedure to expedite endorsement of licensure pursuant to Section 4100.5 of Title 59 of the laws of the State of Oklahoma for applicants who are licensed in another state and who are the spouse of an active-duty member of the Armed Forces of the United States is as follows:

(1) A license shall be issued to the applicant if the requirements for licensure of the other state are substantially equivalent to those required by this state;

(2) If specific licensure requirements in this state were not required in the state in which the Applicant was licensed, a temporary license for a set period of time shall be issued to Applicants to allow the person to work as a licensed marital and family therapist while completing those requirements.

(3) Applicants who are licensed in another state and who are the spouse of an active-duty member of the Armed Forces of the United States seeking to make application for licensure may do so without payment of application fee.

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n/a

GIST/ANALYSIS:

The following permanent rules interpret the Oklahoma Licensed Behavioral Practitioners Act, (59 O.S. 1991, Sections 1901 et seq.)

CONTACT PERSON:

Eric Ashmore, Executive Director, State Board of Behavioral Health Licensure, 3815 N. Santa Fe., Suite 110, Oklahoma City, OK 73118, (405) 522-3696, Eric.Ashmore@bbhl.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 25. LICENSURE BY ENDORSEMENT

86:20-25-1. Requirements for licensure by endorsement

~~(a)~~ The Board shall issue a license by full endorsement to an applicant who is licensed as a behavioral practitioner in another jurisdiction and who meets the following:

- (1) Possess a behavioral practitioner's license which is active and in good standing, with no history of suspension or revocation against license;
- (2) Fulfill the requirements of Section 1935 (A); and (B); ~~and (C)~~ of the Act;
- (3) Possess at least a masters degree from a program in psychology from a regionally accredited college or university; and
- (4) Pass the LBP State Standards Test; ~~and~~
- ~~(5) Pass the Practice Examination of Psychological Knowledge unless the applicant has passed a written examination that, in the judgment of the Board, is substantially equivalent to the examination established by the Board~~

~~(b) The Board shall issue a two (2) year, non renewable, license by endorsement to applicants seeking full endorsement who do not fulfill the requirements set forth in subsection 86:20-25-1(a) of this Chapter, under the following conditions:~~

~~(1) The applicant must show proof of continuous practice in counseling for five (5) years prior to application in Oklahoma;~~

~~(2) The applicant must show proof of behavioral practitioner license in the other jurisdiction is current and in good standing, with no history of suspension or revocation against the license;~~

~~(3) The applicant takes and passes the examinations as provided in subsection 86:20-17-1 of this Chapter; and,~~

~~(4) The applicant completes all deficient course work to meet the academic requirements as provided in subchapter 7 of this Chapter.~~

~~(e) The license by endorsement will expire after two years from the date of issue. Failure to fulfill the requirements as provided in this subsection, within the two (2) year licensure period, will require the applicant to fulfill licensure requirements set forth in Section 1935 (C)(2)(3) of the Act.~~

SUBCHAPTER 31. POST-MILITARY SERVICE OCCUPATION, EDUCATION AND CREDENTIALING RULES

86:20-31-1. Education, training and experience completed as a member of the Armed Forces of the United States pursuant to 59 O.S. § 4100.4(A)

(a) If an applicant otherwise qualifies for licensure, the Board shall issue an appropriate license to applicants who present satisfactory evidence of equivalent education, training and experience completed by the applicant as a member of the Armed Forces or Reserves of the United States, National Guard of any state, the Military Reserves of any state, or the Naval Militias of any state.

(b) Active-duty military service members seeking to make application for licensure may do so without payment of application fee.

86:20-31-3. Reciprocal licensing of spouses of active-duty members of the Armed Forces of the United States

The procedure to expedite endorsement of licensure pursuant to Section 4100.5 of Title 59 of the laws of the State of Oklahoma for applicants who are licensed in another state and who are the spouse of an active-duty member of the Armed Forces of the United States is as follows:

(1) A license shall be issued to the applicant if the requirements for licensure of the other state are substantially equivalent to those required by this state;

(2) If specific licensure requirements in this state were not required in the state in which the Applicant was licensed, a temporary license for a set period of time shall be issued to Applicants to allow the person to work as a licensed behavioral practitioner while completing those requirements.

(3) Applicants who are licensed in another state and who are the spouse of an active-duty member of the Armed

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Forces of the United States seeking to make application for licensure may do so without payment of the application fee.

[OAR Docket #20-516; filed 7-1-20]

TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE CHAPTER 1. GENERAL RULES OF PRACTICE AND PROCEDURE

[OAR Docket #20-608]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 19. Actual and Necessary Travel Reimbursements

150:1-19-1. Actual and necessary expenses [AMENDED]

150:1-19-2. Criteria for approval [AMENDED]

150:1-19-3. Review of expenses; criteria for reimbursement [AMENDED]

AUTHORITY:

Oklahoma Department of Commerce; 74 O.S. §§ 5001 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

September 27, 2019

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

These rules amend the procedures by which Oklahoma Department of Commerce associates seek reimbursement for travel expenditures, the criteria for approval of these expenses, the review process for these expenses and the criteria for reimbursement of these expenses.

CONTACT PERSON:

B. Joshua McGoldrick, General Counsel and Chief of Staff, Oklahoma Department of Commerce, 900 N. Stiles Avenue, Oklahoma City, OK, 73104, 405-815-5153, josh.mcgoldrick@okcommerce.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 19. ACTUAL AND NECESSARY TRAVEL REIMBURSEMENTS

150:1-19-1. Actual and necessary expenses

(a) Allowable and approved actual and necessary expenses incurred by the Director and other employees of the Oklahoma Department of Commerce and others, authorized by the Director for the purpose of business recruitment, shall be reimbursed to such employee in accordance with the rules of this subchapter adopted pursuant to 74 O.S.; ~~500.18(B)(6)(a)~~ **500.18(B)(5)(A).**

(b) All requests for the use of actual and necessary expense reimbursement must be approved in advance by the ~~Agency~~ Director.

(c) Prior to review by the Director, an employee's request to travel under actual and necessary reimbursement shall be reviewed and approved by the requesting employee's immediate supervisor and division director ~~and the appropriate Assistant Director.~~

(d) Requests to travel under actual and necessary reimbursement shall be submitted on required Agency forms.

(e) The ~~Agency~~ Director shall notify the requestor of approval by returning the signed travel request form to him.

150:1-19-2. Criteria for approval

(a) Requests to travel under actual and necessary reimbursement shall be reviewed to determine if the travel is ~~justified in accordance with one or more of the following purposes: to further the Agency's priorities, Objectives and Strategies for national and international recruitment or export assistance.~~

~~(1) The travel is to further the Agency's Priorities, Objectives and Strategies for national and international recruitment or export assistance as set forth in the Agency's Annual Business Plan; or~~

~~(2) The travel is to further the Agency's Action Plans with regard to the priorities established for the national and international recruitment as set forth in the Agency's Annual Business Plan; or~~

~~(3) The travel is to further one of the Agency's Action Plans with regard to the priorities for export assistance as set forth in the Agency's Annual Business Plan.~~

~~(b) The Annual Business Plan is prepared in accordance with and mandated by 74 O.S. 5003.7(C).~~

~~(e) Requests to travel under actual and necessary reimbursement which do not meet one or more of the guidelines requirements set forth in this section shall be denied.~~

150:1-19-3. Review of expenses; criteria for reimbursement

(a) Expenses claimed for actual and necessary reimbursement shall be reviewed by the Director of the Oklahoma Department of Commerce and individually approved or disapproved.

(b) In reviewing expenses claimed for actual and necessary reimbursement, the following criteria shall be applicable:

(1) The purpose for which the travel was intended and requested was a qualified one as set out in 150:1-19-2.

(2) The expense shall be a reimbursable expense under the provisions of 74 O.S., 500.2 et seq. and the guidelines

provided by the Office of Management and Enterprise Services regarding reimbursable expenses.

(3) Expenses for laundry and dry cleaning are reimbursable only if the employee is in travel status more than seven (7) nights.

(4) Expenses for others must be verified by receipt. The receipt shall designate date of expense, to whom expense was paid (name of business or entity), for whom the expense was made, a brief explanation of the expenditure (i.e. lunch and tip, lodging, transportation charges), the business purpose of the expenditure (what was the nature of the business involved), and the dollar amount of the expense.

(5) Expenses for meals—~~or entertainment~~ for others shall be reimbursable if they are ordinary and necessary expenses incurred by economic developers. As provided in 26 U.S.C. 274(a)(1)(A), expenses must be directly related to or associated with, the active conduct of business. Expenditures must be on behalf of the company or individuals in whose name the travel claim has been submitted. Documentation as required in paragraph ~~(5)~~(4) of this section must reflect that the expense was incurred for more than a general expectation of some specific business benefit at some future time; and that business was engaged in during the meal and the main purpose of the combined business and meal was the active conduct of business.

(c) Employees, submitting requests for reimbursement under actual and necessary expenses, shall be required to provide all information necessary to enable the Financial Services Division of the Department to process the request.

[OAR Docket #20-608; filed 7-14-20]

TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE

CHAPTER 35. ENTERPRISE ZONES

[OAR Docket #20-606]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. Incentives

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

AUTHORITY:

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

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 9. Incentives

150:35-9-2 Priority Enterprise Zone incentives [NEW]

Gubernatorial approval:

May 3, 2019

Register publication:

36 Ok Reg 463

Docket number:

19-404

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rule sets forth criteria for the selection of priority enterprise zones within a federal opportunity zone.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 9. INCENTIVES

150:35-9-2. Priority enterprise zone incentives

(a) An Enterprise Zone, as defined by 62 O.S. §690.2, is eligible for designation as a Priority Enterprise Zone, as defined by 62 O.S. §690.2, if it is located within a Federal Opportunity Zone.

(b) The Department shall use the following criteria for selection of Priority Enterprise Zones:

(1) The degree of need;

(2) Likelihood of success in attracting new economic growth;

(3) Evidence of local commitment; and

(4) Any other criteria the Director deems appropriate.

(c) The Priority Enterprise Zone status shall stay in effect as long as the Federal Opportunity Zone is in effect.

[OAR Docket #20-606; filed 7-14-20]

TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE

CHAPTER 140. OKLAHOMA QUICK ACTION CLOSING FUND

[OAR Docket #20-609]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

150:140-1-1. Purpose and scope [AMENDED]

150:140-1-3. Application process [AMENDED]

150:140-1-4. Award process [AMENDED]

150:140-1-5. Award agreement [AMENDED]

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AUTHORITY:

Oklahoma Department of Commerce; 74 O.S. §§ 5001 et seq.; 62 O.S. §§48.2 (E), (F)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

This action is to amend the Quick Action Closing Fund rules to comport with statutory amendments allowing payment of rebates to high impact productions and further creates the ability for the executive director to establish a short term set aside for projects in smaller communities

CONTACT PERSON:

B. Joshua McGoldrick, General Counsel and Chief of Staff, Oklahoma Department of Commerce, 900 N. Stiles Avenue, Oklahoma City, OK, 73104, 405-815-5153, josh.mcgoldrick@okcommerce.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

150:140-1-1. Purpose and scope

(a) The purpose of these rules is to implement the Oklahoma Quick Action Closing Fund at the Oklahoma Department of Commerce.

(b) *All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Governor for the purposes of economic development and related infrastructure development in instances in which expenditure of such funds would likely be a determining factor in locating a high-impact business project or facility in Oklahoma, or in retaining such project or facility within the state or for payment of rebates to a high impact production pursuant to the Oklahoma Film Enhancement Rebate Program. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of State Finance for approval and payment.* [62 O.S. § 48.2(B)]

150:140-1-3. Application process

(a) For the purpose of evaluating the applications, the Department will require all applicants interested in the Oklahoma Quick Action Closing Fund to submit an application in a form

prescribed by departmental guidelines as provided in the application packet. All applications will be required to contain sufficient information to permit the Department to comprehensively review the project proposal and determine if the project will result in a net economic benefit to the State of Oklahoma. The application for the Quick Action Closing Fund will be based upon the statutory mandates set forth in 62 O.S. § 48.2 and to provide the information required in 150:140-1-4.

(1) The Department will make available upon request application forms and application guidelines.

(2) The forms and guidelines will provide information that will assist applicants in their application preparation.

(3) The guidelines and forms set forth shall apply to all applications and awards made in the program year corresponding with the application and application guidelines packet.

(b) *In order to qualify for any funds from the Oklahoma Quick Action Closing Fund, the establishment making application shall be engaged in a business activity described by a North American Industry Classification System (NAICS) Code used to define eligibility for incentive payments from the Oklahoma Quality Jobs Program Act as defined in Section 3603 of Title 68 of the Oklahoma Statutes or a business activity described by Section 3603 of Title 68 of the Oklahoma Statutes or be engaged in a "basic industry" used to define eligibility for incentive payments from the 21st Century Quality Jobs Incentive Act as prescribed by Section 3913 of Title 68 of the Oklahoma Statutes or a high impact production company which has been approved for a rebate pursuant to the provisions of Section 3624 of Title 68 of the Oklahoma Statutes.* [62 O.S. § 48.2(C)]

(c) ~~The application~~ Applications other than those from high impact production companies which ~~has~~ have been approved for a rebate ~~needs to~~ shall include a full and complete description of the project which includes the following:

(1) The number of jobs to be created if the project is a new or existing company;

(2) The number of jobs to be retained if the project is an existing company;

(3) The average salary of jobs to be created or retained by the company;

(4) The latest audited financial statements of the company including the credit rating of the company if it has issued publicly held debt;

(5) The total capital investment to be made by the company;

(A) Sources of the capital investment; and

(B) If the investment is secured or if applications/solicitations are pending.

(6) The relative likelihood of other business enterprises locating within the same vicinity or within the state as a result of the company's location or expansion as a result of payments from the Oklahoma Quick Action Closing Fund;

(7) The relative impact on the economy of the area or community in which the company is or will be conducted;

(8) The location of the project;

- (9) Any needed infrastructure improvements at the project site for the project to go forward;
- (10) All investment, both in kind and monetary, from local governmental units in support of the project;
- (11) The history of the company including date and location of establishment, and significant accomplishments of the company; and
- (12) North American Industries Classification System ("NAICS") code for qualifying business activity;
- (13) Any other information deemed relevant by the Department.

(d) An application for payment of a rebate to a high impact production pursuant to the Oklahoma Film Enhancement Program shall include:

- (1) Proof that the production has been designated as a high impact production as defined in 68 O.S. §3623;
- (2) Proof that the production has been approved or otherwise prequalified for a rebate pursuant to the Oklahoma Film Enhancement Rebate Program detailed in 68 O.S. §3624;
- (3) Any other information deemed relevant by the Department.

150:140-1-4. Award process

(a) *The Oklahoma Department of Commerce shall administer the Oklahoma Quick Action Closing Fund, and expenditures from the fund shall be recommended by the Director of the Oklahoma Department of Commerce to the Governor after a thorough evaluation of selected projects or facilities or after a rebate is approved for payment to a high impact production company pursuant to the provisions of Section 3624 of Title 68 of the Oklahoma Statutes. Except for rebates approved pursuant to the provisions of Section 3624 of Title 68 of the Oklahoma Statutes, the* ~~The~~ *Director of the Oklahoma Department of Commerce shall only recommend expenditures that the Director determines are expected to result in a net economic benefit to the state through the following:*

- (1) *The creation of new jobs which offer a basic health benefit plan, as defined in the Oklahoma Quality Jobs Program Act;*
- (2) *The maintenance of existing jobs which are at a risk for termination;*
- (3) *Investment in new real property, plant or equipment or in the improvement or retooling of existing plant or equipment; or*
- (4) *Additional revenues in either ad valorem, income or sales and use taxes. [62 O.S. § 48.2(E)]*

(b) *The Governor will make the funding decision, after review of the recommendation and evaluation submitted by the Director of the Oklahoma Department of Commerce.*

(c) ~~The~~ Except in the case of a high impact production company which has been approved for a rebate pursuant to the provisions of Title 68 of the Oklahoma Statutes, the ~~Gov-~~ ernor shall not approve payments from the Oklahoma Quick Action Closing Fund unless the Department of Commerce has conducted a complete analysis of the potential impact of the applicant's business activity which shall include, but not be limited to:

- (1) *The number of jobs to be created by a new business establishment;*
- (2) *The number of jobs to be retained by an existing business establishment;*
- (3) *The average salary of jobs to be created by a new establishment;*
- (4) *The average salary of jobs to be retained by an existing business establishment;*
- (5) *The total capital investment to be made by the business establishment;*
- (6) *The likelihood of other business establishments locating within the same vicinity or within the state as a result of the business activity to be conducted by the entity to receive payments from the Oklahoma Quick Action Closing Fund;*
- (7) *The impact on the economy of the area or community in which the business activity of the applicant is or will be conducted; and*
- (8) *Such other factors as the Governor and the Department of Commerce determine to be relevant. [62 O.S. § 48.2(D)]*

(d) The Director of the Oklahoma Department of Commerce may consider the following factors when determining whether to recommend expenditures from the Closing Fund to a high impact production company:

- (1) The amount of money available in the fund for payment of rebates;
- (2) The amount of the anticipated rebate;
- (3) The anticipated economic impact to the State of the production;
- (4) The degree of net benefit or net cost to the State of the production;
- (5) Any other factor that the Director deems relevant to the Governor's funding decision.

(e) At the beginning of each fiscal year, the lesser amount of five hundred thousand dollars (\$500,000.00) or twenty percent (20%) of the available funds held within the closing fund may be set aside by the Director for qualified expenditures affecting cities, towns or unincorporated rural areas, the population of which does not exceed fifty thousand persons according to the most recent Decennial Census. This set aside shall expire and become available for all otherwise permissible uses on January 1st of the fiscal year. This provision shall in no way be construed to limit the amount of funds that can be expended from the Quick Action Closing Fund for projects affecting these communities.

150:140-1-5. Award Agreement

(a) *Upon approval by the Governor, the Oklahoma Department of Commerce shall enter into an agreement that sets forth the conditions for payment of monies from the Oklahoma Quick Action Closing Fund. The agreement must include:*

- (1) *The total amount of funds awarded;*
- (2) ~~The~~ Except in the case of a rebate approved for payment to a high impact production company pursuant to the provisions of Section 3624 of Title 68 of the Oklahoma Statutes, the ~~performance~~ conditions that must be met to obtain the award; including, but not limited to,

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net new employment in the state, average salary, and total capital investment;

(3) *If appropriate, a baseline of current service and measure of enhanced capability;*

(4) *The methodology of validating performance;*

(5) *The schedule of payments from the fund, and claw-back provisions for failure to meet performance conditions; and*

(6) *A requirement that no monies paid from the Oklahoma Quick Action Closing Fund shall be used by a recipient or any other person or entity for purposes of any political contribution to or on behalf of any candidate or for the support of or opposition to any measure including but not limited to an initiative petition or referendum. [62 O.S. § 48.2(H)]*

(b) *If any or all of the amount to be awarded is used to build a capital improvement, except in the case of an amount approved for payment to a high impact production company pursuant to the provisions of Section 3624 of Title 68 of the Oklahoma Statutes:*

(1) *The funds used for the capital improvement shall be deemed to be held in trust for the benefit of the state and shall be considered as a priority claim for purposes of federal bankruptcy law; and*

(2) *If the capital improvement is sold, the recipient of the award shall:*

(A) *repay the state the money awarded to pay for the capital improvement, with interest at the rate and according to the other terms provided by the agreement, and*

(B) *share with the state a proportionate amount of any profit realized from the sale. [62 O.S. § 48.2(J)]*

(c) *If, as of the date certain provided in the agreement, the award recipient has not used monies awarded for the intended purposes, the recipient shall repay that amount and any related interest to the state at the agreed rate and on the agreed terms and any such amounts shall be deemed to be held in trust for the benefit of the state and shall be considered as a priority claim for purposes of federal bankruptcy law. [62 O.S. § 48.2(K)]*

[OAR Docket #20-609; filed 7-14-20]

TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE CHAPTER 145. OKLAHOMA ECONOMIC DEVELOPMENT POOLED FINANCE ACT

[OAR Docket #20-607]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General [NEW]

150:145-1-1. Purpose and scope [NEW]

150:145-1-2. Definitions [NEW]

150:145-1-3. Applications [NEW]

Subchapter 2. Infrastructure Pool [NEW]

150:145-2-1. Criteria [NEW]

150:145-2-2. Scoring system [NEW]

Subchapter 3. Economic Development Pool [NEW]

150:145-3-1. Scoring system [NEW]

Subchapter 4. Public-Private Partner Development Pool [NEW]

150:145-4-1. Criteria [NEW]

150:145-4-2. Scoring system [NEW]

AUTHORITY:

Oklahoma Department of Commerce; 74 O.S. §§ 5001 et seq.; 62 O.S. §891.10, 891.17 (D)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Approved by Governor's declaration on June 25, 2020

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June 25, 2020

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

These rules set out the procedures by which the Oklahoma Department of Commerce shall evaluate applications pursuant to the Oklahoma Economic Development Pooled Finance Act and by which applicants may apply to access the Infrastructure, Economic Development and Public-Private Partner Development Pools.

CONTACT PERSON:

B. Joshua McGoldrick, General Counsel and Chief of Staff, Oklahoma Department of Commerce, 900 N. Stiles Avenue, Oklahoma City, OK, 73104, 405-815-5153, josh.mcgoldrick@okcommerce.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL

150:145-1-1. Purpose and scope

The purpose of these rules is to implement the Oklahoma Economic Development Pooled Finance Act at the Oklahoma Department of Commerce.

150:145-1-2. Definitions

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

"Department" means the Oklahoma Department of Commerce.

"Economic development pool" means proceeds of obligations sold by the Authority to provide resources for eligible local government entities or a local government entity in conjunction with a for-profit business entity to finance an eligible

economic development project or other purposes authorized by this act. [62 O.S. 891.3(9)]

"Infrastructure pool" means the proceeds of obligations sold by the Authority to provide resources for eligible local government entities to provide financing for infrastructure or other purposes authorized by this act.[62 O.S. 891.3 (14)]

"Public-private partner development pool" means proceeds of obligations sold by the Oklahoma Development Finance Authority to provide resources for eligible local government entities to provide financing for infrastructure in conjunction with for-profit business entities and federal government defense entities or any other purpose authorized by this act. [62 O.S. 891.3 (17)]

150:145-1-3. Applications

For the purpose of evaluating applications, the Department will require all applicants interested in the Infrastructure Pool, the Economic Development Pool, or the Public-Private Partner Development Pool to submit an application in a form prescribed by departmental guidelines as provided in the application packet. All applications will be required to contain sufficient information to permit the Department to comprehensively review the project proposal and determine whether or not the project meets the statutory requirements and to evaluate the project under the relevant scoring system.

- (1) The Department will make available upon request application forms and application guidelines.
- (2) The forms and guidelines will provide information that will assist applicants in their application preparation.
- (3) The guidelines and forms set forth shall apply to all applications and awards made in the program year corresponding with the application and application guidelines packet.

SUBCHAPTER 2. INFRASTRUCTURE POOL

150:145-2-1. Criteria

Funds obtained from the Infrastructure Pool may be used for the acquisition, construction, reconstruction, repair, rehabilitation or installation of Infrastructure, as defined in 62 O.S. §891.3, and carried out by the recipient or other public entities.

150:145-2-2. Scoring system

(a) The Department shall develop a scoring system in order to evaluate potential projects which may be eligible for pooled financing from the infrastructure pool. This scoring system shall include, but not be limited to, the following factors:

- (1) Capital investment by eligible local governmental entities as defined in 62 O.S. §891.3;
- (2) Amount and type of benefit to low and moderate income persons;
- (3) Whether or not the improvement will contribute significantly to the safety, health, or welfare of the residents of the area;

(4) Whether or not the area is in a Federally-designated Empowerment Zone or Enterprise Community or Opportunity Zone;

(5) Whether or not the infrastructure improvement would allow the local government entities create jobs;

(6) Whether or not the infrastructure improvement would allow the local governmental entities to retain jobs that would likely be lost without the funds;

(7) Whether or not the infrastructure project provide or significantly improve locally owned broadband internet lines and/or facilities; and

(8) Any other factor(s) deemed relevant by the Department.

(b) This scoring system shall only be used as necessary to prioritize the funding of qualified infrastructure pool projects.

SUBCHAPTER 3. ECONOMIC DEVELOPMENT POOL

150:145-3-1. Scoring system

The Department shall develop a scoring system in order to evaluate potential projects which may be eligible for pooled financing from the economic development pool. The scoring system shall include, but not be limited to, the following factors:

- (1) Capital investment by a for-profit business entity or entities;
- (2) New direct jobs as such term is defined by 68 O.S. §3603, to be created by a for-profit business entity or entities;
- (3) Salary and wage payments to persons employed in new direct jobs;
- (4) Likelihood of additional business location decisions resulting from the activity of the for-profit business entity or entities that would benefit from the use of the economic development pool;
- (5) Capital investment by governmental and/or not for profit entities;
- (6) The amount and degree of net benefit to be had by the State from completion of the project;
- (7) Whether or not the local government entity or for-profit business entity is a participant in any other projects governed by the Oklahoma Economic Development Pooled Finance Act; and
- (8) Any other factor(s) deemed relevant by the Department.

SUBCHAPTER 4. PUBLIC-PRIVATE PARTNER DEVELOPMENT POOL

150:145-4-1. Criteria

Funds obtained from the Public-Private Partner Development Pool may be used for the acquisition, construction, reconstruction, repair, rehabilitation or installation of infrastructure

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owned by an eligible local government entity, as defined in 62 O.S. §891.3.

150:145-4-2. Scoring system

The Department shall develop a scoring system in order to evaluate potential projects which may be eligible for pooled financing from the Public Private Partnership Pool. The scoring system shall include, but not be limited to:

- (1) Capital investment by one or more for-profit business entities and/or federal government defense entities;
- (2) Additional capital investment by one or more local government entities;
- (3) New direct jobs as defined 68 O.S. §3603, to be created by a for-profit business entity or entities;
- (4) Salary and wage payments to persons employed in new direct jobs;
- (5) The likelihood of additional business location decisions resulting from the activity of the for-profit business entity or entities that would benefit from use of the Public-Private Partner Development Pool;
- (6) The amount and degree of net benefit to be had by the State from completion of the project;
- (7) Whether or not the local government entity or business entities is a participant in other projects governed by the Oklahoma Economic Development Pooled Finance Act; and
- (8) Any other factor(s) deemed relevant by the Department.

[OAR Docket #20-607; filed 7-14-20]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD CHAPTER 1. PROCEDURES OF THE OKLAHOMA CONSTRUCTION INDUSTRIES BOARD

[OAR Docket #20-636]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. General Operation and Procedures

158:1-3-10 [AMENDED]

158:1-3-13 [AMENDED]

AUTHORITY:

Construction Industries Board; 59 O.S. §§ 858-627, 1000.4, 1000.5, 1002, 1032, 1681, 1850.3, 1151.2a, and 1151.4

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Gist: The proposed changes provide fee waivers for active duty military and their spouses as well as a one-time low income fee waiver.

Analysis: No fees are established or changed by the proposed rules. The purpose of the amendments to 158:1-3-10 is due to legislation that was passed (SB 670) which provides a fee waiver to active duty military and their spouses; amendments also clarify licensure requirements. Amendments in 158:1-3-13 are due to legislation that was passed (HB 2933) providing a one-time low income fee waiver.

CONTACT PERSON:

Stephanie Brown, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2020:

SUBCHAPTER 3. GENERAL OPERATION AND PROCEDURES

158:1-3-10. Acceptance of Military education, training, and experience toward qualification for licensure or endorsement examination

(a) ~~Licensure or endorsement - post-military service. In accordance with 59 O.S. § 4100.4 of the Post Military Service Occupation, Education and Credentialing Act, the related trade committee and the~~ The Board shall, upon satisfactory evidence of substantially equivalent education, training and experience by an applicant for licensure, registration, or endorsement, accept the education, training and experience completed by the applicant as a member of the Armed Forces or Reserves of the United States, National Guard of any jurisdiction, the Military Reserves of any jurisdiction, or the Naval Militias of any jurisdiction, and apply it in the manner most favorable toward satisfying the applicant's qualifications for examination and license or endorsement issuance.

(1) An applicant applying under this paragraph must complete and submit the following:

(A) Appropriate application(s).

(B) Satisfactory evidence of education, training and experience obtained by the applicant as a member of the military Armed Forces or Reserves of the United States.

(C) License, registration, or endorsement certification(s) from jurisdiction(s) in which the applicant has held or currently holds a license, registration, or endorsement, if applicable.

(D) Criminal history background application, finger print card and fee, if applicable.

(E) Successful completion of the appropriate examination.

(2) An Oklahoma license or registration will be issued within thirty (30) days if applicant is licensed or registered and in good standing in another state upon receipt of completed application and presentation of satisfactory proof of equivalency.

(b) **Military spouse applicant - equivalency.** ~~In accordance with 59 O.S. § 4100.5 the~~ The Board shall issue the individual an equivalent license, registration, or endorsement in an equivalent category if, ~~in the opinion of the related trade committee,~~ the requirements for licensure, registration, or endorsement of the other state are substantially equivalent to those required by this state, and the applicant:

- (1) is actively licensed or holds active registration or endorsement in another state;
- (2) is the spouse of an active-duty member of the Armed Forces or Reserves of the United States;
- (3) has a spouse subject to a military transfer to this state; and
- (4) left employment in another state to accompany their spouse to this state.

(c) **May be required to meet additional requirements.** If, in the opinion of the related trade committee, there is a question as to the competence of the previously licensed, registered, or endorsed applicant, the individual may be required to meet additional educational courses and/or successfully complete the required examination.

(d) **Meeting licensure requirements.** Nothing in the Military Service Occupation, Education and Credentialing Act shall be construed to require the issuance of any license or registration to an applicant who does not otherwise meet the stated eligibility standards, criteria, qualifications or requirements for licensure or registration, nor shall the provisions be construed to automatically allow issuance of any license or registration without the required examination, without proper consideration by the licensing and examination board, or without proper verification that the applicant is not subject to pending criminal charges or disciplinary actions, has not been convicted of any offense prohibiting licensure or registration, and has no other impairment which would prohibit licensure or registration in this state.

(e) **Active duty and spouse of active duty application.** Every active duty military personnel and their spouse who is licensed or registered in another state, upon receiving notice or orders for military transfer or honorable discharge to Oklahoma may in advance of actual transfer or discharge submit a completed application to the Construction Industries Board requesting a license or registration based on their currently held valid license or registration from another state or territory of the United States so such person may upon entering Oklahoma be authorized to continue their licensed or registered occupation without delay.

- (1) Upon receipt of an active duty military application submitted as outlined above and presentation of satisfactory evidence of equivalent education, training and experience on such valid license or registration from another state, the Construction Industries Board can accept the

valid license or registration and apply all its education, training and experience in the manner most favorable toward satisfying the qualifications for issuance of the requested license or registration in Oklahoma, and shall issue the requested Oklahoma license or registration within thirty (30) days provided the license or certification from the other state is found to be in good standing and reasonably equivalent to the requirements of this state.

(2) A license or registration issued pursuant to 59 O.S. § 4100.8 shall be valid for the same period as authorized for full license or registration in this state, unless the person is notified that there is cause for a denial of the application or that certain documentation required by Oklahoma is lacking or unavailable. In such case, a temporary credential shall be issued to allow the person time to obtain the necessary requirement while continuing to be employed in his or her occupation or profession in this state. Any active duty military applicant receiving a notice of denial of full licensure or registration shall have the right to appeal the denial determination as provided in the Administrative Procedures Act or to obtain and submit the documentation required to complete full license or registration requirements in this state.

(3) Each credentialing authority in this state shall waive the application fee for active duty military personnel and their current spouse and shall further waive the license or certificate fees for the first period of issuance for such temporary, reciprocal or comity license or certificate.

(4) Any active duty military personnel who pursuant to any federal or military law, rule or regulation is not required to be licensed or credentialed while employed and performing their occupation or profession only on the premises of an assigned military base shall not be required to be licensed or credentialed in this state pursuant to the same law, rule or regulation.

158:1-3-13. Reciprocity, exam equivalency, and portability of licensure and registration and one time low-income license fee waiver

(a) **Reciprocity.** Pursuant to the Construction Industries Board Act and trade licensing and registration acts administered by the Board, the Board may enter into reciprocity agreements with another state or jurisdiction, upon a satisfactory showing that the requirements for obtaining a license by examination in Oklahoma are deemed by the Board to be substantially the same or equivalent to the requirements of the other jurisdiction's original license by examination. A current Oklahoma reciprocity agreement allows Oklahoma and another jurisdiction, to reciprocate by license type and category, without the Oklahoma licensee or the in-coming applicant being required to meet any additional requirement in either jurisdiction.

(b) **Exam equivalency.** To allow licensees to have more portability of their license, one who is seeking Oklahoma licensure may be eligible for exam equivalency in the category of their home jurisdiction license by examination. The Board

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may enter into exam equivalency agreements with another state or jurisdiction concerning an examination requirement of a license upon a satisfactory showing that the examination in Oklahoma and the other jurisdiction is deemed by the Board to be an equivalent examination. After there is an approved exam equivalency agreement with the jurisdiction, applications may be accepted from that jurisdiction showing proof of successfully passing the exam. Proof of continuous licensing in good standing from time of examination is required. A current examination equivalency agreement allows another jurisdiction's exam, that is evaluated by a trade Committee to be equivalent to Oklahoma's exam for the same license type and category, to be approved by the Board and accepted for the exam requirement in Oklahoma. Exam equivalency only applies to the examination requirement of a license, therefore all other requirements for that license type and category must still be completed to obtain a license in Oklahoma.

(c) One time low-income fee waiver. An individual may be eligible to obtain a one-time one-year fee waiver if the individual completes a request form and provides proof of one of the following requirements: enrolled in the Temporary Assistance for Needy Families, Medicaid, Supplemental Nutrition Assistance Program or other similar state or federal public assistance program, or whose household adjusted gross income is below one hundred forty percent (140%) of the federal poverty line or a higher threshold to be set by the executive branch department that oversees business regulation.

[OAR Docket #20-636; filed 7-17-20]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD CHAPTER 30. PLUMBING INDUSTRY REGULATIONS

[OAR Docket #20-637]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

158:30-1-2 [AMENDED]

158:30-1-3 [AMENDED]

Subchapter 5. License Types, Bond Requirements, and Display of License Number and Firm Name

158:30-5-1 [AMENDED]

158:30-5-2 [AMENDED]

Subchapter 9. Examination Procedures, License and Registration Fees and Duration of Licenses

158:30-9-1.1 [AMENDED]

158:30-9-2 [AMENDED]

Subchapter 11. License Revocation or Suspension and Prohibited Acts

158:30-11-2 [AMENDED]

AUTHORITY:

Construction Industries Board; 59 O.S. §§ 1000.4(A)(1), 1000.5 and 1002.

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Gist: The proposed changes to the Plumbing Industry Regulations amend and add language clarifying existing rules and authority; provide additional clarification regarding surety bonds; and clarifies statutory changes as a result of SB 670 and HB 2933.

Analysis: The proposed amendment to 158:30-1-2 adds two definitions for clarification; the proposed amendment to 158:30-1-3 adds clarification to the rule regarding the role of a plumbing contractor or journeyman. The proposed amendment to 158:30-5-1 clarifies apprentice plumber registration and journeyman plumber license information and the proposed amendment to 158:30-5-2 provides clarification related to the process for surety bonds. Proposed amendments to 158:30-9-1 are related to SB 670 and provide a fee waiver for active military and their spouses and amendments to 158:30-9-2 provides a one-time low income fee waiver related to HB 2933. The proposed amendment to 158:30-11-2 provides further clarification for the public.

CONTACT PERSON:

Stephanie Brown, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

158:30-1-2. Definitions

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

"Act" means the Plumbing License Law of 1955 as found at 59 O.S. § 1001, *et seq.*, as amended.

"Administrator" means the Administrator of the Board as described in the Construction Industries Board Act found at 59 O.S. § 1000.1, *et seq.*

"Applicant" means any person applying for an examination, for a license or registration, for continuing education approval, for review of plans and specifications or for a plumbing code variance from the standard of installation as described in OAC 158:30-1-4 by the Construction Industries Board under the Act.

"Apprentice" or "Plumber's Apprentice" means any person sixteen (16) years of age or older who, as the principle occupation of the person, is registered pursuant to OAC 158:30-5-1(a) and engaged in learning and assisting in the installation of plumbing under the direct supervision of a licensed journeyman plumber or plumbing contractor.

"Board" means the Oklahoma Construction Industries Board.

"Bonds and Insurance Unit" means the consolidated unit that processes bonds and insurance under the direction of the Construction Industries Board.

"Cheating" means any unapproved deviation from any official instruction given before, during or after a license examination, for the purpose of affecting or influencing the examination results or otherwise providing an undue advantage to any examinee.

"Committee" means the Committee of Plumbing Examiners.

"Contracting" means engaging or offering to engage in, on behalf of oneself or on behalf of another, any plumbing work which requires a valid and appropriate license from the Construction Industries Board as required by the Plumbing License Law of 1955, regardless if said work is in exchange for monetary payment or otherwise.

"Credit Hour" or **"Hour"** means at least fifty (50) minutes of classroom instruction with a ten (10) minute break.

"Direct supervision" means the on-the-job physical presence by the supervisor who must be in the work area where the plumbing work is being performed and who also must be a licensed plumbing contractor or plumbing journeyman in the appropriate category for any plumbing work supervised.

"Farm Operations"

(A) For purposes of the Plumbing License Law, "farm" means land devoted primarily to production for sale of livestock or agricultural commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(B) For purposes of the Plumbing License Law, "farm building" means all homes (i.e., domiciles, residences), or buildings therewith designed and used primarily for and in conjunction with conducting farming operations, provided that said buildings are not connected to a public water and/or sewage system. A "farm building" shall not include other structures such as stores, service stations, schools, motels, or any other building having public access, whether connected to private or public water or sewer systems.

"Hearing Board" means the Plumbing Hearing Board.

"Maintenance of state owned or operated facilities" means maintenance of state institutions and school districts and will be construed as all repair and/or upkeep of existing plumbing or plumbing fixtures within existing state owned buildings or local school district owned buildings. This term shall not include the installation of plumbing in a new building or new additions to existing structures or replacement of plumbing systems in existing buildings.

"Oklahoma Uniform Building Code Commission" or **"OUBCC"** means the state agency created under 59 O.S. § 1000.20, *et seq.*, and authorized to adopt all building codes and standards for residential and commercial construction to be used as minimum standards by all entities within this State.

"Plumbing" means and includes:

(A) all piping, fixtures, appurtenances and appliances for, and in connection with, a supply of water

within or adjacent to any building, structure, or conveyance, on the premises and to the connection with a water main or other source of supply;

(B) all piping, fixtures, appurtenances and appliances for sanitary drainage or storm drainage facilities, including venting systems for such facilities, within or adjacent to any building, structure, or conveyance, on the premises and to the connection with a public disposal system or other acceptable terminal;

(C) the installation, repair, maintenance and renovation of all piping, fixtures, appurtenances and appliances for a supply of water, or for the disposal of waste water, liquid waste, or sewage within or adjacent to any building, structure, or conveyance, on the premises and to the source of supply of water or point of disposal of wastes;

(D) the original installation of a water softener but not the exchanging of the units whereby only unions are disturbed in the replacement;

(E) the installation of water services and building sewers; and

(F) sewer cleaning-house sewer maintenance.

"Plumbing License Unit" means the staff and administrative support unit to the Committee of Plumbing Examiners and the Plumbing Hearing Board.

"Property of Residence" means permanently constructed residential property that is an existing single-family dwelling occupied by the individual owner as a primary dwelling where the individual owner's habitation is fixed.

"Reciprocity agreement" means an agreement whereby a person holding a plumber's license or registration who is licensed in another state with substantially similar or greater licensure requirements may be licensed in this State after payment of a fee for licensing by reciprocity.

"Variance" means the use of an alternative material or method of construction from that prescribed in the standard of installation as described in OAC 158:30-1-4 for use at a particular location or project specified in the variance application; and

"Variance and Appeals Board" means the Oklahoma State Plumbing Installation Code Variance and Appeals Board.

"Verifiable Experience" means plumbing experience, for which one (1) year of verifiable experience equals two thousand (2000) hours, may be obtained while employed by a licensed plumbing contractor, or by other means approved by the Committee of Plumbing Examiners including equivalent experience earned while serving in the military.

158:30-1-3. License and registration requirement

(a) No person, on his or her own behalf or on behalf of a plumbing firm, shall engage or offer to engage in, by advertisement or otherwise, any plumbing work who does not possess a valid and appropriate license or registration from the Construction Industries Board pursuant to this Chapter.

(b) Any changes in address, business relationship, structure or affiliation shall be reported in writing to the Oklahoma

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Construction Industries Board within thirty (30) days of such change.

(c) No person shall act in the capacity as a foreman, supervisor or superintendent, regardless of job title, over any plumbing work on behalf of a plumbing contractor unless such person possesses a valid plumbing contractor or journeyman license from the Construction Industries Board.

SUBCHAPTER 5. LICENSE TYPES, BOND REQUIREMENTS, AND DISPLAY OF LICENSE NUMBER AND FIRM NAME

158:30-5-1. License and registration types

(a) **Apprentice plumber registration.**

(1) Apprentice plumbers when engaged in plumbing must be under the direct supervision of a licensed plumber when engaged in plumbing who are both employed by the same plumbing contractor.

(2) A maximum of three (3) apprentice plumbers can work under the supervision of a licensed plumber.

(3) Apprenticeship registration is effective upon the posting of the application and evidence of such posting shall be a copy of the executed application form with proof of tender of the proper fee which may serve as evidence of registration for a period not to exceed thirty (30) days.

(4) The apprentice will be registered for a one (1) year period if a completed application form with the apprentice application and registration fee listed in OAC 158:30-9-2(b) is submitted to the Plumbing License Unit along with verification of enrollment in an approved school or training course or a statement of employment by the licensed plumbing contractor who arranged for employment of the apprentice.

(5) When re-registering, the application fee is only required with the registration fee when the registration application is not filed within thirty (30) days of the expiration of previous registration.

(b) **Journeyman plumber license.**

(1) To engage in the act of plumbing, a journeyman plumber must be employed ~~or~~ and supervised by a licensed plumbing contractor, who may operate as an individual, a firm, partnership, limited liability company, or corporation, or other legal entity to engage in the business of plumbing, or the business of contracting to do plumbing.

(2) A journeyman shall not contract or furnish labor and/or labor and materials.

(c) **Plumbing contractor license.** Plumbing contractors must notify their surety of any municipalities wherein plumbing work will be performed.

158:30-5-2. Insurance and bond requirements

(a) Unless as otherwise provided in (b) of this Section: Each active plumbing contractor must maintain a five thousand dollar (\$5,000.00) corporate surety bond, payable to the Board on the Board's call upon the bond, and must cause the surety

to ~~deposit~~ file a copy of such bond with the Plumbing Licensing Unit.

(b) An active plumbing contractor may also satisfy the requirements of (a) of this Section by depositing filing with the Plumbing Licensing Unit, documentation demonstrating cash funds securely held for bonding purposes equivalent to a corporate surety bond of either the sum of \$5,000 cash, or a certificate of deposit in the sum of \$5,000 so held for bonding purposes and payable to the order of the Plumbing Licensing Revolving Fund Board on the Board's call upon the bond.

(c) Failure to maintain a corporate surety bond in effect shall constitute an inactive contractor status of a bonded plumbing contractor license immediately upon the expiration of such bond.

(d) A corporate surety bond may be accepted from any surety authorized to do business in the State of Oklahoma. It shall continue in effect until thirty (30) days have elapsed after the Bond and Insurance Unit is notified by the surety of the cancellation of such bond, unless the bond expired on a date certain on its face.

(e) A bond or other surety filed in accordance with (a) of this Section shall be in lieu of filing a bond with each municipality where the plumbing contractor works, and shall be conditioned upon all the following terms:

(1) Plumbing contractors shall faithfully and properly conduct business in compliance with applicable statutes, rules of the Oklahoma Construction Industries Board, and with all the applicable ordinances of the municipality in which plumbing work is performed.

(2) Plumbing contractors shall pay all fines and penalties imposed by penalty orders of the Board and fines and penalties imposed by courts of competent jurisdiction for the violation of municipal ordinances. The Board may seek payment through the surety bond of any fines or penalties, which the licensee fails to pay.

(3) In lieu of a corporate surety, an active plumbing contractor may deposit with the Bonds and Insurance Unit the required amount in lawful money or negotiable bonds of the United States, accompanied by a written instrument, to be approved by the Construction Industries Board, executed and acknowledged by the active plumbing contractor, and setting forth the conditions upon which the deposit is made. When the true owner is other than the active plumbing contractor making the deposit, the instrument shall so state and shall also be executed and acknowledged by the true owner. Upon exoneration, the instrument and deposit may be returned by the Bonds and Insurance Unit to the depositor or the true owner, if the depositor is other than the named true owner, after application of the deposit to claims made pursuant to this Section.

(4) Notwithstanding any provision of a security instrument to the contrary, every surety or depositor of security subjects himself or herself to the jurisdiction of the Construction Industries Board and irrevocably appoints the Administrator as his or her agent upon whom any papers affecting his or her liability may be served. Every surety or depositor of security consents to his or her liability being joint and several. Consequently, judgment may be entered

against the surety, or depositor of security, in accordance with his or her obligation simultaneously with judgment against the principal, and execution may thereupon issue.

(5) Plumbing contractors shall protect, save harmless and indemnify the State and municipalities against any liability imposed by law against the State and municipalities for the negligence of said contractor arising from any act or omission while engaged in work pursuant to the Plumbing License Law.

(6) Any aggrieved person may bring an action upon the bond for the recovery of penalty thereof to the same extent and with equal rights as though such aggrieved person had been named as the obligee in the bond.

(7) For purposes of this Section, the term plumbing contractor also includes the agents, servants, and employees of a plumbing contractor.

(f) Exceptions. The bond and insurance requirement will be waived if:

(1) The plumbing contractor wishes to be inactive. A contractor may choose to place his or her license on inactive status and may practice as a journeyman but shall not practice as an active contractor. The inactive contractor can obtain an active license at any time if his or her license is valid and the bond and insurance requirements are met; or

(2) The plumbing contractor is employed by a corporation, partnership, public entity, or political subdivision and said corporation, partnership, public entity or political subdivision submits an affidavit on behalf of the contractor that the employee will only perform plumbing work on property owned by said corporation, partnership, public entity, or political subdivision and the employer assumes all financial responsibility in lieu of the contractor providing bond and insurance. The affidavit must include a statement by the employer that the Board will be notified if the contractor is no longer employed by said employer, or if the employer no longer wishes to assume financial responsibility for the contractor.

(g) Insurance. A plumbing contractor shall provide proof of financial responsibility by providing a certificate of insurance, which indicates a minimum general liability policy of \$50,000. The Construction Industries Board must be notified in the event such liability policy is cancelled for any reason or expires for non-payment of premiums. Plumbing contractors are to add the Construction Industries Board to the certificate as a certificate holder but not as an additional insured and with no additional cost to ensure required notification.

(h) Failure to provide the complete information with current bond and insurance certificate or failure to maintain bond and insurance will result in an inactive plumbing contractor's license being temporarily issued until such time as the requirements are met.

SUBCHAPTER 9. EXAMINATION PROCEDURES, LICENSE AND REGISTRATION FEES AND DURATION OF LICENSES

158:30-9-1.1. Acceptance of Military education, training and experience toward qualification for licensure examination

(a) **Licensure - ~~post~~-military service.** See OAC 158:1-3-10 for provisions related to the application of substantially equivalent education, training, and experience completed as a member of the Armed Forces or Reserves of the United States, National Guard of any jurisdiction, the Military Reserves of any jurisdiction, or the Naval Militias of any jurisdiction toward satisfying the qualifications for examination and license or registration issuance.

(b) **Military spouse applicant—~~equivalency~~.** See OAC 158:1-3-10 for provisions related to issuance of ~~an equivalent~~ a license or registration in an equivalent category for the spouse of an active-duty member of the Armed Forces or Reserves of the United States.

158:30-9-2. Fee schedule for contractors, journeymen, and apprentices

(a) **Examination fees for contractors and journeyman.** The Construction Industries Board, or its designated representative, may collect for the actual cost of any examination provided by this Chapter. The cost for each such examination referenced in OAC 158:30-9-1 shall be posted in plain view at the testing site that provides and administers the examination. Every person whose application for examination is approved shall be informed of the specific fee prior to setting for the examination. The unit testing fee shall be the amount negotiated by the Administrator in accordance with the provisions of the Oklahoma Central Purchasing Act, but cannot exceed the maximum allowable fee provided in 59 O.S. § 1000.5(A)(2). Documentation confirming the contractual fee shall be available upon request.

(b) **Licensing, registration and application fee schedule for contractors, journeyman, and apprentices.** The licensure, application, registration and annual renewal fees shall be as follows:

- (1) contractors application - \$30.00
- (2) initial contractor license - \$300.00
- (3) renewal contractor license - \$200.00
- (4) renewal contractor late fee - \$100.00
- (5) journeyman application - \$25.00
- (6) initial journeyman license - \$50.00
- (7) renewal journeyman license - \$75.00
- (8) renewal journeyman late fee - \$25.00
- (9) apprentice application - \$5.00
- (10) apprentice registration - \$20.00

(c) **One time low-income fee waiver.** See OAC 158:1-3-13(c) regarding eligibility on a one-time, one-year fee waiver.

SUBCHAPTER 11. LICENSE REVOCATION OR SUSPENSION AND PROHIBITED ACTS

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158:30-11-2. Prohibited acts

- (a) No person, entity, or firm may engage in plumbing contracting or perform plumbing work without first obtaining the appropriate license or registration pursuant to this Chapter.
- (b) No person shall offer to engage in work as a plumber during the period his or her license is suspended or revoked.
- (c) No employing plumbing firm shall employ or use an unlicensed or unregistered plumber to perform plumbing work.
- (d) No person, entity, or firm may transfer a license or registration.
- (e) No plumber, licensed pursuant to the Act and this Chapter, shall enter into an agreement for the use of his or her license with any firm or person which is, or has been adjudicated to be, in violation of any provision of the Act or this Chapter, or whose license is currently suspended or has within the last year been revoked, unless or until otherwise approved by the Board.
- (f) No person shall make a materially false or fraudulent statement in an application for license.
- (g) No person may alter a license.
- (h) No person may engage in cheating or any act involving the fraudulent misrepresentation of an applicant by an examinee.
- (i) No person or entity shall deny access to the Construction Industries Board or its representative on a job site.

[OAR Docket #20-637; filed 7-17-20]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD CHAPTER 40. ELECTRICAL INDUSTRY REGULATIONS

[OAR Docket #20-638]

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PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
- 158:40-1-2 [AMENDED]
- Subchapter 5. Licensing Requirements, Display of License, and Firm Name, and Bond Requirements
- 158:40-5-3.1 [NEW]
- Subchapter 7. License Classifications
- 158:40-7-4 [AMENDED]
- Subchapter 9. Examination Applications, Examinations and License and Registration Fees and Renewals
- 158:40-9-2.1 [AMENDED]
- 158:40-9-3 [AMENDED]
- Subchapter 11. License Revocation or Suspension and Prohibited Acts
- 158:40-11-2 [AMENDED]

AUTHORITY:

Construction Industries Board; 59 O.S. §§ 1000.4(A)(1), 1000.5, and 1681.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 22, 2019

COMMENT PERIOD:

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Approved by Governor's declaration on June 25, 2020

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EFFECTIVE:

October 1, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Gist: The proposed changes to the Electrical Industry Regulations add language clarifying existing rules and authority; remove obsolete language, and clarify statutory changes as a result of SB 670 and HB 2933.

Analysis: The proposed amendments to 158:40-1-2 are to clean up definitions including one requested by the Home Theater Industry to provide industry members and the public better clarity. The addition of 158:40-5-3.1 is due to HB1373. The proposed amendments to 158:40-7-4 are to clarify qualifications of a limited electrical contractor. The proposed amendments to 158:40-9-2.1 are related to SB 670 and provide a fee waiver for active military and their spouses and the proposed amendment to 158:40-9-3 provides a one-time low income fee waiver related to HB 2933. The proposed amendments to 158:40-11-2 provides further clarification to the public

CONTACT PERSON:

Stephanie Brown, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

158:40-1-2. Definitions

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

"Act" means the Electrical License Act as found at 59 O.S. § 1680, *et seq.*

"Administrator" means the Administrator of the Board as described in the Construction Industries Board Act found at 59 O.S. § 1000.1, *et seq.*

~~"Alarm Endorsement"~~ ~~or~~ ~~"Alarm Endorsement registration"~~ means a licensed electrician or registered electrical apprentice who has met the endorsement ~~registration~~ requirements and holds a current valid electrical license or registration may install, service, or repair alarm or security systems or electronic security devices such as residential or commercial burglar alarms or security systems, electronic access control, closed circuit television, nurse call systems and the like pursuant to the regulations governing that electrical license or registration.

"Applicant" means any person applying for an examination, for a license or registration, for continuing education approval, for review of plans and specifications, or for an electrical code variance from the standard of installation as described in OAC 158:40-1-4 by the Board under the Act.

"Apprentice" means an electrical worker registered pursuant to OAC 158:40-5-1 who is limited to working for a contractor and is directly supervised by a licensed contractor or

journeyman with the appropriate license classification for the work being performed.

"Associated with and responsible for" means the relationship between an electrical contractor and electrical firm based on the electrical contractor being a permanent employee, owner, partner, or officer in a corporate firm, and whereby the electrical contractor shall give full time to the supervision and control of operations necessary to secure full compliance with the provisions of the Electrical License Act and this Chapter.

"Board" means the Oklahoma Construction Industries Board.

"Bonds and Insurance Unit" means the consolidated unit that processes bonds and insurance under the direction of the Construction Industries Board.

"Cheating" means any unapproved deviation from any official instruction given before, during or after a license examination, for the purpose of affecting or influencing the examination results or otherwise providing an undue advantage to any examinee.

"Committee" means the Committee of Electrical Examiners.

"Contracting" means engaging or offering to engage in, on behalf of oneself or on behalf of another, any electrical work which requires a valid and appropriate license from the Construction Industries Board as required by the Electrical License Act, regardless if said work is in exchange for monetary payment or otherwise.

"Contractor" means a person who meets the definition of 59 O.S. § 1682(5) and is licensed in the appropriate category for any electrical work performed.

"Continuing Education Credit Hour" means at least sixty (60) minutes of classroom instruction.

"Direct supervision" means the on-the-job physical presence by the supervisor who must be in the work area where the electrical work is being performed and who also must be a licensed electrical contractor or electrical journeyman in the appropriate category for any electrical work supervised.

"Electrical facility" means wiring, fixtures, appurtenances and appliances used for and in connection with a supply of electricity, but excludes the connection with a power meter or other utility supply source or other statutory exclusions such as alarm system work (59 O.S. §1800.3(4)), and data, voice and home theater audio/visual communications except for fire alarm systems, security systems and environmental control systems that are not an integral part of a telecommunications system.

"Electrical firm" means any firm, corporation, partnership, sole proprietorship, joint venture or any other business entity engaged in the business of planning, contracting, supervising or furnishing labor or labor and materials for the installation, repair, maintenance or renovation of electrical facilities according to the Act.

"Electrical License Unit" means the staff and administrative support unit to the Committee of Electrical Examiners and the Electrical Hearing Board.

"Electrical maintenance" means electrical work limited to maintaining existing electrical systems, facilities or equipment by an employee of a person, company, corporation or

entity owning the electrical systems, facilities or equipment. Maintenance shall not include any alterations or additions to existing systems, facilities or equipment.

"Electrical work" means work as that term is defined in 59 O.S. § 1682.

"Hearing Board" means the Electrical Hearing Board created by the Act.

"Inactive contractor" means any class of licensed electrical contractor who does not have current bond and insurance to be able to be contracting for electrical work pursuant to the act. An inactive contractor works as a journeyman electrician.

"Journeyman electrician" or **"journeyman"** means any person, other than a contractor or apprentice, who engages in the installation, repair, maintenance or renovation of electrical facilities according to the Act, in the category in which the person is licensed.

"Limited electrical contractor" means any person who has qualified and become licensed in accordance with OAC 158:40-7-4. Such person is prohibited from engaging in the work of a journeyman electrician.

"Military electrical experience" means verifiable military experience in electrical work which is the same as or similar to electrical construction work as defined in the Act.

"Oklahoma Uniform Building Code Commission" or **"OUBCC"** means the state agency created under 59 O.S. § 1000.20, *et. seq.*, and authorized to adopt all building codes and standards for residential and commercial construction to be used as minimum standards by all entities within this State.

"Reciprocity agreement" means an agreement whereby a person holding an electrical license or registration who is licensed in other states with substantially similar or greater licensure requirements may be licensed in this State after payment of a fee for licensing by reciprocity.

"Refinery Electrical Journeyman" means an electrician licensed as a refinery electrical journeyman electrician pursuant to OAC 158:40-7-6 and is limited to performing electrical work only in refinery facilities.

"Residential contractor" means an electrician licensed as a residential contractor pursuant to OAC 158:40-7-2 and is limited to performing residential electrical construction work.

"Residential journeyman" means an electrician licensed as residential journeyman electrician pursuant to OAC 158:40-7-2 and limited to performing residential electrical construction work.

"Temporary electrical journeyman" means an electrician temporarily licensed by the Oklahoma Construction Industries Board as a journeyman electrician and is limited to electrical construction per the equivalent temporary journeyman classification determined by the Board.

"Variance" means the use of an alternative material or method of construction from that prescribed in the standard of installation as described in OAC 158:40-1-4 for use at a particular location or project specified in the variance application; and

"Variance and Appeals Board" means the Oklahoma State Electrical Installation Code Variance and Appeals Board.

Permanent Final Adoptions

SUBCHAPTER 5. LICENSING REQUIREMENTS, DISPLAY OF LICENSE, AND FIRM NAME, AND BOND REQUIREMENTS

158:40-5-3.1. Eligibility for alarm endorsement for apprentice, journeyman, or contractor

(a) A person with a criminal history record may request an initial determination of whether his or her criminal history record would potentially disqualify him or her from obtaining the desired alarm endorsement at any time, including before obtaining any required education or training.

(b) The request shall be in writing and shall include either a copy of the person's criminal history record with explanation of each conviction mentioned in the criminal history record or a statement describing each criminal conviction including the date of each conviction, the court of jurisdiction and the sentence imposed. The person may include a statement with his or her request describing additional information for consideration by the licensing authority including, but not limited to, information about his or her current circumstances, the length of time since conviction and what has changed since the conviction, evidence of rehabilitation, testimonials or personal reference statements and his or her employment aspirations.

(c) Disqualifying offenses are provided to applicants as contained in OAC 158:40.

(d) Upon receipt of a written request for consideration of a criminal history record for alarm endorsement, the CIB shall evaluate the request and make an initial determination based upon the information provided in such request whether the stated conviction is a disqualifying offense for the occupation.

(1) A notice of initial determination shall be issued to the petitioner within sixty (60) days from the date such request was received by the licensing authority, except however, a licensing authority regulating fifty thousand or more members in its occupation shall be allowed ninety (90) days to make its initial determination and issue notice to the requestor.

(2) The notice of initial determination shall be in writing and mailed to the requestor at the address provided in his or her request, and shall contain the following statements:

(A) Whether the person appears eligible for electrical endorsement at the current time based upon the information submitted by the requestor;

(B) Whether there is a disqualifying offense prohibiting the person's engagement in the occupation at any time and a statement identifying such offense in the criminal history record or information submitted for consideration;

(C) Any actions the person may take to remedy what appears to be a temporary disqualification, if any;

(D) The earliest date the person may submit another request for consideration, if any; and

(E) A statement that the notice of initial determination is only an initial determination for eligibility for endorsement based upon the information provided by

the requestor and any approval is subject to meeting all application and endorsement requirements.

(e) Written requests must be provided upon CIB forms for initial determination and the non-refundable Ninety-five Dollars (\$95.00) initial determination of eligibility fee paid.

SUBCHAPTER 7. LICENSE CLASSIFICATIONS

158:40-7-4. Limited electrical contractor

A limited electrical contractor is prohibited from engaging in the work of a journeyman electrician, performing or supervising field work, and has met the following requirements:

(a) Applicants for Limited Electrical Contractor examination must be eighteen (18) years of age or older and must have a degree in Electrical Engineering from an accredited college or university. Additionally, an applicant must have eight thousand (8,000) hours (4 years) of electrical experience in field construction, electrical estimating, electrical project management in commercial and industrial electrical work; or

(b) Applicants for a Limited Electrical Contractor examination must be eighteen (18) years of age or older and must verify sixteen thousand (16,000) hours (8 years) experience in the electrical trade performing electrical work, estimating or project management. The experience must be verified in commercial and/or industrial work.

SUBCHAPTER 9. EXAMINATION APPLICATIONS, EXAMINATIONS AND LICENSE AND REGISTRATION FEES AND RENEWALS

158:40-9-2.1. Acceptance of Military education, training and experience toward qualification for licensure examination

(a) **Licensure - ~~post~~-military service.** See OAC 158:1-3-10 for provisions related to the application of substantially equivalent education, training, and experience completed as a member of the Armed Forces or Reserves of the United States, National Guard of any jurisdiction, the Military Reserves of any jurisdiction, or the Naval Militias of any jurisdiction toward satisfying the qualifications for examination and license or registration issuance.

(b) **Military spouse applicant—~~equivalency~~.** See OAC 158:1-3-10 for provisions related to issuance of ~~an~~ equivalent a license or registration in an equivalent category for the spouse of an active-duty member of the Armed Forces or Reserves of the United States.

158:40-9-3. License and registration fees and renewals

(a) **Examination fees for contractors and journeyman.** The Construction Industries Board, or its designated representative, may collect for the actual cost of any examination

provided by this Chapter. The cost for each such examination referenced in OAC 158:40-9-2 shall be posted in plain view at the testing site that provides and administers the examination. Every person whose application for examination is approved shall be informed of the specific fee prior to setting for the examination. The unit testing fee shall be the amount negotiated by the Administrator in accordance with the provisions of the Oklahoma Central Purchasing Act, but cannot exceed the maximum allowable fee provided in 59 O.S. § 1000.5(A)(2). Documentation confirming the contractual fee shall be available upon request.

(b) **Licensing, registration and application fee schedule for contractors, journeyman, and apprentices.** The licensure, application, and registration and annual renewal fees shall be as follows:

- (1) contractors application - \$30.00
- (2) initial contractor license - \$300.00
- (3) renewal contractor license - \$200.00
- (4) renewal contractor license with late fee - \$300.00
- (5) journeyman application - \$25.00
- (6) initial journeyman license - \$50.00
- (7) renewal journeyman license - \$75.00
- (8) renewal journeyman license with late fee - \$100.00
- (9) apprentice application - \$5.00
- (10) apprentice registration - \$20.00
- (11) initial alarm endorsement - \$75.00
- (12) renewal alarm endorsement - \$25.00

(c) **License renewal penalties.** Thirty (30) days after the expiration of a license for contractors and journeyman a late license renewal fee is effective, as provided in the Act and as listed in (b) of this Section. Upon meeting the continuing education requirements listed in OAC 158:40-9-4, a license may be renewed up to a year from the original renewal date. Any license which remains expired for longer than one (1) year shall not be renewed. The former license holder shall be required to make an initial application and retest to obtain the license formerly held.

(d) **Outstanding fines.** A license cannot be issued or renewed until the applicant has paid any and all outstanding fines due and owing to any division of the Construction Industries Board.

(e) **Duration of licenses.** All licenses and alarm endorsements shall have a duration of no longer than one year, and shall expire on the last day of the birth month of the licensee each year. The alarm endorsement for apprentices shall expire on the expiration date of each apprentice registration.

(f) **One time low-income fee waiver.** See OAC 158:1-3-13(c) regarding eligibility on a one-time, one-year fee waiver.

SUBCHAPTER 11. LICENSE REVOCATION OR SUSPENSION AND PROHIBITED ACTS

158:40-11-2. Prohibited acts

(a) The following acts are prohibited:

- (1) No person, entity, or firm may engage in electrical contracting or perform work without first obtaining the appropriate license or registration pursuant to this Chapter.

(2) No ~~licensee~~person shall perform work contrary to any provision of the standard of installation in OAC 158:40-1-4, except as otherwise provided by law or rule. Each violation of the standard of installation in OAC 158:40-1-4 can be treated as a separate violation of this Chapter.

(3) No person shall offer to engage in work during the period his or her license is suspended or revoked.

(4) No employing firm shall employ or use an unlicensed or unregistered individual or entity to perform work.

(5) No person, entity, or firm may transfer a license or registration.

(6) No individual or entity, licensed pursuant to this Chapter, shall enter into an agreement for the use of his or her license with any firm or person which is, or has been adjudicated to be, in violation of any provision of the Act, or whose license is currently suspended or has within the last year been revoked, unless or until otherwise approved by the Board.

(7) No person shall make a materially false or fraudulent statement in an application for license.

(8) No person may alter a license.

(9) No licensee shall perform work without keeping their license on their person or in close proximity while performing work.

(10) No person may engage in cheating or any act involving the fraudulent misrepresentation of an applicant by an examinee.

(11) No person or entity shall deny access to the Construction Industries Board or its representative on a job site.

(b) The following prohibited acts apply to persons issued a contractor license:

(1) No licensee shall allow more than three (3) apprentices per journeyman at a job site.

(2) No licensee shall fail to maintain a bond and insurance as provided for in OAC 158:40-5-5.

(3) No licensee shall be associated with and responsible for more than one firm.

(c) The following prohibited acts apply to persons issued a journeyman license:

(1) No licensee shall perform work except under the employment or ~~supervision~~ of a contractor.

(2) No licensee shall engage in the planning, contracting, or furnishing of labor and/or materials used for work.

[OAR Docket #20-638; filed 7-17-20]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD CHAPTER 50. MECHANICAL INDUSTRY REGULATIONS

[OAR Docket #20-639]

RULEMAKING ACTION:
PERMANENT final adoption

Permanent Final Adoptions

RULES:

Subchapter 1. General Provisions
158:50-1-2 [AMENDED]
Subchapter 5. License Types, Limitations of Licenses, Contractor Special Requirements and Display of License Number and Firm Name
158:50-5-1 [AMENDED]
158:50-5-2 [AMENDED]
Subchapter 9. Qualifications for Mechanical Licensure, License and Registration Fees, Duration of License, Mechanical License Application, and Apprentice Registration
158:50-9-1 [AMENDED]
158:50-9-1.1 [AMENDED]
158:50-9-2 [AMENDED]
158:50-9-7 [AMENDED]
Subchapter 11. License Revocation or Suspension and Prohibited Acts
158:50-11-2 [AMENDED]

AUTHORITY:

Construction Industries Board; 59 O.S. §§ 1000.4, 1000.5 and 1850.3.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Gist: The proposed changes to the Mechanical Industry Regulations add definitions; add language clarifying existing rules and authority; and a new category license type, to allow for smaller examinations for limited specialty license work that already requires a license; and clarifies statutory changes as a result of SB 670 and HB 2933.

Analysis: The proposed amendments to 158:50-1-2 add definitions related to a new category license type. There is no new fee. There is no additional licensing. Currently, fueled hearth product work requires a license and continuing education. By separating fueled hearth product work into its own category license type, specialty workers on fireplaces would be able to take a smaller examination over only the fueled hearth product work instead of the larger examination over all the subjects of the HVAC/R license that would make it easier for fireplace workers to obtain licensing and protect the health, safety, and welfare of the public. HVAC/R licensees would continue to be able to perform the same work. The proposed amendment to 158:50-5-1 adds a license category related to fueled hearth product work. The proposed amendments 158:50-5-2 provide a description of the added license category and requirements. The proposed amendment to 158:50-9-1 is related to proof of examination related to the new license category. The proposed amendments to 158:50-9-1.1 are related to SB670 and provide a fee waiver for active duty military and their spouses and the proposed amendment to 158:50-9-2 provides a one-time low income fee waiver related to HB2933. The proposed amendments to 158:50-9-7 provide continuing education options for the new category license type. The proposed amendment to 158:50-11-2 provides further clarification to the public.

CONTACT PERSON:

Stephanie Brown, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

158:50-1-2. Definitions

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

"Act" means Mechanical Licensing Act as found at 59 O.S. § 1850.1, *et seq.*

"Administrator" means the Administrator of the Board as described in the Construction Industries Board Act found at 59 O.S. § 1000.1, *et seq.*

"Applicant" means any person applying for an examination, for a license or registration, for continuing education approval, for review of plans and specifications or for a mechanical code variance from the standard of installation described in OAC 158:50-1-4 by the Construction Industries Board under the Act.

"Associated with and responsible for" means the relationship between a mechanical contractor and mechanical firm based on the mechanical contractor being a permanent employee, owner, partner, or officer in a corporate firm, and whereby the mechanical contractor shall give full time to the supervision and control of operations necessary to secure full compliance with the provisions of the Mechanical Licensing Act and this Chapter.

"Biomass" means organic material that comes from plants and animals, and is a renewable source of energy intended for fueled hearth products.

"Board" means the Oklahoma Construction Industries Board.

"Bonds and Insurance Unit" means the consolidated unit that processes bonds and insurance under the direction of the Construction Industries Board.

"Cheating" means any unapproved deviation from any official instruction given before, during or after a license examination, for the purpose of affecting or influencing the examination results or otherwise providing an undue advantage to any examinee.

"Chemical plant" means a chemical plant within the context of 59 O.S. § 1850.10(D) including a fertilizer plant engaged in formulating chemicals ultimately used generally in the agricultural fertilizer industry.

"Committee" means the Committee of Mechanical Examiners.

"Contracting" means engaging or offering to engage in, on behalf of oneself or on behalf of another, any mechanical work which requires a valid and appropriate license from the Construction Industries Board as required by the Mechanical Licensing Act, regardless if said work is in exchange for monetary payment or otherwise.

"Credit Hour" or "Hour" means at least 50 minutes of classroom instruction with a 10 minute break.

"Direct supervision" means the on-the-job physical presence by the supervisor who must be in the work area where the

mechanical work is being performed and who also must be a licensed mechanical contractor or mechanical journeyman in the appropriate category for any mechanical work supervised.

"Endorsed apprentice" means a registered apprentice who met the qualifications, pursuant to OAC 158:50-9-5(i), to sit for the journeyman examination in the HVAC limited category and received a passing score on the examination, but who is working to complete the required one (1) year of verifiable experience as a registered apprentice prior to being issued the journeyman license.

"Fueled Hearth Product Work" means the installation, service or repair of biomass-fueled or natural gas-fired fireplace, fireplace insert, stove or log set and associated venting and piping that fuels or simulates a flame of a solid fuel fire, including accessories for use with natural gas. This does not include (a) gas piping work, (b) the servicing of gas piping, or (c) work associated with pressure regulating devices, except for factory installed appliance gas valves.

"Gas piping" means and includes all natural gas piping within or adjacent to any building, structure, or conveyance, on the premises up to the connection with a natural gas meter, regulator, or other source of supply.

"Ground source piping" means piping buried below the earth's surface or submerged in a water well, lake or pond and used in conjunction with a heat pump to provide heating, ventilation and/or air conditioning to a structure.

"Health care facility" includes but is not limited to hospitals, nursing homes, limited care facilities, clinics, medical or dental offices, and ambulatory care centers, whether permanent or moveable.

"Hearing Board" means the Mechanical Hearing Board.

"Humidification" when applied to air conditioning, means and includes an increase or decrease in moisture content of the air being conditioned and supplied to the space for human occupancy by means of that integral part of the entire air conditioning system, equipment, and control devices; when applied to refrigeration, means and includes an increase or decrease in the moisture content of the air or product being conditioned for a food preservation measure or manufacturing process by means of the integral part of the entire refrigeration system, equipment, and control devices.

"HVAC" or "heating, ventilation and air conditioning" means the process of treating air by controlling its temperature, humidity, and cleanliness and of supplying such air to spaces for human occupancy by means of an integrated system of air conditioning and ventilation equipment, accessories and control devices.

"ICC" means the International Code Council.

"Limited residential installer" means a type and category of mechanical license that is restricted to new installations in new construction for detached one or two family dwellings and multiple single family dwellings (townhouses) not more than three stories in height with a separate means of egress as regulated by this Chapter.

"Limited residential journeyman" means a type and category of mechanical license that is restricted to new installations for detached one or two family dwellings and multiple single family dwellings (townhouses) not more than three

stories in height with a separate means of egress as regulated by this Chapter.

"Mechanical License Unit" means the staff and administrative support unit to the Committee of Mechanical Examiners and the Mechanical Hearing Board.

"Mechanical work" means the installation, maintenance, repair, or renovation, in whole or in part, of any heating system, exhaust system, cooling system, mechanical refrigeration system, ventilation system, medical gas system, medical-surgical vacuum systems, or any equipment or piping carrying chilled water, air for ventilation purposes, or natural gas, or the installation, maintenance, repair, or renovation of process piping used to carry any liquid, substance, or material, including steam and hot water used for space heating purposes not under the jurisdiction of the Department of Labor or Department of Health, provided that minor repairs and maintenance are excluded.

"Medical gas piping work" means the lay out, assembly, installation, and maintenance of pipe systems used in health care facilities for oxygen, nitrous oxide, medical air, carbon dioxide, helium, nitrogen, instrument air, medical-surgical vacuum, waste anesthetic gas disposal, mixtures thereof, or any other gaseous, partly gaseous substance, material or any mixtures thereof used in a health care facility. Replacing cylinders and filters, and performing routine and preventive maintenance that does not breach the integrity of the medical gas piping system and does not constitute the installation, repair, or replacement of medical gas piping shall not require a medical gas piping licensee.

"Medical gas journeyman" means a type and category of mechanical license that is restricted to medical gas piping.

"Minor repairs and maintenance" means minor repairs or maintenance as each are prescribed in the manufacturer's operating instructions to be performed by the equipment owner or his authorized agent, and shall not include replacement and repairs of any nature on natural gas piping, natural gas controls, the manufacturer installed controls and components, the vent system of fuel burning appliances, a breach of the integrity of a refrigeration system or any repair or maintenance which would violate the safe operation of the equipment.

"National Fireplace Institute" or "NFI" means the professional certification entity for planning and installing residential hearth fueled gas, wood, or pellet appliances and venting systems.

"Oklahoma Uniform Building Code Commission" or "OUBCC" means the state agency created under 59 O.S. § 1000.20, *et seq.*, and authorized to adopt all building codes and standards for residential and commercial construction to be used as minimum standards by all entities within this State.

"Petroleum refinery" means an industrial plant which processes petroleum for purposes of creating products derived from petroleum and includes industrial plants which produce and/or refine alternative fuels or petroleum additives. "Petroleum refinery" shall not mean gas processing plant or gas gathering pipeline operations.

"Petroleum refinery journeyman" means a type and category of mechanical license that is restricted to petroleum refinery process piping.

"Petroleum refinery process piping work" means the lay out, assembly, installation, and maintenance of pipe systems used in the petroleum refining process or product refining systems of a petroleum refinery.

"Process" means a series of operations performed in the making or treatment of a product.

"Process piping" means lay out, assembly, installation, and maintenance of pipe systems, pipe supports, and related hydraulic and pneumatic equipment for steam, hot water, heating, cooling, lubricating and fire sprinklers, not subject to regulation pursuant to the Alarm Industry Act, and industrial production and processing systems, and piping used to carry any gaseous, or partly gaseous, substance or material as part of a medical gas piping system.

"Reciprocity" means an agreement whereby a person holding a mechanical license or registration who is licensed in other states with substantially similar or greater licensure requirements may be licensed in this State after payment of a fee for licensing by reciprocity.

"Refrigeration system" means installation, repairing and servicing of a system employing fluid which normally is vaporized and liquefied in an air conditioning system, food preservation measure or manufacturing process.

"Variance" means the use of an alternative material or method of construction from that prescribed in the standard of installation as described in OAC 158:50-1-4 and/or other approved documents by the OUBCC for use at a particular location or project specified in the variance application; and

"Variance and Appeals Board" means the Oklahoma State Mechanical Installation Code Variance and Appeals Board.

"Verifiable experience" means mechanical experience obtained while employed by a licensed Mechanical contractor, or by other means approved by the Committee of Mechanical Examiners including equivalent experience earned while serving in the U.S. Military, for which one (1) year of verifiable experience equals two thousand (2,000) hours.

SUBCHAPTER 5. LICENSE TYPES, LIMITATIONS OF LICENSES, CONTRACTOR SPECIAL REQUIREMENTS AND DISPLAY OF LICENSE NUMBER AND FIRM NAME

158:50-5-1. License types

(a) Mechanical licenses shall be issued as journeyman, contractor or inactive contractor.

(b) Licenses shall be issued for the following categories:

- (1) HVAC limited or unlimited
- (2) Natural Gas Piping
- (3) Process Piping
- (4) Refrigeration
- (5) Sheet Metal
- (6) Ground Source Piping
- (7) Fueled Hearth Product Work
- (78) Limited Residential (journeyman only)
- (89) Limited Residential Installer (journeyman license type)

(910) Petroleum Refinery Process Piping (journeyman only)

(4011) Medical Gas (journeyman only)

158:50-5-2. Limitations of licenses

(a) License duties.

(1) Journeyman is a person who possesses the knowledge and skills to perform mechanical work within a category or categories without direct supervision.

(2) Contractor is a person who possesses the knowledge and skills of a journeyman and who is responsible, either to the contractor or the contractor's employer, for planning, contracting, supervising, or furnishing labor and/or materials used for mechanical work. A mechanical contractor shall only be associated with and responsible for one mechanical firm. However, a mechanical contractor may be responsible for one firm with branch offices.

(A) Active contractor is one who is actively performing as a contractor and who has met the bond and insurance requirements for licensure.

(B) Inactive contractor is one who has met all the licensing requirements of a contractor, but has chosen not to currently perform as a contractor. An inactive contractor is not required to provide bond or insurance, and will be regulated as a journeyman.

(b) License categories.

(1) **Limited mechanical HVAC license.** A limited mechanical HVAC license entitles the licensee to install, alter, modify, service, maintain, or repair a ventilation (duct) system and/or:

(A) any cooling product, system, or equipment including the process piping, that has a cooling capacity of no more than twenty-five (25) tons, and/or

(B) all heating equipment including the process piping that have a heat input of no more than 500,000 Btu/h per appliance, and/or

(C) natural gas piping, refrigeration, and sheet metal.

(2) **Limited residential journeyman license.** A limited residential journeyman license entitles the licensee to install complete new systems for detached one or two family dwellings and multiple single family dwellings (townhouses) not more than three stories in height with a separate means of egress. Installations shall include 5-ton or less cooling systems and 150,000 Btu/h or less heating systems and related accessories such as humidifiers, filtering systems, kitchen vent hoods, exhaust fans and clothes dryer vent exhausts for such dwellings. Such installations shall not include any fuel gas piping, welding, soldering, brazing or final connection of refrigerant lines or final connection of any electrical wiring permitted to be installed in accordance with Oklahoma statutes.

(3) **Limited residential installer license.** A limited residential installer license entitles the licensee to install complete new systems in new construction for detached one or two family dwellings and multiple single family dwellings (townhouses) not more than three stories in height with a separate means of egress. Installations shall

include 5-ton or less cooling systems and 150,000 Btu/h or less heating systems and related accessories such as humidifiers, filtering systems, kitchen vent hoods, exhaust fans and clothes dryer vent exhausts for such dwellings. Such installations shall not include any fuel gas piping, welding, soldering, brazing or final connection of refrigerant lines or final connection of any electrical wiring permitted to be installed in accordance with Oklahoma statutes. Further:

(A) The limited residential installer is a person who possesses the knowledge and skills to perform limited residential mechanical work within this category without direct supervision while under the employment or supervision of a Mechanical Contractor.

(B) No licensee shall allow an apprentice under his or her direct supervision to perform mechanical work for which the limited residential installer is not licensed to perform, or be allowed more than three (3) apprentices per limited residential installer,

(C) Applicants for a limited residential installer license must be at least eighteen (18) years of age and have:

(i) one (1) year of verifiable experience in the mechanical trade in category for which he or she is applying, or

(ii) a vocational diploma certifying completion of an educational program consisting of a minimum of two hundred and fifty (250) or more hours from a school, approved by the Committee, which exhibits knowledge of the trade and in the category of limited residential applied for, and six (6) months of verifiable experience in the mechanical trade, or

(iii) equivalent, verifiable experience in the mechanical trade while serving in the U.S. military.

(D) The examination requirements for an installer's license can be found in OAC 158:50-9-1(c).

(E) A license cannot be issued or renewed until the applicant has paid any and all outstanding fines due and owing to any division of the Construction Industries Board.

(F) Information on license, renewals, and examination fees can be found in OAC 158:50-9-2 (for journeyman)

(G) Continuing education requirements can be found in OCA 158:50-9-7.

(4) **Unlimited mechanical HVAC license.** An unlimited mechanical HVAC license entitles the licensee to install, alter, modify, service, maintain, or repair a ventilation (duct) system and/or:

(A) any cooling product, system, or equipment, including the process piping, and/or

(B) heating equipment, including the process piping, and/or

(C) natural gas piping, process piping, refrigeration, and sheet metal.

(5) **Natural gas piping license.** A natural gas piping license entitles the licensee to install, alter, modify, service, maintain, or repair all natural gas piping.

(6) **Process piping license.** A process piping license entitles the licensee to install, alter, modify, service, maintain, or repair all process piping.

(7) **Refrigeration license.** A refrigeration license entitles the licensee to install, alter, modify, service, maintain, or repair refrigeration products, systems, or equipment, including the process piping.

(8) **Sheet metal license.** A sheet metal license entitles the licensee to install, alter, modify, service, maintain, or repair all ferrous and nonferrous duct systems.

(9) **Ground source piping license.** A ground source piping license entitles the licensee to install, alter, modify, service, maintain or repair all piping outside a structure for a ground source (earth or water) loop pipe.

(10) **Fueled Hearth Product Work license.** A Fueled Hearth Product Work license allows for the licensee to install, service or repair Fueled Hearth Product Work as defined in this Chapter.

(A) The Fueled Hearth Product Work licensee shall be certified by the NFI through examination in the certification categories of gas, wood, or pellets for the work performed which, upon providing satisfactory proof of successful passage of any of the three (3) fuel classes of NFI examination, will meet the examination and experience requirements of this license.

(B) The Fueled Hearth Product Work Contractor licensee, in addition to providing satisfactory proof of successful passage of the appropriate NFI examination, shall provide satisfactory proof of having read the Mechanical Licensing Act and Mechanical Industry Regulations and shall comply with the contractor requirements of this Chapter including, but not limited to, proof of general liability insurance, compliance with workers' compensation insurance laws, bond, lawful presence, along with providing satisfactory proof of successfully passing the business and law portion of any Mechanical Contractor examination or otherwise demonstrating minimum competency in business operations by any three (3) from the below listed items:

(i) Registration with the Oklahoma Secretary of State for the last five (5) years.

(ii) A letter (stating the specific professional service has been provided to the hearth product installation business of the Contractor applicant for a period of at least five (5) years) from a professional service provider used by your business including those who: prepare taxes, payroll, financial statements, provide legal services, banking, risk management or other professional services provided to your business.

(iii) Satisfactory proof of filing state business taxes for the last five (5) years.

(iv) Satisfactory proof of business entity filing with another state agency or registered business.

(v) Satisfactory proof of business operations for the last five (5) years such as bidding, estimating, quoting, contract/project management, customer relations, employee management, job-site safety, or financial management, or

(vi) Any other substantial proof of business operations for the last five (5) years.

(C) Unless otherwise stated in this Section, all licensees and apprentices must comply with all other provisions of this Chapter.

(D) The licensed Fueled Hearth Product Work person can only perform work in the same certification category of gas, wood, or pellets as their certification and the apprentice must perform work in the same certification category of the licensee who is directly supervising the apprentice.

(E) No licensee shall perform mechanical work in a category under which he or she is not licensed or work outside of the confinements of the Fueled Hearth Product Work classification of certification of gas, wood, or pellets.

(F) There is no work experience requirement for licensing in Fueled Hearth Product Work and work experience under this category does not count towards the experience requirement of any other license category in this Chapter.

(G) Information on license, application, and renewal fees can be found in OAC 158:50-9-2.

(H) Continuing education requirements per OAC 158:50-9-7 can be satisfied for Fueled Hearth Product Work licensees by providing proof of continuing education or retesting as required by NFI.

(I) All licensees must maintain current NFI certification in order to renew his or her license.

(4011) **Petroleum refinery journeyman license.** A petroleum refinery journeyman license entitles the licensee to install, alter, modify, service, maintain, or repair all petroleum refinery process piping, and said license is limited to petroleum refinery process piping work only. A petroleum refinery journeyman shall be under the direction and supervision of a licensed unlimited mechanical contractor or a licensed process piping mechanical contractor.

(4412) **Medical gas journeyman license.** A medical gas journeyman license entitles the licensee to install, alter, modify, service, maintain, or repair medical gas or medical-surgical vacuum systems, or equipment, including the piping. A medical gas journeyman shall be under the direction and supervision of a licensed unlimited mechanical contractor or a licensed process piping mechanical contractor.

SUBCHAPTER 9. QUALIFICATIONS FOR MECHANICAL LICENSURE, LICENSE AND REGISTRATION FEES, DURATION OF LICENSE, MECHANICAL LICENSE APPLICATION, AND APPRENTICE REGISTRATION

158:50-9-1. Qualifications for mechanical licensure

(a) **Application.** A person desiring to be licensed under this Chapter, unless otherwise provided in this Chapter, shall file an application with the application fee, examination fee (unless the examination fee is paid directly to a testing provider), and the initial License fee to the Administrator. The fees must be received no less than three (3) working days before the examination date. If the applicant fails to meet the minimum qualifications to take the examination, the application fee will be forfeited.

(b) **Experience.** All persons applying for a license must provide proof of experience in the mechanical trade. Applicants for mechanical license examinations who are not licensed and wish to include experience gained in Oklahoma must maintain an apprentice registration on file with the Oklahoma Construction Industries Board for all experience obtained in Oklahoma. The Construction Industries Board will not consider experience obtained in or outside of Oklahoma as verifiable experience for periods in which an apprentice is unregistered, except for experience lawfully obtained according to any applicable federal or state laws, and must be comprised of mechanical work as defined under the Act and in this Chapter.

(1) Applicants for a journeyman license must be at least eighteen (18) years of age and have:

(A) three (3) years of verifiable experience in the mechanical trade in the category for which he or she is applying, or

(B) an associate's degree or vocational diploma certifying completion of a formal mechanical educational program approved by the Committee, consisting of one thousand (1,000) hours or more from a school approved by the Committee, which exhibits knowledge of the trade in the category of license applied for and one (1) year of verifiable experience in the mechanical trade, or

(C) a vocational diploma certifying completion of a formal mechanical educational program approved by the Committee, consisting of five hundred (500) or more hours from a school approved by the Committee, which exhibits knowledge of the trade in the category of license applied for, and two (2) years of verifiable experience in the mechanical trade, or

(D) a vocational diploma certifying completion of a formal mechanical educational program approved by the Committee, consisting of a minimum of three hundred and seventy five (375) or more hours from a school approved by the Committee, which exhibits knowledge of the trade and in the category of license applied for, and two and one-fourth (2 1/4) years of verifiable experience in the mechanical trade, or

(E) a vocational diploma certifying completion of a formal mechanical educational program approved by the Committee, consisting of a minimum of three hundred and thirty four (334) or more hours from a school approved by the Committee, which exhibits knowledge of the trade and in the category of license

applied for, and two and one-third (2 1/3) years of verifiable experience in the mechanical trade, or

(F) a vocational diploma certifying completion of a formal mechanical educational program approved by the Committee, consisting of a minimum of two hundred and fifty (250) or more hours from a school approved by the Committee, which exhibits knowledge of the trade and in the category of license applied for, and two and one-half (2 1/2) years of verifiable experience in the mechanical trade, or

(G) equivalent, verifiable experience in the mechanical trade while serving in the U.S. military, or

(H) experience sufficient to obtain the special certification required for the mechanical category sought by the tendered application, such as Ground Source Piping and Medical Gas, or

(I) a verifiable out-of-state license in the mechanical classification for which the applicant is applying may expedite processing of the requirements or be considered for reciprocity under OAC 158:50-9-6 if there is a written reciprocity agreement with that state. The license must:

- (i) be current,
- (ii) be in good standing, and
- (iii) meet qualifications listed in (A) through (F) above.

(2) Applicants for a contractor license must meet the same requirements as a journeyman with an additional one (1) year of experience.

(3) Applicants must present transcripts showing the Committee approved schools, the Committee approved program, courses, hours attended, grades, any certificates achieved, and a vocational diploma or certificate of completion for the specific educational program and school that has been approved by the Committee. The Administrator shall make the final determination on acceptability of the described supporting documentation.

(c) **Examination.** A license cannot be issued until the applicant has passed the appropriate examination for the license type and category. Examinations and the passing score for each examination shall be approved by the Committee. Applicants for the Ground Source Piping category shall provide proof of being certified by examination in the proper installation of ground source piping by an organization approved by the Committee. Applicants for the Petroleum Refinery journeyman category shall provide proof of being certified by examination in the area of industrial pipefitter by an organization approved by the Committee. Applicants for the Medical Gas category shall provide proof of being certified by examination in accordance with the most current NFPA 99 standard or certified in the proper installation of medical gas piping by an organization approved by the Committee. Applicants for a Fueled Hearth Product Work license shall provide proof of having been certified by examination in accordance with NFI in one of the three (3) categories: gas, wood, or pellets per OAC 158:50-5-2(b)(10).

(1) If the applicant does not pass the exam, the applicant may reapply for the exam and pay an additional

retesting fee. However, no person will be allowed to retake an exam within thirty (30) days of the first failed exam or within ninety (90) days of the second or subsequent failed exam.

(2) Applicants for a contractor license must pass both portions (business/law and trade) of the contractor license exam. If an applicant for a contractor license passes only one of the two portions of the required exam, the applicant need only retake the portion of the exam not passed if done within three (3) years of the date the Applicant is approved and eligible to sit for the contractor's exam. Otherwise, the Applicant will need to retake both portions of the contractor license exam.

(3) If an applicant for a contractor license passes only the trade portion of the contractor exam, the applicant may choose to apply the passing score of the trade portion of the contractor exam to a journeyman license application within the same license category as the trade portion of the contractor exam that the applicant passed. All other requirements in the Act and this Chapter for a journeyman license are required, including but not limited to, completing the journeyman application form and submitting any applicable fee, both of which must be received by the Board no more than one year after passing the trade portion of the contractor exam. The timeframe to complete both portions of the contractor exam as provided in (c)(2) of this Section is applicable even if a journeyman license is obtained under this subsection.

(4) A contractor license, whether active or inactive, must be renewed annually including completing the renewal form and paying the renewal license fee for a contractor license. An inactive contractor status may be changed to active contractor status at any time by providing proof of compliance with bond and insurance requirements as provided in this

Chapter. A contractor, whether active or inactive, can elect to renew as a journeyman with filing of a journeyman renewal application and fee which election will be considered a permanent change of license category. If a permanent license category change occurs and the individual wants to change from journeyman to contractor category, either active or inactive, the individual must retake and pass the contractor license exam and meet all other contractor license requirements in the Act and this Chapter.

(5) If an active or inactive contractor license is current, the Applicant may pursue other category contractor applications in the same trade without being required to retake the business and law portion of the exam if the business and law portion was successfully passed previously.

(6) Any applicant who violates exam procedures as determined by the examination provider, including but not limited to cheating, misrepresenting oneself as another, or inappropriate actions during an examination may be immediately notified and expelled from the examination. Furthermore, the applicant's exam will be considered invalid and the applicant will be disqualified from retaking the exam for a period of time no less than 30 days and no

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more than 365 days as determined by the Administrator of the Construction Industries Board.

(7) No person shall be allowed any assistance in reading the contractor's examination, nor shall any persons other than the examinees or the Committee members be allowed in the examination area. However, an applicant may request that the Committee make reasonable accommodations for any disability.

(d) **Outstanding fines.** A license cannot be issued or renewed until the applicant has paid any and all outstanding fines due and owing to any division of the Construction Industries Board.

158:50-9-1.1. Acceptance of Military education, training and experience toward qualification for licensure examination

(a) **Licensure - ~~post~~ military service.** See OAC 158:1-3-10 for provisions related to the application of substantially equivalent education, training, and experience completed as a member of the Armed Forces or Reserves of the United States, National Guard of any jurisdiction, the Military Reserves of any jurisdiction, or the Naval Militias of any jurisdiction toward satisfying the qualifications for examination and license or registration issuance.

(b) **Military spouse applicant—~~equivalency~~.** See OAC 158:1-3-10 for provisions related to issuance of ~~an equivalent~~ a license or registration in an equivalent category for the spouse of an active-duty member of the Armed Forces or Reserves of the United States.

158:50-9-2. License and registration fees and renewals

(a) **Examination fees for contractors and journeyman.** The Construction Industries Board, or its designated representative, may collect for the actual cost of any examination provided by this Chapter. The cost for each such examination referenced in OAC 158:50-9-1 shall be posted in plain view at the testing site that provides and administers the examination. Every person whose application for examination is approved shall be informed of the specific fee prior to sitting for the examination. The unit testing fee shall be the amount negotiated by the Administrator in accordance with the provisions of the Oklahoma Central Purchasing Act, but cannot exceed the maximum allowable fee pursuant to 59 O.S. § 1000.5(A)(2). Documentation confirming the contractual fee shall be available upon request.

(b) **Licensing, registration and application fee schedule for contractors, journeyman, and apprentices.** The licensure, application, registration and annual renewal fees shall be as follows:

- (1) contractors application - \$30.00
- (2) initial contractor license - \$300.00
- (3) renewal contractor license - \$200.00
- (4) renewal contractor late fee - \$100.00
- (5) journeyman application - \$25.00
- (6) initial journeyman license - \$50.00
- (7) renewal journeyman license - \$75.00

(8) renewal journeyman late fee - \$25.00

(9) apprentice application - \$5.00

(10) apprentice registration - \$20.00

(c) **One time low-income fee waiver.** See OAC 158:1-3-13(c) regarding eligibility on a one-time, one-year fee waiver.

158:50-9-7. Continuing Education

(a) **Continuing Education Requirements:**

(1) No contractor or journeyman license shall be renewed unless the licensee has completed at least six (6) hours of continuing education ("CE") every three (3) years or thirty-six (36) months preceding the license expiration date. The continuing education course and instructor shall be approved in advance by the Committee. Exceptions to advance approval, or post-course approval, may be allowed by the Committee, or its designee, for substitute instructors in emergency situations when written notice of the emergency is provided to the Committee or its designee within seven (7) days of the course. The continuing education material shall cover codes and revisions adopted by the OUBCC and/or other trade related subject matters appropriate for topics of continuing education for licensees and approved by the Committee including: examination materials, manufacturers' installation of equipment or parts, the licensing Act, the trade regulations as set forth in this Chapter as well as the rules of the Construction Industries Board in OAC 158:10, and other trade or safety related subject matters approved by the Committee.

(2) If a license expires before the licensee completes the CE requirement, any CE that is completed while the license is expired will be applied to the CE requirement for the thirty-six (36) months preceding the date the license expired. Six (6) hours of CE will still have to be completed in order to meet the CE requirement for the subsequent thirty-six (36) month period.

(3) Credit will be given for CE programs approved by the Committee, or its designee.

(4) Except as provided herein, this Section shall apply to every licensed mechanical journeyman or contractor.

(5) A licensee is exempt from the education requirements of this Section for three (3) years from the date he or she passed their current licensing exam.

(6) The continuing education requirement provisions for Fueled Hearth Product Work corresponds with NFI certification requirements and are described in OAC 158:50-5-2(b)(10).

(b) **Standards.** The following standards will govern the approval of continuing education programs by the Committee.

(1) The program provider shall submit evidence that the provider and instructional staff are qualified by reason of education, experience or training. The training provider and instructors will be of good reputation and of good moral character.

(2) Any written material that is distributed during the session shall be readable, of high quality and shall be made available to all attendees.

(3) The program shall be presented in a comfortable location such as hotel/motel conference room, corporate meeting room, or regular classroom.

(4) The training session shall be presented outside the regular workplace or after regular working hours. An on-site conference room, that meets standards imposed by (3) of this subsection, shall be considered outside the regular workplace.

(5) A credit hour means at least fifty (50) minutes of classroom instruction with a ten (10) minute break.

(6) CE courses shall be presented in one of the following formats.

(A) Six (6) credit hours presented in one (1) day.

(B) Two (2) sessions of three (3) credit hours each presented within a seven (7) day period.

(C) One (1) session of two (2) credit hours of trade related instruction, Mechanical Licensing Act and/or Mechanical Industry Regulations.

(D) An approved correspondence course.

(E) Another format approved by the Committee.

(7) Verification of Credit.

(A) The Course Provider shall verify the total number of continuing education hours completed by each attendee.

(B) Continuing education providers shall require attendees to present a photo I.D. prior to the attendee signing the sign-in sheet provided by the Construction Industries Board. Sign-in sheets shall include the name and license number of each licensee in attendance.

(C) As soon as practicable but in any event on or before seven (7) days following an approved continuing education program, the provider shall furnish the original sign-in sheets from the course to the Mechanical License Unit of the Construction Industries Board.

(D) Providers shall maintain copies of all sign-in sheets for a period of two (2) years following the conclusion of the course.

(E) Complaint Procedure.

(i) A person, government, or private organization may submit a written complaint to the Committee, or its designee, charging a provider of continuing education with a violation of this Section, and specifying the grounds for the complaint.

(ii) Complaints must be in writing and include contact information, and shall be filed on the proper complaint form prescribed by the Construction Industries Board, or its designee.

(iii) The Committee may consider an unsigned or anonymous complaint for further investigation.

(iv) Upon receipt of a signed complaint form, a copy shall be sent to the continuing education provider addressed in the complaint. The continuing education provider shall provide a written response within fifteen (15) days. Upon receipt of the continuing education provider's written

response, both complaint and response shall be considered by the Committee, or its designee, for appropriate action including dismissal of the complaint, further investigation, or a finding of violation of the Act or this Chapter. The Committee, or its designee, shall notify both complainant and continuing education provider of the determination made by the Committee. Failure of the continuing education provider to respond will be considered as a violation of this Section.

(v) If a reasonable cause violation determination is made by the Committee, the Oklahoma Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken.

(8) Course providers or instructors may not advertise or promote the sale of any goods, products or services between the opening and closing of any Continuing Education Course.

(c) **Application Procedures.**

(1) A completed application form, with all supporting documentation, shall be submitted to the Construction Industries Board at least fifteen (15) days prior to the date of the Regular meeting of the Committee from which the provider wants the course to be considered for approval, and at least thirty (30) days prior to the scheduled start date. Supporting documents shall include the following:

(A) A resume or brief summary of qualifications of all course developers and instructors.

(B) A course agenda designating the beginning and ending of actual instruction times, sign-in times, breaks, lunches and evaluation time.

(C) A course curriculum indicating the subject or code areas to be taught with sufficient detail to determine which code revisions are to be addressed or the trade related instruction being provided.

(2) An application is to be submitted for each date, or dates, that constitute a single course.

(3) Each course must be included on a separate application.

(d) **Mechanical Examiners Committee Acceptance.**

(1) The Committee, or its designee, will review each application for completeness of form and supporting documentation, as well as course content.

(2) The approval of any course will be made by a majority vote of the Committee at a regularly scheduled meeting of the Mechanical Examiners Committee.

(3) The Committee's designee may approve additional dates and locations after the course has been approved by Committee vote. Substantive change to course content must be brought before the Committee.

(4) The applicant will be notified in writing whether the program is approved or disapproved, detailing the basis of the decision if disapproved.

(5) Approval is rescinded upon the adoption of a different statewide code and a new application showing updates of new code is necessary.

(e) **Committee Rejection and Reevaluation of a Course.**

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- (1) The Committee, or its designee, may refuse to accept any application for approval if the supporting documentation is insufficient or incomplete. The Committee may deny or revoke approval of an application for any of the following reasons.
 - (A) Failure to comply with the continuing education provisions.
 - (B) Inadequate application or supporting documentation.
 - (C) Failure to instruct on topic approved.
 - (D) Inadequate experience of program developer or instructor.
 - (E) Unsatisfactory evaluation of the course instructor or materials from previous classes.
 - (2) The Committee may, at any time, re-evaluate and grant or revoke approval of application or course.
 - (A) The Committee may, at any time, review courses for quality of instruction. The Committee may also investigate complaints regarding approved courses. The Committee may then take appropriate action, up to and including revocation of authority to provide CE courses.
 - (B) A provider's failure to comply with this Section constitutes grounds for disciplinary action, up to and including revocation of authority to provide CE, against the provider or for denial of future applications for course work.
 - (3) The Committee, or its designee, will notify the provider, in writing, of any changes in approval status.
- (f) **Appeals.**
- (1) Applicants denied approval of a course may appeal such a decision by submitting a written letter of appeal to the Committee within fifteen (15) days of the receipt of the notice.
 - (2) All appeals will be heard by the Committee at its next regularly scheduled meeting.
- (g) **Course Presentation.**
- (1) The program, including the named advertised participants, shall be conducted as approved, including lunch and breaks shown on the approved agenda, subject to emergency withdrawals and minor alterations.
 - (2) Changes including but not limited to location, date, instructors, or cancellations must be requested from the Committee, or its designee, in writing prior to start of class. All requests for change must include the course ID number.
- (h) **Course Advertisement.**
- (1) All advertising must include the course ID number.
 - (2) Approved program courses may be advertised.
 - (3) The provider of an approved continuing education program may announce or indicate as follows: Course # ____ has been approved by the Construction Industries Board Mechanical Examiners Committee for ____ hours of CE credit.
- (i) **Correspondence and Online Courses.**
- (1) Applications, approvals and rejections, and appeals of all correspondence and online courses shall be the same as for classroom-based courses.
 - (2) Correspondence courses shall be required to comply with all requirements of continuing education courses, except sign-in sheets.
 - (3) Providers of an on-line course shall submit verification of six (6) hours of real time on-line instruction.
 - (4) Course providers shall provide a student with a document of completion which certifies completion of approved correspondence course.
 - (5) Applications shall be resubmitted annually, from date of approval, for review and approval.
- (j) **Alternate Credit Accrual.**
- (1) Credit may be earned through teaching an approved continuing education course. The Committee may award up to six (6) hours of CE credit, not to exceed the number of approved hours for that CE course.
 - (2) Credit may also be earned through teaching a course in an accredited trade school or a trade-specific program approved by the Committee. The Committee may award up to six (6) hours of CE credit for each semester of academic credit awarded by the academic institution for the course.
 - (3) Credit may also be earned through participating as a designate of a technical committee appointed by the OUBCC to review and recommend adoption of building codes. The Committee may award up to six (6) hours of continuing education for completing a code review as designee in the code listed as the standard for the license held and upon completion of the code review receiving a certificate of completion from the OUBCC. A copy of the certificate will be required to be provided to CIB to receive continuing education credits.
- (k) **Continuing Education Not Required for Petroleum Refinery Journeyman.** Subsections (a) through (j) of this Section shall not apply to the license category of Petroleum Refinery Journeyman. The Petroleum Refinery Journeyman license may be renewed without continuing education.
- (l) **Continuing Education Not Required for Ground Source Piping.** Subsections (a) through (j) of this Section shall not apply to the license category of Ground Source Piping. The Ground Source Piping category license may be renewed without continuing education provided that a current approved certification is submitted.
- (m) **Continuing Education Not Required for Medical Gas.** Subsections (a) through (j) of this Section shall not apply to the license category of Medical Gas. The Medical Gas category may be renewed without continuing education provided that a current approved certification is submitted.

SUBCHAPTER 11. LICENSE REVOCATION OR SUSPENSION AND PROHIBITED ACTS

158:50-11-2. Prohibited acts

- (a) The following are prohibited acts:
 - (1) No person, entity, or firm may engage in mechanical contracting or perform mechanical work without first obtaining the appropriate license or registration pursuant to this Chapter.

- (2) No licensee shall perform mechanical work in a category under which he or she is not licensed or work outside of the confinements of the required Medical Gas certification.
- (3) No licensee shall perform work contrary to any provision of the standards of installation as described in OAC 158:50-1-4, except as otherwise provided by law or rule. Each violation of the standards of installation in OAC 158:50-1-4 can be treated as a separate violation of this Chapter.
- (4) No person shall offer to engage in mechanical work during the period his or her license is suspended or revoked.
- (5) No employing mechanical firm shall employ or use an unlicensed or unregistered individual or entity to perform mechanical work.
- (6) No person, entity, or firm may transfer a license or registration.
- (7) No individual or entity, licensed pursuant to this Chapter shall enter into an agreement for the use of his or her license with any firm or person which is, or has been adjudicated to be, in violation of any provision of the Act, or whose license is currently suspended or has within the last year been revoked, unless or until otherwise approved by the Board.
- (8) No person shall make a materially false or fraudulent statement in an application for license.
- (9) No person may alter a license.
- (10) No licensee or registrant shall fail to notify the Administrator of a change in his or her address.
- (11) No licensee or registrant shall perform mechanical work without keeping their license or registration and any required certification on their person or in close proximity while performing mechanical work.
- (12) No person may engage in cheating or any act involving the fraudulent misrepresentation of an applicant by an examinee.
- (13) No person or entity shall deny access to the Construction Industries Board or its representative on a job site.
- (b) The following prohibited acts apply to persons issued a contractor license:
- (1) No licensee shall employ or supervise persons performing mechanical work unless those persons are licensed or registered to perform that category of work.
- (2) No licensee shall allow any apprentice to perform mechanical work at the contractor's job site unless the apprentice will have direct supervision by a person licensed to perform in that category of mechanical work.
- (3) No licensee shall allow more than three (3) apprentices per journeyman at a job site.
- (4) No licensee shall fail to maintain a bond as provided for in OAC 158:50-5-3.
- (5) No licensee shall fail to provide proof of financial responsibility to the Administrator as provided for in OAC 158:50-5-3(b).
- (6) No licensee shall be associated with and responsible for more than one mechanical firm.

(c) The following prohibited acts apply to persons issued a journeyman license:

- (1) No licensee shall allow an apprentice under his or her direct supervision to perform mechanical work for which the journeyman is not licensed to perform.
- (2) No licensee shall perform mechanical work except under the employment or supervision of a Mechanical Contractor.
- (3) No licensee shall engage in the planning, contracting, or furnishing of labor and/or materials used for mechanical work.

[OAR Docket #20-639; filed 7-17-20]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD

CHAPTER 60. INSPECTORS REGULATIONS

[OAR Docket #20-640]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

158:60-1-2 [AMENDED]

Subchapter 3. Procedures of the Committee

158:60-3-1 [AMENDED]

158:60-3-2 [AMENDED]

Subchapter 5. Categories and Classifications of Inspector Licenses, Qualifications for Inspector Licensure, License Requirements for Inspectors, Fees, Certification and Continuing Education for Inspectors, and Continuing Education Courses

158:60-5-1 [AMENDED]

158:60-5-2 [AMENDED]

158:60-5-2.1 [AMENDED]

158:60-5-3 [AMENDED]

158:60-5-3.1 [AMENDED]

158:60-5-4 [AMENDED]

158:60-5-5 [AMENDED]

Subchapter 9. Duration of Licenses

158:60-9-3 [AMENDED]

AUTHORITY:

Construction Industries Board; 59 O.S. §§ 1000.4, 1000.5 and 1032.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

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APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

Permanent Final Adoptions

GIST/ANALYSIS:

Gist: The proposed changes to the Inspectors Regulations provides language clarifying existing rules and authority due to legislative changes including a change in provisional licenses from 2 to 1 year and a new independent third party license type; fee waivers for active duty-military, their spouses and a low income fee waiver.

Analysis: The proposed amendments to 158:60-1-2 are for the purpose adding a new definition and changes due to SB 733 and format cleaning of other definitions for consistency. The proposed amendments to 158:60-3-1 are formatting cleanup for consistency. The proposed amendments to 158:60-3-2 add language to clarify the complaint process for the benefit of the public. The proposed amendments to 158:60-5-1 change provisional licenses from 2 years to 1 year and the proposed amendments to 158:60-5-2 are as a result of SB 733. The proposed amendments to 158:60-5-2.1 are related to SB670 and provide a fee waiver for active duty military and their spouses. The proposed amendments to 158:60-5-3 and 158:60-5-3.1 are as a result of SB 733 as well as formatting cleanup. The proposed amendments to 158:60-5-4 include formatting cleanup as well as provides a one-time low income fee waiver as a result of HB 2933. The proposed amendments to 158:60-5-5 are related to formatting cleanup. The proposed amendments to 158:60-9-3 are a result of SB 733 and HB 2088.

CONTACT PERSON:

Shanpie Brown, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

158:60-1-2. Definitions

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

"Act" means the Oklahoma Inspectors Act as found at 59 O.S. § 1031, *et seq.*

"Administrator" means the Administrator of the Board as described in the Construction Industries Board Act found at 59 O.S. § 1000.1, *et seq.*

"Authorized Provider" means one who is not a governmental employee but an independent contractor who, ~~through contract, is designated~~ recognized by a ~~political subdivision~~ Political Subdivision that issues building permits and who meets the requirements under the Oklahoma Inspectors Act and rules promulgated on the requirements of such licensure.

"Board" means the Construction Industries Board.

"Building and ~~construction inspection~~ Construction inspection" means the inspection of plumbing, electrical, mechanical or structural aspects of building and construction, for the purpose of enforcing compliance with the applicable building codes or standards.

"Building and ~~construction inspector~~ Construction Inspector" means any person actively engaged in the inspection of any phase of building and construction ~~by the political subdivision having managerial and superintending control over building codes as the code official~~ for the purpose of enforcing and having the authority to enforce compliance with the applicable building codes or standards and includes, but

is not limited to, plumbing inspectors, electrical inspectors, mechanical inspectors and structural building inspectors.

"Building ~~official~~ Official" means the licensed employee code official having the duty to administer and the authority to enforce building codes in the ~~political subdivision~~ Political Subdivision.

"Certification" means successful passage of an examination by a Committee-approved national certification program in a license category pursuant to the Oklahoma Inspectors Act.

"Category" means one of the following areas of inspector licensure: electrical, mechanical, plumbing, building, or energy.

"Circuit ~~rider~~ inspector Rider Inspector" means a person who acts as a ~~building~~ Building and construction inspector Construction Inspector for two or more municipalities or other political subdivisions and is certified and licensed pursuant to the Oklahoma Inspectors Act.

"Classification" means ~~unlimited~~ Unlimited or ~~residential~~ Residential, ~~circuit rider~~ Circuit Rider, ~~provisional~~ Provisional, or ~~authorized agent~~ Authorized Provider in a license Category. Only ~~unlimited~~ Unlimited and ~~residential~~ Residential classification may be renewed inactive.

"C.E.U." or "CEU" means a continuing education unit that is either one (1) credit hour of Committee approved instruction or its equivalent as determined by the Committee.

"Committee" means the Oklahoma Inspector Examiners Committee.

"Credit Hour" means fifty (50) minutes, or more, of instruction with a ten (10) minute break.

"Designated ~~code official~~ Code Official" means an employee of a Political Subdivision with a population over 10,000 who is licensed, who approves the Report Writer or reviews and accepts the Report Writer's report in the same category as the official is licensed.

"Direction and Control" means when the licensed ~~authorized~~ Authorized Provider ~~agent is solely and exclusively~~ responsible to the ~~recognizing political subdivision~~ Political Subdivision ~~through contract~~ when performing building and construction inspections as an independent contractor separate and free from any influence or control on an inspection by any entity or business that performs industrial, commercial, or residential construction within the ~~political subdivision~~ Political Subdivision where the ~~authorized agent~~ Authorized Provider is providing inspection services.

"Inactive ~~building~~ Building and construction ~~inspector~~ Construction Inspector" means a previously licensed ~~building~~ Building and construction inspector Construction Inspector, having successfully passed an examination by a Committee-approved national certification program, ~~who is currently not employed by a political subdivision and therefore~~ does not meet all requirements of the Oklahoma Inspectors Act to perform building and construction inspections pursuant to the Oklahoma Inspectors Act until all requirements are met.

"OUBCC" means the Oklahoma Uniform Building Code Commission.

"Political Subdivision" means a municipality, city, town, village, county, or public trust where a city or town is a beneficiary.

"Provisional ~~License~~License" means a license issued to a ~~buildingBuilding and construction inspectorConstruction Inspector~~ who is an employee of a ~~political subdivisionPolitical Subdivision~~ on a provisional basis and limited to a maximum of ~~two (2) yearsone (1) year~~ in each license category for the purpose of enabling an applicant to meet the certification requirements.

"Recognized" means when a Political Subdivision, ~~having managerial and superintending control over building codes, determines for the Political Subdivision that a licensee is qualified to perform inspections within the Political Subdivision, is aware the licensee is free of direction and control of any person, entity or performing or designing contractor requesting the inspection, and can notify the Construction Industries Board of the same upon request.~~

"Regular work placeWork Place" means the immediate individual office including desk, chair, computer and office telephone wherein the inspector is expected to be reached and to conduct day-to-day office business.

"Report Writer" means any person ~~or agency designated recognized by a political subdivisionPolitical Subdivision~~ having managerial and superintending control over building codes as a report writer for purposes of furnishing report-writing services on behalf of the ~~building officialBuilding Official~~. This person must be approved by the ~~building officialBuilding Official~~ or designated code official, provided he or she has no conflict of interest and satisfies the requirements of the ~~political subdivisionPolitical Subdivision~~ as to qualifications, ethical standards and reliability in the process and services. The individual's furnished written reports shall be provided and acceptable to the ~~building officialBuilding Official~~, designated code official or ~~political subdivisionPolitical Subdivision~~ for final code evaluation. A report writer must be an employee of or ~~recognized by the political subdivisionPolitical Subdivision~~.

"Residential" means the classification of inspector license which authorizes an individual to conduct electrical, mechanical, plumbing or building inspections of only those structures designated as use group R3 or R4 in the most current Residential code adopted by the "OUBCC".

"Unlimited" means the classification of inspector license which authorizes an individual to conduct electrical, mechanical, plumbing or building inspections of all structures or installations.

SUBCHAPTER 3. PROCEDURES OF THE COMMITTEE

158:60-3-1. Procedures of the Committee

(a) The Committee shall serve the Construction Industries Board in an advisory capacity, assist and advise on all matters pertaining to the formation of rules pursuant to the Act, and assist and advised the Administrator, as needed, on the national certification and examination, by contract or otherwise, and licensing of applicants for ~~buildingBuilding and construction inspectorConstruction Inspector~~ license, and shall act as advisor on all matters related to the licensing of building and

construction inspectors, in accordance with these rules and the Act.

(b) Committee meetings will be held in the principal offices of the Construction Industries Board referenced at OAC 158:1-3-1, unless posted otherwise according to the Open Meeting Act. The Committee shall meet as often as is necessary, but at least once each quarter when applications are pending.

(c) The public may communicate with the Committee, in person or by mail, through the Oklahoma Construction Industries Board.

(d) Application for licensure shall be done by submitting an application to the Construction Industries Board on a form provided by the Board.

158:60-3-2. Hearings and Complaints

(a) The Committee may, upon its own motion or upon receipt of written complaint about a licensee or ~~political subdivisionPolitical Subdivision~~, request an investigation be conducted regarding an alleged violation of the Oklahoma Inspectors Act or the related administrative rules. All Inspector investigations must be approved by the Committee. Complaints must:

- (1) Be in writing;
- (2) Provide adequate information, including but not limited to, the date when the alleged violation occurred, facts surrounding the event, name of the person(s) and/or ~~political subdivisionPolitical Subdivision~~ being complained against; and
- (3) Provide any documented evidence to substantiate the complaint.

(b) Complaints on Authorized Providers may be made by a Political Subdivision as they will be recognizing any Authorized Provider's licensures for their jurisdiction.

(c) Any complaint on a person acting or performing as a Building and Construction Inspector without the proper license can be forwarded to the appropriate district attorney for prosecution.

(d) Any complaint toward an entity who employs an unlicensed person to perform the duties and responsibilities of a Building and Construction Inspector or who fails to notify the Construction Industries Board of the employment of an inspector shall be subject to an administrative fine following an investigation and hearing on the matter.

~~(b)~~ Upon completion of an investigation by the Committee's designee, the results of the investigation will be presented to the Committee for them to determine if an individual proceeding is to be conducted. If the Committee approves a matter to be set for individual proceeding, the CIB Administrator will contact a hearing examiner to conduct the individual proceeding according to the Procedures of the Construction Industries Board's administrative rules in Title 158, Ch. 1.

~~(e)~~ Notice of an individual proceeding will be served upon an individual licensee or for political subdivisions the mayor, city manager or city attorney according to the Procedures of the Construction Industries Board's administrative rules in Title 158, Ch. 1.

(~~dg~~) Pursuant to the Construction Industries Board Act, the Oklahoma Inspectors Act, and Administrative Rules hearings shall occur as often as is necessary to enforce the requirements of the Inspectors Act and this Chapter. Hearings shall be conducted by an administrative hearing examiner who will render a proposed order on any fine, penalty or fee which will then be submitted to the Construction Industries Board to become a final order.

(~~eh~~) After a proposed order by the impartial hearing examiner finding whether a violation occurred pursuant to the Oklahoma Inspectors Act with a recommendation of action as provided by the Oklahoma Inspectors Act, Construction Industries Board Act and/or the administrative rules is completed, it will be provided to the Administrator and then submitted to the Construction Industries Board pursuant to the Procedures of the Construction Industries Board administrative rules in Title 158, Ch. 1.

SUBCHAPTER 5. CATEGORIES AND CLASSIFICATIONS OF INSPECTOR LICENSES, QUALIFICATIONS FOR INSPECTOR Licensure, LICENSE REQUIREMENTS FOR INSPECTORS, FEES, CERTIFICATION AND CONTINUING EDUCATION FOR INSPECTORS, AND CONTINUING EDUCATION COURSES

158:60-5-1. Categories and classifications of inspector licenses

Licenses shall be issued for the following categories and classifications:

- (1) Category of Electrical inspector:
 - (A) Unlimited classification.
 - (B) Residential classification.
 - (C) Inactive Unlimited classification.
 - (D) Inactive Residential classification.
 - (E) Circuit Rider Unlimited classification.
 - (F) Circuit Rider Residential classification.
 - (G) ~~Two year~~One year Provisional Unlimited classification.
 - (H) ~~Two year~~One year Provisional Residential classification.
 - (I) Authorized ~~Agent~~Provider classification (Unlimited only).
- (2) Category of Mechanical inspector:
 - (A) Unlimited classification.
 - (B) Residential classification.
 - (C) Inactive Unlimited classification.
 - (D) Inactive Residential classification.
 - (E) Circuit Rider Unlimited classification.
 - (F) Circuit Rider Residential classification.
 - (G) ~~Two year~~One year Provisional Unlimited classification.
 - (H) ~~Two year~~One year Provisional Residential classification.
 - (I) Authorized ~~Agent~~Provider classification (Unlimited only).
- (3) Category of Plumbing inspector:

- (A) Unlimited classification.
 - (B) Residential classification.
 - (C) Inactive Unlimited classification.
 - (D) Inactive Residential classification.
 - (E) Circuit Rider Unlimited classification.
 - (F) Circuit Rider Residential classification.
 - (G) ~~Two year~~One year Provisional Unlimited classification.
 - (H) ~~Two year~~One year Provisional Residential classification.
 - (I) Authorized ~~Agent~~Provider classification (Unlimited only).
- (4) Category of Building inspector:
 - (A) Unlimited classification.
 - (B) Residential classification.
 - (C) Inactive Unlimited classification.
 - (D) Inactive Residential classification.
 - (E) Circuit Rider Unlimited classification.
 - (F) Circuit Rider Residential classification.
 - (G) ~~Two year~~One year Provisional Unlimited classification.
 - (H) ~~Two year~~One year Provisional Residential classification.
 - (I) Authorized ~~Agent~~Provider classification (Unlimited only).
 - (5) Category of Energy Code Inspector:
 - (A) Unlimited classification.
 - (B) Residential classification.
 - (C) Inactive Unlimited classification.
 - (D) Inactive Residential classification.
 - (E) Circuit Rider Unlimited classification.
 - (F) Circuit Rider Residential classification.
 - (G) ~~Two year~~One year Provisional Unlimited classification.
 - (H) ~~Two year~~One year Provisional Residential classification.
 - (I) Authorized ~~Agent~~Provider classification (Unlimited only).

158:60-5-2. Qualifications for inspector licensure

- (a) Initial application must be made on the form provided by the Administrator and the licensure must be approved by the employing or recognizing Political Subdivision.
- (b) The proper fees must accompany any application, including the late fee if application for renewal is made after expiration of the initial license.
- (c) Be employed by a Political Subdivision with a population over 10,000 unless acting as a circuit rider or Authorized Provider then the person must be licensed regardless of Political Subdivision population size.
- (d) The applicant must submit, as soon as is practicable after application for initial license is made, proof of certification by successful completion of a national examination approved by the Committee.
- (e) ~~Other than two year provisional license, no~~No license shall be issued for longer than one (1) year and all licenses shall expire on the end of the birth date month of the licensee.

(f) Before an application for license renewal can be approved, the Board must receive proof of completion of the required C.E.U.'s.

~~(g) If a licensed Building and Construction Inspector is not employed at the time of renewal, the license may be renewed if the applicant is otherwise compliant with the requirements of the Oklahoma Inspectors Act, including meeting continuing education requirements; however, the renewal application must reflect the change in employment along with a request to renew as inactive status. An inactive license status may be changed to active status upon notification of employment to the Construction Industries Board.~~

(hg) OAC 158:60-5-4 sets forth the licensing qualifications for the license categories and classifications provided in OAC 158:60-5-1. Additional certifications or exams may be recognized by approval of the Committee and the Construction Industries Board on a case by case basis. However, no person shall be required to meet the continuing education requirements for the licensing year the certification requirements of subsection (d) of this Section are met.

(ih) A provisional license is issued to allow a person to work as an inspector even though all the license requirements have not been met. This provisional license will provide the licensee with adequate time and motivation to become educated and meet all licensure requirements within ~~two (2) years~~ one (1) year after being issued the provisional license. No person shall be issued more than one provisional license in any license category. At the end of the ~~two (2) years~~ one (1) year, the provisional license for the specified category and classification will expire. To continue performing inspections in the same category and classification as the expired provisional license an individual must meet the certification requirements to be a licensed inspector. A person cannot renew a provisional license in the category and classification previously held, but may obtain a provisional license in a different classification or category to perform work in that classification and category. The fee for the provisional license shall be \$35.00.

158:60-5-2.1. Acceptance of Military education, training and experience toward qualification for licensure examination

(a) **Licensure - ~~post~~-military service.** See OAC 158:1-3-10 for provisions related to the application of substantially equivalent licensure, education, training, and experience completed as a member of the Armed Forces or Reserves of the United States, National Guard of any jurisdiction, the Military Reserves of any jurisdiction, or the Naval Militias of any jurisdiction toward satisfying the qualifications for examination and license issuance.

(b) **Military spouse applicant—~~equivalency~~.** See OAC 158:1-3-10 for provisions related to issuance of ~~an equivalent~~ a license in an equivalent category for the spouse of an active-duty member of the Armed Forces or Reserves of the United States.

158:60-5-3. License requirements for inspectors

(a) The licensee shall notify the Construction Industries Board in writing within fifteen (15) days of any change in address or change in employment status related to the license.

(b) All licensees shall, in addition to any local procedures or requirements, notify the Administrator as to persons suspected of performing building, electrical, mechanical, plumbing, or roofing work within their jurisdiction who are not properly licensed or registered by the State. All licensees performing building and construction inspections shall require all persons doing work in his/her jurisdiction to meet all requirements for licensing and code standards.

(c) Any person who voluntarily surrenders their license during an investigation by the licensing authority shall be treated as if their license had been revoked by the Administrator on the day of surrender.

(d) The licensee shall not attempt to retain licensure by making false statements concerning C.E.U.'s.

(e) In political subdivisions where licensing is required by the Act, no person may perform building and construction inspections in a classification and category in which he or she is not licensed.

(f) To receive an unlimited inspector license in a given category, one must take and pass both the residential certification examination and the commercial certification examination for that category.

(g) Any person conducting inspections as an Inspector or Building Official is required to be licensed if working for or within a Political Subdivision of over ten thousand. An Authorized ~~Provider~~ Agent conducting inspections for a Political Subdivision regardless of the population must be licensed by passing both residential and commercial exams.

(h) No license is currently required for a Report Writer whose report is subject to review and accepted by one of the following licensees: Inspector, designated code official, or Building Official of the Political Subdivision.

(i) Any municipality or other governmental entity which employs any person as a building and construction inspector for functions normally performed by a building and construction inspector shall notify the Construction Industries Board of the employment.

158:60-5-3.1. ~~Authorized agents~~ Provider

(a) To obtain an ~~authorized agent~~ Authorized Provider inspector license, the applicant shall:

(1) ~~Be engaged in an independently established business approved, recognized individually, accepted and designated by a political subdivision~~ Political Subdivision, meet as meeting all requirements for a state inspector's license in the category of the inspections being performed, unlimited classification, and make any recognizing political subdivisions aware he or she is ~~be~~ free of direction and control of any contractor, person, or entity who is requesting the inspection;

(2) Pass in the chosen category the unlimited inspector classification examinations (residential and commercial)

approved by the Oklahoma Inspector Examiners Committee and complete all other requirements in the Oklahoma Inspectors Act and rules for each category sought; and

(3) Complete an ~~authorized agent~~ Authorized Provider inspector license application for the examination, license or renewal of license. The application shall be completed in writing on forms furnished by the Construction Industries Board. Each application shall be accompanied by a fee and proof of continuing education for renewals as required in the Oklahoma Inspectors Act and rules. Every applicant shall provide to the Construction Industries Board, on new and renewal applications, a completed application form and verify to the Construction Industries Board upon request that applicant is recognized ~~notarized certification~~ by a political subdivision's city or county manager, clerk or director of inspections department that the applicant will be performing as an ~~authorized agent~~ Authorized Provider of or within that political subdivision ~~Political Subdivision~~.

(b) It shall be unlawful for any person to act as or perform the work of an ~~authorized agent~~ Authorized Provider inspector unless such person is qualified and licensed pursuant to the Oklahoma Inspectors Act and regardless of the size of the Political Subdivision. An ~~authorized agent~~ Authorized Provider inspector license does not authorize an individual to issue permits.

(c) ~~Authorized-agent~~ Provider inspectors licensed by the state are deemed to be acting as independent contractors and not as officers, employees or agents of the state. The state assumes no liability for the actions or omissions of licensed ~~authorized agents~~ Authorized Providers.

(d) ~~Authorized-agents~~ Providers shall:

(1) In addition to complying with the provisions of the Oklahoma Inspectors Act, provide proof of insurance coverage of up to One Million Dollars (\$1,000,000.00) in professional liability insurance, in addition to One Million Dollars (\$1,000,000.00) in errors and omissions insurance as set by rule. Proof of valid and current insurance coverage must be provided upon application for registration and renewal of registration in the form of an insurance certificate listing the State of Oklahoma as the certificate holder. Further, proof of compliance with the workers' compensation laws of Oklahoma or exemption is required. Lapse of insurance shall result in the change of license status to inactive;

(2) Not be under the direction and control of any entity that performs industrial, commercial or residential construction within the ~~political—subdivision~~ Political Subdivision in which they would provide services;

(3) Not be under the direction and control of any entity that designs industrial, commercial or residential projects within the ~~political—subdivision~~ Political Subdivision in which they would provide services;

(4) Provide written reports acceptable to the ~~political subdivision~~ Political Subdivision according to the ~~political subdivision~~ Political Subdivision requirements;

(5) Not be prohibited in this act from providing other plan review and inspection services for jurisdictions that pertain to infrastructure projects, utilities projects or other

services not regulated by the Oklahoma Inspectors Act, except as restricted or limited by the Political Subdivision;

(6) Not be allowed to apply for a provisional license as described in Section 1036 of Title 59 of the Oklahoma Statutes; and

(7) Provide evidence of being certified for the specific license category for which they are applying and shall only provide services in the area of certification and licensing.

(e) A Political Subdivision should report to the CIB any instances of an Authorized Provider failing to maintain liability insurance, failing to comply with worker's compensation laws, and if the Authorized Provider is working under the direction and control of an entity to which they are also providing services.

158:60-5-4. Fees, certification and continuing education for inspectors

(a) **Requirements.** The fees for an individual holding more than one inspector license category is capped at the cost for one category thereby the total cost for all license categories is the same total cost as the cost for one license category if application is made at the same time for multiple categories. The same fee structure for the inspector license classifications applies to the ~~Authorized-Agent~~ provider and provisional classifications. Fees, certification and continuing education requirements for inspectors are as follows:

(1) Building inspectors (both unlimited and residential licenses):

- (A) \$35.00 Fee for initial license and renewal;
- (B) \$35.00 Late fee, if applicable;
- (C) Approved Certification; and
- (D) Completion of six (6) C.E.U.'s for renewal license.

(2) Electrical inspectors (both unlimited and residential licenses):

- (A) \$35.00 Fee for initial license and renewal;
- (B) \$35.00 Late fee, if applicable;
- (C) Approved Certification; and
- (D) Completion of six (6) C.E.U.'s for renewal license.

(3) Mechanical inspectors (both unlimited and residential licenses):

- (A) \$35.00 Fee for initial license and renewal;
- (B) \$35.00 Late fee, if applicable;
- (C) Approved Certification; and
- (D) Completion of six (6) C.E.U.'s for renewal license.

(4) Plumbing inspectors (both unlimited and residential licenses):

- (A) \$35.00 Fee for initial license and renewal;
- (B) \$35.00 Late fee, if applicable;
- (C) Approved Certification; and
- (D) Completion of six (6) C.E.U.'s for renewal license.

(5) Energy Code inspector (both unlimited and residential licenses):

- (A) \$35.00 Fee for initial license and renewal;
- (B) \$35.00 Late fee, if applicable;

- (C) Approved Certification;
- (D) Completion of six (6) C.E.U.'s for renewal license.

(b) One time low-income fee waiver. See OAC 158:1-3-13(c) regarding eligibility on a one-time, one-year fee waiver.

158:60-5-5. Continuing education

(a) Continuing education requirements:

- (1) No license shall be renewed unless the licensee has completed at least six (6) hours of continuing education within twelve (12) months preceding the application for renewal.
- (2) Credit will only be given for continuing education programs approved by the Committee.
- (3) A licensee is exempt from the continuing education requirements of this Chapter for one (1) year from the date he or she passed their current licensing exam.

(b) Application procedures for continuing education course approval. Any provider or instructor which desires to sponsor education to licensees in compliance with the continuing education requirements of OAC 158:60-5-4 shall file an application for approval on the form prescribed by the Committee, or its designee at least fifteen (15) days prior to the date of the Regular meeting of the Committee from which the organization wants the course to be considered for approval, and at least thirty (30) days prior to the date for which the course is scheduled. The application shall include a list of the course instructors and their qualifications, an agenda detailing the material to be presented, the location of the training, the program objectives, and the number of credit hours of classroom and supervised instruction. Licensees shall not receive continuing education credit for attending classes that are not approved by the Committee. Within seven (7) days of the completion of the course, the provider or instructor shall submit the original sign-in sheets for all sessions to the Inspector Examiners Unit of the Construction Industries Board. The sign-in sheets shall include the signature and state inspector license number of each person in attendance. The provider or instructor shall verify the total number of continuing education hours completed by each attendee. All programs shall be presented as submitted and approved, including lunch and breaks shown on the approved agenda, unless changes have been approved. Changes to the program shall be submitted to the Committee, or its designee, within ten (10) days of the training session for review by the Committee. Failure to obtain approval of changes may result in loss of CEU approval.

(c) Standards for continuing education. The following standards will govern the approval of continuing education programs by the Inspector Examiners Committee:

- (1) The program provider shall submit evidence that the provider and instructional staff are qualified by reason of education, experience or training.
- (2) All material and information presented shall pertain to the discipline in which the person is licensed.
- (3) All courses must be of at least two (2) credit hours in length.
- (4) The training location must be outside the regular work place or after hours.

(5) Correspondence or online course approval standards:

(A) Providers or instructors seeking to offer correspondence courses for continuing education shall submit a course curriculum and study material for review and approval by the Committee prior to the courses being offered as continuing education. An access code and password shall be provided to the Committee, or its designee, for an online course for the purpose of review and approval. Approved correspondence courses shall be required to comply with all requirements for other continuing education courses except for sign-in sheets. Providers shall provide a student with a document of completion which certifies completion of approved correspondence courses.

(B) Providers of an on-line course shall submit verification of six (6) hours of real time on-line instruction. Correspondence or online courses shall have sufficient explanation and or graphics to expound the concepts being taught. The format of the online course shall be constructed so as to elicit interaction between the student and the material presented. Each page of text shall be designed with a question that must be answered before advancing to the next page or a test at the end of a subject matter before the course is considered complete. Providers shall provide a student with a document of completion that shall certify completion of an approved online course.

(C) Applications for correspondence or online courses shall be resubmitted annually, from date of approval, for review and approval.

(6) Along with a course application, a video presentation may be submitted for course material and instructor approval by the Committee if the video presentation is closely related to the subject matter of the course and meets the following:

(A) All video presentations must be submitted in electronic format at least thirty (30) days in advance of the Committee meeting reviewing the course application, except for manufacturer's videos generally accepted in the industry covering accepted industry practices or standards. If the electronic format does not allow forwarding by email, then seven (7) copies of a portable storage format are required.

(B) Video segments shall be no more than thirty (30) minutes, followed by a discussion and no more than fifty percent (50%) of the total course time.

(C) The required copies of each individual video presentation training segment must be submitted with the CEU class approval request for review and approval by the Committee of the course material and instructor. However, if the video is a manufacturer's video, the Committee is not required to approve of the instructor in the video as long as the video course material and video presentation is approved by the Committee.

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- (D) An approved instructor will be present during the viewing of any video and will monitor the class for questions. Prior to any video presentation, class participants shall be instructed to raise their hand if they have a question or comment during the video presentation. When a class participant has a question or comment during the video presentation, the instructor must be able to stop or pause the video to accommodate live interactive discussion.
- (E) Audio and video equipment shall be arranged in advance or otherwise provided to assure that class participants are able to see and hear all portions of any video presentation. In the case of audio or video failure, the time of the video presentation may be presented by the approved instructor over subject matter previously approved for that instructor.
- (d) **Course Advertisement.**
- (1) All advertising must include the course ID number.
 - (2) The provider of an approved continuing education program may announce or indicate as follows: Course #____ has been approved by the Construction Industries Board Inspector Examiners Committee for ____ hours of CE credit.
- (e) **Approval Limitations.**
- (1) The Committee's designee may approve additional course dates and locations after the course has been approved by Committee vote. Substantive change to course content must be brought before the Committee.
 - (2) Approval of all courses, including correspondence and online courses, is rescinded upon the adoption of a different statewide code by OUBCC, and a new application showing updates of new code is necessary.
 - (3) The Committee or its designee may refuse to accept any application for approval if the supporting documentation is insufficient or incomplete. The Committee may deny or revoke approval of an application for any of the following reasons:
 - (A) failure to comply with the continuing education provisions;
 - (B) inadequate application or supporting documentation;
 - (C) failure to instruct on the topic approved; or
 - (D) unsatisfactory evaluations of the course, instructor, or materials from previous classes.
 - (4) If an application is refused or disapproved, written notice detailing the basis of the decision shall be provided to the applicant.
 - (5) The Committee may at any time re-evaluate and grant or revoke approval of an application or course.
 - (A) The Committee or its designee shall be granted access to attend, observe and audit any continuing education course approved by the Committee.
 - (B) The Committee may at any time review courses for quality in instruction. The Committee shall also investigate and take appropriate action, up to and including revocation of authority to provide CE, regarding complaints involving approved courses.
- (C) A provider's failure to comply with this Section constitutes grounds for disciplinary action, up to and including revocation of authority to provide CE, against the provider or for denial of future applications for coursework.
- (6) The applicant will be notified in writing by mail whether the program is approved or disapproved.
- (f) **Alternate Credit accrual:**
- (1) Credit may be earned through teaching in an approved continuing education class in the license category for which the renewal application is submitted. The Committee may award up to six (6) hours of CE credit not to exceed the number of approved hours for that CE class.
 - (2) Credit may also be earned through teaching an approved course in an accredited vocational school or a ~~building~~Building and ~~construction inspector~~Construction Inspector-specific program approved by the Committee. The Committee may award up to six (6) hours of CE credit for each semester of academic credit awarded by the academic institution for the course.
 - (3) Credit may also be earned through participating as a designee of a technical committee appointed by the OUBCC to review and recommend adoption of building codes. The Committee may award up to six (6) hours of continuing education for completing a code review as designee in the code listed as the standard for the license held and upon completion of the code review receiving a certificate to be provided to CIB to receive continuing education credits.
- (g) **Complaint procedure:**
- (1) A person, government, or private organization may submit a written complaint to the Committee, or its designee, charging a provider of continuing education with a violation of the rules, and specifying the grounds for the complaint.
 - (2) Complaints must be in writing and include contact information, and shall be filed on the proper complaint form prescribed by the Construction Industries Board, or its designee.
 - (3) The Committee may consider an unsigned or anonymous complaint for further investigation.
 - (4) Upon receipt of a signed complaint form, a copy shall be sent to the continuing education provider addressed in the complaint. The continuing education provider shall provide a written response within fifteen (15) days. Upon receipt of the continuing education provider's written response, both complaint and response shall be considered by the Committee, or its designee, for appropriate action including dismissal of the complaint, further investigation, or a finding of violation of a statute or rule. The Committee, or its designee, shall notify both complainant and continuing education provider of the determination made by the Committee. Failure of the continuing education provider to respond will be considered as a violation of this rule.
 - (5) If a reasonable cause violation determination is made by the Committee, the Oklahoma Administrative

Procedure Act shall be followed for all disciplinary proceedings undertaken including but not limited to all parts of this subsection.

SUBCHAPTER 9. DURATION OF LICENSES

158:60-9-3. Duration of licenses

- (a) All licenses, ~~except for a provisional license~~, shall have a duration of no more than one (1) year, and shall expire on the ~~licensee's last day of his or her birth-day month~~.
- (b) Any license issued, except for a provisional license, may be renewed by submitting the renewal application and the license fee for the next year by check or money order which must be delivered or mailed on or before the expiration date.
- (c) A license renewed under the provision of (b) of this Section is effective when notice of such renewal is issued by the Construction Industries Board.
- (d) An expired license may be reinstated by submitting the license renewal fee and late fee with the filing of a renewal application and proof of meeting all license renewal requirements.
- (e) A licensee who, during an investigation of the licensee by the Construction Industries Board, surrenders their license shall be treated as if the license had been revoked for one (1) year from the day of surrender.
- (f) A license cannot be renewed until the licensee has paid any and all outstanding fines due and owing to any division of the Construction Industries Board.
- ~~(g) To maintain an active inspector license, in addition to complying with the requirements of this Chapter, an inspector must be employed by a political subdivision, otherwise the license status is inactive.~~

[OAR Docket #20-640; filed 7-17-20]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD

CHAPTER 70. HOME INSPECTION INDUSTRY REGULATIONS

[OAR Docket #20-641]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
- 158:70-1-3 [AMENDED]
- Subchapter 5. License Requirements, License Fees, License Period, Re-Examination, Display and Insurance
- 158:70-5-2 [AMENDED]
- Subchapter 9. Examination Applications, Examinations, Course Approval Requirements, Instructor Requirements, Continuing Education, Denied Application Appeal, Submission of Records, Substantial Compliance and Reciprocity
- 158:70-9-1 [AMENDED]
- 158:70-9-1.1 [AMENDED]
- Subchapter 11. License Revocation and Suspension and Additional Prohibited Acts

158:70-11-2 [AMENDED]

AUTHORITY:

Construction Industries Board; 59 O.S. §§ 858-627, 1000.4 and 1000.5.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 22, 2019

COMMENT PERIOD:

December 16, 2019, through January 17, 2020

PUBLIC HEARING:

January 29, 2020

ADOPTION:

January 29, 2020

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 4, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

October 1, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Gist: The proposed changes to the Home Inspection Industry Regulations add language clarifying existing rules and statutory changes as a result of SB 670, HB 1373 and HB 2933.

Analysis: The proposed amendments to 158:70-1-3 are to clarify the standards of practice for home inspectors. The proposed amendments to 158:70-5-2 are for clarification and also to provide a one-time low income fee waiver related to HB 2933. The proposed amendment to 158:70-9-1 is a result of HB 1373. The proposed amendments to 158:70-9-1.1 are related to SB 670 and provide a fee waiver for active duty military and their spouses. The proposed amendments to 158:70-11-2 are for clarification and also include an ethical provision.

CONTACT PERSON:

Stephanie Brown, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

158:70-1-3. Standards of workmanship and practice

- (a) General requirements.

(1) These standards of practice are the minimum levels of inspection practice required of inspectors for the components and systems identified in these rules. No additional inspection beyond these standards of practice set out by the rules is required. Any additional inspection services provided beyond or outside the scope of the standards of practice is a contractual matter between the parties. Home inspections performed in accordance with these standards of practice are intended to provide the client with information regarding the condition of the systems and components at the time of the inspection.

(2) The inspector shall be governed by the following general requirements:

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- (A) The inspector shall inspect all readily accessible installed systems and components listed in these standards of practice.
- (B) The inspector shall complete a written inspection report in accordance with these standards and submit the report to the client within an agreed upon time frame.
- (C) The inspector shall identify in any written report the client, the inspector who performed the inspection by name and license number, and the address of the inspected property.
- (D) The inspector shall report:
- those systems and components inspected, which in the professional opinion of the inspector, are in normal working order;
 - those systems and components inspected which, in the professional opinion of the inspector, are not in normal working order and the reason, if not self-evident;
 - those systems and components inspected which, in the professional opinion of the inspector, could impair the safety of the occupants or client and the reason, if not self-evident;
 - the inspector's recommendations to have corrected, further evaluated or monitored any reported condition or defect; and,
 - any systems and components designated for inspection in these standards, which were present at the time of the Home Inspection but were not inspected and the reason they were not inspected.
- (3) These standards of practice are not intended to limit inspectors from:
- including other inspection services or inspecting other systems or components in addition to those required by these Standards when agreed to by the parties contracting for inspection services;
 - providing a higher level of inspection performance than required by these Standards;
 - reporting other observations or conditions in addition to those required by these Standards after any additional conditions are evaluated and would meet the overall purpose of the home inspection, including categorizing additionally reported item, such as but not limited to life and safety, functionality or general maintenance; or,
 - excluding systems and components from the inspection, if requested by the client in writing prior to the inspection and recorded on a signed form, such as the sample form "Sample Home Inspection Exclusion" at Appendix A of this Chapter.
- (4) All home inspectors shall maintain a log or record of all home inspections performed, for a minimum period of five (5) years from the date of inspection. The log or record shall include the name of the client, the address of the property, and the date of the inspection. The home inspector shall maintain a copy of all home inspections completed within the past thirty-six (36) months. The log or record and inspection reports may be a hard file or an electronic file and shall be maintained at the home inspector's principal business address. The files shall be available for review upon request of an authorized representative of the Construction Industries Board.
- (5) A home inspector who visually examines any portion of a residential unit that is part of a real property consisting of more than four (4) dwelling units, shall advise, in writing, the person requesting the visual examination that the visual examination being conducted by the home inspector is not governed by the Act and these rules.
- (6) All home inspectors should provide the standards of practice of this section to all potential clients prior to the home inspection by proof of signature of acknowledgment.
- (7) All home inspectors should require a written pre-inspection agreement to be signed by the client prior to the commencement of a home inspection.
- (b) General limitations and exclusions.
- The inspector is not required to perform any action or make any determination not specifically stated in these Standards of Practice.
 - Inspections performed in accordance with these standards are not required to be technically exhaustive, will not identify concealed conditions or latent defects and are only applicable to buildings with four or fewer dwelling units and their garages, both attached and detached, or carports.
 - The inspector is not required to:
 - perform any action or make any determination unless specifically stated in these Standards, except as may be required by lawful authority;
 - determine the condition of systems or components which are not readily accessible;
 - determine the remaining life of any system or component;
 - determine the strength, adequacy, effectiveness, efficiency or insurability of any system or component;
 - determine the causes of any condition or defect;
 - determine the methods or materials for repair or correction of any defect;
 - determine future conditions including, but not limited to, failure of systems and components;
 - determine the suitability of the property for any specialized use or compliance with any regulatory requirements other than this Chapter;
 - determine the presence of potentially hazardous plants or animals including, but not limited to, wood destroying organisms, mold, mildew, fungi, or diseases harmful to humans;
 - determine the presence of any environmental hazards including, but not limited to, toxins, carcinogens, noise, and contaminants in soil, water, or air;
 - determine the effectiveness of any system installed or methods utilized to control or remove suspected hazardous substances;

- (L) determine the operating costs of any system or component;
 - (M) determine the acoustical properties of any system or component;
 - (N) perform engineering or architectural services or perform work in any trade or professional service other than home inspections;
 - (O) provide warranties or guarantees of any kind;
 - (P) operate any system or component which is shut down or otherwise inoperable or turn on any utility services;
 - (Q) operate any system or component which does not respond to normal operating controls, or shut-off valves;
 - (R) enter any area which will, in the opinion of the inspector, likely be dangerous to the inspector or other persons or may damage the property or its systems or components;
 - (S) enter the under-floor crawl spaces, attics or any area which, in the opinion of the inspector, is not readily accessible;
 - (T) inspect or determine the integrity of underground systems or components, including, but not limited to, main drain lines connecting to sewers, water lines, gas lines, electrical lines and underground storage tanks or other underground indications of their presence whether abandoned or active;
 - (U) inspect systems or components which are not installed, decorative items, systems or components located in areas that are not entered in accordance with these Standards, detached structures other than garages and carports, or common elements and areas in multi-unit housing, such as condominium properties or cooperative housing;
 - (V) move suspended ceiling tiles, personal property, furniture, equipment, plants, soil, snow, ice, or debris;
 - (W) dismantle any system or component, except as explicitly required by these rules; or,
 - (X) light any standing gas pilot light that does not have a spark-igniter, including but not limited to heating systems, water heaters and fireplaces; or,
 - ~~(Y) determine the cost to correct any defect or provide cost estimates.~~
- (4) The inspector shall not:
- (A) offer or perform any act or service contrary to law;
 - (B) determine or report on the market value of the property or its marketability;
 - (C) report on the advisability of the purchase of the property; ~~or;~~
 - (D) estimate or speculate the cost for repairs; or
 - ~~(DE) advertise or solicit to perform repair services on the inspected home for a period of one (1) year from the date of the inspection.~~
- (c) Structural system inspection requirements.
- (1) The inspector shall inspect:
- (A) the foundation structure including slabs, piers, columns, posts, stem walls;
 - (B) the floor structure including beams, girders, joists, trusses, sill plates, blocking, bracing, drilling, notching and sub floors;
 - (C) the wall structure;
 - (D) the roof structure including rafters, trusses, sheathing, blocking, bracing, drilling, notching and fire stops;
 - (E) the ceiling structure including joists, trusses, blocking, bracing, drilling, notching and fire stops at ceiling penetrations; and,
 - (F) the crawl space, basement and attic moisture conditions and indicators of harmful water penetration or condensation on structural components.
- (2) The inspector is required to:
- (A) describe the foundation, floor structure, roof structure, ceiling structure and wall structure;
 - (B) describe indicators of foundation or structural movement;
 - (C) enter the crawl space and attic to determine the general condition of the components;
 - (D) report the method used to observe the crawl space and attic if the inspector did not enter; and,
 - (E) probe structural components where deterioration is suspected or where clear indications of possible deterioration exist. Probing is not required where no deterioration is visible.
- (3) The inspector is not required to:
- (A) enter a crawl space or any foundation area where the headroom is less than 18 inches, the access opening is less than 18 inches by 24 inches, where the area is excessively wet, or where the inspector reasonably determines the conditions or materials are hazardous to the safety of the inspector;
 - (B) enter an attic space where head room is less than 30 inches, the access opening is less than 18 inches wide by 24 inches long, or where the inspector reasonably determines conditions or materials are hazardous to the safety of the inspector; or
 - (C) perform any invasive or destructive inspection.
- (d) Exterior inspection requirements.
- (1) The inspector shall inspect:
- (A) the exterior wall covering, trim, flashings, caulking and protective coatings;
 - (B) all exterior doors and locking devices;
 - (C) overhead garage doors and garage door openers including safety mechanisms;
 - (D) storm windows and doors;
 - (E) attached decks/patios, balconies, stoops, steps, porches, and their associated railings;
 - (F) eaves, soffits and fascias;
 - (G) driveways and walkways leading to dwelling entrances;
 - (H) vegetation, grading, surface drainage, and retaining walls on the property when any of these are likely to have an adverse effect on the structure; and,
 - (I) the primary garage or carport.

- (2) The inspector shall describe:
 - (A) the exterior wall covering;
 - (B) attached decks/patios and balconies;
 - (C) driveways; and,
 - (D) walkways.
- (3) The inspector is not required to inspect:
 - (A) screening, shutters, awnings, and similar seasonal accessories;
 - (B) fences;
 - (C) geotechnical or hydrological conditions;
 - (D) recreational facilities;
 - (E) detached structures except the primary garage or carport;
 - (F) seawalls, break-walls, and docks; or,
 - (G) erosion control and earth stabilization measures.
- (e) Roof system inspection requirements.
 - (1) The inspector shall inspect the:
 - (A) roof covering;
 - (B) roof drainage systems;
 - (C) flashings;
 - (D) skylights;
 - (E) chimneys;
 - (F) attic ventilation covers; and,
 - (G) other roof penetrations.
 - (2) The inspector shall describe the roof covering.
 - (3) The inspector shall report:
 - (A) the number of layers of roof covering;
 - (B) asphalt/composition shingles over wood shingles; and,
 - (C) the methods used to inspect the roof.
 - (4) The inspector is not required to inspect:
 - (A) the interiors of flues or chimneys;
 - (B) antennae; or,
 - (C) other installed accessories.
- (f) Plumbing system inspection requirements.
 - (1) The inspector shall inspect:
 - (A) the interior water supply and distribution systems and components;
 - (B) the connections, flow and drainage of fixtures, and fittings at bathtubs, showers, sinks, toilets and the exterior hose bibs immediately adjacent to the structure;
 - (C) the clothes washing machine faucets and drains, unless a washing machine is in place;
 - (D) drain, waste and vent systems and components;
 - (E) the shower and bathtub enclosure surfaces;
 - (F) the water heating equipment, safety devices/valves, clearances, vent systems, flues and chimneys, gas supply piping, and gas shut off valves;
 - (G) the fuel storage and/or fuel distribution systems; and,
 - (H) the drainage sumps, sump pumps and related piping.
 - (2) The Inspector shall describe:
 - (A) water supply piping materials;
 - (B) drain, waste, and vent piping materials;
 - (C) the water heating equipment and the energy sources;
 - (D) the location of the main water shut-off, main fuel shut-off and the house sewer cleanout, and
 - (E) the presence of any shade of yellow corrugated stainless steel tubing ("CSST") flexible gas piping observed during the inspection in which the inspector is not required to identify concealed conditions, components not readily accessible, or any other item excepted from inspection pursuant to OAC 158:70-1-3. If any shade of yellow CSST flexible gas piping is observed, the home inspector shall notify the client, in writing, as follows: "Manufacturers believe the product is safer if properly bonded and grounded as required by the manufacturer's installation instructions. Proper bonding and grounding of the product can only be determined by a licensed electrical contractor."
 - (3) The inspector is not required to:
 - (A) inspect the interiors of flues or chimneys, wells, well pumps, or water storage related equipment, water conditioning systems, solar water heating systems, fire and lawn sprinkler systems, or private waste disposal systems;
 - (B) determine the quantity or quality of the water supply;
 - (C) determine whether water supply and waste disposal are public or private;
 - (D) operate safety valves, shut-off valves or washing machine hose connections, if installed appliances are present; or,
 - (E) use technically exhaustive techniques to determine the water tightness or integrity of shower pans or enclosures.
- (g) Electrical system inspection requirements.
 - (1) Except as provided in OAC 158:70-1-3(b), the Inspector shall inspect:
 - (A) The service drop;
 - (B) the service entrance conductors, cables, and raceways;
 - (C) the service equipment and main disconnects;
 - (D) the service grounding;
 - (E) the interior components of service panels and sub panels by removing the panel dead front covers;
 - (F) the branch circuit conductors, over current protection devices and the compatibility of the conductors with the device;
 - (G) conduit, wiring and splicing including the basement, crawl space and attic;
 - (H) interior and exterior installed lighting fixtures, switches and ceiling fans;
 - (I) receptacles including polarity and grounding, ground fault circuit interrupters and arc fault circuit interrupters; and,
 - (J) exterior electrical components that provide service to a qualifying garage or carport.
 - (2) The Inspector shall describe:
 - (A) the amperage and voltage rating of the service;

- (B) the wiring methods;
- (C) the location of main disconnect(s), distribution panels and sub panels;
- (D) the presence of solid conductor aluminum branch circuit wiring; and,
- (E) the absence of smoke detectors.
- (3) The inspector is not required to:
 - (A) inspect remote control devices unless the device is the only control device, alarm systems and components, low voltage wiring systems and components or ancillary wiring systems and components not a part of the primary electrical power distribution system;
 - (B) measure amperage, voltage/voltage drop, or impedance;
 - (C) insert any tool, probe or testing device inside panels or dismantle any electrical device or control other than to remove the dead front covers of the main and sub panels; or,
 - (D) test or operate any over current protection device except ground fault and arc fault circuit interrupters.
- (h) Heating, Air conditioning and distribution system inspection requirements.
 - (1) Heating systems.
 - (A) The inspector shall open readily openable access panels.
 - (B) The inspector shall inspect:
 - (i) the installed heating equipment including backup heating devices;
 - (ii) controls;
 - (iii) heating operation;
 - (iv) burners and burner chambers in fuel fired heating systems;
 - (v) combustion air provisions;
 - (vi) gas supply piping and shut off valve;
 - (vii) electrical supply provisions and disconnects;
 - (viii) clearances;
 - (ix) vent systems, flues, and chimneys; and,
 - (x) bathroom supplemental heating appliances.
 - (C) The inspector shall describe the heating methods by their distinguishing characteristics and the energy sources.
 - (D) The inspector is not required to:
 - (i) inspect the interiors of flues or chimneys, humidifiers or dehumidifiers, solar space heating systems, and heat exchangers;
 - (ii) measure amperage of electric heating elements.
 - (2) Air conditioning systems.
 - (A) The inspector shall open readily openable access panels.
 - (B) The inspector shall inspect:
 - (i) installed cooling equipment;
 - (ii) cooling operation;
 - (iii) condensate disposal provisions;
 - (iv) the electrical supply provisions and disconnect; and,
 - (v) the refrigerant lines.
 - (C) The inspector shall describe the cooling methods by their distinguishing characteristics and the energy sources.
 - (D) The inspector is not required to:
 - (i) verify sizing or component matching; or,
 - (ii) operate equipment when outdoor temperatures may cause damage to the equipment.
- (3) Heat and air conditioning distribution systems.
 - (A) The inspector shall inspect:
 - (i) plenums and ducts with associated supports, insulation, supply registers and return grills;
 - (ii) radiators and piping;
 - (iii) filters; and,
 - (iv) main air handlers fans and blowers.
 - (B) The inspector shall describe the type of conditioned air distribution system.
 - (C) The inspector is not required to:
 - (i) inspect electronic air filters, heat reclamation equipment or dampers;
 - (ii) determine duct leakage or calculate duct sizing; or,
 - (iii) determine the uniformity, adequacy, or distribution balance of the heat or cooling supply to habitable rooms.
- (i) **Interior inspection requirements.**
 - (1) The inspector shall inspect:
 - (A) walls, ceilings and floors of the dwelling and garage;
 - (B) steps, stairways, balconies and railings;
 - (C) doors and windows including operation, glazing and thermal pane seals;
 - (D) installed cabinets and countertops; and,
 - (E) indicators of harmful water penetration or condensation on interior and structural components.
 - (2) The inspector shall describe the walls, ceilings and floors.
 - (3) The inspector is not required to inspect:
 - (A) paint, wallpaper, and other finish treatments;
 - (B) carpeting and other floor coverings;
 - (C) window treatments;
 - (D) the operation of interior door locks, latches and devices; or,
 - (E) recreational facilities.
- (j) Insulation and ventilation inspection requirements.
 - (1) The inspector shall inspect:
 - (A) insulation and vapor retarders/barriers in unfinished spaces;
 - (B) ventilation of attics and foundation areas;
 - (C) mechanical ventilation systems; and,
 - (D) the clothes dryer exhaust system.
 - (2) The inspector shall describe:
 - (A) the insulation and vapor retarders or barriers in unfinished spaces; and,
 - (B) the absence of insulation in unfinished spaces at conditioned surfaces.

- (3) The inspector is not required to:
 - (A) disturb insulation or vapor retarders or barriers;
 - (B) operate powered attic vents; or,
 - (C) determine indoor air quality.
- (k) **Appliance inspection requirements.**
 - (1) The inspector shall inspect the:
 - (A) food waste disposal;
 - (B) range/stove, regardless of whether it is an installed or free standing appliance;
 - (C) cook top;
 - (D) oven(s);
 - (E) dishwasher;
 - (F) ventilation equipment or range hoods;
 - (G) installed microwave;
 - (H) trash compactor; and,
 - (I) gas appliance connectors and shut off valves.
 - (2) The inspector shall describe the range/stove, cook top and oven(s) by the energy source.
 - (3) The inspector is not required to:
 - (A) operate appliances in all modes or self-cleaning cycles; or,
 - (B) inspect clocks, timers, thermostats or household appliances not listed in these standards.
- (l) **Fireplaces and solid fuel burning appliances inspection requirements.**
 - (1) The inspector shall inspect the:
 - (A) hearth and hearth extension;
 - (B) damper;
 - (C) gas supply; and,
 - (D) the firebox, vent systems, flues and chimneys.
 - (2) The inspector shall describe:
 - (A) the fireplaces;
 - (B) solid fuel burning appliances; and,
 - (C) chimneys.
 - (3) The inspector is not required to:
 - (A) inspect the interiors of flues or chimneys, the fire screens and doors, the seals and gaskets, the automatic fuel feed devices, the mantels and fireplace surrounds, the combustion make-up air devices, the heat distribution assists whether gravity controlled or fan assisted or free standing solid fuel burning appliances;
 - (B) ignite or extinguish fires;
 - (C) determine draft characteristics; and,
 - (D) move fireplace inserts, stoves or firebox contents.

SUBCHAPTER 5. LICENSE REQUIREMENTS, LICENSE FEES, LICENSE PERIOD, RE-EXAMINATION, DISPLAY AND INSURANCE

158:70-5-2. License fees, license period, re-examination, display, and insurance requirements

- (a) Initial license fees. The following fees apply to home inspection industry licensure:

- (1) Approval fees for schools, instructors and home inspection organizations - \$100.00. If the same home inspection organization conference has multiple instructors, the fee will not exceed \$100.00.
- (2) Approval fees for educational course content - \$50.00. If the same home inspection organization conference has multiple courses, the fee will not exceed \$100.00.
- (3) Application for license - \$30.00
- (4) Licensure for reciprocity - \$50.00
- (5) Examination fee - \$200.00
- (6) License fee - \$250.00
- (7) License renewal - \$150.00
- (8) License reactivation - \$50.00
- (b) License period.
 - (1) A license shall expire twelve (12) months after issuance, and may be renewed without penalty for thirty (30) days following expiration.
 - (2) A license which has been expired for more than one (1) year shall not be renewed. An individual may obtain a valid license by successful completion of the appropriate examination and other licensure requirements.
- (c) Re-examination. Any applicant who fails an examination must wait thirty (30) days before retaking the home inspection examination.
- (d) License display. The state issued license number shall be placed on all letterhead stationery, business cards, bids, estimates and printed advertisements, and shall be included in viewable electronic media advertisements. Decals and yard signs shall display the state issued license number.
- (e) Personal license display. All persons subject to these rules shall possess the state issued card any time the person is working. The card shall be shown when requested.
- (f) Insurance requirements. Each licensee must maintain insurance coverage and furnish and maintain in effect a certificate of insurance therefore which indicates that the licensee has a comprehensive general liability policy. Limits of liability are to be no less than \$50,000.00 combined single limit for bodily injury and property damage. The certificate of insurance shall provide for thirty (30) days notice to the Home Inspection License Unit, prior to cancellation or material alteration of the required insurance. The Licensee must add the Construction Industries Board as a certificate holder but not as an additional insured and with no additional cost. This is required in order for the Construction Industries Board to be notified in the event such liability policy is cancelled for any reason or expires for non-payment of premiums. Failure to provide the complete information with current insurance certificate or failure to maintain insurance will result in an inactive home inspector's license being temporarily issued until such time as the requirements are met.
- (g) **One time low-income fee waiver.** See OAC 158:1-3-13(c) regarding eligibility on a one-time, one-year fee waiver.

**SUBCHAPTER 9. EXAMINATION
APPLICATIONS, EXAMINATIONS, COURSE
APPROVAL REQUIREMENTS, INSTRUCTOR
REQUIREMENTS, CONTINUING EDUCATION,
DENIED APPLICATION APPEAL, SUBMISSION
OF RECORDS, SUBSTANTIAL COMPLIANCE
AND RECIPROCITY**

158:70-9-1. Qualifications and examination applications

Applicants for home inspection license examinations must be eighteen (18) years of age or older ~~and be of good moral character,~~ and every application must be accompanied by evidence of successful completion of ninety (90) credit hours of home inspection training that is approved pursuant to OAC 158:70-9-3, or its equivalent.

158:70-9-1.1. Acceptance of Military education, training and experience toward qualification for licensure examination

(a) **Licensure - ~~post-military~~ service.** See OAC 158:1-3-10 for provisions related to the application of substantially equivalent education, training, and experience completed as a member of the Armed Forces or Reserves of the United States, National Guard of any jurisdiction, the Military Reserves of any jurisdiction, or the Naval Militias of any jurisdiction toward satisfying the qualifications for examination and license issuance.

(b) **Military spouse applicant—~~equivalency~~.** See OAC 158:1-3-10 for provisions related to issuance of ~~an equivalent~~ a license in an equivalent category for the spouse of an active-duty member of the Armed Forces or Reserves of the United States.

**SUBCHAPTER 11. LICENSE REVOCATION AND
SUSPENSION AND ADDITIONAL PROHIBITED
ACTS**

158:70-11-2. Additional prohibited acts

(a) No person, entity, or firm may engage in or perform home inspection work without first obtaining a license or registration pursuant to these Rules.

(b) No person shall offer to engage in work as a home inspector during the period his or her license is suspended or revoked.

(c) No employing home inspection firm shall employ or use an unlicensed home inspector to perform home inspection work.

(d) No person, entity, or firm may transfer a license or registration.

(e) No home inspector, licensed pursuant to this Chapter, shall enter into an agreement for the use of his or her license with any firm or person who is, or has been adjudicated to be, in violation of any provision of the Act, or whose license is currently suspended or has within the last year been revoked, unless or until otherwise approved by the Board.

(f) No person shall make a materially false or fraudulent statement in an application for license or for approval of continuing education, engage in cheating, or otherwise commit an act in violation of OAC 158:70-9-2(g).

(g) No person shall falsify or fail to disclose in a home inspection report a material defect.

(h) No person shall accept inspection assignments when the employment itself is contingent upon reporting a predetermined estimate, analysis or opinion.

(i) No person shall accept inspection assignments when the fee to be paid is contingent upon the opinion, the conclusion, analysis, or report reached, or upon the consequences resulting from such assignments.

(j) No person shall perform a home inspection upon a home, or any part thereof, where the home inspector has solicited or performed any work or repair service therein upon a system or component described in Subchapter 1 of this Chapter, within the previous thirty (30) days. If the person performing the home inspection has performed such work within the previous one-hundred eighty (180) days, such prior work must be disclosed to the client.

(k) No person shall solicit or perform work or repair services upon a home, or any part thereof, that the home inspector has inspected for one (1) year after the date of the inspection.

(l) No person shall knowingly accept compensation from more than one client for a single home inspection, unless the home inspector has informed all clients who are paying a fee for that home inspection that such compensation is sought or anticipated.

(m) Unless upon demand in writing by the Board, a law enforcement agency, or by order of a court of competent jurisdiction, no person shall disclose the results of a home inspection to any person other than the client without the written consent of the client.

(n) No person shall fail to disclose to the client any conflict of interest of which the inspector knows or should have known that may adversely affect the client. Based upon the potentially adverse affect to the home inspector's ability to produce an unbiased report, some circumstances or conditions are presumed to adversely affect the client and must be disclosed to the client in writing prior to the inspection. These include, but are not limited to, the following:

(1) Situations where the payment of remuneration or other consideration is made by the home inspector to a third party and representing a reward or compensation to the third party for the home inspector receiving inspection employment.

(2) Situations where the payment of remuneration or other consideration is received by the home inspector from a third party and representing a reward or compensation for the home inspector recommending services or products to the client or other persons having an interest in the property.

(3) In those cases where the client is the buyer of real property, situations where the home inspector has had some prior connection, relationship or association with the seller, his or her assigns or family members related to the seller within the second degree.

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- (4) Situations where prior reports or inspections have been made or conducted upon any system or component of the real property that the home inspector has agreed to inspect.
- (o) No person shall fail to submit a written home inspection report within a reasonable time as determined by the Board to the client after compensation has been paid to the home inspector.
- (p) A home inspector is prohibited from inspecting a home when an immediate family member is a realtor involved in the transaction.

[OAR Docket #20-641; filed 7-17-20]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD CHAPTER 85. ROOFING CONTRACTOR REGISTRATION REGULATIONS

[OAR Docket #20-642]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 2. Registration and Endorsement Application and Renewal Requirements, Procedures, Fees, Duration, Military and Reciprocity

158:85-2-5 [AMENDED]

158:85-2-7 [AMENDED]

Subchapter 5. Registration and Endorsement Requirements and Limitations, Display of Registration Number, Endorsement, Firm Name and Contact Information, Exclusions

158:85-5-3 [AMENDED]

158:85-5-4 [AMENDED]

AUTHORITY:

Construction Industries Board; 59 O.S. §§ 1000.4, 1000.5, 1151.2a, and 1151.4

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 22, 2019

COMMENT PERIOD:

December 16, 2019, through January 17, 2020

PUBLIC HEARING:

January 29, 2020

ADOPTION:

January 29, 2020

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 4, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

October 1, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Gist: The proposed amendments to the Roofing Contractor Registration Regulations add language clarifying existing rules and statutory changes related to SB 670 and HB 2933.

Analysis: The proposed amendments to 158:85-2-5 provide a one-time low income fee waiver related to HB 2933. The proposed amendments to 158:85-2-7 are related to SB 670 and provide a fee waiver for active duty military and their spouses. The proposed amendments to 158:85-5-3 clarify the rule related to truthfully disclosed convictions. There is no prohibition for felonies. The proposed amendments to 158:85-5-4 provides clarification.

CONTACT PERSON:

Stephanie Brown, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2020:

SUBCHAPTER 2. REGISTRATION AND ENDORSEMENT APPLICATION AND RENEWAL REQUIREMENTS, PROCEDURES, FEES, DURATION, MILITARY AND RECIPROCITY

158:85-2-5. Fees

(a) The annual registration and commercial endorsement fee and application fee schedule shall be as follows:

- (1) initial roofing contractor registration - \$75.00
- (2) initial roofing contractor registration by reciprocity - \$75.00
- (3) initial roofing endorsement by reciprocity - \$200.00
- (4) renewal of roofing contractor registration - \$75.00
- (5) application for commercial endorsement on roofing contractor registration - \$30.00
- (6) initial commercial endorsement on roofing contractor registration - \$200.00
- (7) initial commercial endorsement and registration by reciprocity - \$275.00
- (8) renewal of commercial endorsement on roofing contractor registration - \$100.00
- (9) renewal of commercial endorsement and registration by reciprocity - \$175.00
- (10) renewal roofing contractor registration late fee if overdue 31 to 60 days - \$100.00
- (11) renewal roofing contractor registration late fee for suspended registration - \$150.00
- (12) renewal roofing contractor registration reinstatement fee for revoked registration - \$300.00

(b) In addition to a registration being categorized as not in good standing or suspended for nonrenewal, pursuant to 59 O.S. § 1151.12(D), registrants have 31 to 60 days after the expiration of a roofing contractor registration to renew, but a late registration renewal fee of \$100.00 is effective as provided in the Act and as listed above.

(c) Pursuant to 59 O.S. § 1151.12(E), a roofing contractor desiring to renew a registration certificate that has been suspended for any cause provided in the Act shall be assessed a fee equal to twice the amount of the fee established by 59 O.S. § 1151.8(D) as listed above. Further, for any registration that has been revoked for any cause provided in the Act, a reinstatement fee in addition to the registration renewal fee is assessed, both of which are listed above.

(d) Commercial endorsement of a registration requires an examination. Examination fees are separate fees and are paid directly to the testing provider.

- (1) **Payable when.** All registration and endorsement fees shall be paid at the time that the application is filed.

(2) **Initial Registration and Endorsement Fee.** The fee for registration as a Registered Roofing Contractor with commercial endorsement shall be Two Hundred Seventy-Five Dollars (\$275.00)

(3) **Renewal Registration and Endorsement Fee.** The fee for a renewal registration as a Registered Roofing Contractor with commercial endorsement shall be One Hundred Seventy-Five Dollars (\$175.00)

(4) **Change of registry information fee.** The fee for the change of information of a registered roofing contractor in the Oklahoma Registry of Roofing Contractors shall be Twenty Five Dollars (\$25.00). This fee shall be applicable when an applicant or registrant submits a change of information notification form required by 59 O.S. § 1151.11.

(e) One Time low-income fee waiver. See OAC 158:1-3-139(c) regarding eligibility on a one-time, one-year fee waiver.

**158:85-2-7. Registration and Endorsement-
post-military and military spouse
application, expediting issuance of
endorsement to military spouse, and
renewals for endorsement—~~post-military~~
service**

(a) **Acceptance of Military education, training and experience toward qualification for endorsement.**

(1) **Registration and Endorsement - ~~post-military~~ service.** See OAC 158:1-3-10 for provisions related to the application of substantially equivalent education, training, and experience completed as a member of the Armed Forces or Reserves of the United States, National Guard of any jurisdiction, the Military Reserves of any jurisdiction, or the Naval Militias of any jurisdiction toward satisfying the qualifications for registration, examination and endorsement issuance.

(2) **Military spouse applicant—~~equivalency~~.** See OAC 158:1-3-10 for provisions related to registration and issuance of an ~~equivalent~~ endorsement in an equivalent category for the spouse of an active-duty member of the Armed Forces or Reserves of the United States.

(b) **Expediting issuances of registration and endorsement to military spouse.** See OAC 158:1-3-11 for provisions related the Board expediting the issuance of a registration and endorsement for spouses of certain members of the Armed Forces on active duty in this state.

(c) **Renewals for registration and endorsement - ~~post-military~~ service.** See OAC 158:1-3-12 for provisions related to registration renewal while a registrant is a member of the Armed Forces of the United States on active duty, and for provisions related to a registrant whose registration expires while on active duty as a member of the National Guard or reserve component of the Armed Forces.

**SUBCHAPTER 5. REGISTRATION AND
ENDORSEMENT REQUIREMENTS AND
LIMITATIONS, DISPLAY OF REGISTRATION
NUMBER, ENDORSEMENT, FIRM NAME AND
CONTACT INFORMATION, EXCLUSIONS**

**158:85-5-3. Registration responsibilities and
limitations**

The holder of a roofing registration or roofer registration with commercial endorsement, shall:

(1) maintain, and provide notice to the Construction Industries Board as Certificate Holder, the required liability insurance coverage at all times,

(2) maintain workers' compensation coverage satisfactory under the Workers' Compensation Act.

(3) maintain or renew a roofing contractor registration as provided in the Roofing Contractor Registration Act;

(4) file or renew a trade name registration;

(5) file, renew, or properly amend any fictitious name certificate.

(6) maintain an active status of a corporation or registration as a foreign corporation, a limited liability company or registration as a foreign limited liability company, a limited liability partnership registration or foreign limited liability partnership registration, or a limited partnership certificate or limited partnership or foreign limited partnership certificate of authority, with the Oklahoma Office of the Secretary of State.

(7) maintain a registration or license as required by law in another state while registered in this state as a nonresident roofing contractor;

(8) notify the registrar in writing within ten (10) days of a change in name, qualifying party, address, legal business entity, business relationship, structure or affiliation, change in firm ownership of fifty percent (50%) or more of the stock or beneficial interest in the company, legal service agent, or adjudication by a court of competent jurisdiction for any act or omission specified in 59 O.S. § 1151.14(A) or a violation of the Roofing Contractor Registration Act;

(9) file and pay all taxes of the qualifying party and business entity when due in this state.

(10) pay all fines imposed by final orders of the Construction Industries Board, and fines and penalties imposed by courts of competent jurisdiction and agreements with a District Attorney.

(11) comply with state laws and local ordinances relating to standards and permits for roofing services and projects;

(12) submit the roofing contractor's registration certificate number when applying for any permit issued by the state, or any of its political subdivisions, for commercial or residential roofing services or projects, if a permit is required by such authority;

(13) notify the registrar within ten (10) days after he or she receives notice that any conviction has been rendered against him or her or the registrant or qualifying party has made any plea of guilty, nolo contendere or finding

of guilt. The notification shall be in writing, by certified mail, and shall include a copy of the conviction, plea, finding of guilt or judgment and sentence. Conviction of an offense shall not disqualify a person from registration as a roofing contractor under the Roofing Contractor Registration Act; provided, that he or she has truthfully disclosed the conviction and nature of offense;

(14) notify the registrar immediately upon receipt of an order imposing disciplinary action upon its registration issued by any other professional regulatory board, in this or any other jurisdiction.

(15) Utilize a valid written contract when engaging in the business of roofing contractor work as described in Sections 1151.7 and 1151.21 of the Act.

158:85-5-4. Display and posting of registration number, endorsement, and firm name

(a) Each person issued a contractor registration shall display the roofing contractor firm name, the contractor registration number bearing the initials "OK" preceding that registration number issued by the registrar, and commercial endorsement, if any, on all vehicles used to transport materials and tools in the operation of the business. Such names, numbers and lettering shall be printed in letters and numerals at least two (2) inches in height in a conspicuous location on both sides of each vehicle in contrasting color to the background color.

(b) The roofing contractor state registration number, along with any commercial endorsement, must be displayed on all advertising, contracts, and bids. Advertising for the purposes of this subsection shall not include uniforms or promotional items including but not limited to pens, pencils, key chains, tape measures, and the like.

(c) Each registrant, or the agents, servants, and employees of a registered roofing contractor shall post in a conspicuous place on the job site where any roofing work is performed, in size, color contrast, language and written form that is easily legible, the roofing firm name, registration number, existence of any commercial endorsement, and telephone number for the registrant pursuant to 59 O.S. § 1151.7 under which any work is being performed, and on all viewable media containing the registrant's name or registrant's firm name, including but not limited to magnetic signs on vehicles, business cards, contracts, bids, letterhead, signs, and advertisements.

[OAR Docket #20-642; filed 7-17-20]

TITLE 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE

[OAR Docket #20-576]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

Part 1. General

165:5-1-4. Office location; office hours; records [AMENDED]

165:5-1-5. Filing of documents [AMENDED]

165:5-1-9. ~~Telephonic or videoconferencing testimony~~ Telephone or videoconference participation [AMENDED]

Subchapter 3. Fees

Part 1. General Provisions

165:5-3-1. Fees, fines and bonds [AMENDED]

165:5-3-2. Fees for the Petroleum Storage Tank Division [AMENDED]

Subchapter 5. Dockets

165:5-5-1. Dockets; identifying initials [AMENDED]

Subchapter 7. Commencement of a Cause

Part 1. General

165:5-7-1. General application and notice requirements [AMENDED]

Part 3. Oil and Gas

165:5-7-6. Drilling and spacing unit establishment or modification [AMENDED]

165:5-7-9. Well location exception [AMENDED]

165:5-7-10. Increased well density [AMENDED]

165:5-7-27. ~~Enhancement or addition~~ Application for approval of injection and disposal wells [AMENDED]

165:5-7-29. Request for exception to certain underground injection well requirements [AMENDED]

165:5-7-30. Amending existing orders or permits authorizing injection for ~~enhanced recovery injection, saltwater~~ disposal, or LPG storage wells [AMENDED]

Part 5. Public Utilities

165:5-7-61. Procedures for causes filed pursuant to OAC 165:70 [AMENDED]

Subchapter 9. Subsequent Pleadings

165:5-9-4. Intervention and parties of record [AMENDED]

165:5-9-6. Continuances [AMENDED]

Subchapter 13. Initial and Subsequent Proceedings

165:5-13-3. Hearings [AMENDED]

165:5-13-4. Report of the Administrative Law Judge [AMENDED]

165:5-13-5. Exceptions to Report of the Administrative Law Judge [AMENDED]

Subchapter 15. Orders

165:5-15-1. General form and procedure [AMENDED]

Subchapter 19. Contempt

165:5-19-1. Contempt procedure [AMENDED]

Subchapter 25. Motor Carrier Tax and Registration Protests

165:5-25-2. ~~Applications—Filing confidential applications~~ for hearing [AMENDED]

Subchapter 29. Consumer Services Complaints [NEW]

165:5-29-1. Consumer services complaints against regulated utility providers [NEW]

Appendix A. General Notice of Hearing [Revoked]

Appendix A. General Notice of Hearing [NEW]

Appendix B. Notice of Application for Extension of Time for Closure of Noncommercial Pit [Revoked]

Appendix B. Notice of Application for Extension of Time for Closure of Noncommercial Pit [New]

Appendix C. Notice of Hearing for Extension of time for Closure of Noncommercial Pit [Revoked]

Appendix C. Notice of Hearing for Extension of time for Closure of Noncommercial Pit [New]

Appendix D. Notice of Application for Waiver of Pit Closure [REVOKED]

Appendix D. Notice of Application for Waiver of Pit Closure [NEW]

Appendix E. Notice of Hearing for Waiver of Pit Closure [REVOKED]

Appendix E. Notice of Hearing for Waiver of Pit Closure [NEW]

Appendix F. Notice of Application for Authority Authorizing Commercial Pit/Soil

Farming/Recycling Facility [REVOKED]

Appendix F. Notice of Application for Authority Authorizing Commercial Pit/Soil Farming/Recycling Facility [NEW]

Appendix G. Notice of Hearing for Authority Authorizing Commercial Pit/Soil Farming [REVOKED]

Appendix G. Notice of Hearing for Authority Authorizing Commercial Pit/Soil Farming/Recycling Facility [NEW]

Appendix H. Notice of Application for Determination of Allowables [REVOKED]

Appendix H. Notice of Application for Determination of Allowables [NEW]

Appendix I. Notice of Hearing for Determination of Allowables [REVOKED]

Appendix I. Notice of Hearing for Determination of Allowables [NEW]

Appendix J. Witness Identification Form [REVOKED]
Appendix J. Consumer Services Docket Notice of Hearing [NEW]
Appendix K. Witness Identification Form [NEW]

AUTHORITY:

Corporation Commission; Article IX, Sections 18 and 19 of the Oklahoma Constitution; 17 O.S. §§ 1-4; 17 O.S. § 52; 27A O.S. § 1-3-101; 47 O.S. §§ 966 *et seq.*; 52 O.S. §§ 87.6 *et seq.*; 52 O.S. § 149.3; 52 O.S. §§ 287.1 *et seq.*

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2019-11, the proposed rules were submitted to the Governor and Cabinet Secretary on January 22, 2020.

COMMENT PERIOD:

January 22, 2020, through March 16, 2020

PUBLIC HEARING:

March 11, 2020, and March 16, 2020

ADOPTION:

March 16, 2020

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 24, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

October 1, 2020

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The approved rules update, streamline, and clarify existing rules and establish new rules concerning the Commission's Rules of Practice, including, but not limited to, general clean-up throughout the Chapter, provide consistency between similar provisions in OAC 165:5 and 165:10, clarify how confidential information shall be provided to the Commission, address procedures for telephone and videoconference participation during hearings, and allow electronic signatures of Commissioners in certain documents. The approved rules also establish standardized items that must be included in oil and gas related exhibits and orders, allow the U.S. Department of Defense and/or the Federal Executive Agencies to intervene in Public Utility Division causes without needing to file a motion to intervene, provide a process for automatic continuances of the Motor Carrier Citation Docket when the Commission is closed, provide specificity for service of process in contempt causes, provide instructions for submission of confidential International Fuel Tax Agreement/International Registration Plan (IFTA/IRP) information, create a standard process for consumers to file complaints against a regulated utility provider, and update forms with new signature requirements.

CONTACT PERSON:

Jeff W. Kline, Deputy General Counsel, Judicial & Legislative Services Division, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, P.O. Box 52000, Oklahoma City, OK 73105, Telephone (405) 521-2308, Email Jeff.Kline@occ.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. GENERAL

165:5-1-4. Office location; office hours; records

(a) **Principal office.** The principal office of the Oklahoma Corporation Commission is in the Jim Thorpe Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105. The mailing address is P. O. Box 52000, Oklahoma City, Oklahoma, 73152-2000.

(b) **Regional service areas.** The Commission has two regional service areas described as the Eastern Regional Service Area and the Western Regional Service Area. The Eastern Regional Service Area shall consist of the land east of Oklahoma State Highway 99. The Western Regional Service Area shall consist of the land west of that highway. The establishment of these regional service areas shall not limit the services available from either regional service office.

(c) **Eastern regional service office.** In the Eastern Regional Service Area, the Commission maintains a regional service office located at 440 South Houston, Suite 114, Tulsa, Oklahoma, 74127.

(d) **Western regional service office.** In the western regional service area, the Commission's principal office serves as the regional service office.

(e) **Telephonic communication service.** The Judicial and Legislative Services Division shall develop and maintain a system for providing ~~telephonic~~ telephone and/or videoconference communication service for all hearings.

(f) **Office hours.** For each regional service office or other office described in (a) through (d) of this Section, office hours shall be from 8:00 a.m. to 4:30 p.m., each day except Saturday, Sunday, and any legal holiday proclaimed by the Governor or official agency closing. Public records may be viewed during regular office hours. Copies of public records may be obtained from 8:00 a.m. to 4:00 p.m.

(g) **Exercise of Commission authority.** The Commission, or any person exercising its authority, may meet and exercise its official powers and functions at any location in the State of Oklahoma.

(h) **Oil and gas filings.** Applications for oil and gas development, administrative applications, and any other related oil and gas matters may be filed in any regional service office.

(i) **Central records.** The central record of all filings with all regional service offices shall be maintained in the regional service office of the Corporation Commission located in Oklahoma City.

(j) **Court Clerk.** Every oil-and-gas-related document or order tendered to the Court Clerk shall be filed, deposited with, or mailed to the Court Clerk at a regional service office unless the Commission directs otherwise. All documents related to other matters shall be filed, deposited with, or mailed to the Court Clerk at the Commission's principal office unless the Commission directs otherwise. All persons filing, mailing or presenting documents, including orders, to the Court Clerk or Judicial and Legislative Services shall enclose a self-addressed postage paid envelope large enough for the return of a file-stamped or processed copy, provided that a document other than a proposed order may be hand-delivered to the Court Clerk during normal business hours without such an envelope so long as a file-stamped copy of the document is immediately obtained by the presenter. Failure to enclose a self-addressed

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postage paid envelope will result in a file-stamped or processed document not being returned. No document will be mailed to anyone who obtains an immediate file-stamped copy. All documents shall be deemed received upon the date file-stamped by the Court Clerk, subject to the provisions of 165:5-1-5(f). Filing of any document shall not be complete except upon payment of all applicable fees required by law or by the rules of this Chapter. Filing of any document with the Court Clerk shall be deemed filing with the Secretary.

165:5-1-5. Filing of documents

(a) **Document form.** Electronic filing is the Commission's preferred filing method. All persons filing documents with the Court Clerk shall file electronically to the greatest extent possible as directed by the Court Clerk. Documents filed with the Court Clerk in paper format may be printed, typewritten or reproduced by any legible method. All documents filed in paper format must be single-sided on 8 1/2" x 11" paper and ready for digital processing by the Court Clerk. Exceptions to the required document size may be allowed by the Court Clerk for good cause shown. Exact duplicates of any allowed documents must be filed in sections on 8 1/2" X 11" paper to allow for digital processing by the Court Clerk. Quotations shall be indented. Subsequent to the filing of the original application, every page of documents filed with the Court Clerk shall contain a page number, the applicable subject matter docket listed in OAC 165:5-5-1(a), the docket number assigned to the cause by the Court Clerk, and document type, e.g., application, motion, response, or brief. All filed documents must have a continuous pagination for the entire document, including exhibits and attachments. The original application shall include all this information, except the docket number, on each page. No document may be altered after filing; pages may not be otherwise inserted and no interlineations, additions or deletions may be made. If a filing error is made, the correct document or information, as appropriate, shall be submitted as a separate filing to the Court Clerk as soon as possible and the same number of copies as required for the original filing shall be provided to the Court Clerk.

(b) **Filing stricken by motion.** Upon the motion of the Commission or Administrative Law Judge, or the filing of a motion pursuant to OAC 165:5-9-2(b), the Administrative Law Judge is authorized to recommend to the Commission an order to strike the filing of any document containing defamatory, scurrilous or improper language, or otherwise in violation of any of the rules of this Chapter. In case of such recommendation to grant a motion to strike a filed document, the subject document shall be presented to the Commission for ruling on acceptability for filing.

(c) **Required information.** The requirements of this subsection shall not be jurisdictional. All documents shall include the party's or attorney's actual or electronic signature, typed name, business mailing address, telephone number, facsimile number and electronic mail address, if any, with additional copies as may be required by the Court Clerk. A registered user must provide an electronic mail address at the time the registered user files his or her entry of appearance or other initial filing. All documents, except notices of hearing, signed by

an attorney shall contain the name of the State Bar Association to which the attorney belongs and his/her State Bar Association number.

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

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

(f) **Facsimile transfers.**

(1) The Court Clerk shall accept pleadings submitted by facsimile transfer during regular Commission business hours pending payment of the appropriate filing fees and submission of a proper original and requisite copies within two (2) business days of the filed facsimile, in accordance with the provisions of 165:5-1-6(a). New applications must be transferred and completed prior to 3:30 p.m. of each business day.

(2) Unless otherwise delivered the same day, if an application for emergency relief in a spacing, location exception, increased density or multiunit horizontal well proceeding is submitted by facsimile transfer, a copy of such emergency application shall be emailed to the Technical Services Department of the Commission at an ~~email~~ electronic mail address to be designated by the Director of the Conservation Division, on the date of the facsimile transfer.

(3) A facsimile shall be deemed filed on the date of receipt, unless the proper original is not timely received and/or the appropriate filing fee is not paid. When the original documents are not received within two (2) business days of receipt of the facsimile and/or the appropriate filing fee is not timely paid, the facsimile will not be deemed timely filed. It is the responsibility of the filing party to notify the Court Clerk, upon submission of any original, of any document that has been previously faxed to secure a filing date earlier than the date of submission of the original document. Failure to do so may result in a filing date which does not reflect the submission having been faxed on an earlier date. If any original document requires payment of a fee prior to filing, the cashier must also be notified of the faxed document prior to payment of the required fee.

(4) Administrative filings and submissions or requests for reconsideration filed on the Oklahoma Universal Service Fund docket cannot be submitted by facsimile.

(5) Until electronic filing is available, a CD cause number may be requested by faxing a request for a cause number that contains the entire caption of the proposed application, a statement that only a cause number is being requested, and contact information for the party requesting the cause number. This will not be considered a fax filing of the application and the date of filing the application

will be the date the original documents are received in the Court Clerk's office. In order to minimize gaps in the numbering of causes, the cause number requested by fax must be followed by filing original documents containing the exact same caption in the Court Clerk's office, within three (3) business days of the request, or the cause number will be cancelled and may not be reused for any purpose.

(g) **Confidential documents.** All documents and information considered to be confidential must be clearly marked as such on a cover page of the document. All documents deemed and marked as confidential shall be docketed and retained by the Court Clerk. Until the Commission determines otherwise, the cover page only of such filings will be viewable by the public for identification purposes. The responsibility for following these rules concerning confidential documents and information rests solely with counsel, the parties, or any other filer. The Court Clerk does not have any duty to review documents for compliance with this rule.

(h) **Personal Identifier Information.** If a filer includes personal identifier information such as Social Security numbers, tax identification numbers, financial account numbers, driver's license numbers, dates of birth, addresses or other sensitive information, in any document filed with the Court Clerk, electronically or otherwise, the document becomes a public record as filed, unless otherwise ordered by the Commission. Further, unless otherwise ordered or as otherwise provided by law, every filer, whether filing electronically or otherwise, may redact the following information, except the last four digits, in documents prior to filing with the Court Clerk, including but not limited to:

- (1) Social Security numbers;
- (2) taxpayer identification numbers;
- (3) financial account numbers; or
- (4) driver's license numbers.

165:5-1-9. ~~Telephonic or videoconferencing testimony~~ Telephone or videoconference participation

(a) In an unopposed hearing, testimony by witnesses, appearances by parties of record, and arguments made by parties of record may be offered by telephone or ~~videoconferencing connection~~ videoconference, unless the Commission or Administrative Law Judge determines that the presence of the witnesses or parties of record in the courtroom is necessary for the effective and efficient presentation of evidence or argument.

(b) In a protested hearing, testimony by witnesses, appearances by parties of record, and arguments made by parties of record may be offered by telephone or ~~videoconferencing connection~~ videoconference with the consent of all parties of record and the Commission or Administrative Law Judge. With the agreement of all parties, the Administrative Law Judge may conduct a hearing remotely by videoconference. It shall be the responsibility of the proponent of ~~telephonic or videoconferencing~~ telephone or videoconference testimony or argument to obtain the required consent before the hearing. No continuance shall be granted for failure to obtain the required consent.

(c) The cost of ~~telephonic or videoconferencing communication~~ telephone or videoconference service shall be paid by the party requesting its use. If participation through a ~~videoconferencing connection~~ telephone or videoconference service in a proceeding is sought ~~by consent~~, the proponent must indicate the capability to establish the ~~videoconference participation~~ using its own digital device or other means of access.

(d) A proceeding conducted by telephone or videoconference shall be conducted in the same manner as if the parties had appeared in person, and the Commission or Administrative Law Judge presiding over the matter may exercise all powers consistent with the proceeding.

(e) In any proceeding conducted by telephone or videoconference, the remote location(s) shall be considered an extension of the courtroom and held before the Commission or Administrative Law Judge who is presiding. The Commission or Administrative Law Judge's pronouncements, instructions, recommendations and/or rulings shall have the same force and effect as if all participants had been physically present in the courtroom. The Commission or Administrative Law Judge shall consider and rule on any objections of a party of record prior to beginning the proceeding.

(f) An oath administered by the Commission or Administrative Law Judge in a proceeding conducted by telephone or videoconference shall have the same force and binding effect as if the oath had been administered to a person physically present in the courtroom.

(g) In any proceeding conducted by telephone or videoconference, a court reporter, who can see (if videoconference) and hear the witness and other participants, may record notes and transcribe the proceeding without being physically present in the same location as either the Commission or Administrative Law Judge or the remote participants.

(h) In any proceeding conducted by telephone or videoconference, an interpreter, who can see (if videoconference) and hear the witness and other participants, may provide interpreter services without being physically present in the same location as either the judge or the remote participants.

(i) Any system used for conducting a proceeding by telephone or videoconference shall conform to the following minimum requirements:

- (1) Participants shall be able to see (if videoconference), hear, and communicate with each other simultaneously;
- (2) Participants shall be able to see (if videoconference), hear, and otherwise observe any physical evidence or exhibit presented;
- (3) Video and sound quality shall be adequate to allow participants to observe demeanor and nonverbal communications and to clearly see (if videoconference) and hear what is taking place to the same extent as if they were present in the courtroom;
- (4) When feasible, a party and the party's attorney should be allowed to communicate privately off the record by use of a private communication facility (cellphone, landline, facsimile, Skype, etc.) during the proceeding, or during a break. The Commission or Administrative Law

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Judge is not required to provide a private communication facility if none is available.

(j) Any pleading, other document, or exhibit used in a proceeding conducted by telephone or videoconference may be transmitted between the Commission's location and any remote site by electronic means, including, but not limited to, facsimile, scan, or electronic mail address. Signatures on any document transmitted by electronic means shall have the same force and effect as an original signature.

(k) Unless otherwise ordered by the Commission or Administrative Law Judge, any original exhibit offered and/or admitted into evidence from a remote site shall be transferred by the moving party to the court reporter within three (3) business days of the close of the proceeding. If no court reporter was utilized during the proceeding, the Commission or Administrative Law Judge shall instruct the moving party regarding the transmission and custody of the exhibit.

(l) Any stipulation/waiver of any right to be present in the courtroom shall be obtained at the commencement of the proceeding, either on the record or in writing. A written stipulation/waiver shall be filed in the cause and made a part of the record.

~~(d-m)~~ Within three (3) business days following the hearing, each witness testifying by telephone or videoconferencing connection—videoconference shall be required to sign an affidavit verifying the witness's identity, unless the circumstances of the videoconferencing testimony enable the Commission or Administrative Law Judge to verify the identity of the witness, affirming that the witness was provided copies of all documents presented or relied upon, and exhibits offered and/or admitted into evidence, to which the witness testified during the hearing, and affirming that the testimony was unassisted and not prompted or directed by any person. Said affidavit, if necessary, shall be filed in the cause prior to the issuance of an order. A copy of the filed affidavit shall be submitted to the Commission or Administrative Law Judge. Appendix "J"—"K" to this Chapter contains a sample affidavit.

~~(e)~~ If an interested party intends to participate in the hearing by telephone or videoconferencing connection, said party shall so notify the Applicant, prior to the hearing date and obtain the consent of the Commission or Administrative Law Judge.

~~(f)~~ Applicant or applicant's attorney shall be responsible for announcing at docket call those parties who plan to testify or otherwise participate by telephone or videoconferencing connection.

document, unless the document is filed under authorization of and in the name of an instrumentality of the State of Oklahoma.

(A) Filing fees shall not apply to any subsequent pleading or amended application except a Form 1000 required in OAC 165:10-3-1(b)(1)(A) through (E) and OAC 165:10-3-1(c).

(B) No filing fee shall be required for any application filed pursuant to OAC 165:10-3-31, Use of vacuum at the well head.

(C) No filing fee applicable to the conservation docket shall be required for any Notice of Intent to Mediate filed with the Judicial and Legislative Services pursuant to OAC 165:5-23-1 et seq. A per participant fee provided in OAC 165:5-3-1(b)(1)(L) shall be charged for any informal dispute resolution procedure that commences.

(D) No filing fee shall be paid by a party filing a protest to an adverse action of the Commission pursuant to the International Fuel Tax Agreement ("IFTA") or the International Registration Plan ("IRP").

(E) No filing fee shall be paid by a customer filing a Consumer Services docket application against a public utility.

(F) No filing fee shall be required for any application filed on the Oklahoma Universal Service Fund ("OSF") docket.

(G) No filing fee shall be paid by a party filing a protest to a nonconsensual towing Violation Notification issued by the Transportation Division.

(2) **Filing fees.** Any filing fee assessed by this Section shall be due and paid at the time of filing of the document. Neither the Court Clerk's Office nor any division of the Commission shall accept an application subject to a filing fee until the required fee is paid. No filing fee shall be refundable. For documents that are being filed in paper form, all associated filing fees must be paid and the documents submitted to the Court Clerk's Office for filing prior to 3:30 p.m. to allow for document processing within established hours of operation.

(3) **Other fees.** Any other fee assessed by this Section shall be due and payable at the time the service is requested. No service shall be rendered before payment of the prescribed fee. No such other fee shall be refundable.

(4) **Negotiable instruments.** Fees paid by negotiable instruments shall be made payable to the "Oklahoma Corporation Commission." Negotiable instruments include personal checks, cashier checks, certified checks, and money orders. Foreign checks must be payable through a United States bank in United States funds.

(5) **Returned payments.** A service fee of \$20.00 shall be assessed on each check returned to the Commission as a result of the refusal of the bank upon which the check was drawn to honor the same. Upon the return of any check by reason of the refusal of the bank to honor it, the Commission may file a bogus check complaint with the appropriate district attorney. In the event that a payment transaction

SUBCHAPTER 3. FEES

PART 1. GENERAL PROVISIONS

165:5-3-1. Fees, fines and bonds

(a) General.

(1) **Exceptions to filing fees.** For each initial application in each category listed in (b) of this Section, a filing fee shall be paid by the person seeking to file or submit the

for any fee, fine or bond fails, the Commission reserves the right to require payment of that fee, fine or bond, and any future fee, fine or bond owed to the Commission by the same individual or entity, to be made by cash, cashier check, certified check, money order or another secured form of payment.

(6) **Petroleum Storage Tank Division fees.** All fees pertaining to the Petroleum Storage Tank Division are listed in OAC 165:5-3-2.

(b) **Schedule of filing fees.**

(1) **Oil and gas fees.**

- (A) Commercial disposal well application - \$1,500.00
- (B) Commercial earthen pit application - \$1,250.00
- (C) Commercial soil farming site application - \$1,250.00
- (D) Commercial recycling facility application - \$1,000.00
- (E) Noncommercial injection or disposal well application - Form 1015 - \$250.00
- (F) Commercial facilities annual fee due on October 1 of each year:
 - (i) Commercial earthen pit facility - \$750.00
 - (ii) Commercial soil farming facility - \$750.00
 - (iii) Commercial recycling facility - \$750.00
- (G) Conservation docket, ~~and~~ pollution docket, and gas gathering base applications - \$200.00
- (H) Emergency application on the conservation or pollution docket - \$250.00
- (I) Permit to drill - Form 1000:
 - (i) Directional well - \$350.00
 - (ii) Horizontal well - \$400.00
 - (iii) Multiunit well - \$600.00
 - (iv) Vertical well - \$350.00
- (J) Expedited permit to drill - Form 1000:
 - (i) Directional well - \$600.00
 - (ii) Horizontal well - \$600.00
 - (iii) Multiunit well - \$800.00
 - (iv) Vertical well - \$600.00
- (K) Temporary permit to drill - Form 1000:
 - (i) Directional well - \$350.00
 - (ii) Horizontal well - \$350.00
 - (iii) Multiunit well - \$350.00
 - (iv) Vertical well - \$350.00
- (L) Notice of Intent to Mediate pursuant to Chapter 23 of this Chapter - \$5.00 per participant
- (M) Permit for one-time land application of materials - Form 1014S - \$150.00
- (N) Expedited permit for one-time land application of materials - Form 1014S - \$250.00
- (O) Tax exemption application filed pursuant to OAC 165:10-21 - \$100.00
- (P) Transfers of well operatorship - Forms 1073 and 1073I - single well - \$25.00
- (Q) Transfers of well operatorship - Forms 1073IMW and 1073MW - multiple wells - \$250.00
- (R) Notification of intent to plug - Form 1001 - \$100.00

(S) Operator agreement-annual fee-Form 1006B-based on the number of unplugged wells for which the operator is responsible according to Commission records:

- (i) No wells being operated - \$100.00
- (ii) From 1-25 wells - \$250.00
- (iii) From 26-100 wells - \$500.00
- (iv) From 101-~~200-500~~ wells - \$750.00
- (v) ~~From 201-500 wells - \$750.00~~
- (~~vi~~) Over 500 wells - \$1,000.00

(T) Fluid disposal/injection reports:

- (i) Commercial disposal well fluid disposal report-Form 1012C-semiannual per well-\$500.00
- (ii) Noncommercial disposal and injection well and LPG storage well report-Form 1012-annual per well-\$25.00
- (iii) Noncommercial disposal and injection well and LPG storage well report-Form 1012-more than 100 wells-annual fee-\$2,500.00

(U) Permit to use earthen pit, noncommercial disposal or enhanced recovery well pit for temporary storage of saltwater, and pit associated with commercial disposal well surface facility-Form 1014:

- (i) Capacity of pit less than or equal to 10,000 barrels-\$250.00
- (ii) Capacity of pit greater than 10,000 barrels-\$1,000.00

(V) Permit for seismic operations-Form 1000S-\$100.00

(W) Application for temporary exemption from well plugging-Form 1003A-\$100.00

(X) Permit to vent or flare gas from well-Form 1022-\$50.00

(Y) Application for multiple zone well completion, production of well through a multiple choke assembly, and commingling of well production-Form 1023-\$50.00

(2) **Transportation fees.**

(A) Transportation docket application - \$500.00

(B) Other transportation fees:

- (i) Intrastate license.
 - (I) Original application filing fee - \$100.00
 - (II) Sub application filing fee - \$100.00
 - (III) Renewal application filing fee - \$50.00
 - (IV) Reinstatement application filing fee - \$100.00
 - (V) Name change application filing fee - \$50.00
 - (VI) Identification device or per vehicle fee - \$7.00
- (ii) Deleterious Substance License Permit application filing fee - \$350.00
- (iii) International Fuel Tax Agreement (IFTA) fees.
 - (I) IFTA decal - \$2.00 per vehicle per decal set
 - (II) IFTA reinstatement fee - \$100.00

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- (iv) Trailer registration processing fee per trailer registered through the IRP System - \$2.00
- (v) Temporary registration and fuel permit fees (a \$10.00 services fee is added to each permit in this unit):
 - (I) Temporary registration (72 hour trip permit) - \$12.00
 - (II) Temporary fuel permit (120 hours) - \$25.00
 - (III) Unladen or hunters permit (45 days) - \$25.00
- (vi) Harvest permit fees (power units only).
 - (I) Thirty day permit - \$20.00 per axle
 - (II) Sixty day permit - \$35.00 per axle
 - (III) 15 day extension - \$8.75 per axle
- (vii) Transportation Network Company annual permit fee - \$5,000.00
- (viii) Household goods certificate fees:
 - (I) Original application filing fee - \$350.00
 - (II) Sub application filing fee - \$300.00
 - (III) Renewal application filing fee - \$300.00
 - (IV) Reinstatement application filing fee - \$250.00
 - (V) Name change application filing fee - \$50.00
 - (VI) Identification device or per vehicle fee - \$7.00
- (ix) Apportioned commercial motor vehicle registration services fee - \$100.00 per vehicle (apportioned)
- (x) Apportioned commercial motor vehicle registration application reprocessing fee - \$100.00 per application
- (xi) Application for lawful fence - \$500.00. If the Transportation Division determines a lawful fence is required to be constructed by the railroad, the railroad shall have sixty (60) days from the date of notice to refund the application filing fee to the landowner
- (3) **Utility fee.** Public utility docket application - \$100.00
- (4) **Enforcement fee.** Enforcement docket application - \$100.00
- (c) **Certified copies.** A fee of \$1.00 per copied page is charged for each copy of an order or other document on file with the Commission certified by the Secretary, in addition to the fees specified in (d) of this Section.
- (d) **Other fees.** The following fees shall be charged and collected at the time of request for same; none of which shall ever be refundable:
 - (1) Certificate of non-development (maximum of one quarter section) - \$10.00
 - (2) Copies of any file or order -
 - (A) Non-certified copies - \$0.25 per page; certified copies \$1.00 per page
 - (B) Postage - actual cost
 - (3) Microfilmed images from coin-operated microfilm reader (coin box) - \$0.25
 - (4) Batch reproduction on continuing basis (per page) - \$0.25
 - (5) Copy of any document prepared in OCC offices (per page) - \$0.25
 - (6) Copy of any Chapter of Commission rules and regulations - \$10.00
 - (7) Copy of Oil and Gas Conservation rules - \$20.00
 - (8) Current ownership/lienholder information - \$1.00 per vehicle record page
 - (9) Computer generated title history - \$5.00 per vehicle
 - (10) Manual title history - \$7.50 per vehicle
 - (11) Copy of lien release - \$7.50 per vehicle
 - (12) Certified copy of lien release - \$10.00 per vehicle
 - (13) Certified copy of title history - \$10.00 per vehicle
 - (14) Preparation of the record on appeal to the Oklahoma Supreme Court - \$200.00
- (e) **Computer data processing documents.** Reproduction of documents or informational searches involving computer data processing services will be in accordance with ~~the rates established by the Oklahoma Office of Management and Enterprise Services~~ 51 O.S. § 24A.5.
- (f) **Document search fee.** Except where provided otherwise by law, where the request for document copying and/or mechanical reproduction is solely for commercial purpose or clearly would cause excessive disruption of the Commission's essential functions, then a fee of \$10.00 per hour (minimum of one hour) shall be charged to recover the direct cost of document search.
- (g) **Fax.** A service charge of \$5.00 plus \$1.00 per page will be assessed for all outgoing faxes. All incoming faxes for persons not associated with the Commission shall be assessed a copy fee of \$0.25 per page including the cover page.
- (h) **Payments by Credit Card and other means of electronic funds transfer.**
 - (1) "Nationally recognized" credit card means any instrument or device, whether known as a credit card, credit plate, charge plate, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in lieu of a check, as defined by 12A Oklahoma Statute § 3-104(f), in obtaining goods, services or anything else of value or for the use of the cardholder in obtaining such goods, services, or anything else of value on credit and which, in either case, is accepted by over one thousand merchants in this state. The Oklahoma Corporation Commission shall determine which nationally recognized credit card will be accepted for any payments due and owing to the Oklahoma Corporation Commission.
 - (2) Implementation of payment by nationally recognized credit card and other means of electronic funds transfer will be phased in over a period of time as determined by the Commission.
 - (3) The Oklahoma Corporation Commission will verify that sufficient credit is available before acceptance of credit card to insure that no loss of state revenue will occur by the use of such card.

(A) If a person is at a designated receiving point and credit is not available, the person then has the opportunity to pay by other methods accepted by the Commission.

(B) If a person mails in the credit card information and credit is not available, the transaction will be handled as one with no remittance and a bill will be forthcoming.

(4) The Oklahoma Corporation Commission may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such nationally recognized card.

(5) Persons wishing to pay by credit card must be willing to submit normally required credit card information to the Commission. This includes, but is not limited to: card type (VISA, etc.), card number, card expiration date, card holder name as shown, and three digit security personal identification number (PIN). The Commission assumes no liability for unauthorized use of this information.

(6) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account.

(7) "Electronic terminal" means an electronic device, other than a telephone operated by a person, through which a person may initiate an electronic funds transfer.

(8) "Financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to another person.

(9) "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

165:5-3-2. Fees for the Petroleum Storage Tank Division

(a) General.

(1) For each initial application filed on the Petroleum Storage Tank docket, a filing fee shall be paid by the person seeking to file or submit the document, unless the document is filed under authorization of and in the name of an instrumentality of the State of Oklahoma. Filing fees shall not apply to any emergency application, subsequent pleading or amended application.

(2) Any fee assessed by this Section is either due and payable at the time of filing or due and payable at the time the service is requested. Neither service shall be rendered before payment of the prescribed fee nor shall the Court Clerk's Office or any division of the Commission accept any application subject to a filing fee until the required fee is paid. All fees are nonrefundable.

(3) The fees listed in this section may be paid by check, personal checks, cashier checks, certified checks, money

orders, credit cards and other means of electronic funds transfer. Foreign checks must be payable through a United States bank in United States funds. The check or money order should be made payable to the "Oklahoma Corporation Commission - Petroleum Storage Tank Division" and will be deposited to the Oklahoma Petroleum Storage Tank Revolving Fund.

(4) Payments by credit card and other means of electronic funds transfers.

(A) "Nationally recognized" credit card means any instrument or device, whether known as a credit card, credit plate, charge plate, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in lieu of a check, as defined by 12A Oklahoma Statute § 3-104(f), in obtaining goods, services or anything else of value or for the use of the cardholder in obtaining such goods, services, or anything else of value on credit and which, in either case, is accepted by over one thousand merchants in this state. The Oklahoma Corporation Commission shall determine which nationally recognized credit card will be accepted for any payments due and owing to the Oklahoma Corporation Commission.

(B) Implementation of payment by nationally recognized credit card and other means of electronic funds transfer will be phased in over a period of time as determined by the Commission.

(C) The Oklahoma Corporation Commission will verify that sufficient credit is available before acceptance of credit card to insure that no loss of state revenue will occur by the use of such card.

(i) If a person is at a designated receiving point and credit is not available, the person then has the opportunity to pay by other methods accepted by the Commission.

(ii) If a person mails in the credit card information and credit is not available, the transaction will be handled as one with no remittance and a bill will be forthcoming.

(D) The Oklahoma Corporation Commission may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such nationally recognized card.

(E) Persons wishing to pay by credit card must be willing to submit normally required credit card information to the Commission. This includes, but is not limited to: card type (VISA, etc.), card number, card expiration date, card holder name as shown, and three digit security personal identification number (PIN). The Commission assumes no liability for unauthorized use of this information.

(F) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct

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or authorize a financial institution to debit or credit an account.

(G) "Electronic terminal" means an electronic device, other than a telephone operated by a person, through which a person may initiate an electronic funds transfer.

(H) "Financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to another person.

(I) "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

(b) **Fees.**

(1) **Application fee.** The fee to file an application on the Petroleum Storage Tank/Indemnity Fund docket is \$100.00.

(2) **Variance review fee.** The fee for administrative review of a Petroleum Storage Tank Division variance application is \$250.00.

(3) **Annual storage tank permit fee.** Owners of regulated petroleum storage tanks, whether in use or not, are required to pay an annual permit fee as follows:

(A) For petroleum storage tanks - \$25.00 per tank or tank compartment.

(B) For noncommercial agricultural underground storage tanks containing petroleum products - \$10.00 per tank.

(C) For any tank installed or permanently closed during a calendar year, the full yearly fee shall be assessed.

(D) Invoices will be mailed out approximately 60 days in advance of the due date as noted on the invoice.

(4) **UST Installer License.** The fees for an Underground Storage Tank Installer License are:

(A) Application fee - \$50.00

(B) License fee - \$100.00

(C) Annual License renewal fee - \$100.00

(5) **Environmental Consultant License.** The fees for an Environmental Consultant License are:

(A) Application fee - \$50.00

(B) License fee - \$100.00

(C) Annual License renewal fee - \$100.00

(6) **UST Remover License.** The fees for an Underground Storage Tank Remover License are:

(A) Application fee - \$50.00

(B) License fee - \$100.00

(C) Annual License renewal fee - \$100.00

(7) **AST Licensee.** The fees for an Aboveground Storage Tank Licensee are:

(A) Application fee - \$50.00

(B) License fee - \$100.00

(C) Annual License renewal fee - \$100.00

(8) **Vapor Monitor Well Technician License.** The fees for a Vapor Monitor Well Technician License are:

(A) Application fee - \$50.00

(B) Examination fee - \$25.00

(C) License fee - \$100.00

(D) Annual License renewal fee - \$100.00

(9) **Groundwater Monitor Well Technician License.**

The fees for a Groundwater Monitor Well Technician License are:

(A) Application fee - \$50.00

(B) License fee - \$100.00

(C) Annual License renewal fee - \$100.00

(10) **Antifreeze Permit.** The manufacturer of any antifreeze displayed, distributed, manufactured, marketed, produced, sold, used and/or offered for sale or resale, held with intent to sell, or transported within the State of Oklahoma is required to pay the following fees:

(A) Application fee - \$100.00 per brand per type

(B) Annual permit renewal fee - \$100.00 per brand per type

(11) **Miscellaneous fees.**

(A) **Certified copies.** A fee of \$1.00 per copied page is charged for each copy of an order or other document on file with the Commission certified by the Secretary, in addition to the fees specified in this Section.

(B) **Other fees.** The following fees shall be charged and collected at the time of request for same; none of which shall be refundable:

(i) Batch reproduction on continuing basis (per page) - \$0.25

(ii) Copy of any document prepared in OCC offices (per page) - \$0.25

(iii) Copies of any file or order -

(I) Non-certified copies - \$0.25 per page; certified copies \$1.00 per page

(II) Postage - actual cost

(C) **Computer data processing documents.** Reproduction of documents or informational searches involving computer data processing services will be in accordance with the rates established by the Oklahoma Office of Management and Enterprise Services 51 O.S. § 24A.5.

(D) **Document search fee.** Except where provided otherwise by law, where the request for document copying and/or mechanical reproduction is solely for commercial purpose or clearly would cause excessive disruption of the Commission's essential functions, then a fee of \$10.00 per hour (minimum of one hour) shall be charged to recover the direct cost of document search.

(E) **Fax.** A service charge of \$5.00 plus \$1.00 per page will be assessed for all outgoing faxes. All incoming faxes for persons not associated with the Commission shall be assessed a copy fee of \$0.25 per page including the cover page when not submitted for filing with the Court Clerk's office.

(12) **Failure to pay fee.** Failure to pay by the designated due date, insufficient payments or returned payment of any fee within this subsection will result in the Corporation

Commission being authorized to assess payment of any outstanding fee, plus for storage tank permits: a penalty of 50% of the computed total fee and/or suspend tank operation until payment of any fee or penalty assessed under this subsection is received.

SUBCHAPTER 5. DOCKETS

165:5-5-1. Dockets; identifying initials

(a) **Subject matter dockets.** Subject matter dockets shall be maintained by the Court Clerk, with identifying initials preceding the docket number as follows:

- (1) General Docket (GD), which shall consist of causes not coming within the purview of any other docket listed below, and which shall include notices of inquiry.
- (2) Conservation Docket (CD), which shall consist of causes to prevent waste and protect or adjust the correlative rights of parties owning interests in the common source of supply or unitized management of a common source of supply including, but not limited to, spacing, increased density, location exception, pooling and unitization.
- (3) Consumer Services Docket (CS), which shall consist of causes initiated by ~~(A) either~~ the Director of the Consumer Services Division against a regulated utility provider retail public utility or ~~(B) a customer against the customer's regulated utility provider of telecommunications, electricity, natural gas, water, steam or other regulated service of a public utility~~ seeking to require the regulated utility provider to abide by approved tariffs, state statutes, Commission rules, or Commission orders. Public-Regulated utility provider includes public utilities and telecommunications carriers as defined by 17 ~~Okl. Stat.~~ O.S. §§ 41, 139.102 and 151.
- (4) Enforcement Docket (EN), which shall consist of causes initiated by the Commission or any of its directors, the Attorney General of Oklahoma, or other affected parties to find parties in contempt of Commission rules or to require compliance of parties with applicable statutes, rules, and Commission orders.
- (5) Gas Gathering Docket (GG), which shall consist of causes initiated for determination of reasonable fees and terms or conditions of service related to open access to natural gas gathering systems.
- (6) Motor Carrier Citation Docket (MCC), which shall consist of causes initiated by issuance of citations by Commission motor carrier/vehicle officers at roadside, weigh stations or on-site, for alleged violation of state statutes, Commission rules or federal regulations regarding the registration, licensing, certification, or operation of motor carriers or commercial motor vehicles.
- (7) ~~Oil and Gas Citation Docket (OGC), which shall consist of causes initiated by the Director of the Oil and Gas Conservation Division, seeking to find parties in contempt of Commission rules as listed in Appendices E and F of OAC 165:10 and to impose the penalties therein.~~

~~(8)~~ Oklahoma Universal Service Fund Docket (OSF), which for causes filed on or after January 1, 2018, shall consist of causes relating to funding from the Oklahoma Universal Service Fund (OUSF) or the Oklahoma Lifeline Fund (OLF), including, but not limited to, requests for OUSF or OLF funding, submissions relating to OUSF administrative preapproval requests and the OUSF fee assessment.

~~(9)~~ Petroleum Storage Tank Docket (PSD), which shall consist of causes initiated by the Director of the Petroleum Storage Tank Division or other party seeking relief from Commission rules, disputing PSD decisions regarding jurisdiction, corrective action, licensing, system shutdown, Petroleum Storage Tank Indemnity Fund eligibility or reimbursement.

~~(10)~~ Petroleum Storage Tank Division Citation Docket (PSC), which shall consist of causes initiated by issuance of citations by Commission fuel inspectors for alleged violation of state statutes or Commission rules regarding operation of petroleum storage tank systems.

~~(11)~~ Pollution Docket (PD), which shall consist of causes initiated and related to the protection of the environment regarding oil and gas production or the disposal, injection, remediation or storage of deleterious substances produced from oil and gas related activities including, but not limited to, applications for injection wells, commercial disposal wells, disposal pits and recycling.

~~(12)~~ Public Utility Docket (PUD), which shall consist of causes initiated by the Director of the Public Utility Division, a public utility, or other party with standing concerning any matter relating to public utilities, except rulemaking and, effective January 1, 2018, the Oklahoma Universal Service Fund.

~~(13)~~ Rulemaking Docket (RM), which shall consist of causes initiated by the Commission or any of its directors for the promulgation, amendment, or repeal of a Commission statement or group of related statements of general applicability and future effect that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the Commission. [75 Okla. Stat. § 250.3(17)] Formal petitions by the public for rulemaking shall be part of the General Docket. If the Commission orders a rulemaking proceeding as a result of such petition, the rulemaking proceeding shall be part of the Rulemaking Docket.

~~(14)~~ State Fund Plugging Docket (SF), which shall consist of causes initiated by the Director of the Oil and Gas Conservation Division seeking authorization to use monies from the Commission's Plugging Fund to plug or replug abandoned wells in the State of Oklahoma.

~~(15)~~ Transportation Docket (TD), which shall consist of causes initiated by:

- (A) an applicant protesting a Transportation Division determination denying a motor carrier's application seeking a license, certificate, or permit from the Transportation Division to lawfully operate as a for-hire or private motor carrier or for a special permit or registration;

- (B) an applicant protesting a Transportation Division determination denying its registration or fuel tax application or proposed audit assessment;
- (C) an application by the Transportation Division modifying, suspending, canceling or revoking an existing certificate, permit, registration, or license;
- (D) an application by the Transportation Division modifying a previously issued order;
- (E) an application by the Transportation Division to effect an operational change in a transportation regulated entity;
- (F) an interested party protesting a license, certificate, permit or registration being issued or renewed;
- (G) an interested party seeking to modify, suspend, cancel, or revoke an existing certificate, permit, registration or license or to assess penalties to a motor carrier, registrant or licensee;
- (H) a pipeline operator seeking a pipeline acceptance;
- (I) any individual, entity or railroad seeking approval to update, open or close a railroad crossing; or
- (J) any interested party seeking relief from the Commission in transportation matters relating to its jurisdiction.

~~(46-15)~~ "Oil and gas dockets" as used in these Rules includes the following dockets: CD, PD, GG, SF and ~~OGE~~ oil and gas related EN docket.

(b) **Docket assignment.** Every cause shall be assigned a docket number by the Court Clerk, and all documents filed in the cause shall bear the docket number, including the year prefix. The Court Clerk shall:

- (1) File-stamp each document received with the date of receipt.
- (2) Record every document filed in the cause.
- (3) Maintain a complete file of all original documents filed in every cause.

(c) **Improper docketing.** If the Commission or an Administrative Law Judge, after consultation with the Court Clerk, determines that an application has been filed on an improper docket as set forth in (a) of this Section, the Commission shall enter an order transferring the application to the proper docket. The Judicial and Legislative Services shall send the order transferring the application to the proper docket to the applicant by mail, facsimile, or electronic mail, who shall be responsible for sending the order to all parties of record.

(d) **Procedural dockets.** In addition to the subject matter dockets described in (a) of this Section, the Commission may, from time to time, designate procedural dockets.

(e) For the purposes of documentation produced by the case management feature of the Electronic Filing System, individual applications or causes may be denoted as dockets and daily and weekly court calendars may be denoted as agendas.

SUBCHAPTER 7. COMMENCEMENT OF A CAUSE

PART 1. GENERAL

165:5-7-1. General application and notice requirements

(a) **Scope.** Except where otherwise specifically provided in this Subchapter, including the Petroleum Storage Tank Division at OAC 165:5-21-3, ~~and the Oil and Gas Conservation Division at OAC 165:5-7-27 (injection and disposal wells)~~, the provisions of this Section shall govern the commencement of a cause filed with the Commission and over which the Commission may exercise jurisdiction, including applications for declaratory rulings as to the applicability of any rule or order of the Commission.

(b) **Form.** Every cause shall be commenced by:

- (1) An application.
- (2) A complaint.
- (3) An order of the Commission commencing a cause.

(c) **Caption.** The application or complaint shall be headed by a caption, which shall contain:

- (1) The heading, "Before the Corporation Commission of the State of Oklahoma".
- (2) The applicant.
- (3) The relief sought. In the case of a conservation docket or pollution docket cause, the statement shall contain the legal description of the lands involved in the cause.
- (4) The docket identifying initials, year prefix, and cause number, pursuant to OAC 165:5-5-1.
- (5) The title of the document.
- (6) In the case of an enforcement docket cause, the caption shall contain the name(s) of the respondent(s).

(d) **Body.** The body of the application or complaint shall consist of five numbered paragraphs, if applicable, as follows:

(1) **Applicants and respondents identified.** The applicant shall be identified, including name, address, electronic mail address, and telephone number of his attorney or designated representative and the nature of the applicant's interest in the subject matter of the cause; and the name and address of each person (if any) named as respondent.

(2) **Allegation of facts.** The allegation of fact stated in the form of ultimate facts, without unnecessary detail, upon which the right to relief is based. The allegations will be stated in numbered subparagraphs as necessary for clarity.

(3) **Legal authority.** Citations of statutes, rules, orders, and decided cases authorizing the relief sought; including, in the case of a complaint, the laws, rules, regulations, or orders alleged to have been violated. Statutes shall be cited by title and section. Rules and orders of the Commission shall be cited by number. Decided cases shall be cited by citation to official reports. Quotations from legal authorities shall not be required.

(4) **Relief sought.** A brief statement of the provisions of the order, authority, or other relief sought. An application relating to oil and gas conservation shall seek only one type of relief. Formal prayer for relief shall not be required.

(5) **Specify order to be affected.** An application to vacate, alter, modify, or amend an order shall state the

specific order in the body which is sought to be vacated, altered, modified, or amended.

(e) **Certification.** The application shall be signed by the applicant, or an authorized agent of the applicant, or by the attorney for the applicant, and shall set out the mailing address, telephone number, facsimile number, electronic mail address and bar identification number of the person so signing it, as applicable. The person signing the application shall be deemed, on signing same, to be certifying that:

- (1) He has read the application.
- (2) To the best of his knowledge, information, and belief formed after reasonable inquiry the facts and allegations contained in the application are true and correct.
- (3) The application is not filed to harass or to cause unnecessary delay or needless expense.

(f) **Service of an application.** Except as hereinafter provided in this Subchapter, every application and notice of hearing stating the date on which the cause is set for hearing, if required, in which a person is named a respondent shall be served by regular mail on each respondent named therein and Commission staff counsel by the person filing the application.

(g) **Manner of service.** All documents subsequent to the application in a cause may be served on a party of record by regular mail, facsimile, electronic mail or in person, except where the rules of this Subchapter or a statute requires a specific mode of service which shall be followed. Service on a corporation may be by delivery to the registered corporate agent, or by delivery to the principal place of business of the corporation. Service outside the United States and its territories shall be by any means provided by Federal Rule of Civil Procedure 4(f). For purposes of this Section, a corporation may designate its principal place of business by filing a notice thereof with the Court Clerk. When an attorney has appeared of record for a person, all subsequent service shall be on the attorney. Service by mail, facsimile or electronic mail shall be complete on the date and time of transmittal except where otherwise provided in this Subchapter; provided, that a person may be granted appropriate relief upon showing that a document so served was not received, or delivery thereof was delayed.

(h) **Certificate of service.** Except where an affidavit of mailing is required by law or by this Subchapter, a certificate of service shall be filed following or with the filing of every document. The certificate of service shall contain a list of the persons served and the certification that on the date stated a copy of the document was mailed, postage prepaid, transmitted by facsimile, mailed electronically or delivered to each person listed.

(i) **Service not jurisdictional.** Service prescribed by the rules of this Subchapter shall not be jurisdictional except where so provided by the Constitution or by statute. Failure to comply with the provisions of this Section as to mailing and service of notice shall not deprive the Commission of jurisdiction of the application or complaint, but shall be grounds for such appropriate relief as the Commission may order.

(j) **Publication of notice.** Every application, except as provided in this Chapter for motor carrier and public utility applications, shall be accompanied by a notice of hearing, which

date shall be set by the Commission. The notice of hearing shall be published as provided in the rules of this Subchapter.

(k) **Signatures.** ~~The notice of hearing of an application shall be signed by the Secretary certifying to the Commissioners' signatures. The signatures of the Secretary and the Commissioners may be electronic signatures as provided by OAC 165:5-1-14. The notice of hearing shall contain the typewritten name of each current Commissioner at the bottom of the notice, which shall serve as the Commissioner's electronic signature, followed by the signature of the person filing the application.~~

(l) **Content of notice.** The notice shall contain:

- (1) The caption from the application.
- (2) The time, date, and place of hearing.
- (3) Briefly the general nature of the order, rule, regulation or other relief sought.
- (4) In oil and gas causes, where applicable, the names or description of all common sources of supply affected by the order sought; or that the entire state would be affected.
- (5) Who to contact for additional information.

(m) **Form of notice.** The notice shall conform substantially to the form shown in Appendix A to this Chapter.

(n) **Notice by publication.** When a cause other than an oil and gas or Petroleum Storage Tank Division cause is commenced, the applicant shall cause the notice of hearing prescribed in (j) through (l) of this Section to be published in one or more newspapers of general circulation, on dates and for periods as required by law, or this Subchapter, or as the Commission shall order.

(2) In oil and gas causes, unless otherwise provided in this Subchapter, the notice of hearing shall be published one time at least fifteen (15) days prior to the hearing in a newspaper of general circulation published in Oklahoma County, Oklahoma and in a newspaper of general circulation published in each county in which the lands embraced in the application are located.

(3) Publication shall be at the expense of the applicant, and shall be made in a newspaper which has met the statutory requirements for publication of legal notices. Written proof of publication shall be filed in the cause.

(4) Proof of publication shall be established by an original proof of publication.

(o) **Effective date prior to date of issuance of order.** No order may be made effective prior to its date of issuance without evidence placed into the record that the approval of such effective date is necessary. An effective date prior to the date of issuance of the order shall be requested in the application and placed in the special relief paragraph of the notice of hearing.

(p) **Notice of motor carrier motions and applications.** Notice of all motor carrier motions and applications shall be printed on the Commission docket as prescribed by law for circulation to the public.

PART 3. OIL AND GAS

165:5-7-6. Drilling and spacing unit establishment or modification

(a) Notice of hearing relating to drilling and spacing units shall be published one time at least fifteen (15) days prior to the hearing in a newspaper of general circulation published in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in each county in which lands embraced in the application are located.

(b) When an applicant proposes to establish, vacate, alter, modify, amend, or extend a drilling and spacing unit, the application and notice shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon each person or governmental entity having the right to participate in production from the proposed drilling and spacing unit or the existing drilling and spacing unit.

(c) A plat or plats shall be attached to each application for an order to establish a drilling and spacing unit or units or to extend existing spacing within a common source or sources of supply, which plat shall show the spacing units requested together with any spacing units abutting or overlapping the area to be spaced, and any abutting spacing units in all spaced formations. An amended plat shall be provided at the time of the hearing in the event drilling and spacing units have been established after the application was filed and prior to the hearing to reflect the status of the spacing at the time of the hearing.

(d) An application to extend spacing from an adjacent drilling and spacing unit shall state in the body of the application the order number that created the spacing in the adjacent unit that applies to the common sources of supply which are sought to be extended by the application. Such request to extend spacing and citation to such order number shall be placed in the special relief paragraph of the notice of hearing.

(e) Where a well has not been commenced to or completed in the common source of supply sought to be spaced, notice of hearing for an order to vacate, alter, amend, extend, or change a prior spacing order shall be served and published as required in (a) of this Section. Such request to vacate, alter, amend, extend, or change a prior spacing order shall be placed in the special relief paragraph of the notice of hearing.

(f) Where two or more orders have issued spacing a common source of supply and such spacing orders have resulted in there being a conflict either as to the size of the unit or as to a common source of supply or a conflict as to the nomenclature of the common source of supply, then the applicant seeking to vacate, alter, amend, or change one of the prior spacing orders shall either file an application to construe and modify the conflicting orders or may amend a relevant application to accomplish the same result. Notice of hearing shall be served and published as required upon the commencement of a proceeding.

(g) The Commission may issue an order establishing horizontal well units for a common source of supply. A horizontal well unit may be established for a common source of supply for which there are already established non-horizontal drilling and spacing units, and said horizontal well unit may include within the boundaries thereof more than one existing non-horizontal drilling and spacing unit for the common source of supply. Upon the formation of a horizontal well unit that includes

within the boundaries thereof one or more non-horizontal drilling and spacing units, the Commission shall provide that such horizontal well unit exists concurrently with one or more of such non-horizontal drilling and spacing units, and each such unit may be concurrently developed. Notwithstanding the foregoing, the Commission may vacate any non-horizontal drilling and spacing unit upon a proper showing of a change of conditions or change in knowledge of conditions to justify such vacation or deletion, and any such request to vacate or delete any such non-horizontal drilling and spacing unit may be included in and made a part of any application to form one or more horizontal well units.

(1) In any spacing proceeding to establish or form a horizontal well unit, the application filed in such proceeding shall set forth and describe any non-horizontal drilling and spacing unit that exists concurrently with such horizontal well unit, including the API numbers of the well or wells located in any such non-horizontal drilling and spacing unit.

(2) The order entered in such proceeding shall describe any non-horizontal drilling and spacing unit that exists concurrently with the horizontal well unit, including the API numbers of the well or wells located in such non-horizontal drilling and spacing unit. The order establishing or forming a horizontal well unit that exists concurrently with any non-horizontal drilling and spacing unit shall state, based on the evidence presented, that the consent in writing required by subsection (h) of this Section has been obtained and filed or that a waiver of such consent requirement as authorized by subsection (i) of this Section has been granted by the Commission.

(h) No order of the Commission authorizing a horizontal well unit that overlies any existing well, or portion of any existing drilling and spacing unit with any existing well, producing from the same common source of supply shall be entered until:

(1) at least fifty percent (50%) of the ownership having a right to drill in each such well and drilling and spacing unit consents in writing to the formation of such horizontal well unit and such written consent or consents are filed with the Court Clerk of the Commission in the applicable spacing proceeding or otherwise entered into the record in such proceeding; or

(2) such consent is waived by the Commission. Provided, however, in the event any such order is entered by the Commission without the written consent required above or a waiver of such consent, any horizontal well unit purported to be formed by such order for which such consent is required shall not be effective until such consent is filed with the Court Clerk of the Commission in such spacing proceeding or is otherwise entered into the record of such proceeding or such consent is waived by the Commission. Requests for such consent must be sent by restricted mail to the owners having the right to drill in any existing well and/or drilling and spacing unit producing from the same common source of supply as the proposed horizontal well unit. In addition, if the boundaries of the horizontal well unit do not encompass such existing drilling and spacing unit in its entirety, then the application

and notice for the horizontal well unit shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon each person or governmental entity having the right to participate in production from the existing drilling and spacing unit.

(i) Any written consent to the order required under subsection (h) of this Section shall not be a waiver of, nor commitment of, any rights of such owners in either the existing production or the proposed horizontal well unit. If the required percentage of consent cannot be obtained, the applicant may make application to the Commission for a waiver of the consent requirement, and upon a showing of good cause by the applicant, the Commission may waive the consent requirement. For purposes of this subsection, a showing of good cause means applicant must present sufficient testimony and evidence, and the Commission must find in the order, that applicant has established the following:

- (1) Due diligence was exercised to locate each owner having a right to drill in any existing well and/or any existing drilling and spacing unit producing from the same common source of supply as the proposed horizontal well unit;
- (2) A bona fide effort was made to obtain the required percentage of consent;
- (3) Alternate methods of development are inadequate to prevent waste and to protect correlative rights unless the consent requirement is waived and the proposed horizontal well unit created; and
- (4) Any correlative rights or vested rights, or both, of owners in the existing well(s) and/or drilling and spacing unit(s), and in the proposed horizontal well unit, will be adequately protected if the consent requirement is waived and the proposed horizontal well unit created.

(j) If a horizontal well unit formed under subsection (g) of this Section is determined to exist concurrently with any previously formed non-horizontal drilling and spacing unit, or any portion thereof, the order forming such horizontal well unit shall provide that each concurrently existing unit may be separately developed in that a well may be drilled into, completed in, and produce hydrocarbons from the same common source(s) of supply in each such concurrently existing unit, with production from such well to be governed by and allocated pursuant to the applicable unit. If a unit is determined to exist concurrently with another unit and is subject to a prior pooling order, which is in full force and effect, the rights relinquished by a non-participating owner which became vested under such prior pooling order in the same common source(s) of supply shall be treated and recognized as vested rights in any subsequent pooling proceeding covering such other unit. An owner, who participated as a working interest owner under an existing pooling order covering a unit that exists concurrently with another unit, need not participate or continue to participate as a working interest owner under any other pooling order covering such other unit in order to continue to participate as a working interest owner under such existing pooling order; provided, however, if such owner does not participate as a working interest owner under such other pooling order, such owner shall

relinquish its rights to participate in any well drilled under or otherwise covered by such other pooling order.

(k) Any spacing order entered by the Commission pursuant to 52 O.S. §87.1(f) which forms a horizontal well unit or units that exceed six hundred forty (640) acres plus tolerances and variances as allowed by statute shall provide that the contemplated lateral length of the initial horizontal well drilled in any such horizontal well unit formed by such order shall be at least seven thousand five hundred (7,500) feet. Such spacing order shall further provide that upon the initial horizontal well drilled under such spacing order reaching its total depth, an affidavit shall be filed in the spacing proceeding in which such order is entered setting forth the lateral length of such initial horizontal well in any horizontal well unit formed by such order.

(l) At the hearing, except for good cause shown, a production plat, type log, and any other exhibits necessary to support the requested relief (e.g. isopach map or structure of the target zone(s)) shall be provided.

(m) The Commission may request that the record be reopened to receive additional information from the applicant prior to issuance of an order.

165:5-7-9. Well location exception

(a) The application, which shall be limited to a single well, and notice of hearing for an order granting a well location exception for a well drilled or to be drilled for oil or gas into any common source of supply at a location other than that authorized by a rule or order of the Commission shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon the operator of each well located in an adjoining or cornering tract of land or drilling and spacing unit, currently producing from the same common source of supply, toward which tract or unit the well location has been or is proposed to be moved. The application and notice of hearing shall specify the name(s) of the well(s) and operator(s) of the well(s) towards which the location exception well is moving. The application and notice of hearing also shall be served, in the manner required above, upon the operator of any well located in an adjoining or cornering tract of land or drilling and spacing unit currently producing from the same common source of supply, if the requested well location is closer to the offsetting well than would be permitted under the applicable well location tolerances or requirements. Provided, however, if the applicant, or any other entity to be authorized to drill or otherwise operate the subject well, is the operator of any of the wells identified above, then the application and notice of hearing shall be served, in the manner required above, upon each working interest owner in any such well.

(b) An application and notice of hearing for an order granting a well location exception pursuant to this Section may also include a request for an exception to OAC 165:10-3-28(c)(2). The application and notice of hearing shall be served in the manner required in subsection (a) of this Section, and shall contain the information required in such subsection. Where an application includes requested relief for both a location exception and exception to OAC 165:10-3-28(c)(2), such application shall separately identify respondents for the location exception and respondents for the exception to OAC 165:10-3-28(c)(2).

(c) For any well other than a directionally drilled well or a horizontal well, the application and notice of hearing for a location exception shall specify the proposed or actual surface location of the well expressed in feet from the two nearest boundaries of the drilling and spacing unit, or, if no drilling and spacing unit has been established, from the two nearest boundaries of the mineral estate(s) upon which the well will be or has been drilled.

(d) For a directionally drilled well, the application and notice of hearing for a location exception shall specify the proposed or actual subsurface location of the well's entry into and the proposed or actual subsurface location of the well's exit from the common source of supply for which the location exception is requested, expressed in feet from the two nearest boundaries of the drilling and spacing unit or, if no drilling and spacing unit has been established, from the two nearest boundaries of the mineral estate(s) upon which the well will be or has been drilled. For purposes of this section, a directionally drilled well does not include a horizontal well.

(e) For a horizontal well, the application and notice of hearing for a location exception shall specify the proposed or actual subsurface location of the completion interval, as defined by OAC 165:10-3-28, within the common source of supply for which the location exception is requested, expressed as the distance in feet from the nearest boundaries of the drilling and spacing unit or, if no drilling and spacing unit has been established, from the nearest boundaries of the mineral estate(s) upon which the well will be or has been drilled.

(f) The proposed subsurface location for a directionally drilled well or a horizontal well may be described in the application and notice of hearing as no closer than specified footages from the nearest boundaries of the drilling and spacing unit or, if no drilling and spacing unit has been established, from the nearest boundaries of the mineral estate(s) upon which the well will be drilled.

(g) At the time of hearing, a well's location, as set out in the application and notice of hearing, may be changed to another location that is not closer to the boundaries of the drilling and spacing unit or mineral estate(s) described in the application and notice of hearing, that is not closer to any offsetting well the operator of which, or any working interest owner in which, was required to be notified under this section, and that does not require notice to additional operators or working interest owners under this section.

(h) If at the time of the hearing on an application for a directionally drilled well or a horizontal well, the applicant does not have the results of the well survey required by OAC 165:10-3-27, then the Administrative Law Judge may recommend the issuance of an interim order granting the application and, if so, shall consider whether to adjust the allowable based on the potential locations of the well in each common source of supply for which the order is sought. All potential locations shall be considered in the interim order. If the directionally drilled well or the horizontal well is drilled and completed in compliance with the interim order, the well shall be assigned the allowable as set out in the interim order.

(i) If a directionally drilled or horizontal well is drilled and completed in compliance with an interim order approving

a location exception, and no party of record has requested a hearing, the Commission may issue a final order approving the location exception, without further hearing, based on an administrative review by the Commission's Technical Services Department of the following documents, which the applicant must file with the Court Clerk for the record: the directional survey, a final plat showing the actual location of the lateral, and the well completion report. The applicant must also submit a proposed final order to the Commission's Technical Services Department in any cause handled through the administrative review process. In the event the directional survey shows that a directionally drilled or horizontal well was not drilled and completed in compliance with the interim location exception order, the applicant shall notify the Commission and all of the parties entitled to notice in the original hearing establishing the interim order by filing an amended application in the cause setting forth the actual subsurface locations of the well and by giving proper notice thereof. The actual subsurface locations of the well will be considered at a hearing conducted on the date specified in the interim location exception order, or on such date to which the hearing is continued.

(j) Notice of hearing on an application for an order granting a well location exception for a well drilled or to be drilled for oil or gas at a location other than that authorized by a rule or order of the Commission shall be published pursuant to OAC 165:5-7-1(n)(2).

(k) An application for an exception to the minimum distance requirements specified by OAC 165:10-3-28 (c)(2) and (c)(3) for the completion interval of a horizontal well, the notice of hearing for such exception proceeding and any resulting order in such proceeding shall include the API numbers of the existing well or wells being encroached upon by such horizontal well requiring such exception. Such application shall set forth the proposed subsurface location tolerance area or if available, the actual subsurface locations of the completion interval of such horizontal well requiring such exception. The proposed or actual subsurface locations, as applicable, of the completion interval of the horizontal well requiring such exception may be amended at the hearing on any such application. If the results of the well survey required by OAC 165:10-3-28(c)(1) are not available at the time of the hearing on such an application, the Administrative Law Judge may recommend the issuance of an order granting the application on an interim basis. Any final order issuing in such a proceeding shall specify the distance in feet between the completion interval of the subject horizontal well and the well or wells being encroached upon by such horizontal well requiring such exception.

(l) At the hearing, except for good cause shown, a production plat and any other exhibits necessary to support the requested relief (e.g. isopach map or structure of the target zone(s), and cross section) shall be provided.

(m) The Commission may request that the record be re-opened to receive additional information from the applicant prior to issuance of an order.

165:5-7-10. Increased well density

(a) **Notice of hearing.**

(1) For increased well density applications, notice of hearing shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing by regular mail upon:

(A) Each person or governmental entity entitled to oil or gas or the proceeds of oil or gas produced from the common source of supply in the drilling and spacing unit for which the application for an increased density well has been filed; and

(B) The operator, as shown by the records of the Commission, of each well which is commencing or currently producing from the same common source of supply in the drilling and spacing unit or any separate tract of land for which no drilling and spacing unit has been formed for such common source of supply adjoining, cornering or adjacent to the drilling and spacing unit for such an increased density well.

(2) If the applicant is the operator of a well commencing or currently producing from the same common source of supply applicable to the increased density well in a drilling and spacing unit or a separate tract of land for which no drilling and spacing unit has been formed for such common source of supply adjoining, cornering or adjacent to the drilling and spacing unit for such increased density well, notice of hearing shall be served by the applicant no less than fifteen (15) days prior to the date of hearing by regular mail upon each owner, as shown by the records of the operator, with a working interest in such well in such common source of supply.

(3) If the applicant is seeking approval of an increased density well to be completed in a common source of supply for which the Commission has established field rules, and for which no application for an increased density well in such common source of supply has been approved by the Commission subsequent to January 1, 1998, and prior to June 21, 1999, notice of hearing shall be served by the applicant no less than fifteen (15) days prior to the date of hearing by regular mail upon the operator, as shown by the records of the Commission, of each well commencing or currently producing from that same common source of supply governed by the field rules.

(4) Where some person other than the applicant may be authorized to drill an increased density well, the notice shall so state.

(5) No person except for those persons provided for in this subsection shall be entitled to notice of the hearing on an application for approval of an increased density well in any drilling and spacing unit.

(b) **Publication of notice.** Notice of hearing for an increased density well shall be published pursuant to 165:5-7-1(n)(2). If the increased density well is to be completed in a common source of supply for which the Commission has established field rules and for which no application for an increased density well in such common source of supply has been approved by the Commission subsequent to January 1, 1998, and prior to June 21, 1999, notice of the hearing shall also be published one time at least fifteen (15) days prior to the

hearing in a newspaper of general circulation published in each county in which the lands subject to the field rules are located.

(c) **Commingled production.** Where production from an original unit well has been commingled and the operator has failed to obtain a commingling order for that well, an increased density well shall not be produced from the commingled common sources of supply until such time that proof of a commingling order is entered at the hearing for increased density.

(d) **Exhibits.** At the hearing, except for good cause shown, a production plat, isopach map, and any other exhibits necessary to support the requested relief shall be provided.

(e) **Additional Information.** The Commission may request that the record be reopened to receive additional information from the applicant prior to issuance of an order.

165:5-7-27. Enhancement or addition Application for approval of injection and disposal wells

(a) Each application for the approval of a ~~newly drilled or newly converted proposed~~ injection well or disposal well shall be filed with the UIC Department on Form 1015 and shall be verified by a duly authorized representative of the operator. See OAC 165:10-5-5.

(b) The application for the approval of an enhanced recovery injection or disposal well or wells shall be accompanied by:

(1) Plat:

(A) ~~Noncommercial. A plat showing the location and total depth of the well or wells and each abandoned, producing or drilling well, and dry hole within one quarter (1/4) mile of the proposed enhanced recovery injection well or disposal well, for volumes less than 20,000 barrels per day and within one half (1/2) mile of the proposed disposal well for volumes equal to or greater than 20,000 barrels per day, and identifying the surface owner of the land on which the enhanced recovery injection or disposal well is to be located, and each operator of a producing spacing unit or well within one half (1/2) mile of each enhanced recovery injection or disposal well with a requested injection rate of less than five thousand barrels per day, and each operator of a producing spacing unit or well within one (1) mile of each enhanced recovery injection or disposal well with a requested injection rate of five thousand barrels per day or more.~~

(B) ~~Commercial. A plat showing the location and total depth of the well or wells and each abandoned, producing or drilling well and dry hole within one half (1/2) mile of the disposal well, and identifying the surface owner of the land on which the disposal well is to be located, and each operator of a producing spacing unit or well within one (1) mile of each disposal well.~~

(2) ~~If the well has been drilled, a copy of the Completion Report (Form 1002A) and any available electric or radioactivity log of the well.~~

(3) A schematic diagram of the well showing:

(A) The total depth or plugback depth of the well.
(B) The depth of the injection or disposal interval indicating both the top and bottom.

- (C) The geological name (geological group) of the injection or disposal zone.
 - (D) The depths of the tops and bottoms of the casing and cement to be used in the well.
 - (E) The size of the casing and tubing, and the depth of the packer.
- (4) Information showing that injection into the proposed zone will not initiate fractures through the overlying strata which could enable the injection fluid or formation fluid to enter fresh water strata.
- (A) When the fluid injection rate is 1,000 barrels per day or less, or an equivalent rate for any fraction of twenty four (24) hours, an overlying strata of at least 200 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.
 - (B) When the fluid injection rate is greater than 1,000 barrels per day or an equivalent rate for any fraction of twenty four (24) hours, an overlying strata of at least 500 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.
 - (C) When the fluid injection rate is greater than 10,000 barrels per day or an equivalent rate for any fraction of twenty four (24) hours, an overlying strata of at least 3,000 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.
 - (D) If the overlying strata is less than required in (A), (B) and (C) of this paragraph, the Commission may administratively approve injection provided a finding is made that such injection will not initiate fractures through the overlying strata into the fresh water strata. Applicant is required to furnish the Commission sworn evidence and data in support of such findings. The Commission, when issuing a permit approving fluid injection, shall consider the following:
 - (i) Maximum injection rate.
 - (ii) Maximum surface injection pressure.
 - (iii) Injection fluid.
 - (iv) The lithology and rock characteristics of the injection zones and overlying strata.
- (5) Proposed operating data:
- (A) Daily injection rates and pressures. The maximum permitted surface injection pressure will be the pressure requested in the application or 1/2 psi per foot of depth to the top of the injection/disposal interval, whichever is less, unless the results of a fracture pressure step rate test support a higher pressure.
 - (B) Geologic name, depth, and location of injection fluid source.
 - (C) Qualitative and quantitative analysis of fresh water from two (2) or more fresh water wells within one (1) mile of the proposed enhanced recovery injection or disposal well showing location of wells and dates samples were taken, or statement why samples were not submitted. The analysis shall include at a minimum chloride, sodium, and total dissolved solids. Sample collection date(s) must be no more than twelve (12) months prior to the date the application is filed.
 - (D) Qualitative and quantitative analysis of representative sample of water to be injected. The analysis shall include at a minimum chloride, sodium, and total dissolved solids.
- (e) A copy of the application for approval of injection or disposal of water or other substances in a well shall be served by the applicant within five (5) days of the date the application is filed by regular mail or delivered to the following:
- (1) The owner of the surface of the land on which the proposed injection or disposal well is to be located;
 - (2) For a proposed commercial disposal well, to each surface owner and surface lessee of record on each tract of land adjacent and contiguous to the site of the proposed well;
 - (3) For a noncommercial injection or disposal well with a requested injection rate of less than five thousand (5,000) barrels per day, to each operator of a producing spacing unit or well within one half (1/2) mile of such proposed well;
 - (4) For a noncommercial injection or disposal well with a requested injection rate of five thousand (5,000) barrels per day or more, or a commercial disposal well, to each operator of a producing spacing unit or well within one (1) mile of such proposed well;
 - (5) For a noncommercial horizontal injection or disposal well with a requested injection rate of less than five thousand (5,000) barrels per day, to each operator of a producing spacing unit or well within one half (1/2) mile of the lateral of such proposed well; and
 - (6) For a noncommercial horizontal injection or disposal well with a requested injection rate of five thousand (5,000) barrels per day or more, or a horizontal commercial disposal well, to each operator of a producing spacing unit or well within one (1) mile of the lateral of such proposed well.
- (d) Notice of an application relating to injection, disposal or commercial wells shall be published one time for injection and noncommercial disposal wells and two times for a commercial disposal well in a newspaper of general circulation published in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in each county in which land embraced in the application are located. The notice shall include:
- (1) PD or tracking number.
 - (2) Name and address of applicant.
 - (3) Location of proposed well to nearest 10 acre tract.
 - (4) Well name.
 - (5) The geological name of the injection formation.
 - (6) The top and bottom of the injection interval.
 - (7) Maximum injection pressures.
 - (8) Maximum B/D or MCF/D injection rate.

- (9) ~~The type of well (injection, disposal, commercial).~~
- (e) ~~If a written objection to the application is filed within fifteen (15) days after the application is published for injection and noncommercial disposal wells or thirty (30) days after the last publication date for commercial disposal wells, or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of the application. If no objection is filed and the Commission does not require a hearing, the matter may be approved administratively by the Manager of Underground Injection Control.~~
- (f) ~~Any operator of a commercial disposal well facility shall file with the Manager of Document Handling for the Conservation Division an agreement to properly plug the well and reclaim the site upon termination of operations. The agreement shall be on forms available from the Conservation Division and shall be accompanied by surety. The agreement shall provide that if the Commission finds that the operator has failed or refused to comply with Commission rules or take remedial action as required by law and Commission rules, the surety shall pay to the Commission the full amount of the operator's obligation up to the limit of the surety.~~
- (g) ~~The Commission shall establish the amount of surety in the order or permit for the authority to operate a commercial disposal well facility. The amount of surety shall be based on factors such as the depth of the well, dimensions of the facility, and costs of plugging the well, reclamation, monitoring, plugging of monitor wells, any pit closure, trucking of any deleterious substances, remediation and earth work. The amount may be subject to change for good cause. The surety shall be maintained for as long as monitoring is required. The type of surety shall be a corporate surety bond, certificate of deposit, irrevocable commercial letter of credit, or other type of surety approved by order or permit of the Commission. Any type of surety that expires shall be renewed prior to 30 days before the expiration date.~~
- (h) ~~Operators of commercial disposal well facilities authorized prior to the effective date of subsections (f) and (g) must either comply with those subsections or close such facilities within one (1) year of the effective date of those subsections.~~
- (i) ~~Optionally, the operator can file a Unit wide Application for Injection (Form 1015U) that fulfills all the requirements of (b) through (e) of this Section. Upon review and approval, the operator receives a Unit wide permit that allows the operator to file a traditional, individual well application (Form 1015) and if it fits the Unit wide criteria, the UIC permit can be issued immediately without additional area of review, notice, or protest period.~~

165:5-7-29. Request for exception to certain underground injection well requirements

- (a) Each application for an exception to 165:10-5-1 through 165:10-5-10 shall comply with the requirements of OAC 165:5-7-1(a) through (g).
- (b) Each application shall be filed at the UIC Department and shall be verified by a duly authorized representative of the

operator. The application and one complete set of attachments, with additional copies as may be required by the Court Clerk, shall be furnished to the Court Clerk.

(c) The application shall be accompanied by the information required in ~~165:5-7-27(b)~~ OAC 165:10-5-5(b). The Manager of UIC may waive any particular information depending on the nature of the exception.

(d) Notice of the application shall be published pursuant to 165:5-7-1(n)(2).

(e) If a written objection to the application is filed within fifteen (15) days after the application is published or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of the application. If no objection is filed and if the Commission does not require a hearing, the matter shall be presented administratively to the Manager of Underground Injection Control who shall file the Manager's report and make the Manager's recommendations.

165:5-7-30. Amending existing orders or permits authorizing injection for ~~enhanced recovery injection, saltwater disposal, or~~ LPG storage wells

(a) Each application for an amendment to an existing order or permit shall be filed on Form 1015 and comply with the requirements of ~~OAC 165:5-7-27(a) and (b)~~ OAC 165:10-5-5(a) and (b).

(b) The application shall also include a statement of facts explaining in detail the nature of and the reason for the amendment, and shall be signed by a duly authorized agent of the operator.

(c) Notice of the application relating to the nature of the amendment shall be published pursuant to OAC 165:5-7-1(n)(2). The notice shall include:

- (1) UIC tracking number.
- (2) Name and address of applicant.
- (3) Location of proposed well to nearest 10-acre tract.
- (4) Well name.
- (5) The geological name of the injection formation.
- (6) The top and bottom of the injection interval.
- (7) Maximum injection pressures.
- (8) Maximum B/D or MCF/D injection rate.
- (9) The type of well (injection, disposal, commercial, LPG storage).

(d) If a written objection to the application is filed with the Commission within fifteen (15) days after notice of the application is published or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required in OAC 165:5-7-1. If no objection is filed and if the Commission does not require a hearing, the application may be approved administratively by the Manager of Underground Injection Control.

PART 5. PUBLIC UTILITIES

165:5-7-61. Procedures for causes filed pursuant to OAC 165:70

(a) **Purpose.** The purpose of this Section is to establish procedures regarding rate change causes filed on the Public Utility Docket pursuant to OAC 165:70 which will allow the Oklahoma Corporation Commission to fulfill its responsibility to process rate changes within the time prescribed by Title 17 O.S. (Supp. 1993) § 152 et seq.

(1) This Section shall apply to all parties to the proceeding, including the utility, the Commission Staff, the Attorney General and any intervening party of record.

(2) To the extent this Section conflicts with other Sections of the Commission's Rules of Practice, OAC 165:5, the procedures established in this Section shall control.

(b) **Definitions.** The definitions set forth in OAC 165:70-1-2 shall be deemed applicable to this Section.

(c) **Intervening party requirement.**

(1) The Commission Staff, the Attorney General and any intervening party of record shall conform their testimony and exhibits to the format set forth in OAC 165:70-5-4. A waiver of any requirements of Chapter 70 shall be obtained as outlined in OAC 165:70-3-6.

(2) Any interested person seeking to intervene pursuant to OAC 165:5-9-4 shall request permission to intervene no later than ninety (90) days following the filing date of the application for a general rate change. The filing or granting of any Motion to Intervene shall not be grounds to delay, continue or extend any hearing date, deadline or time limit set or to be set in a proceeding.

(3) If the Commission does not rule on a motion to intervene within twenty (20) days from the date the motion to intervene is filed, the motion to intervene shall be deemed to have been granted.

(d) **Data requests/responses.** Any party, including but not limited to the utility, the Commission Staff, the Attorney General and any other intervening party of record, shall answer, within ten (10) business days from the date of receipt, all data requests issued, unless an objection is filed or the parties agree in writing to a different response time. Any data requests received after 3:00 p.m. shall be deemed received the next regular business day.

(1) Data requests submitted by any party prior to the date of filing the application package shall be deemed received the date the application package is filed pursuant to OAC 165:70-3-1.

(2) A copy of all data requests and/or answers to data requests shall be submitted to all counsel of record by regular mail, facsimile, electronic mail or in person at the same time they are issued or answered.

(3) The party served with the data request shall notify the issuing party within five (5) business days of receipt of the requests that the ten (10) business day requirement or otherwise agreed-upon response time cannot be met and provide an explanation for the delay. The party served with the data request shall commit, at the time of such notification, to a response date.

(4) Any objection(s) relating to a data request or the date a response is to be provided shall be presented by the

objecting party within five (5) business days of receipt of the data request. If the parties are unable to reach a resolution regarding the dispute within three (3) business days of the date of the objection, the objecting party shall file a written objection and a hearing on all such objections shall be set on the next Public Utility Motion Docket. It shall be the responsibility of the objecting party to notify the Commission or the Administrative Law Judge that the matter will appear on the Docket.

(e) **General instructions regarding testimony and exhibits.** The following instructions are applicable to all classes of utilities, the Commission Staff, the Attorney General and any intervening party of record who filed testimony and exhibits regarding a general rate change filed pursuant to OAC 165:70:

(1) All schedules and exhibits shall be mathematically correct and properly cross-referenced.

(2) All schedules and exhibits shall be designated as provided in 165:70-5-4.

(3) Headings on all schedules and exhibits shall clearly indicate the party's name, the nature and content of the schedule, the test period covered and the cause number.

(4) All schedules and exhibits shall be typed and/or clearly legible.

(f) **Filing of responsive and rebuttal testimony, notice of major issues to be raised and oral surrebuttal.**

(1) The Commission Staff, the Attorney General and any intervening party of record seeking to present evidence shall file responsive testimony and exhibits no later than the one hundred twentieth (120th) day subsequent to the filing date of the application for a general rate change. Any party seeking only to cross-examine witnesses shall file a statement of position no later than the one hundred twentieth (120th) day subsequent to the filing date of the application for a general rate change. At the time of filing testimony the Commission Staff, the Attorney General and any intervening party of record shall, upon request, provide a copy of the workpapers which support the recommendations contained in their testimony to the requesting party of record. The workpapers shall be organized and presented in the same format as required of the utility by Part 5 of OAC 165:70-5.

(2) If the utility elects to present rebuttal testimony, the rebuttal testimony shall be filed by the one hundred fortieth (140) day subsequent to the filing date of the application for a general rate change.

(3) A hearing on the merits shall commence no later than the one hundred fiftieth (150th) day subsequent to the date the application for a general rate change was filed pursuant to OAC 165:70-3-1.

(4) Parties filing direct testimony pursuant to this subsection (f) may present oral rebuttal testimony to any issue raised for the first time during the hearing. Parties filing responsive testimony pursuant to this subsection (f) may present oral surrebuttal.

(5) Nothing in this Section shall preclude the trier of fact from permitting parties who filed testimony to present oral surrebuttal regarding issues raised for the first time

in oral testimony presented during the hearing, if deemed appropriate.

(g) **Hearings regarding intervention, waiver of requirements, deficiencies, the confidentiality agreement and/or protective order.** Any hearings regarding motions to intervene, disputes related to the Waiver of Requirements contained in OAC 165:70, Deficiencies, the Confidentiality Agreement and/or the need for a protective order shall be set before ~~the Commission en banc, since time is of the essence in resolving these disputes~~ an Administrative Law Judge.

(h) **Amending an application.**

(1) A utility may not significantly amend an application for a general rate change filed pursuant to OAC 165:70 after it has been docketed by the OCC Court Clerk, except as provided in this subsection.

(2) An amendment may be accommodated by withdrawing the initial filing and substituting a new, amended filing in place of the original cause, which will establish a new filing date. An amended filing must conform to the requirements of OAC 165:70-5-1 and will be subject to the sanctions in OAC 165:70-5-2.

(3) For purposes of this Section, an amendment shall be deemed "significant" if it changes the test year, or if it requests more than a five percent (5%) increase in the previously requested revenue requirement, unless such changes are the result of arithmetical error or are mandated by law.

(4) A utility may incorporate a significant change without refileing an entirely new case by agreeing to restart the 180-day period. The new period would begin when the amended application is filed.

(i) **Limitations on active applications for a general rate change.**

(1) A utility may not have more than one active general rate change application pending before the Commission at any one time, unless the Commission has failed to issue a final order upon the first application within two hundred seventy (270) days of that application's filing date. This shall not prohibit the utility from filing a new application for a general rate change if the utility can show its financial integrity or service reliability is materially impacted during the period from the closing of the record to the time in which the Commission makes a final determination on an active rate application.

(2) A cause which has been remanded to the Commission by the Oklahoma Supreme Court after appellate review shall not be deemed an active general rate change application pursuant to this Section.

SUBCHAPTER 9. SUBSEQUENT PLEADINGS

165:5-9-4. Intervention and parties of record

(a) Any person, not subject to subsection d of this Section, interested in the subject matter of a cause may become a party of record by filing a motion for intervention, which shall be accompanied by a notice of hearing and set for hearing on the next motion docket or as agreed to by the parties of record and

the Commission or Administrative Law Judge. The Commission or an Administrative Law Judge shall prescribe terms and conditions upon which intervention shall be allowed.

(b) An intervention shall follow the form provided elsewhere in this Chapter for an application or a response. An intervention may seek affirmative relief.

(c) Each motion to intervene, accompanied by the notice of hearing, shall be served to all parties of record.

(d) The following persons shall become a party of record by filing an entry of appearance or orally stating an entry of appearance at any proceeding regarding the cause:

(1) A person named as a respondent,

(2) A person entitled to individual notice in a cause,

(3) A person seeking to intervene with the agreement of the applicant, all parties of record, and the Commission or Administrative Law Judge, ~~or~~

(4) The Attorney General, ~~or~~

(5) The U.S. Department of Defense and/or the Federal Executive Agencies, but only for causes filed on the PUD docket.

(e) Nothing herein shall waive the requirement that attorneys comply with OAC 165:5-1-10.

165:5-9-6. Continuances

(a) **General.** The Commission or Administrative Law Judge before whom a cause is set may continue or adjourn a hearing at any time for any period, with or without notice or motion. Continuances may be granted for good cause shown, or by agreement of all parties of record at the hearing. A stipulation of a continuance among all parties of record ordinarily will be approved, unless the Commission determines that the public interest requires otherwise. A continuance in a cause may be granted in advance of the date for hearing of the cause in the following ways:

(1) As provided in OAC 165:5-9-2(b)(1); or

(2) The applicant in a cause may request a continuance at least five (5) days in advance of a hearing date from the Docket Clerk or, if the cause has been assigned for hearing, the Commission or assigned Administrative Law Judge. Upon approval of a continuance date, the applicant shall send a notice of continuance stating the continuance date to the Docket Clerk and if the cause has been assigned for hearing, the Commission or assigned Administrative Law Judge. Notice of the continuance date shall be served on all respondents or, if a prehearing/scheduling agreement has been filed or a prehearing/scheduling order has been issued in the cause, notice of the continuance date shall be served on all parties of record. The notice of continuance must be sent by regular mail, facsimile, electronic mail or in person at least five (5) days prior to the date of the hearing. Such cause shall be continued on the docket without the necessity of the appearance of the applicant at the time of hearing.

(b) **Contested motion for continuance.** A contested motion for continuance on the day set for hearing of the cause shall be heard by the Commission or Administrative Law Judge. Such decision may be noted as part of the order of the

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Commission or Initial Report of the Administrative Law Judge if requested by a party of record.

(c) **More than two continuances.** In those cases where two (2) continuances have previously been granted, upon the granting of each additional continuance, written notice of such continuance shall be served by regular mail, facsimile, electronic mail or in person by the person requesting such continuance on all respondents or, if a prehearing/scheduling agreement has been filed or a prehearing/scheduling order has been issued in the cause, notice of the continuance date shall be served on all parties of record at least five (5) days prior to the date the continued cause is set for hearing. The movant shall provide proof of service of such notice at the time of hearing. This subsection shall not apply to matters assigned to before the Commission or an Administrative Law Judge unless the Commission or Administrative Law Judge deems or orders otherwise.

(d) **Day certain.** Every continuance shall be to a day certain. If an applicant has failed to set a continued cause on a day certain for a period more than thirty (30) days after last recorded hearing date as shown from the Commission's docket records, the Director of the Judicial and Legislative Services or an Administrative Law Judge may recommend dismissal of the cause to the Commission, pursuant to OAC 165:5-9-2(e)(4); and the Commission may dismiss the cause without prejudice by an Order Dismissing Cause.

(e) **Continuances of the Motor Carrier Citation Docket when the Commission is closed.** In the event the Commission is closed due to inclement weather or other administrative reason on the date and/or time of the Motor Carrier Citation Docket, all citations scheduled to be heard on the Motor Carrier Citation Docket shall be automatically continued to the following month's docket as posted on the Commission's website.

SUBCHAPTER 13. INITIAL AND SUBSEQUENT PROCEEDINGS

165:5-13-3. Hearings

(a) **Conduct of hearing.** Every hearing shall be conducted by the Commission, by an Administrative Law Judge or as provided at OAC 165:5-13-2.1. The Commission or Administrative Law Judge shall call the cause for hearing, after which proceedings shall be had as provided in this Section.

(b) **Scope of hearings.** The Commission, Administrative Law Judge or Public Utility Referee may state the purpose and scope of the hearing, or the issues upon which evidence will be heard.

(c) **Appearances.** Every person appearing shall enter his appearance by stating his name and address. Thereafter, such person shall be deemed a party of record, unless specified otherwise. An individual may appear on his own behalf. A corporation may appear only by its attorney; provided, that a representative other than an attorney may appear on behalf of a corporation for the sole purpose of making a statement or indicating corporate policy. Such a representative may not assume an advocate's role or introduce evidence or examine witnesses in the proceeding.

(d) **Protests.**

(1) Except as otherwise permitted by this Chapter, any person desiring to protest the relief requested by the applicant shall file a notice of protest with the Court Clerk's office.

(2) Before the protest is filed or within a reasonable time thereafter, the protestant shall give notice to the applicant in a manner designed to advise the applicant of the protest prior to the scheduled hearing. Once filed, the written protest shall be provided to the applicant by regular mail, facsimile, electronic mail or in person.

(3) A protesting party initially may announce a protest to a case at the time of hearing, but shall subsequently file a written protest within a reasonable amount of time after the announcement of such protest.

(4) A protest form will be available on the Commission's website; however, such form is not required as long as the filed protest document contains the required information.

(5) A filed protest must contain the caption of the application and contact information of the protestant or the protestant's attorney.

(6) The provisions of this subsection shall not apply to causes filed on the PUD or OSF dockets.

(e) **Preliminary matters.** The following shall be addressed prior to receiving evidence:

(1) The applicant, or staff counsel, may offer preliminary exhibits, including documents necessary to present the issues to be heard, notices, proof of publication and orders previously entered in the cause.

(2) Ruling may be made on any pending motions, including requests pertaining to discovery.

(3) Stipulations of fact and stipulated exhibits shall be received. No stipulation, settlement, or agreement between the parties of record, their attorneys, or representatives with regard to any matter involved in any cause shall be enforced unless it shall have been reduced to writing and signed by the parties of record or the representatives authorized by the rules of this Chapter to appear for them and thereafter made a part of the record, or unless it shall have been dictated into the record by them during the course of a hearing or incorporated into an order bearing their written approval. This Section does not limit a party of record's ability to waive, modify, or stipulate any right or privilege afforded by the rules of this Chapter, unless precluded by law.

(4) Parties of record may, in the discretion of the Commission or Administrative Law Judge, make opening statements where appropriate.

(5) Any other preliminary matters appropriate for disposition prior to presentation of evidence.

(f) **Rules of evidence.** The Commission and Administrative Law Judges shall follow the rules of evidence applied in the district courts of Oklahoma, except that such rules may be relaxed where the Commission or the Administrative Law Judge deems it in the public interest to do so. The Commission or Administrative Law Judge may exclude evidence upon objection made thereto, or the evidence may be received subject to

final ruling by the Commission. An exception will be deemed to be preserved by a party of record objecting to evidence upon an adverse ruling thereon. The Commission or Administrative Law Judge may exclude inadmissible evidence on his own motion and may direct cumulative evidence be discontinued.

(g) **Order of proof.** The applicant or complainant who institutes a cause may open and close the proof. Staff counsel may open and close a cause instituted by the Commission or a staff member. Intervenor may be heard immediately following parties of record with whom allied in interest. In all cases, the Commission or Administrative Law Judge shall designate the order of proof.

(h) **Examination of witnesses.** Every witness shall be examined and cross-examined orally and under oath by not more than one attorney for each party of record. The Commission or Administrative Law Judge shall designate the order of examination and may limit the scope of examination and cross-examination.

(i) **Adverse party.** A party of record may call an adverse person or an officer or employee of an adverse person, in which case the witness may be impeached and otherwise cross-examined.

(j) **Record.** All testimony shall be taken on the record.

(k) **Prepared testimony.** Written testimony of a witness in form of questions and answers, or a narrative statement may be received in lieu of direct examination upon authentication by the witness under oath. In order to be received and relied upon at the hearing, such testimony and exhibits shall be filed and served upon all parties of record not less than five (5) days prior to the hearing, unless otherwise ordered by the Commission for good cause shown. The witness shall be subject to cross-examination. A written or oral statement by or a communication from any person, or a statement or resolution of a political subdivision, trade association, civic organization, or other organization may be received without cross-examination, but will be considered only as argument and not as proof of any recitation of facts contained therein.

(l) **Documents.**

(1) A photographic copy of a document which is on file as part of the official records of the Commission will be received without further authentication.

(2) A photographic copy of a public record certified by the official custodian thereof will be received without further authentication. A written statement by such custodian of records that no record or entry of described character is found in his records shall be received as proof of absence of such record.

(3) A photographic copy of a document may be substituted for the original at the time the original is offered in evidence.

(4) A document may not be incorporated in the record by reference except by permission of the Commission or Administrative Law Judge. Any document so received must be precisely identified.

(5) The Commission or Administrative Law Judge may require that documents such as rate compilations, statistical or technical data, and tabulated material be filed at a designated time prior to the hearing.

(6) The Commission or Administrative Law Judge may require that additional copies of exhibits be furnished for use by the Commission, staff counsel, and other parties of record.

(7) When evidence is offered which is contained in a book or document containing material not offered, the person offering the same shall extract or clearly identify the portion offered.

(8) The Commission or Administrative Law Judge may permit a party of record to offer a document as part of the record within a designated time after conclusion of the hearing.

(m) **Exhibits.** All exhibits shall be identified by docket type and cause number on the first page of each exhibit prior to submitting to the Commission. All pages of each exhibit shall have continuous pagination. Each exhibit shall conform to the following requirements:

(1) all exhibits must be legible;

(2) the font must be no smaller than a size 10 font;

(3) if multiple colors are used, the colors shall be sufficiently distinguishable; and

(4) data shall be included on each exhibit to support the relief requested.

(n) **Summary exhibits.** An exhibit consisting of a compilation or summary of evidence, records, data, statistics, or other similar information may be received in evidence in addition to or in lieu of the evidence summarized, provided:

(1) The evidence summarized has been admitted in evidence, or is admissible; and

(2) If the evidence summarized has not been admitted, the person offering the summary exhibit has made the evidence summarized available for inspection by all other parties of record, or the information is published in a generally recognized publication which is available to all parties of record. It shall be the responsibility of a person offering a summary exhibit to comply with this subsection in advance of the hearing, and failure to make the evidence summarized available for inspection shall be grounds for refusal to admit the exhibit.

(o) **Closing the record.** The record shall be closed when all parties of record have had an opportunity to be heard and to present evidence, and the Commission or Administrative Law Judge announces that the record of testimony and exhibits is closed. Unless a decision is then announced, the matter will be taken under advisement for later decision.

(p) **Briefs.** The Commission or Administrative Law Judge may require or allow the filing of briefs by the parties of record, and may designate the order and time for filing briefs and reply briefs.

(q) **Reopening the record.** Any person may file and serve, by regular mail, facsimile or electronic mail on all parties of record a motion to reopen the record for further hearing or to offer additional evidence. The Commission, at any time prior to final order in the cause, may, upon such motion or upon the motion of the Commission, order the record to be reopened for the purpose of taking testimony and receiving evidence which was not or could not have been available at the time of the hearing on the merits or for the purpose of examining its

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jurisdiction. A motion to reopen shall be filed and served in the same manner as provided in OAC 165:5-9-2(b). The motion and notice shall include a statement that if the Administrative Law Judge grants the motion, the record may be reopened the same day or on some other day as the Commission may determine.

(r) **Corrections to transcript.** Except as provided in OAC 165:5-13-1(d), an official reporter shall make a stenographic and electronic record of the hearing. Errors claimed to be in a transcription of either a contested or uncontested hearing shall be noted in writing and suggested corrections may be offered to the Commission or Administrative Law Judge who presided at such hearing within ten (10) days after the transcript is filed, unless the Commission or Administrative Law Judge shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record and the Commission or Administrative Law Judge. If not objected to within twelve (12) days after being offered, the Commission or Administrative Law Judge shall direct that such suggested corrections be made and the manner of making them. In the event that parties disagree on suggested corrections, the Commission or Administrative Law Judge, with the aid of argument and testimony from the parties of record, shall then determine the manner in which the record shall be changed, if at all.

(s) **Preparation of report or order.** The Commission or Administrative Law Judge may permit or direct any party or parties of record to prepare a proposed report or order in any protested cause. In unprotested causes, the applicant shall prepare and submit a proposed Commission order.

(1) Orders regarding non-emergency applications shall be submitted to the Administrative Law Judge within thirty (30) calendar days of the date the Administrative Law Judge announced the recommendation unless the Administrative Law Judge directs otherwise.

(2) Proposed orders regarding emergency applications shall be submitted to the Administrative Law Judge within ten (10) business days of the date the Administrative Law Judge announced the recommendation unless the Administrative Law Judge directs otherwise.

(3) Failure to submit a proposed order to the Administrative Law Judge within the time frame required by this subsection may result in the Administrative Law Judge reopening the record, with five (5) business days' notice to the party or parties of record, and the application being recommended for dismissal unless good cause is shown for the failure to supply the proposed order as required. Notice to the party or parties of record may be provided via electronic mail.

165:5-13-4. Report of Administrative Law Judge

(a) At the conclusion of a hearing before an Administrative Law Judge, such officer shall, at the earliest practicable date, file a written report in the proceeding. The report shall contain the following:

- (1) Names of parties of record and their attorneys.
- (2) Brief statement of facts establishing jurisdiction of the cause.

(3) Brief summary of the evidence of each party of record who offered evidence.

(4) The pertinent facts as found by the officer upon consideration of all evidence offered.

(5) Recommended conclusions of law and recommendations as to action to be taken or relief to be granted or denied.

(6) In oil and gas conservation causes and pollution causes, such report shall be prepared only when a party of record in the hearing before the Administrative Law Judge has formally, in writing, protested the granting of the application, or, in the judgment of the Administrative Law Judge, the issuance of a report is required.

(b) The Administrative Law Judge shall send a copy of the report by regular mail, facsimile, electronic mail or in person to each party of record.

(c) At the expiration of ten (10) business days after the report is filed, if no exceptions are filed, the Commission shall enter such order as shall be deemed appropriate upon consideration of the report.

(d) In any conservation or pollution cause in which the Administrative Law Judge has recommended that an order issue, but the approval of staff counsel or technical staff is withheld after all efforts have been exhausted to resolve technical or legal problems with the applicant and Administrative Law Judge, the Administrative Law Judge shall issue a report in accordance with this Section, allowing any person time to file exceptions.

(e) Upon request by a Commissioner, an Administrative Law Judge shall appear at any scheduled signing agenda, Commission hearing or public deliberation to respond to questions from the Commissioners concerning the proposed order or report of the Administrative Law Judge.

(f) When a recommendation is made by an Administrative Law Judge on the Motor Carrier Citation Docket, a report for individual citations shall only be required once a request has been received conforming with OAC 165:5-13-5(a)(3).

165:5-13-5. Exceptions to Report of Administrative Law Judge

(a) **Reviewability.** Except as provided in OAC 165:5-9-6(c) for rulings on continuances, any report from Administrative Law Judges shall be subject to review in the manner prescribed in this Section. Oral argument before the Commission en banc in an oil and gas ~~or transportation~~-related matter is not a matter of right. The Commission en banc may deny a motion to entertain oral argument on any oil and gas ~~or transportation~~-related exceptions without a response being filed or hearing oral presentation on said motion.

(1) **Oral exceptions regarding motions and emergency matters.** Any person adversely affected by a decision of an Administrative Law Judge on the motion/emergency docket shall have no more than five (5) days in which to advise the Administrative Law Judge, other parties of record, and the Judicial and Legislative Services of his or her intent to lodge exceptions and any request for oral arguments on the exceptions before the

Commission en banc. Written exceptions shall not be required. Oral exceptions shall be set for hearing before the Corporation Commission sitting en banc unless referred to an Oil and Gas Appellate Referee or an Administrative Law Judge regarding matters involving issues addressed in Chapters 10, 15, 16, ~~20, 25, 26, 27, 28, and/or 29, 30 and/or 32.~~ Oral exceptions in all other matters shall be set for hearing before the Commission sitting en banc. Oral exceptions will be set on the next regularly scheduled day for such matters unless:

- (A) The parties agree to another date; or
- (B) The Commission specifies otherwise.

(2) **Exceptions to the report from the hearing on the merits.** Any person adversely affected by a report of an Administrative Law Judge from the hearing on the merits shall have ten (10) business days in which to file exceptions to the report before the Commission en banc. To perfect exceptions, written exceptions must be filed within ten (10) business days after filing of the Report of the Administrative Law Judge. The person filing exceptions shall serve copies of the exceptions and notice of hearing for the exceptions on all parties of record and the Administrative Law Judge below. Such service shall be made not later than five (5) days after the expiration of the ten (10) business day period for filing the exceptions. In exceptions before the Commission en banc arising from the Petroleum Storage Tank and/or Indemnity Fund, an additional ten (10) business days shall be allowed for the filing of cross exceptions. OAC 165:5-13-2 shall govern the setting of the exceptions. If a party desires the Commission en banc to hear oral arguments on any exceptions, a motion for oral argument of exceptions before the Commission en banc must be filed with the exceptions.

(3) **Exceptions to Report from the Motor Carrier Citation Docket.** Any party of record adversely affected by a recommendation of an Administrative Law Judge on the Motor Carrier Citation Docket shall have five (5) business days from the date the oral recommendation is made to request a report of the Administrative Law Judge for the purpose of filing written exceptions. The request shall be sent jointly to the Administrative Law Judge who issued the recommendation and all other parties of record. Written exceptions shall be filed within ten (10) business days of issuance of the written report. The hearing on the written exceptions shall be heard by an Administrative Law Judge on the next available Motor Carrier Citation Docket or at the Commission en banc's discretion.

(b) **Contents of the exceptions.** For purposes of (a)(2) of this Section, the written exceptions shall specifically state the findings or portions of the report to which the person takes exception, and in what respect the person alleges the findings and report to be in error. A person may be permitted to amend his exceptions, or to present at the initial hearing on exceptions thereon additional grounds for exceptions from the report. A person taking exception from any part of the summary of the evidence stated in the report of the Administrative Law Judge, shall attach to his exceptions a transcript or what he deems a correct summary of the pertinent evidence, provided that if the

transcript is unavailable at the time of filing of the exceptions, then any person filing exceptions desiring to use a transcript instead of a summary of evidence shall, at the discretion of the Commission en banc, or the Oil and Gas Appellate Referee or Administrative Law Judge to whom the exceptions have been referred, submit the transcript as soon as it is available. In the absence of such a transcript or summary of the evidence, the exceptions shall be considered based on the summary of evidence in the appealed report.

(c) **Responses to written exceptions.** For purposes of exceptions under (a)(2) of this Section, any other person may file written response to the exceptions within five (5) business days after service thereof, and may attach thereto a transcript or his own summary of the pertinent evidence, provided that if a transcript is unavailable at the time of the filing of the exceptions, the party desiring to use the transcript instead of a summary of evidence shall, at the discretion of the Commission en banc, or the Oil and Gas Appellate Referee or Administrative Law Judge to whom the exceptions have been referred, submit the transcript as soon as it is available. In the absence of a transcript or written summary of evidence submitted by a party of record, the exceptions shall be considered upon the summary of the evidence in the exceptions to the report.

(d) **Contents of the Oil and Gas Appellate Referee or Administrative Law Judge Reports.** In a case where exceptions are referred to an Oil and Gas Appellate Referee or Administrative Law Judge, such Referee or Administrative Law Judge shall file a written report, stating a recommendation to the Commission to affirm, reverse, or modify the findings of fact or conclusions of law of the Administrative Law Judge below or to remand the cause for further hearing. The Commission, as the final arbiter, shall enter the order it deems appropriate.

(e) **Scope of review by the Commissioners.** With respect to any report, the Commission sitting en banc may affirm, reverse, or modify the findings of fact or conclusions of law of the Administrative Law Judge, or may remand the cause for further hearing. The Commission shall enter the order in its discretion as it deems appropriate.

SUBCHAPTER 15. ORDERS

165:5-15-1. General form and procedure

(a) **Contents of orders.** The Commission may prescribe a standardized format for all orders. Every order of the Commission shall contain the following where appropriate or except where the Commission determines otherwise:

- (1) Caption, cause number on the appropriate docket and order number. Every page of the order shall also contain a page number, the applicable subject matter docket listed in OAC 165:5-5-1(a), the docket number assigned to the cause by the Court Clerk, and order type, e.g., emergency order, final order, etc.
- (2) Appearances.
- (3) Date and place of all hearings.
- (4) Summary of allegations of applicant, and of all other parties of record.

- (5) Summary of evidence of applicant, and of all other parties of record.
 - (6) Findings of fact, containing all ultimate facts found to have been established.
 - (7) Conclusions of law, containing:
 - (A) All legal conclusions found to be applicable to the facts; and
 - (B) The directive of the order stated in concise and mandatory language.
 - (8) Signature of the Secretary certifying as to all Commissioners participating in making the order. The signatures of the Secretary and Commissioners participating in the making of the order may be electronic signatures as provided in OAC 165:5-1-14.
 - (9) Seal of the Commission.
 - (10) Date of filing, and effective date where appropriate.
- (b) **Duty to send orders.** ~~The Court Clerk—Commission~~ shall immediately ~~mail or otherwise deliver~~ provide a copy of the order to the applicant. Upon the implementation of electronic filing, delivery shall only be made by electronic mail, unless there are exigent or extraordinary circumstances. Except where otherwise specifically provided in this Chapter, the applicant shall thereafter mail or otherwise deliver a copy of the order within five (5) days of the receipt of the order to all parties of record and to each respondent in the cause. Where an attorney has appeared of record for a person, service shall be on the attorney.
- (c) **Effectiveness of order.** The issuance of or effectiveness of an order or its enforcement will not be stayed or postponed by the filing of any motion for rehearing or for other relief therefrom. The Commission may by order stay any order pending further hearing, and may stay or postpone the effective date thereof, or enforcement thereof for such time and on such terms as may be just.
- (d) **Order titles and numbers.** An order of the Commission, descriptively titled, shall be issued for all motions and other matters set for hearing, except for continuances, and all such orders shall be given an order number; provided that when a motion is withdrawn, no order shall be required to document the withdrawal.

SUBCHAPTER 19. CONTEMPT

165:5-19-1. Contempt procedure

- (a) **Commencement.** ~~A cause filed for contempt for disobedience to or violation of law or a rule, regulation, order, or judgment of the Commission, shall be commenced by the filing of a verified complaint. A contempt proceeding is commenced with the filing of a verified Complaint. Prior to the filing of a contempt proceeding by the Commission, or a division thereof, the self-reporting of an apparent violation and corrective actions taken by the Respondent, along with plans to prevent future violations, and/or other mitigating factors should be considered.~~
- (b) **Complaint.** The complaint shall state:
- (1) The name of the person, firm, trust, corporation, or association against whom the complaint is made.

- (2) Each law, order, rule, regulation of which violation is charged.
 - (3) In general terms, the acts or omissions constituting the violation of which complaint is made. If complaint is made of more than one violation, each violation shall be separately stated.
- (c) **Citation.** When a complaint is filed, the Secretary shall issue in the name of the state a citation directed to the person against whom complaint is made, which citation shall be accompanied by a copy of the complaint. The citation shall state:
- (1) The name of the complainant and the date the complaint was filed.
 - (2) A brief description of the nature of the complaint.
 - (3) Reference to the accompanying copy of the complaint.
 - (4) The date upon which the complaint is set for hearing, which shall not be earlier than ten (10) days from the date the citation is served.
 - (5) A statement that, unless the person complained against shall on or before the date for hearing file a response to the complaint, the allegations and charges therein will be taken as confessed.
- (d) **Service of citation.** Service of the citation for contempt may be made by a person directed to do so by order of the Commission. Such service shall be made in accordance with the rules of the Commission. Service shall be made by mailing the citation for contempt by certified mail to the respondent's last known address as listed in Commission records, and, if applicable, to the respondent's registered agent as listed with the Oklahoma Secretary of State. The respondent is responsible for notifying the Commission of any change of address.
- (e) **Return of service.** The person making the service shall make his return thereof, and file the same with the Court Clerk. The return shall show the time when the citation was received by him, and the time and manner the same was served by him, and such return shall be verified by the person making the service. Service of the citation for contempt on the respondent by certified mail shall be considered effective on the date of receipt, or if refused, on the date of refusal of the complaint by the respondent, if returned from the last known address as listed in Commission records for the following reasons, including, but not limited to:
- (1) ~~Signed for by any person at the address listed.~~
 - (2) ~~Undeliverable—no forwarding address, forwarding address expired, unclaimed and/or refused.~~ If the certified mailing is returned as undeliverable, the Commission or Administrative Law Judge shall determine sufficiency of service and may recommend additional service requirements. The Commission or Administrative Law Judge may use the service of process requirements in 12 O.S. § 2004 as guidance to ensure effective service.
- (f) **Default.** If no response to the complaint is filed on or before the date set for hearing, or if a respondent fails to appear at the time set for hearing, as specified in the citation, the Commission may immediately proceed to hear the complaint. After hearing the evidence, the Commission shall impose such fine, cancellation, suspension, or other order or punishment as the facts and circumstances warrant, or dismiss the complaint.

(g) **Response.** A respondent who desires a hearing shall, on or before the time specified in the citation for hearing, file a response to the merits of the cause and shall appear at the time set for hearing. The response shall include all objections and defenses of any nature to the complaint and may include a motion to dismiss the complaint for reason of insufficiency thereof or lack of jurisdiction.

(h) **Hearing procedures.** At the hearing, the Commission shall first determine whether jurisdiction and service are proper, then hear all objections and defenses other than to the merits of the complaint and shall enter appropriate order thereon. Amendments may be permitted upon terms that are just, with or without grant of a continuance. After all preliminary questions are heard, the Commission shall hear the merits of the complaint, and at the conclusion thereof, shall impose such fine, suspension, cancellation, or other order or punishment as the facts and circumstances warrant, or dismiss the complaint.

(i) **Hearing date.** Every cause instituted hereunder shall be tried on its merits on the date specified in the citation, or at such other time to which such cause shall be continued for hearing by the Commission.

SUBCHAPTER 25. MOTOR CARRIER TAX AND REGISTRATION PROTESTS

165:5-25-2. Applications Filing confidential applications for hearing

(a) Taxpayer or ~~Registrant~~ applications for hearing shall be filed with the Commission's Court Clerk's Office. Applications shall be in writing, marked "CONFIDENTIAL" pursuant to OAC 165:5-1-5(g), signed by the taxpayer/registrant, taxpayer or registrant or an authorized representative thereof, and shall set out therein:

- (1) The name, mailing address, physical address, telephone number, and e-mail address, and social security number or employer's identification number of the taxpayer/registrant taxpayer or registrant;
- (2) A statement of the amount of the deficiency as determined by the Transportation Division in the proposed assessment, the nature of the tax or fee and the amount thereof in controversy, or the denial of base state registration;
- (3) A clear and concise statement of each item in dispute;
- (4) The argument and any legal authority upon which each item in dispute is made; provided, that the ~~taxpayer/registrant~~ taxpayer or registrant shall not be bound or restricted in such hearing, except on exceptions, to the arguments and legal authorities contained and cited in said applications or presented in the initial hearing;
- (5) A statement of the relief sought by the ~~taxpayer/registrant~~ taxpayer or registrant;
- (6) A verification by the ~~taxpayer/registrant~~ taxpayer or registrant or his duly authorized agent that the statements and facts contained therein are true; and

(7) In a refund claim, a statement as to whether the basis for the claim request is due to a mistake of law or a mistake of fact with a brief explanation of the mistake.

(b) Pursuant to 47 O.S. § 1170 and 51 O.S. § 24A.29, the Commission hereby determines that all reports and files of the Commission concerning the administration of the IFTA/IRP are confidential. All information classified as confidential shall remain confidential unless otherwise provided by law.

(c) The taxpayer or registrant may authorize the disclosure of information to any person pursuant to a written waiver of confidentiality.

SUBCHAPTER 29. CONSUMER SERVICES COMPLAINTS

165:5-29-1. Consumer services complaints against regulated utility providers

(a) **Mediation.** Prior to filing a complaint pursuant to this section, the consumer and the utility are encouraged to follow the mediation provisions in OAC 165:35-21-40, OAC 165:45-11-20, and OAC 165:65-11-17. The consumer and utility are encouraged to continue mediation following the filing of a complaint.

(b) **Commencement.** A cause filed on the Consumer Services Docket shall be commenced by the filing of a complaint.

(c) **Applicant.** A complaint may be filed by either the Director of the Consumer Services Division against a regulated utility provider or customer against the customer's regulated utility provider.

(d) **Respondent.** The Respondent to a complaint is limited to a regulated utility provider, which includes public utilities and telecommunications carriers as defined by 17 O.S. §§ 41, 139.102 and 151.

(e) **Complaint.** The complaint shall state:

- (1) The applicant or attorney's actual or electronic signature, typed or handwritten name, mailing address, telephone number, facsimile number (if applicable), and electronic mail address;
- (2) The name of the person, firm, trust, corporation, or association against whom the complaint is made;
- (3) In general terms, the issues, acts, or omissions constituting the nature of the complaint;
- (4) Each alleged violation of a tariff, state statute, Commission rule, or Commission order shall be stated separately; and
- (5) The relief requested by the applicant.

(f) **Notice of hearing.** When a complaint is filed pursuant to this section, a notice of hearing scheduling the prehearing conference shall be prepared by the applicant pursuant to OAC 165:5-7-1(l). Appendix "J" to this Chapter contains a sample notice of hearing.

(g) **Service of complaint.** The applicant shall serve the respondent by sending, by certified mail, the complaint and the notice of hearing to the respondent's last known address as listed in the Commission records, and, if applicable, to the respondent's registered agent as listed with the Oklahoma Secretary of State.

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(h) **Return of service.** The applicant shall prepare the return of service and file it with the Court Clerk. The return shall be verified by the person making the service, and shall show the manner, date, and time when the complaint was received by the Respondent. Service of the complaint and notice of hearing on the respondent by certified mail shall be considered effective on the date of receipt, or if refused, on the date of refusal of the complaint by the respondent. If the certified mailing is returned as undeliverable, the Commission or Administrative Law Judge shall determine sufficiency of service and may recommend additional service requirements. The Commission or Administrative Law Judge may use the service of process requirements in 12 O.S. § 2004 as guidance to ensure effective service.

(i) **Subsequent service.** The applicant and respondent shall provide changes of contact information to all parties of record and will accept service related to the complaint at the provided address.

(j) **Hearing procedures.** The complaint shall be set for prehearing conference before an Administrative Law Judge within thirty (30) calendar days after the complaint is filed. At the prehearing conference, the Administrative Law Judge shall determine whether service and jurisdiction are proper, and whether the issues, acts, or omissions constituting the nature of the complaint have been resolved. If the Administrative Law Judge determines that jurisdiction is not proper, the Administrative Law Judge shall recommend dismissal of the complaint.

(1) The Administrative Law Judge may continue the prehearing conference to a date certain to allow for resolution of the complaint by the parties, or to allow for proper service.

(2) If the Administrative Law Judge finds that the matter cannot be resolved without a hearing, then a hearing on the merits shall be set within the next sixty (60) calendar days.

(3) The Administrative Law Judge may recommend that the parties complete specific actions to complete the record, which may include but not be limited to requiring the applicant to submit additional information, require the respondent file a response to the complaint, and an allowance for discovery.

(4) If the respondent fails to appear at the time set for prehearing conference, as specified in the notice of hearing, or subsequent hearings as directed by the Administrative Law Judge, the Administrative Law Judge may schedule the complaint for a hearing on the merits or immediately proceed to hear the complaint if already scheduled for a hearing on the merits.

(5) If the applicant fails to appear at the prehearing conference or subsequent hearings, the Administrative Law Judge may recommend that the complaint be dismissed without prejudice.

(6) The Administrative Law Judge shall hear the merits of the complaint, and at the conclusion thereof, shall issue a report of the Administrative Law Judge that may impose such resolution as the facts and circumstances warrant, or dismiss the complaint.

(7) Exceptions to the report of the Administrative Law Judge may be filed and heard pursuant to OAC 165:5-13-5.

APPENDIX A. GENERAL NOTICE OF HEARING [REVOKED]

APPENDIX A. GENERAL NOTICE OF HEARING [NEW]

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANT:)
RELIEF SOUGHT:) CAUSE NO. _____
LEGAL DESCRIPTION)
(WHERE APPROPRIATE):)

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the Applicant in this cause is requesting that the Commission (set out the nature of the application and the relief sought).

NOTICE IS FURTHER GIVEN that the Applicant in this cause is requesting the following special relief: See 165:5-7-11(g), 165:5-7-20(e), 165:5-7-21(e) or 165:5-7-22(e)).

NOTICE IS FURTHER GIVEN that this cause be set before an Administrative Law Judge for hearing, taking of evidence and reporting to the Commission.

NOTICE IS FURTHER GIVEN that this cause will be heard before an Administrative Law Judge on the _____ docket at the Corporation Commission, (insert the address of the appropriate regional service office), Oklahoma, at _____m. on the ____ day of _____, 20__, and that this notice be published as required by law and the rules of the Commission.

NOTICE IS FURTHER GIVEN that the Applicant and interested parties may present testimony by telephone. The cost of telephonic communication shall be paid by the person or persons requesting its use. Interested parties who wish to participate by telephone shall contact the Applicant or Applicant's attorney, prior to the hearing date, and provide their name and phone number.

NOTICE IS FURTHER GIVEN for information concerning this action, contact (Name of Attorney--not firm name; or individual signing the application), (Address), (City), (State), (phone number).

OKLAHOMA CORPORATION COMMISSION

[Commissioner]
[Commissioner]
[Commissioner]

[Name and signature of person filing the notice]

**APPENDIX B. NOTICE OF APPLICATION FOR EXTENSION OF TIME FOR CLOSURE OF
NONCOMMERCIAL PIT [REVOKED]**

**APPENDIX B. NOTICE OF APPLICATION FOR EXTENSION OF TIME FOR CLOSURE OF
NONCOMMERCIAL PIT [NEW]**

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANTS:)	
RELIEF SOUGHT: EXTENSION OF)	
TIME FOR CLOSURE OF)	
NONCOMMERCIAL PIT UNDER)	
165:10-7-16)	CAUSE NO PD _____
LEGAL DESCRIPTION OF TRACT)	
WITH PIT(S):)	

NOTICE OF APPLICATION

NOTICE IS HEREBY GIVEN that the Applicant in this cause is requesting the Commission to issue an order granting the Applicant waiving closure requirement for pits at the above-captioned location.

NOTICE IS ALSO GIVEN that any protest to this application must be filed with the Court Clerk within the protest period prescribed by 165:5-7-34, said protest period being not less than fifteen (15) day's service of this notice.

NOTICE IS FURTHER GIVEN that an initial site inspection shall be made by the Applicant and a representative of the Field Operations' staff on the ___ day of ____, 20___. Any interested person may attend.

NOTICE IS FURTHER GIVEN that if the application is unprotested, then it shall be referred to the Conservation Division of the Commission for review without hearing and that if the application is protested, then any protestants shall receive notice of hearing as prescribed by 165:5-7-34.

NOTICE IS FURTHER GIVEN that for information concerning this action, contact (Name of Attorney--not firm name--or individual signing the application), (Address), (City), (State), (phone number).

OKLAHOMA CORPORATION COMMISSION

[Commissioner]
[Commissioner]
[Commissioner]

[Name and signature of person filing the notice]

**APPENDIX C. NOTICE OF HEARING FOR EXTENSION OF TIME FOR CLOSURE OF
NONCOMMERCIAL PIT [REVOKED]**

**APPENDIX C. NOTICE OF HEARING FOR EXTENSION OF TIME FOR CLOSURE OF
NONCOMMERCIAL PIT [NEW]**

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANTS:)	
)	CAUSE NO PD _____
RELIEF SOUGHT: EXTENSION OF)	
TIME FOR CLOSURE OF)	
NONCOMMERCIAL PIT UNDER)	
165:10-7-16.)	
)	
LEGAL DESCRIPTION OF TRACT)	
WITH PIT(S): (List location to)	
nearest 10 acre tract))	

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that this cause will be heard before an Administrative Law Judge on the Pollution Docket at the Corporation Commission, (insert the address of the appropriate regional service office), at a.m. on the day of , 20 .

OKLAHOMA CORPORATION COMMISSION

[Commissioner]
[Commissioner]
[Commissioner]

[Name and signature of person filing the notice]

APPENDIX D. NOTICE OF APPLICATION FOR WAIVER OF PIT CLOSURE [REVOKED]

APPENDIX D. NOTICE OF APPLICATION FOR WAIVER OF PIT CLOSURE [NEW]

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANTS:)	
)	
RELIEF SOUGHT: WAIVER OF PIT)	
CLOSURE REQUIREMENT UNDER)	
165:10-7-16.)	CAUSE NO PD _____
)	
LEGAL DESCRIPTION OF TRACT)	
WITH PIT(S):)	

NOTICE OF APPLICATION

NOTICE IS HEREBY GIVEN that the Applicant in this cause is requesting the Commission to issue an order granting the Applicant a waiver of the closure requirement for pit(s) at the above captioned location.

NOTICE IS ALSO GIVEN that any protest to this application must be filed with the Court Clerk within the protest period prescribed by 165:5-7-34, said protest period being not less than fifteen (15) days after service of this notice.

NOTICE IS FURTHER GIVEN that an initial site inspection shall be made by the Applicant and a representative of the Field Operations Department staff on the ____ day of _____, 20___. Any interested person may attend.

NOTICE IS FURTHER GIVEN that if the application is unprotested, then it shall be referred to the Conservation Division of the Commission for review without hearing and that if the application is protested, then any protestants shall receive notice of hearing as prescribed by 165:5-7-34.

NOTICE IS FURTHER GIVEN that for information concerning this action, contact (Name of Attorney--not firm name--or individual signing the application), (Address), (City), (State), (phone number).

OKLAHOMA CORPORATION COMMISSION

[Commissioner]
[Commissioner]
[Commissioner]

[Name and signature of person filing the notice]

APPENDIX E. NOTICE OF HEARING FOR WAIVER OF PIT CLOSURE [REVOKED]

APPENDIX E. NOTICE OF HEARING FOR WAIVER OF PIT CLOSURE [NEW]

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANTS:)	
)	CAUSE NO PD _____
RELIEF SOUGHT: WAIVER OF PIT)	
CLOSURE REQUIREMENTS UNDER)	
165:10-7-16.)	
)	
LEGAL DESCRIPTION OF TRACT)	
WITH PIT(S): (List location to)	
nearest 10-acre tract)	

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that this cause will be heard before an Administrative Law Judge on the Pollution Docket at the Corporation Commission, (insert the address of the appropriate regional service office), at ____ a.m. on the ____ day of _____, 20__.

OKLAHOMA CORPORATION COMMISSION

[Commissioner]
[Commissioner]
[Commissioner]

[Name and signature of person filing the notice]

Permanent Final Adoptions

APPENDIX F. NOTICE OF APPLICATION FOR AUTHORITY AUTHORIZING COMMERCIAL PIT/SOIL FARMING/RECYCLING FACILITY [REVOKED]

APPENDIX F. NOTICE OF APPLICATION FOR AUTHORITY AUTHORIZING COMMERCIAL PIT/SOIL FARMING/RECYCLING FACILITY [NEW]

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANT:)	
)	
RELIEF SOUGHT: ORDER AUTHORIZING)	
COMMERCIAL PIT(S), COMMERCIAL)	CAUSE NO PD _____
SOIL FARMING SITE AND/OR)	
COMMERCIAL RECYCLING FACILITY)	
(as appropriate))	
)	
LEGAL DESCRIPTION(S):)	
(LIST LOCATION OF PROPOSED)	
SITE(S) TO NEAREST 10 ACRE TRACT))	

NOTICE OF APPLICATION FOR AUTHORITY TO OPERATE COMMERCIAL PIT(S),
COMMERCIAL SOIL FARMING SITE AND/OR
COMMERCIAL RECYCLING FACILITY

NOTICE IS HEREBY GIVEN that the Applicant in this cause is requesting the Commission to issue an order granting the Applicant authority to operate a commercial pit(s), a commercial soil farming site and/or a commercial recycling facility (as appropriate) at the above-captioned location(s).

NOTICE IS ALSO GIVEN that any protest to this application must be filed with the Court Clerk within the protest period prescribed by 165:5-7-35, said protest period being not less than thirty (30) days after publication of this notice.

NOTICE IS FURTHER GIVEN that an initial site inspection shall be made by the Applicant and the Pollution Abatement staff on the ____ day of _____, 20___. Any interested person may attend.

NOTICE IS FURTHER GIVEN that if the application is unprotested then it shall be referred to the Conservation Division of the Commission for review without hearing and that if the application is protested, then any protestants shall receive notice of hearing as prescribed by 165:5-7-35.

NOTICE IS FURTHER GIVEN that for information concerning this action, contact (Name of Attorney--not firm name--or individual signing the application), (Address), (City), (State), (telephone number) (electronic mail address).

OKLAHOMA CORPORATION COMMISSION

[Commissioner]
[Commissioner]
[Commissioner]

[Name and signature of person filing the notice]

Permanent Final Adoptions

APPENDIX G. NOTICE OF HEARING FOR AUTHORITY AUTHORIZING COMMERCIAL PIT/SOIL FARMING [REVOKED]

APPENDIX G. NOTICE OF HEARING FOR AUTHORITY AUTHORIZING COMMERCIAL PIT/SOIL FARMING/RECYCLING FACILITY [NEW]

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANT:)	
)	
RELIEF SOUGHT: ORDER AUTHORIZING)	
COMMERCIAL PIT(S),)	CAUSE NO PD _____
COMMERCIAL SOIL FARMING SITE AND/OR)	
COMMERCIAL RECYCLING FACILITY)	
(as appropriate))	
)	
LEGAL DESCRIPTION(S):)	
(LIST LOCATION OF PROPOSED)	
SITE(S) TO NEAREST 10 ACRE TRACT))	

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that this cause will be heard before an Administrative Law Judge on the Pollution Docket at the Corporation Commission, (insert the address of the appropriate regional service office), at __:__ a.m. on the __ day of ____, 20__.

OKLAHOMA CORPORATION COMMISSION

[Commissioner]
[Commissioner]
[Commissioner]

[Name and signature of person filing the notice]

APPENDIX H. NOTICE OF APPLICATION FOR DETERMINATION OF ALLOWABLES [REVOKED]

APPENDIX H. NOTICE OF APPLICATION FOR DETERMINATION OF ALLOWABLES [NEW]

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANTS:)
RELIEF SOUGHT:) CAUSE NO _____
LEGAL DESCRIPTION:)

NOTICE OF APPLICATION

NOTICE IS HEREBY GIVEN that the Applicant in this cause is requesting the Commission to issue an order (state the nature of the relief sought).

NOTICE IS ALSO GIVEN that any protest to this application must be filed with the Court Clerk's Office within the protest period prescribed by 165:5-7-12, said protest period being not less than fifteen (15) days of this notice.

NOTICE IS FURTHER GIVEN that if the application is unopposed, then it shall be referred to the Oil and Gas Conservation Division of the Commission for review without hearing and that if the application is opposed, then any opponents shall receive notice of hearing as prescribed by 165:5-7-12.

NOTICE IS FURTHER GIVEN that for information concerning this action, contact (Name of attorney -- not firm name -- or individual signing this application), (address), (city), (state), (telephone number).

OKLAHOMA CORPORATION COMMISSION

[Commissioner]
[Commissioner]
[Commissioner]

[Name and signature of person filing the notice]

APPENDIX I. NOTICE OF HEARING FOR DETERMINATION OF ALLOWABLES [REVOKED]

APPENDIX I. NOTICE OF HEARING FOR DETERMINATION OF ALLOWABLES [NEW]

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANTS:)
RELIEF SOUGHT:) CAUSE NO _____
LEGAL DESCRIPTION:)

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that this cause will be heard before an Administrative Law Judge on the Conservation Docket at the Corporation Commission, (insert the address of the appropriate regional service office), at __:__ m. on the ____ day of _____, 20__.

OKLAHOMA CORPORATION COMMISSION

[Commissioner]
[Commissioner]
[Commissioner]

[Name and signature of person filing the notice]

APPENDIX J. WITNESS IDENTIFICATION FORM [REVOKED]

APPENDIX J. CONSUMER SERVICES DOCKET NOTICE OF HEARING [NEW]

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE COMPLAINT OF:)
)
_____, APPLICANT,) CAUSE NO. CS_____
)
AGAINST)
)
_____, RESPONDENT.)

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above named Applicant has filed a Complaint in the above-reference cause.

NOTICE IS FURTHER GIVEN that a prehearing conference concerning the Complaint shall be before the Administrative Law Judge on the ____ day of _____, 20____, at 8:30 a.m., in Courtroom ____, located on the first floor of the Jim Thorpe Office Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma, 73105.

NOTICE IS FURTHER GIVEN that all interested persons may appear and be heard and that after hearing and consideration of the recommendations of the Administrative Law Judge, the Commission will issue such orders and grant such relief as it deems reasonable, fair, necessary, proper and equitable in the premises, whether or not specifically prayed for in the Application.

NOTICE IS FURTHER GIVEN that for information concerning this action, contact the Applicant, whose contact information is stated in the Complaint.

OKLAHOMA CORPORATION COMMISSION

[Commissioner]
[Commissioner]
[Commissioner]

[Name and signature of person filing the notice]

APPENDIX K. WITNESS IDENTIFICATION FORM [NEW]

I, _____, did hereby testify under oath in Cause Number _____,
(name)

before Administrative Law Judge _____ on _____.
date)

I was provided copies of all documents I presented or relied upon, and exhibits I offered or relied upon and/or admitted into evidence during the hearing. Further, the testimony I provided was unassisted and not prompted or directed by any person.

My unassisted testimony was presented by telephone or by videoconferencing connection from:

(location)

(Witness Signature)

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My Commission expires:

[OAR Docket #20-576; filed 7-9-20]

TITLE 165. CORPORATION COMMISSION CHAPTER 10. OIL & GAS CONSERVATION

[OAR Docket #20-649]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Chapter 10. Oil & Gas Conservation [AMENDED]

AUTHORITY:

Corporation Commission; 17 O.S. § 52, 27A O.S. § 1-3-101, and 52 O.S. § 139.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2019-11, the proposed rules were submitted to the Governor and Cabinet Secretary on January 23, 2020.

COMMENT PERIOD:

January 22, 2020, through March 16, 2020

PUBLIC HEARING:

March 11, 2020, and March 16, 2020

ADOPTION:

March 16, 2020

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 24, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

October 1, 2020

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The rules were approved to update, streamline, and clarify the Oil & Gas Conservation rules; add a schedule of fines listed in the Chapter 10 rules; eliminate a requirement for operators to file annual unallocated natural gas well surveys; expand the use of noncommercial pits with capacities in excess of fifty thousand barrels; clarify what actions must cease when ruptures, breaks, or openings occur in well casing strings; eliminate a requirement that operators provide at least twenty-four hours' notice to the Oil & Gas Conservation Division (OGCD) as to when surface casing will be run; enhance notice requirements concerning hydraulic fracturing operations; increase the amount and type of information to be submitted with applications for approval of underground injection wells; modify notice requirements for proposed underground injection wells; augment monitoring and reporting requirements for disposal wells within areas of interest designated by the OGCD regarding potentially critical environmental or public safety impacts; update commercial recycling facility requirements; enhance requirements for construction of noncommercial disposal and enhanced recovery well pits used for temporary storage of saltwater and pits at commercial disposal well facilities, and modify gas well testing requirements. OAC 165:10-1-7(b) and OAC 165:10-3-10 require new Form 6000NHF (notice to Conservation Division of hydraulic fracturing operations) and new Form 6000NOO (notice to operators of producing wells of hydraulic fracturing operations).

CONTACT PERSON:

Susan Dennehy Conrad, Deputy General Counsel, Judicial and Legislative Services Division, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, P.O. Box 52000, Oklahoma City, OK 73152-2000, Telephone (405) 521-3939, Email Susan.Conrad@occ.ok.gov.

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OKLAHOMA CORPORATION COMMISSION, WESTERN REGIONAL SERVICE OFFICE, JIM THORPE OFFICE BUILDING, 2101 NORTH LINCOLN BOULEVARD, OKLAHOMA CITY, OKLAHOMA, AT THE OKLAHOMA CORPORATION COMMISSION, EASTERN REGIONAL SERVICE OFFICE, KERR BUILDING, 440 SOUTH

HOUSTON, SUITE 114, TULSA, OKLAHOMA, AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):

SUMMARY:

OAC 165:10-1-2 is amended regarding definitions; OAC 165:10-1-4 to update the list of effective dates for OAC 165:10 rulemakings; OAC 165:10-1-6 to delete a reference to the Natural Gas Policy Act of 1978 and to add a reference to a schedule of fines; OAC 165:10-1-7 to update the list of Oil & Gas Conservation Division (OGCD) prescribed forms, to delete forms and to add new forms; OAC 165:10-1-10 concerning operator agreements; OAC 165:10-1-15 with respect to transfer of operatorship of oil and gas wells; OAC 165:10-3-1 regarding permits to drill wells; OAC 165:10-3-2 concerning notification of spudding of new wells; OAC 165:10-3-3 with respect to ruptures, breaks or openings in well casing strings; OAC 165:10-3-4 regarding casing and cementing of wells; OAC 165:10-3-10 concerning hydraulic fracturing operations and submission of information with respect to chemicals used in hydraulic fracturing operations; OAC 165:10-3-16 regarding operations in hydrogen sulfide areas; OAC 165:10-3-17 concerning well site and surface facilities; OAC 165:10-3-28 with respect to horizontal drilling; OAC 165:10-5-2 regarding the process for obtaining approval of proposed underground injection wells within a specified distance of public water supply wells; OAC 165:10-5-5 concerning applications for approval of underground injection wells; OAC 165:10-5-6 with respect to testing and monitoring requirements for underground injection wells; OAC 165:10-5-7 regarding monitoring and reporting requirements for underground injection wells; OAC 165:10-5-9 concerning duration of underground injection well orders or permits; OAC 165:10-5-10 with respect to transfer of authority to operate underground injection wells; OAC 165:10-7-2 regarding administration and enforcement of the Oil & Gas Conservation rules; OAC 165:10-7-5 concerning reporting of nonpermitted discharges of deleterious substances; OAC 165:10-7-7 to strike references to complaint citations pertaining to alleged violations of Commission orders or the Oil & Gas Conservation rules, and OAC 165:10-7-9 is revoked regarding complaint citations because such complaint citations are no longer used.

In addition, OAC 165:10-7-16 is amended concerning use of noncommercial pits; OAC 165:10-7-19 with respect to land application of water-based fluids from earthen pits, tanks and pipeline construction; OAC 165:10-7-20 regarding noncommercial disposal or enhanced recovery injection well pits used for temporary storage of saltwater; OAC 165:10-7-26 concerning land application of contaminated soils and petroleum hydrocarbon based drill cuttings; OAC 165:10-7-33 with respect to truck wash pits; OAC 165:10-8-5 regarding submission of operator agreements for recycling/reclaiming facilities; OAC 165:10-9-1 concerning operation of commercial pits; OAC 165:10-9-2 with respect to commercial soil farming; OAC 165:10-9-3 regarding commercial disposal well surface facilities; OAC 165:10-9-4 concerning commercial recycling facilities; OAC 165:10-11-9 with respect to temporary exemption from well plugging requirements; OAC 165:10-17-7 regarding alternate shut-in pressure requirements for gas wells; OAC 165:10-17-16 is revoked concerning filing of Form 1007A annual unallocated natural gas well surveys; Appendix E is revoked, and a new Appendix E is reenacted to implement a schedule of fines, and Appendix F is revoked.

The full text of these rules may be obtained by interested parties at the Oklahoma Corporation Commission's Oklahoma City Court Clerk's Office located in the Jim Thorpe Office Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma, 73105, at the Commission's Tulsa Court Clerk's Office located in the Kerr Building at 440 South Houston, Suite 114, Tulsa, Oklahoma, 74127, and on the Commission's website at <http://www.occweb.com>.

[OAR Docket #20-649; filed 7-20-20]

TITLE 165. CORPORATION COMMISSION CHAPTER 15. FUEL INSPECTION

[OAR Docket #20-600]

RULEMAKING ACTION:

PERMANENT final adoption

Permanent Final Adoptions

RULES:

Subchapter 1. General Provisions
165:15-1-2. Definitions [AMENDED]
Subchapter 3. Fuel Specialists, Testing, Accessibility, and Assistance
Part 11. Accessibility and Assistance
165:15-3-32. Retail ~~outlet~~ facility with aboveground storage tanks [AMENDED]
Subchapter 13. Labeling of Tanks and Product Lines
165:15-13-1. General identification and color coding requirements [AMENDED]
Subchapter 15. Liquid Measuring Devices
Part 7. Money Values and Volumes Dispensed
165:15-15-35. Money value display and computation [AMENDED]
Subchapter 19. Inspections, Notices of Violation, Field Citations, and Formal Enforcement Actions
165:15-19-3. Notices of Violation [AMENDED]
165:15-19-4. Re-inspection, Formal Enforcement and Field Citation [AMENDED]
165:15-19-5. Issuance of a Field Citation and payment of fine or hearing [AMENDED]

AUTHORITY:

Corporation Commission; 17 O.S. §§ 306(12), 307, 322, 342, and 347

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2019-11, the proposed rules were submitted to the Governor and Cabinet Secretary on September 18, 2019.

COMMENT PERIOD:

September 18, 2019 to November 15, 2019

PUBLIC HEARING:

December 10, 2019

ADOPTION:

December 10, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

December 20, 2019

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

October 1, 2020

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The approved rules make certain definitions consistent with those in other chapters; add definitions for maintenance and observation well and strike definitions already appearing in statute, or which are not otherwise used in the rules. The approved rules also clarify that a retail facility with aboveground storage tanks must provide a safe means of returning motor fuel used for calibrating dispensers back to the storage tank; designate the color of storage tanks that contain E15 motor fuel; and clarify that the price of fuel advertised on the store marquee and the price at the dispenser must be the same. The approved rules clarify which violations can be immediately referred to the Commission's Judicial and Legislative Services Division for Formal Enforcement Action; clarify a storage tank system can be shut down pending correction of a violation or a hearing; clarify that if an owner disagrees with a fine, the Field Citation instructs the owner as to how he or she may request a hearing; and clarify terminology related to a violation of Petroleum Storage Tank Division ("PSTD") rules. The approved rules also clarify terminology related to a tank system shutdown; add language consistent with Oklahoma Administrative Code ("OAC") 165:5; strike unnecessary language, and make grammatical corrections.

CONTACT PERSON:

Travis N. Weedn, Deputy General Counsel, Judicial & Legislative Services Division, Oklahoma Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000, Telephone (405)521-4137, Email Travis.Weedn@occ.ok.gov.

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

FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

165:15-1-2. Definitions

In addition to the terms defined in 17 O.S. §§ 301 et seq., the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise.

"API (American Petroleum Institute) gravity scale" means the gravity scale in general use by the petroleum industry in the United States.

"ASTM" means the American Society for Testing and Materials. The latest ASTM revision must be the test used and is expressly incorporated in this Chapter.

"ATG" means an automatic tank gauging system.

"Aboveground storage tank" or "AST" means ~~any stationary tank, and individual compartments not included within the definition of an underground storage tank in Oklahoma Administrative Code (OAC) 165:25-1-11, which is designed to contain any PSTD regulated substances without structural support of earthen material, a "Storage tank" as defined in 17 O.S. § 303(40) that has more than ninety percent (90%) of its volume above the surface of the ground.~~

"Aboveground storage tank system" means ~~an above-ground storage tank, the individual compartments, and any connected aboveground or underground piping, dispensers and associated equipment and fixtures or transport truck connected to the storage tank system.~~

"Airport" means landing facility for aircraft that is routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private residential airstrips or private airports.

"Analog type" means an indicating element or a system of indication or recording in which values are presented as a series of numbered graduations in combination with an index, and in which the most sensitive element of the indicating system moves continuously during the operation of the device.

"Ancillary equipment" means any device including, but not limited to, devices such as piping, fittings, flanges, valves, and pumps that are used to distribute, meter, or control the flow of regulated substances to or from a petroleum storage tank.

"Approval seal" means ~~an inspection label or tag pasted on the face of a dispenser indicating its official approval, showing day, month, and year.~~

"Aviation gasoline" means a volatile hydrocarbon fuel suitable for use in an aircraft internal combustion engine.

"Bulk plant" means a petroleum storage tank facility where regulated substances are received by tank vessels, pipelines, tank cars or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distribution by a tank vessel, pipeline, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"Calibrate" or "Calibration" means the comparison of the indicated volume to the volume actually delivered by a

retail or wholesale device into a certified test measure, prover, or through a second accurate meter.

"Cathodic protection" means a technique designed to prevent the corrosion of a metal surface by making it the cathode of an electrochemical cell. For example, protection can be accomplished with an impressed current system or a galvanic anode system.

~~**"Change in service"** means a change in the status of a storage tank (i.e., from currently in use to temporarily out of use); change of regulated substance that a storage tank contains.~~

"Computing type" means a device designed to indicate and measure the total money value of product for one of a series of unit prices.

"Digital type" means a system of indicating or recording that advances intermittently in which all values are presented digitally and without graduations.

~~**"Dry hose type"** means a device in which the discharge hose must be completely drained following the mechanical operations involved in each delivery.~~

"Face of the dispenser" means that side of a measuring device that displays the quantity measured. The face must include an indicator and a series of graduations or present values digitally. It is the side of the dispenser where the unit price, volume dispensed, and dollar amount of the sale appear.

~~**"Fuel" or "motor fuel"** means any petroleum product, oxygenate, or blend of products suitable for use in an internal combustion or diesel engine.~~

"Fuel Specialist" means any field inspector employed by the Compliance and Inspection Department of the Petroleum Storage Tank Division of the Oklahoma Corporation Commission.

"Formal Enforcement Action" means the process of ensuring compliance with Commission regulations, rules, orders, requirements, standards, and/or state law when a violation occurs and PSTD initiates an enforcement Complaint under the contempt procedure in OAC 165:5 Subchapter 19 to be heard at the Commission by an Administrative Law Judge or the Commissioners.

"Gasoline" means a volatile unleaded fuel that is suitable for use in a spark ignition, internal combustion engine.

"Gum" means the evaporation residue of aircraft gasoline or the heptane insoluble portion of the evaporation residue of motor gasoline.

"Important building" means a building that is considered not expendable in an exposure fire.

"Index of an indicator" means that particular portion of an indicator that is directly used in making a reading.

"Indicating element" means that component located on the face of the dispenser that signifies the amount relative to a quantity measured by a measuring device.

~~**"Isooctane"** means a pure hydrocarbon 2,2,4-trimethylpentane used as a reference fuel that has an octane rating of one hundred.~~

"Kerosene" means a refined hydrocarbon fuel intended for use in heating and illumination.

"Liquid measuring device" or "liquid fuel device" means any and all measuring devices (retail, wholesale, or vehicle tank measure) with which gasoline, motor fuel, kerosene, motor oil, diesel fuel, or aviation gasoline is sold, dispensed, or delivered to the public or to any person for any purpose.

"MtBE" means methyl tertiary butyl used as a component in gasoline.

"Maintenance" means the normal operational upkeep necessary to prevent a petroleum storage tank system from releasing product.

~~**"Measuring device" or "meter"** means all measuring devices (retail, wholesale, or vehicle tank measure) with which gasoline, motor fuel, kerosene, motor oil, diesel fuel, or aviation gasoline is sold, dispensed, or delivered to the public or to any person for any purpose~~ a measuring device as defined in 17 O.S. § 303(23).

~~**"Motor fuel" or "fuel"** means any petroleum product, oxygenate, or blend of products, that is suitable for use as a fuel in an internal combustion or diesel engine.~~

~~**"NACE"** means the National Association of Corrosion Engineers.~~

~~**"N-heptane"** means a pure hydrocarbon used as a reference fuel with an assigned octane rating of zero.~~

"Observation well" means a cased and screened boring or drilled hole, installed within the tank excavation or piping trench that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors as a method of release detection.

"Octane", or "octane number", or "octane rating" means the antiknock quality of gasoline as determined by either the ASTM Research Method or the ASTM Motor Method.

"Oxygenate" means ethyl alcohol, MtBE, TAME, or other oxygen-containing, ashless organic compounds.

"Permanent out of use" or "POU" means a petroleum storage tank system that is not in service/use, does not contain regulated substances, and is not intended to be placed back in service/use.

~~**"Petroleum"** means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel~~ the substances as set forth in 17 O.S. § 303(31). It does not include 100% biodiesel, compressed natural gas, liquid natural gas, methanol, ~~and~~ propane.

"Primary indicating elements" or "recording elements" means those principal visual indicating elements and recording elements that may be used by an owner or operator in the normal commercial use of a device and which are readily visible to the public.

"Private airport" means an airport used only by its owner and regulated by PSTD as a fleet and commercial facility.

~~**"Private airstrip"** means a personal residential takeoff and landing facility attached to the airstrip owner's residential property.~~

"PSTD" means Petroleum Storage Tank Division.

"(R+M)/2" means the arithmetic mean of the ASTM Research Method (R) and the ASTM Motor Method (M) octane numbers, and is the octane rating.

"Regulated substance" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel as set forth in

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17 O.S. § 305. It does not include compressed natural gas, liquid natural gas and/or propane.

"Retail device" means a measuring device or mechanism designed for single deliveries of PSTD regulated substances to individual land, air, and water vehicles.

"Retail level facility" means ~~all places of business where a service station, convenience store or any other facility selling a PSTD regulated substance are dispensed or delivered directly into the tank of the consuming vehicle or receptacle, and may include bulk agents, consignment agents, distributors, or jobbers substance that is open to the general public.~~

"SIR" means Statistical Inventory Reconciliation.

"Security Seal" or "seal" or "lock/locking mechanism" means a lead and wire seal, lock or locking device, or similar device, attached to a petroleum storage tank system for protection against access, removal, or adjustment.

"TAME" means tertiary amyl methyl ether for use as a component in gasoline.

"Temporary out of use" or "TOU" means the status of a petroleum storage tank system that has been taken out of service/use with the intent to permanently close or return to service.

"Tolerance" means a value fixing the limit of allowable error or departure from the highest performance or value.

"Transport calibration" or "truck calibration" means the volume held to the designated marker as determined by the addition of a calibration fluid to the compartment from an accurate meter or from provers.

"Underground storage tank" or "UST" means ~~a regulated storage tank and individual compartments, including underground piping.~~ "Storage tank" as defined in 17 O. S. § 303(40) that has 10 percent (10%) or more of its volume beneath the surface of the ground.

"Underground storage tank system" means ~~an underground storage tank a closed-plumbed system including, but not limited to the underground storage tank(s), the individual storage tank compartments, and any connected aboveground or underground piping, dispensers the lines, dispenser for a given product, containment sump, if any, and ancillary equipment or transport a delivery truck that is connected to the storage tank system.~~

"Visible type" means ~~a type of device in which the measurement takes place in visible glass measuring chambers.~~

"Wet-hose type" means a device designed to be operated with the discharge hose full of liquid at all times.

"Wholesale device" means any device other than a retail device.

SUBCHAPTER 3. FUEL SPECIALISTS, TESTING, ACCESSIBILITY, AND ASSISTANCE

PART 11. ACCESSIBILITY AND ASSISTANCE

165:15-3-32. ~~Retail-outlet facility~~ with aboveground storage tanks

(a) At a ~~retail-outlet facility~~ with aboveground storage tanks, the owner or operator must provide a safe means of returning motor fuel to the storage tank or tanks used in checking the calibration of the measuring devices.

(b) When the fuel return opening to the storage tank is reached only by the use of steps, stairs, or a ladder, or is not located at ground level, the owner or operator must:

- (1) Provide safe containers with sufficient volume to complete a required inspection.
- (2) Label each container with the particular contents of product being stored.
- (3) Store containers outside the diked area.
- (4) Properly dispose of the product used in checking the calibration in accordance with applicable law.

SUBCHAPTER 13. LABELING OF TANKS AND PRODUCT LINES

165:15-13-1. General identification and color coding requirements

(a) All storage tanks subject to the rules of this Chapter must be marked with a tag, lettering, or other permanent marking on the fill neck and color coded on the overfill sump lids to identify the type, grade, or quality of regulated substance they contain.

(b) East of 99 degrees west longitude, color coded markings must be:

- (1) Unleaded motor fuel, 91 octane or above: red.
- (2) Unleaded motor fuel, 89 or 90 octane: blue.
- (3) Unleaded motor fuel, 86 through 88 octane: white.
- (4) Diesel motor fuel: yellow.
- (5) Kerosene: brown.
- (6) Dyed diesel: half yellow, half red.
- (7) Unleaded 87 octane E10: white with black "X" and a black border around lid.
- (8) Premium unleaded 91 octane E10: red with black "X" and a black border around lid.
- (9) E15: E15 tanks must be designated "E15" in black with a black border around lid, and the colors referenced above for unleaded motor fuel, 86 through 91 octane, should be used for the lid.
- (910) Biodiesel: bronze with yellow and black border around lid.
- (1011) ~~Ethanol-blending tank for E85:~~ orange with black "X" and a black border around lid.

(c) West of 99 degrees west longitude, color coded markings must be:

- (1) Unleaded motor fuel, 90 octane or above: red.
- (2) Unleaded motor fuel, 88 or 89 octane: blue.
- (3) Unleaded motor fuel, 86 or 87 octane: white.
- (4) Diesel motor fuel: yellow.
- (5) Kerosene: brown.
- (6) Dyed diesel: half yellow, half red.
- (7) Unleaded 87 octane E10: white with black "X" and a black border around lid.

(8) Premium unleaded 91 octane E10: red with black "X" and a black border around lid.

(9) E15: E15 tanks must be designated "E15" in black with a black border around lid, and the colors referenced above for unleaded motor fuel, 86 through 91 octane, should be used for the lid.

(910) Biodiesel: bronze with yellow and black border around lid.

~~(1011) Ethanol-blending tank for E85: orange with black "X" and a black border around lid.~~

~~(d) Products containing extenders (oxygenates) such as ethanol shall be designated by the addition of a black border around a black "X".~~

(ed) Vapor-recovery connections and manholes shall be marked with orange circles.

(fe) Observation and monitoring wells shall be marked with a black triangle on a white background.

(gf) At all facilities with more than one tank, the color coding applied to the fill cap or manhole cover shall extend beyond the edge of the cap or cover onto adjacent concrete or pavement.

(hg) The tag labeling and color coding must be waterproofed and fuel-proofed material so that the type, grade, or quality of the motor fuel is readily visible to persons adding to or taking a sample from the line or storage tank.

SUBCHAPTER 15. LIQUID MEASURING DEVICES

PART 7. MONEY VALUES AND VOLUMES DISPENSED

165:15-15-35. Money value display and computation

(a) **On a retail device.** Money value computations (on a retail device) must be of the full computing type in which the money value at a single unit price, or at each of a series of unit prices, is computed for every delivery within either the range of measurement of the liquid measuring device or the range of the computing elements, whichever is less. Any analog money value indication must not differ from the mathematically computed money value (Quantity X Unit Price = Sales Price), for any delivered quantity, by an amount greater than one-half the value of the money value division. Value graduations must be supplied and accurately positioned. The value of each graduated interval must be 1 cent.

(b) **"Cash" discount.** When a discount for "cash" is offered, the discount must be paid inside the store, the discount is to be calculated, and the customer informed of the discounted amount. The cash discount price must not be posted on a marquee or remote billboards unless it is explicitly called a "cash price".

(c) **Retail dispensing devices used in contract sales.** Those retail motor fuel dispensing devices used in contracted sales, which are normally unattended and accessed and actuated by keys, cards and/or other coding mechanisms and which

are not accessible to the general public, are not required to display unit prices nor to make money value computations for every delivery.

(d) **Airport dispensing devices.** Those retail motor fuel dispensing devices installed at airports for use in fueling aircraft are not required to display unit prices nor to make money value computations for every delivery.

(e) **Advertised price.** The price per gallon charged at the dispenser must be the same price advertised on the facility's marquee and remote billboards. The price per gallon advertised on the facility's marquee and remote billboards must be the same price charged at the dispenser.

SUBCHAPTER 19. INSPECTIONS, NOTICES OF VIOLATION, FIELD CITATIONS, AND FORMAL ENFORCEMENT ACTIONS

165:15-19-3. Notices of Violation

(a) When a Petroleum Storage Tank Division Fuel Specialist finds a violation of any statute, rule, requirement or order of the Commission regarding the regulation of petroleum storage tanks, the Fuel Specialist may issue a Notice of Violation (NOV).

(b) Each violation that can have an NOV issued is listed in this Chapter, OAC 165:16, 165:25, and 165:26.

(1) A Notice of Violation is to alert the tank owner or operator that a violation has been found. The NOV will describe the violation and advise that further PSTD enforcement action may occur if the violation is not corrected. If the violation cannot be corrected, the violation will be referred to the PSTD Compliance and Inspection Manager or Director's designee who may initiate Formal Enforcement Action or issue a Field Citation.

(2) At PSTD's discretion, ~~egregious~~ serious violations can be immediately turned over to the Commission's Judicial and Legislative Services Division for Formal Enforcement Action.

(3) In all situations where an NOV is issued, it must explain to the person to whom it is given what the offense is and how the person can correct it.

(c) A Notice of Violation will state the following information:

(1) A clear description of the violation(s).

(2) A date by which the violation(s) are required to be corrected.

(3) The name of the Fuel Specialist issuing the NOV, along with a telephone number and address so that the tank owner or operator can ask the Fuel Specialist questions.

(d) NOV(s) are issued to the owner or operator of the storage tank facility. If the owner or operator is not present, NOVs can be given to store personnel, but all notifications and/or correspondence will be mailed or electronically delivered to the owner and/or operator.

Permanent Final Adoptions

165:15-19-4. Re-inspection, Formal Enforcement and Field Citation

- (a) After the date that the violation is required to be corrected, a Fuel Specialist will re-inspect the storage tank facility to verify that the violation has been corrected.
- (b) If the re-inspection shows that the violation has not been corrected, the Fuel Specialist may:
- (1) Refer the violation to the Division's Compliance and Inspection Manager or the Director's designee who may initiate Formal Enforcement Action or issue a Field Citation; and/or
 - (2) Shut down the storage tank ~~facility system~~ pending a correction of the problem or a hearing on the issue.

165:15-19-5. Issuance of a Field Citation and payment of fine or hearing

- (a) The storage tank owner or operator can either pay the amount of the fine as stated in the Field Citation or request a hearing.
- (b) The tank owner or operator will have thirty (30) days from the date the Field Citation was issued to pay the fine.
- (1) A fine may be paid with cash, a money order, check or electronic method approved by the Commission. Any cash payment must be made at the Commission's cashier window. All checks must be made payable to the Oklahoma Corporation Commission - Petroleum Storage Tank Division. If sending payment through the mail, a copy of the Field Citation must be sent with the payment to ensure proper credit.
 - (2) Payment of a fine within the thirty (30) day timeframe will not be considered an agreement or disagreement with the Field Citation.
- (c) If the storage tank owner or operator disagrees with the Field Citation, they may appear at the hearing at the Commission as provided in the Field Citation. ~~If found guilty at the hearing in violation of PSTD rules at the time the Commission order is issued,~~ the tank owner or operator must pay the amount of the fine, as well as an administrative cost of \$250.00.
- (d) ~~If a Field Citation has not been paid within ninety (90) days of being issued or within ninety (90) days of a Commission order confirming the fine, the amount of the fine will double.~~—Refusal to comply with an order of the Commission may result in an additional fine to be levied after notice and hearing in an amount as allowed by law, and shutdown of the ~~facility storage tank system~~ for failure to pay fines.
- (e) Failure of a tank owner or operator to appear at the hearing may result in additional enforcement action.
- (f) ~~An appeal from Any exceptions to~~ the hearing must be made in accordance with OAC 165:5.
- (g) A tank owner or operator is still responsible for following the Commission's rules regarding petroleum storage tanks regardless of paying a fine or correcting a violation.

[OAR Docket #20-600; filed 7-14-20]

TITLE 165. CORPORATION COMMISSION CHAPTER 20. GAS & HAZARDOUS LIQUID PIPELINE SAFETY

[OAR Docket #20-663]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

165:20-1-4. Forms and documentation [AMENDED]

Subchapter 5. Safety Regulations for Gas Pipelines

Part 5. Minimum Safety Standards for Gas

165:20-5-21. Adoption of federal safety regulations [AMENDED]

Part 9. Mandatory Participation in Oklahoma One Call

165:20-5-41. Mandatory participation in Oklahoma One Call [AMENDED]

Subchapter 6. Safety Regulations for Underground Natural Gas Storage Facilities [NEW]

165:20-6-1. Adoption of federal safety regulations [NEW]

Subchapter 7. Safety Regulations for Hazardous Liquids

165:20-7-1. Adoption of federal safety and reporting regulations [AMENDED]

165:20-7-3. Mandatory participation in Oklahoma one call [AMENDED]

Subchapter 11. Drug Testing

165:20-11-1. Control of drug use in pipeline operations [AMENDED]

AUTHORITY:

Corporation Commission; 17 O.S. § 152 and Article IX, Section 18 of the Oklahoma Constitution.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2019-11, the proposed rules were submitted to the Governor and Cabinet Secretary on January 22, 2020.

COMMENT PERIOD:

January 22, 2020 to February 28, 2020

PUBLIC HEARING:

March 10, 2020, and March 11, 2020

ADOPTION:

March 11, 2020

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 20, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 25, 2020.

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

October 1, 2020

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

Incorporated standards as they existed on January 1, 2020:

49 C.F.R. Part 191, Transportation of Natural and Other Gas by Pipeline: Annual Reports, Incident Reports, and Safety Related Incident Reports; 49 C.F.R. 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; Title 63 O.S. §§142.1 through 142.13, Mandatory Participation in Oklahoma One Call; 49 C.F.R. Part 195, Transportation of Hazardous Liquids by Pipeline; 49 C.F.R. Part 199, PHMSA Drug and Alcohol Testing Regulation

Incorporating rules:

165:20-5-21, 165:20-5-41, 165:20-6-1, 165:20-7-1, 165:20-7-3 and 165:20-11-1

Availability:

8:00 a.m. to 4:30 p.m., Monday through Friday at Oklahoma Corporation Commission, Gas & Hazardous Liquid Pipeline Safety, 5th Floor, Jim Thorpe Office Building, Room 560, 2101 N. Lincoln Blvd., Oklahoma City, OK 73105

GIST/ANALYSIS:

The adopted rules update references to the Federal Pipeline Safety Regulations found in 49 C.F.R. §§ 191, 192, 195, and 199. The adopted rules also incorporate statutory changes in 63 O.S. §§ 142.1 through 142.13 that were passed by the Oklahoma Legislature in 2019 concerning to the definition of the word "Excavation" and relating to the Oklahoma One-Call System.

The proposed rules further clarify the Commission's role in enforcing the Underground Natural Storage Facility Act.

CONTACT PERSON:

Michael P. Copeland, Deputy General Counsel, Judicial & Legislative Services Division, Oklahoma Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000, Telephone (405) 522-1638, Email Michael.Copeland@occ.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

165:20-1-4. Forms and documentation

- (a) The Commission is empowered to prescribe necessary and proper forms in order to effectuate the purpose of this Chapter. The Manager of Pipeline Safety shall prescribe the number of copies of an appropriate form which shall be necessary to comply with the filing requirements of this Chapter.
- (b) Plans, specifications, maps, and other data relative to natural gas pipeline systems, underground natural gas storage facilities, and hazardous liquid pipeline systems shall be submitted to the Commission as prescribed by the Manager of Pipeline Safety in order to effectuate the purpose of this Chapter. This subsection is applicable to the operators of pipelines regulated pursuant to Subchapters 5, 6, and 7 of this Chapter.
- (c) Plans and maps submitted to the Commission pursuant to subsection (b) shall be deemed confidential records or trade secrets of the operator under the Open Records Act as provided for by 51 O.S. § 24A.22 and shall be kept confidential by the Commission, unless such records are successfully challenged or become subject matter of an enforcement action at the Commission.

SUBCHAPTER 5. SAFETY REGULATIONS FOR GAS PIPELINES

PART 5. MINIMUM SAFETY STANDARDS FOR GAS

165:20-5-21. Adoption of federal safety regulations

The Commission adopts the provisions of 49 C.F.R. Part 192, as such exist on January 1, ~~2019~~2020, subject to the following:

- (1) 49 C.F.R. § 192.1 is replaced by the following:
- (A) This Part prescribes minimum safety requirements for intrastate pipeline facilities and the transportation of gas subject to the jurisdiction of the Commission.
- (B) This Part shall not apply to:
- (i) Interstate transmission facilities; and

- (ii) Onshore gathering of gas through a pipeline that operates at less than 0 psig or through a pipeline that is not a regulated onshore gathering line as determined by 49 C.F.R. § 192.8.
- (2) The definition of "Administrator" and "State" are deleted and replaced as follows:
- (A) All references to the "Administrator" are replaced with the "Commission".
- (B) All references to the "State" refer to the State of Oklahoma.

PART 9. MANDATORY PARTICIPATION IN OKLAHOMA ONE CALL

165:20-5-41. Mandatory participation in Oklahoma One Call

- (a) The Commission adopts the provisions of the Oklahoma Underground Facilities Damage Prevention Act, Title 63 O.S. §§ 142.1 through ~~142.11~~142.13 as such exist on January 1, ~~2019~~2020.
- (b) The Commission will enforce the provisions of Title 63 O.S. §§ 142.1 through ~~142.11~~142.13 as such exist on January 1, ~~2019~~2020, against intrastate and interstate gas pipelines, as described in 49 C.F.R. Part 192.1.

SUBCHAPTER 6. SAFETY REGULATIONS FOR UNDERGROUND NATURAL GAS STORAGE FACILITIES

165:20-6-1. Adoption of federal safety regulations

The Commission adopts all of the provisions of 49 C.F.R. Parts 191 and 192, as such exist on January 1, 2020, pertaining to Intrastate Underground Natural Gas Storage Facilities.

SUBCHAPTER 7. SAFETY REGULATIONS FOR HAZARDOUS LIQUIDS

165:20-7-1. Adoption of federal safety and reporting regulations

The Commission adopts the provisions of 49 C.F.R. Part 195, as such exist on January 1, ~~2019~~2020, subject to the following:

- (1) 49 C.F.R. § 195.0 is replaced by the following: "This Part prescribes safety standards and accident reporting requirements for pipeline facilities used in the intrastate transportation of hazardous liquids subject to the jurisdiction of the Commission."
- (2) 49 C.F.R. § 195.1(a) is replaced by the following: "Except as provided in paragraph (b) of 49 C.F.R. § 195.1(b), this Part applies to pipeline facilities and the transportation of hazardous liquids associated with those facilities used in the intrastate transportation of hazardous liquids subject to the jurisdiction of the Commission."

(3) The definition of "Administrator" shall be deleted and all references to the "Administrator" are replaced with the "Commission".

(4) 49 C.F.R. § 195.52(b) is replaced by the following: "(b) Reports made under paragraph (a) of 49 C.F.R. § 195.52(a) are made by telephone to 405-521-2258 (Pipeline Safety Department in Oklahoma City, OK) or submitting a report online at the <http://www.occeweb.com/> and 800-424-8802 (in Washington, D.C. 202-462-2675), and must include the following information:

- (A) Name and address of the operator.
- (B) Name and telephone number of the reporter.
- (C) The location of the failure.
- (D) The time of the failure.
- (E) The fatalities and personal injuries, if any.
- (F) All other significant facts known by the operator that are relevant to the cause of the failure or extent of the damages."

(5) 49 C.F.R. § 195.54(a) is replaced by the following: "Each carrier that experiences an accident that is required to be reported under this subpart, as soon as practicable but not later than thirty (30) days after discovery of the accident, shall prepare and file an accident report on DOT Form 7000-1, or a facsimile, with the Pipeline Safety Department, Oklahoma Corporation Commission, in accordance with OAC 165:20-1-6 of this Chapter, and the Information Resources Manager, Office of Pipeline Safety, Department of Transportation, Washington, D.C. 20590."

(6) 49 C.F.R. § 195.54(b) is replaced by the following: "Whenever an operator receives any changes in the information reported or additions to the original report on DOT Form 7000-1, it shall submit a supplemental report within thirty (30) days with the Pipeline Safety Department, Oklahoma Corporation Commission, in accordance with OAC 165:20-1-6 of this Chapter, and the Information Resources Manager, Office of Pipeline Safety, Department of Transportation, Washington, D.C. 20590."

165:20-7-3. Mandatory participation in Oklahoma One Call

(a) The Commission adopts the provisions of the Oklahoma Underground Facilities Damage Prevention Act, Title O.S. 63 O.S. §§ 142.1 through ~~142.11-142.13~~ as such exist on January 1, ~~2019-2020~~.

(b) The Commission will enforce the provisions of Title 63 O.S. §§ 142.1 through ~~142.11-142.13~~, as such exist on January 1, ~~2019-2020~~, against intrastate and interstate hazardous liquid or carbon dioxide pipelines, as described in 49 C.F.R. Part 195.1.

SUBCHAPTER 11. DRUG TESTING

165:20-11-1. Control of drug use in pipeline operations

The Commission adopts the provisions of 49 C.F.R. Part 199, with all amendments and appendices thereto as such exist on January 1, ~~2018-2020~~.

[OAR Docket #20-663; filed 7-22-20]

TITLE 165. CORPORATION COMMISSION CHAPTER 25. UNDERGROUND STORAGE TANKS

[OAR Docket #20-601]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

Part 3. Definitions

165:25-1-11. Definitions [AMENDED]

Part 6. Administrative Provisions

165:25-1-26.1. Hearings, orders and ~~appeals~~ exceptions [AMENDED]

Part 9. Notification and Reporting Requirements

165:25-1-41. General reporting requirements [AMENDED]

165:25-1-42. New tank systems [AMENDED]

Part 17. Licensing Procedures

165:25-1-107. License penalties [AMENDED]

Subchapter 2. General Requirements for Underground Storage Tank Systems

Part 1. Codes and Standards

165:25-2-2. Incorporated codes and standards [AMENDED]

Part 5. Protection Against Corrosion

165:25-2-53.1. Underground storage tank internal lining requirements [AMENDED]

Part 6. Piping

165:25-2-55.2. Vent piping requirements [AMENDED]

Part 7. Dispensers

165:25-2-75.1. Display on dispenser [NEW]

Part 13. Removal and Closure of Underground Storage Tank Systems

165:25-2-135. Permanent closure [AMENDED]

Subchapter 3. Release Prevention and Detection Requirements

Part 2. Release Detection Requirements and Methods

165:25-3-6.25. Interstitial monitoring [AMENDED]

Part 3. Release Investigation Requirements

165:25-3-7.1. Release reporting [AMENDED]

Subchapter 5. Upgrades

165:25-5-1. Alternatives allowed [AMENDED]

Subchapter 8. Special Requirements for Underground Storage Tank Systems Utilized by Marinas

Part 5. Dispenser Requirements

165:25-8-15. Nozzles [AMENDED]

Subchapter 18. Inspections, Notices of Violation, Field Citations, and Formal Enforcement Actions

Part 3. Notices of Violation, Field Citations, and Formal Enforcement Actions

165:25-18-11. Notices of Violation [AMENDED]

165:25-18-12. Re-inspection, Field Citation and Formal Enforcement Action [AMENDED]

165:25-18-13. Issuance of a Field Citation and payment of fine or hearing [AMENDED]

Part 5. Penalties

165:25-18-19. Penalties [AMENDED]

Appendix S. Field Citations Table [REVOKED]

Appendix S. Field Citations Table [NEW]

AUTHORITY:

Corporation Commission; 17 O.S. §§ 306(12), 307, 322, 342, and 347.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2019-11, the proposed rules were submitted to the Governor and Cabinet Secretary on September 18, 2019.

COMMENT PERIOD:

September 18, 2019 to November 15, 2019

PUBLIC HEARING:

December 10, 2019

ADOPTION:

December 10, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

December 20, 2019

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

October 1, 2020

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

Incorporated Standards:

PEI/RP 1700 (2018 Edition), Recommended Practices for the Closure of Underground Storage Tanks and Shop-Fabricated Aboveground Storage Tank Systems; 16 CFR Parts 306.0 through 306.12, including Appendices; and National Institute of Standards and Technology (NIST) Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices

Incorporating rules:

165:25-2-2 and 165:25-2-75.1

Availability:

8:00 a.m. to 4:30 p.m., Monday through Friday at the Petroleum Storage Tank Division, Oklahoma Corporation Commission, Jim Thorpe Building, 2101 N. Lincoln Blvd., Oklahoma City, OK 73105

GIST/ANALYSIS:

The approved rules make definitions consistent with those in other chapters; add language to clarify certain definitions; add definitions for compatible, electronic signature, gathering lines, maintenance, observation well, operational life and OWRB; and strike definitions already appearing in statute or which are not otherwise used in the rules. The approved rules also update the Petroleum Storage Tank Division's ("PSTD") electronic notification and release detection forms submission procedures; update PSTD's electronic notification and tank registration procedures; clarify terminology within the rule and move existing language to a new subsection within the rule; incorporate an industry standard recommended practice for tank and product line closure; and provides that certain PSTD forms and PSTD's electronic notification procedure for internal tank lining inspections will be located on the Commission's website.

The approved rules incorporate industry standard recommended practices to protect vent risers from damage caused by vehicles, mowers, weather and testing methods; add the requirements for displaying fuel contents on dispensers; clarify that an application and administrative review for a variance is required for associated piping to be closed in place; clarify that low liquid level testing cannot be used for initial integrity testing; and refer the public to the Commission's website and release reporting email address. The approved rules clarify that piping upgrade requirements must be met; incorporate an industry standard recommended practice for dispenser nozzles at marinas; clarify that the violation of a statute may result in a Notice of Violation being issued, and clarify which violations can be immediately referred to the Commission's Judicial and Legislative Services Division for Formal Enforcement Action; clarify that a storage tank system can be shut down pending correction of a violation or until a hearing is held on the issue; and clarify that if an owner disagrees with a fine the Field Citation instructs the owner as to how he or she may request a hearing.

The approved rules also clarify terminology related to a violation of PSTD rules; clarify terminology related to tank system shutdown; strike unnecessary language; add language consistent with Oklahoma Administrative Code ("OAC") 165:5; and correct grammatical errors. The approved rules revoke and reenact Appendix S to correct rule citations, clarify some of the descriptions used for rules in the violation column, move existing violations to the applicable section within the table, and update terminology.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 3. DEFINITIONS

165:25-1-11. Definitions

In addition to the terms defined in 17 O.S. §§ 303 and 348, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"**Agent**" means a person authorized by another to act on their behalf, either out of employment or contract.

"**Airport**" means landing facility for aircraft that are routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private airstrips or private airports.

"**Airport hydrant system**" means an underground storage tank system which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one (1) or more hydrants (fill stands). The airport hydrant system begins where fuel enters one (1) or more tanks from an external source, such as a pipeline, barge, rail car, or other motor fuel carrier.

"**ATG**" means automatic tank gauge.

"**Ball float functionality**" means the ball float is operational as designed.

"**BTEX**" means benzene, toluene, ethylbenzene and xylene.

"**Bulk plant**" means a petroleum storage tank facility where regulated substances are received by tank vessels, pipelines, tank cars or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distribution by a tank vessel, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"**Cathodic protection**" means a technique designed to prevent the corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, protection can be accomplished with an impressed current system or a galvanic anode system.

"**Change in service**" means a change in the status of a storage tank (i.e., from currently in use to temporarily out of use); or change of regulated substance that a storage tank contains.

"**Commission**" or "**OCC**" means the Oklahoma Corporation Commission ~~(OCC) and includes its designated agents or representatives.~~

"**Compatible**" means the ability of two (2) or more substances to maintain their respective physical properties upon contact with one another for the design life of the petroleum storage tank system under conditions likely to be encountered in the system.

Permanent Final Adoptions

"Construction tank" means a fuel tank used for twelve (12) months or less at a construction site.

"Corrosion expert" means an individual having the requisite knowledge, experience, certification, and training to design, install, test, and maintain corrosion protection systems.

"Division" means the Petroleum Storage Tank Division (PSTD) of the Corporation Commission.

"EPA" means the United States Environmental Protection Agency.

"Electronic signature" means an electronic signature as defined in OAC 165:5-1-3.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes but is not limited to fish hatcheries, rangeland, and nurseries with growing operations.

"Field constructed tank" means a tank constructed in the field such as a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field.

"Financial responsibility" shall have the same meaning in this Chapter as in 40 CFR 280 Subpart H.

"Financial security" means holding financial security in a tank system or facility site and is not considered ownership of a tank system unless certain criteria of 40 CFR 280 Subpart H is met.

"Fleet and Commercial" means any facility as defined in this Chapter that uses underground storage tanks to store regulated substances for use in its own vehicles or equipment.

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process.

"Formal Enforcement Action" means the process of ensuring compliance with Commission regulations, rules, orders, requirements, standards, and/or state law when a violation occurs and PSTD initiates an enforcement Complaint under the contempt procedure in Oklahoma Administrative Code (OAC) 165:5 Subchapter 19 to be heard at the Commission by an Administrative Law Judge or the Commissioners.

"Gathering lines" means a gathering line or gathering system as defined in OAC 165:45-1-2.

"Important building" means a building that is considered not expendable in an exposure fire.

"Inert material" means a solid, motionless substance that is neither chemically nor biologically reactive, is denser than water, and will not decompose. Examples of inert material include sand and concrete, or as otherwise approved by PSTD staff.

"Lender liability" shall have the same meaning in this Chapter as in 40 CFR 280 Subpart I.

"Licensed Environmental Consultant" means an individual who has a current license issued by PSTD to perform corrective action.

"Maintenance" means the normal operational upkeep necessary to prevent a petroleum storage tank system from releasing product.

"Marina" means any fuel storage tank system located on or by the water for the purpose of fueling watercraft.

"Observation well" means a cased and screened boring or drilled hole, installed within the tank excavation or piping trench that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors as a method of release detection.

"Operational life" means the period beginning from the time installation of the tank or system is commenced until it is properly closed or removed as provided for in this Chapter.

"Operator" means any person in control of or having responsibility for the daily operation of the storage tank system, whether by lease, contract, or other form of agreement. The term "operator" also includes a past operator at the time of a release, tank closure, violation of the Oklahoma Petroleum Storage Tank Consolidation Act, or a rule promulgated thereunder, or a requirement of the Commission. In the case of a storage tank system in service/use before November 8, 1984, but no longer in service/use on that date, the last person to operate the storage tank system immediately before the discontinuation of its service/use.

"Out of Order tag" means tag, device or mechanism on the tank fill pipe that clearly identifies an underground storage tank as ineligible for delivery of product.

"Owner" means: any person as set forth in 17 O.S. § 303(27).

~~(A) In the case of a storage tank system in service/use on November 8, 1984, or brought into service/use after that date, any person who holds title to, controls, or possesses an interest in a storage tank system used for the storage, use, or dispensing of regulated substances, including the real property owner where the storage tank system is still present, the storage tank system presence is a trade fixture or improvement or both. It is not necessary that the real property owner sold, used, or stored regulated substances in, of, or from the storage tank system.~~

~~(B) In the case of a storage tank system in service/use before November 8, 1984, but no longer in service/use on that date, any person who holds title to, controls, or possesses an interest in a storage tank system immediately before the discontinuation of its service/use. However, a real property owner who has a storage tank system located on their property that was taken out of service/use prior to November 8, 1984, is not considered to be a storage tank owner for any PSTD regulated purpose.~~

"OWRB" means the Oklahoma Water Resources Board.

"Permanent out of use" or "POU" means a petroleum storage tank system that is not in service/use, does not contain regulated substances, and is not intended to be placed back in service/use.

"Private airport" means an airport used only by its owner and regulated as a fleet and commercial facility.

"Private airstrip" means a personal residential takeoff and landing facility part of the airstrip owner's residential property.

"PST" means petroleum storage tank.

"PSTD" means Petroleum Storage Tank Division.

"Public Utility" means any entity providing gas, electricity, water, or telecommunications services for public use.

"Recalcitrant owner" means an owner/operator who is responsible for a tank system and after notice will not adhere to a PSTD enabling statute, Commission rule, requirement, or order.

"Regulated substance" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel as set forth in 17 O.S. § 305. It does not include compressed natural gas, liquid natural gas and or propane.

"Release detection" means the methodology used in determining whether a release of regulated substances has occurred from a petroleum storage tank or system into the environment or into the interstitial area between the underground storage tank system and its secondary barrier.

"Residential tank" is a tank located on real property used primarily for dwelling purposes.

"Retail facility" means a service station, convenience store or any other facility selling a PSTD regulated substance that is open to the general public.

"Secondary containment" means an underground storage tank and/or piping with inner and outer barriers which provide a space for interstitial (the space between the inner and outer walls of a double walled tank or piping) monitoring.

"Tampering" means willful intention in an attempt to deceive, cheat or misrepresent facts to the public. Tampering also presents a risk to the environment as well as public health, safety and welfare.

"Tank tightness testing" or **"precision testing"** means a procedure for testing an underground storage tank system's integrity.

"Temporary out of use" or **"TOU"** means the status of an underground storage tank system that has been taken out of service/use with the intent to permanently close or return to service.

"TPH" means total petroleum hydrocarbons.

"Underground storage tank" or "UST" ~~or "tank"~~ means ~~a regulated storage tank and the individual compartments, including underground piping, "storage tank" as defined in 17 O.S. § 303(40)~~ that has ten percent (10%) or more of its volume beneath the surface of the ground.

"Underground storage tank system" means ~~an underground storage tank, a closed-plumbed system including, but not limited to the underground storage tank(s), the individual storage tank compartments, and any connected aboveground or underground piping, dispensers, the lines, dispenser for a given product, containment sump, if any, and ancillary equipment or a transport-delivery truck that is connected to the storage tank system.~~

"Used Motor Oil" is any spent motor oil removed from a motor vehicle.

PART 6. ADMINISTRATIVE PROVISIONS

165:25-1-26.1. Hearings, orders and ~~appeals~~ exceptions

(a) The Commission will issue orders after notice and hearing as necessary to enforce the provisions of this Chapter or PSTD enabling statutes to protect property, the public health and safety, and the environment.

(b) Hearings to enforce or ~~appeal exceptions to~~ the provisions of this Chapter or PSTD enabling statutes will be ~~done~~ conducted in accordance with ~~Chapter 5 of Commission rules~~ OAC 165:5.

PART 9. NOTIFICATION AND REPORTING REQUIREMENTS

165:25-1-41. General reporting requirements

PSTD requires owners or operators of underground storage tank systems to provide information it deems necessary for the protection of human health, safety, property and the environment. Use of the designated PSTD online format is required for reporting, scheduling, tank registration, change in ownership, release detection, testing, temporary change in service, permanent closure, or return to service. Owners and operators must notify PSTD within thirty (30) days when their mailing address changes or tank status changes. Owners and operators of underground petroleum storage tank systems must notify PSTD at least thirty (30) days prior to switching to regulated substances containing greater than ten percent (10%) ethanol or regulated substances containing greater than twenty percent (20%) biodiesel ~~using the PSTD scheduling form in the online format established by PSTD. These Required release detection forms are available at the OCC on the Commission website, PSTD webpage: www.occeweb.com; follow the link to Petroleum Storage Tank Division and the link to PSTD Compliance Forms.~~ Failure to notify and/or submit PSTD paperwork in the online format established by PSTD within the timeframe required may result in an enforcement action.

165:25-1-42. New tank systems

(a) Persons intending to install a new underground storage tank and/or new underground piping must give PSTD notification of the installation at least forty-eight (48) hours before the tank and/or lines are to be installed by submitting the PSTD scheduling notification ~~form in the online format established by PSTD~~ and receiving confirmation of the installation from PSTD. If events require a change in the date of installation, PSTD shall be given forty-eight (48) hours notice of the new date. Any underground storage tank system permanent removal or a removal associated with replacement of tanks or lines requires at least fourteen (14) day notification prior to the removal activity.

(b) Upon receipt of the ~~scheduling form~~ scheduled installation authorization letter giving temporary approval to receive fuel into an un-permitted tank **FOR TESTING PURPOSES ONLY** will be sent to the owner. This letter is site specific and will expire ninety (90) days after the date of issuance. After the tank installation is complete, the PSTD registration ~~form~~ must be submitted to PSTD in the online format

established by PSTD along with copies of required installation testing, photographs of the tank and piping system components before they are covered, an as-built drawing of the entire tank system, and manufacturer installation checklists within thirty (30) days. The tank owner and Licensed UST Installer are both responsible for timely submittal of all installation paperwork. The registration ~~form~~ must be approved and tank fees paid in order to receive a tank permit to dispense fuel. No regulated storage tank system can be operated without a valid permit from the Corporation Commission.

(c) Owners and Commission-licensed UST Installers must certify on the registration ~~form~~ that the installation of tanks and piping meet the requirements of this Chapter.

PART 17. LICENSING PROCEDURES

165:25-1-107. License penalties

(a) The PSTD has the responsibility to deny, suspend, refuse to renew or revoke the license of, or reprimand, any licensee who is found guilty in violation of:

- (1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.
- (2) Any gross negligence, incompetence or misconduct in work performed pursuant to this Chapter.
- (3) Knowingly making false statements or signing false statements, certificates or affidavits to the PSTD or to clients ~~with the intention to induce payment.~~
- (4) Aiding or assisting another person in violating any provision of this Chapter.
- (5) Signing a verification statement for work performed pursuant to this Chapter that was not performed by the licensee.
- (6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.
- (7) Failure to comply with this Chapter, OAC 165:26, 165:27, 165:29, and/or the Oklahoma Petroleum Storage Tank Consolidation Act (17 O.S. §§ 301 et seq.) may result in PSTD seeking a suspension and/or revocation of the license.
- (8) Being under indictment or convicted of a felony for any criminal offense that impacts their obligation to PSTD.
- ~~(9) Failure to submit required PSTD paperwork, test results, and/or reports in the format established by PSTD within the required timeframe may result in enforcement action.~~

(b) Failure to submit required PSTD paperwork, test results, and/or reports in the online format established by PSTD within the required timeframe may result in enforcement action.

~~(bc)~~ Disciplinary action levels against PSTD licensees include but are not limited to informal reprimand, formal reprimand, license suspension, license revocation and refusal to renew.

(ed) Any licensee in violation of Commission enabling statutes, PSTD rules, requirements and/or Commission orders may be subject to disciplinary action levels mentioned above

and/or fines assessed by the Commission after notice and hearing.

SUBCHAPTER 2. GENERAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

PART 1. CODES AND STANDARDS

165:25-2-2. Incorporated codes and standards

Specific references to documents are made in this Chapter. Each of these documents or part thereof is included by reference as a standard. New editions of codes and standards supersede all previous editions. Commission rules will supersede in all conflicts between PSTD rules and any industry standard. These codes and standards will be updated periodically through a formal rulemaking procedure initiated by PSTD to reflect any substantive or relevant changes.

- (1) National Fire Protection Association Standards:
 - (A) Standard Number 30, 2018, "Flammable and Combustible Liquids Code."
 - (B) Standard Number 329, 2015, "Handling Releases of Flammable and Combustible Liquids and Gases."
 - (C) Standard Number 385, 2017, "Tank Vehicles for Flammable and Combustible Liquids."
 - (D) Standard Number 326, 2015, "Safeguarding Tanks and Containers for Entry, Cleaning and Repair."
 - (E) Standard Number 30A, 2018, "Motor Fuel Dispensing Facilities and Repair Garages."
- (2) American Petroleum Institute Standards
 - (A) Recommended Practice 1615, (2011), "Installation of Underground Hazardous Substances or Petroleum Storage Systems, Sixth Edition."
 - (B) Recommended Practice 1632, (R2010), "Cathodic Protection of Underground Storage Tank and Piping Systems."
 - (C) Recommended Practice 1604, (R2010), "Closure of Underground Petroleum Storage Tanks, Third Edition."
 - (D) Recommended Practice 1631, (2001), "Interior Lining and Periodic Inspection of Underground Storage Tanks."
 - (E) Recommended Practice 1621, (R2012), "Bulk Liquid Stock Control at Retail Outlets."
 - (F) Recommended Practice 1626, (2010), "Storing and Handling Ethanol and Gasoline - Ethanol Blends at Distribution Terminals and Service Stations."
 - (G) Recommended Practice 1627, (R2000), "Storing and Handling of Gasoline - Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."
 - (H) Publication 1628, (1996), "A Guide to the Assessment and Remediation of Underground Petroleum Releases."

- (I) Publication 2200, (2015), "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines, Fourth Edition."
- (J) Publication 2015, (2018), "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks."
- (K) Recommended Practice 1637, (R2012), "Using the API Color Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals, Third Edition."
- (3) National Association of Corrosion Engineers:
 - (A) Standard Number SP0169-2013, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."
 - (B) Standard Number SP0285-2011, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection."
 - (C) Standard Number SP0286-2007, "Electrical Isolation of Cathodically Protected Pipelines."
 - (D) International Test Method, TM 0101 2012, "Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems."
 - (E) International Test Method, TM 0497 2012, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems."
- (4) Underwriter's Laboratory Standards:
 - (A) Standard UL58, 2018, "Steel Underground Tanks for Flammable and Combustible Liquids."
 - (B) Standard UL1316 Bulletin 2013, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures."
 - (C) Standard UL1746 Bulletin 2013, "External Corrosion Protection Systems for Steel Underground Storage Tanks."
 - (D) Standard UL567 Bulletin-2012, "Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Petroleum Products and LP-Gas."
 - (E) Standard UL971 Bulletin 2011, "Nonmetallic Underground Piping for Flammable Liquids."
- (5) American Society for Testing Materials:
 - (A) ASTM E1739-95 (2015), "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites."
 - (B) ASTM G158-98 (2016), "Three Methods of Assessing Buried Steel Tanks."
- (6) Petroleum Equipment Institute:
 - (A) PEI/RP 100-17 (2017 Edition) "Recommended Practices for Installation of Underground Liquid Storage Systems."
 - (B) PEI/RP 400-18 (2018 Edition), "Recommended Practices for Equipment Testing Electrical Continuity of Fuel Dispensing Hanging Hardware."
 - (C) PEI/RP 500-11 (2011 Edition), "Recommended Practice for Inspection and Maintenance of Motor Fuel Dispensing Equipment."
 - (D) PEI/RP 900-17 (2017 Edition), "Recommended Practices for the Inspection and Maintenance of UST Systems."
 - (E) PEI/RP 1200-17 (2017 Edition), "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities."
 - (F) PEI/RP 1700 (2018 Edition), "Recommended Practices for the Closure of Underground Storage Tank and Shop-Fabricated Aboveground Storage Tank Systems."
- (7) Steel Tank Institute:
 - (A) STIP3®, "Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks."
 - (B) STI-R892-91, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems."
 - (C) STI-R894-91, "Specification for External Corrosion Protection of FRP Composite Underground Steel Storage Tanks."
 - (D) RP-972-10, "Recommended Practice For The Addition of Supplemental Anodes to STI-P3 USTs."
 - (E) STI-ACT-100-U®, F961, "Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks".
 - (F) STI-F841, "Standard for Dual Wall Underground Steel Storage Tanks."
 - (G) STI-F922, "Specification for Permatank®."
 - (H) RP-R051, "Cathodic Protection Testing Procedures for STI-P3® Underground Storage Tank Systems."
- (8) Factory Mutual 1920, "Flexible Pipe Couplings."
- (9) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension, Existing Steel UST by Lining without Additional Cathodic Protection."
- (10) National Groundwater Association, 1986, "RCRA Ground Water Monitoring Technical Enforcement Guidance Document (TEGD)."
- (11) U.S. Environmental Protection Agency Office of Water, 1997, Drinking Water Advisory: "Consumer Acceptability Advice on Health Effects Analysis on Methyl Tertiary-Butyl Ether (MTBE)."
- (12) Ken Wilcox Associates, Inc., First Edition: "Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera."

PART 5. PROTECTION AGAINST CORROSION

Permanent Final Adoptions

165:25-2-53.1. Underground storage tank internal lining requirements

- (a) A previously lined steel tank that fails precision tightness testing or an internal lining inspection shall not be repaired and must be removed.
- (b) Tank lining may not be used as a method of repair for an unlined tank.
- (c) Within 10 years after lining, and every five years thereafter, lined USTs must be internally inspected and found to be structurally sound, with the lining still performing in accordance with original design specifications.
- (d) Standards that must be referenced during the periodic inspection of lined USTs:
 - (1) American Petroleum Institute (API) Publication 1631.
 - (2) Ken Wilcox Associates, Inc. "Recommended Practices for Inspecting Buried Lined Steel Tanks Using a Video Camera," First Edition, 1999, Methods A and D.
 - (3) National Leak Prevention Association Standard 631.
 - (4) PSTD Internal Tank Lining Guidance document and PSTD Interior Lining Inspection Form are available on ~~OCC~~ the Commission website at www.occweb.com.
- (e) UST owners/operators must submit to PSTD a copy of the certificate of performance (Interior Lining Inspection Form) completed by the inspection provider attesting that the UST meets the performance requirements for both the UST and the lining material. Any UST failing to meet the specified performance requirements cannot be relined. Minor imperfections may be repaired and the tank must be upgraded with a cathodic protection system within six months of the lining repair, or be removed.
- (f) USTs upgraded by the addition of both internal lining and cathodic protection do not require internal periodic inspection if the cathodic protection system has been properly installed and maintained on the UST system.
- (g) Tank owners or their representative must provide 48 hour notification for all lining inspections to PSTD ~~by submitting the PSTD scheduling form~~ in the online format established by PSTD.

PART 6. PIPING

165:25-2-55.2. Vent piping requirements

- (a) Where vent pipes installed prior to July, 2003, from tanks storing gasoline are adjacent to buildings or public ways, they must be located not less than twelve feet (12') (3.6 meters) above the adjacent ground level or three feet (3') above the roof line at the highest point of attachment. Newly installed vent pipes must be five feet (5') above the roof or canopy. All vent pipes buried below ground must be a minimum of eighteen inches (18").
- (b) In order to aid in dispersion, vapors must be discharged upward. Vent outlets must be located so that flammable vapors will not accumulate to an unsafe location or trapped under

eaves and shall be at least five feet (5') (1.5 meters) from building openings and fifteen feet (15') (4.5 meters) from powered ventilation air intake devices).

- (c) All new or replacement underground vent piping must be non-metallic. Aboveground vent risers must be steel pipe.

(d) Vent risers must be located or protected and anchored, to prevent damage from traffic, wind, or testing procedures.

PART 7. DISPENSERS

165:25-2-75.1. Display on dispenser

(a) Every dispenser or delivery device regulated by the Commission used for the sale of motor fuel to the public must legibly display the type of motor fuel offered for sale.

(b) Any motor fuel must be displayed in accordance with 16 CFR Part 306.0 through 306.12, including Appendices; and sold as provided for by Commission rules and National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices".

PART 13. REMOVAL AND CLOSURE OF UNDERGROUND STORAGE TANK SYSTEMS

165:25-2-135. Permanent closure

All underground storage tanks and associated piping out of service/use for more than twelve (12) months must be removed if they do not comply with the requirements as stated in 165:25-2-133 and 165:25-2-134. A variance to close a tank and/or associated piping in place with a PSTD approved inert material must be made by application and administrative review in accordance with OAC 165:5-21-3.1. For a closure in place variance solely on the basis of financial concerns between the cost to remove and the cost to close in place, applicant must submit three (3) bids to remove and three (3) bids to close in place with their variance application. A variance is effective on order issuance.

SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION REQUIREMENTS

PART 2. RELEASE DETECTION REQUIREMENTS AND METHODS

165:25-3-6.25. Interstitial monitoring

(a) For double-walled underground storage tank systems, the sampling or testing method must be capable of detecting a leak at least every thirty (30) days through the inner wall in any portion of the tank that routinely contains product in accordance with the manufacturer instructions.

(b) On new installations, the containment sumps used for interstitial monitoring of piping must be tested at installation and using a PSTD approved testing method that tests the sump above the highest penetration or sump sidewall seam. After

initial testing, sumps must be tested at least once every three (3) years for liquid tightness or use double-walled containment sumps with periodic interstitial monitoring of the space between the two (2) walls of the sump at least every thirty (30) days. Records demonstrating compliance must be maintained for three (3) years.

(c) Existing systems must have the containment sumps tested for liquid tightness by October 13, 2018, and at least once every three (3) years thereafter or use double-walled containment sumps with periodic interstitial monitoring of the space between the two (2) walls of the sump at least every thirty (30) days. Owners and operators using a low liquid level test must ensure that when the sensor is activated the alarm activates, and verify the submersible pumps automatically shut off when the liquid activates the sensors. Sensors must be mounted and positioned at the lowest point in the sumps. Low liquid level UST sump testing must be performed according to the procedures set forth on the Commission's Containment Sump Alternative Test form. Records demonstrating compliance must be maintained for three (3) years.

(d) Beginning October 13, 2018, owners and operators must perform operation and maintenance tests on electronic and mechanical components of release detection equipment. This testing must be conducted according to the manufacturer's instructions or a code of practice developed by a nationally recognized association or independent testing laboratory. A test of the proper operation must be performed at least annually and, at a minimum, as applicable to the facility, cover the following components and criteria:

- (1) Automatic tank gauge and other controllers: test alarm, verify system configuration, test battery backup.
- (2) Probes and sensors: inspect for residual buildup, ensure floats move freely, ensure shaft is not damaged, ensure cables are free of kinks and breaks, test alarm operability and communication with controller.
- (3) Vacuum pumps and pressure gauges: ensure proper communication with sensors and controller.
- (4) Hand-held electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation.

(e) Owners and operators must maintain records of the annual operation tests for three (3) years. At a minimum, records must list each component tested, indicate whether each component meets the criteria listed above or needed to have action taken, and describe any action taken to correct an issue.

PART 3. RELEASE INVESTIGATION REQUIREMENTS

165:25-3-7.1. Release reporting

(a) The reporting requirements of this Part do not relieve the owner/operator of the responsibility to take necessary corrective action pursuant to OAC 165:29, to protect the public health, safety and the environment, including the containment and cleanup of spills and overfills that are not required to be reported by this Chapter.

(b) All underground storage tank system owners, operators, their employees or agents, or transporters must report to PSTD within twenty-four (24) hours of discovering any substances, conditions or monitoring results that indicate a release may have occurred using the link provided on the release reporting tab on PSTD's webpage ~~at the OCC website, www.occweb.com (PSTReleaseReporting@occemail.com)~~ on the Commission website; by email at PSTReleaseReporting@occ.ok.gov; or by telephone at (405) 521-4683 or 1-888-621-5878. If after hours, or on weekends or holidays, call the PSTD emergency phone number at (405) 823-0994. Owners or operators must provide written confirmation to follow within twenty (20) days in accordance with the requirements established in this Chapter. Events indicating a release include, but are not limited to, the following:

- (1) The discovery of released regulated substances at the facility or in the surrounding area (such as the presence of free product or vapors in soils, basements, crawlspaces, sewer and utility lines, and nearby surface water) whether on-site or off-site.
- (2) Any unusual operating conditions observed, such as the unexplained erratic behavior of product dispensing equipment, the sudden loss of product from the underground storage tank system, an unexplained presence of water in the tank, or liquid in the interstitial space of secondarily contained systems, unless the system equipment or component is found not to be releasing regulated substances to the environment; any defective system equipment or component is immediately repaired or replaced; for secondarily contained systems any liquid in the interstitial space not used as part of the interstitial monitoring method (for example brine filled) is immediately removed.

(A) In the case of inventory control, two consecutive thirty (30) day periods where the Total Gallons Over/Short is greater than the "Leak Check" (one percent (1%) of product sales plus 130 gallons) must be reported to PSTD within twenty-four (24) hours of the owner/operator discovering the inventory control results.

(B) Any UST system failure from a third party-certified Statistical Inventory Reconciliation (SIR) analysis must be reported to PSTD by the owner, operator, or agent within twenty-four (24) hours of discovering the failure. An immediate investigation into the cause of the failed report must be conducted and results reported to PSTD within seven (7) days.

(C) An "Inconclusive" report from an SIR analysis must be reported by the owner, operator, or agent within twenty-four (24) hours of report generation. An Inconclusive means that the UST system has failed to meet leak detection requirements for that month thirty (30) day period.

(3) An unusual level of vapors on the site that is of unknown origin. A vapor observation well reading in excess of 4,000 units/ppm from a pit containing gasoline tanks, and in excess of 1,500 units/ppm for a pit containing diesel or both gasoline and diesel, must be reported to PSTD

within twenty-four (24) hours by the owner/operator, their employees, or agents discovering the monitoring results. Within ten (10) days, the owner/operator must submit to PSTD all vapor monitoring well data for the last twelve (12) thirty (30) day periods. Upon examination of the submitted data, PSTD will advise the owner/operator what action, if any, is needed.

(4) An increase in vapor levels of 500 units/ppm above background or historical levels detected by thirty (30) day monitoring, even though below the twenty-four (24)-hour reporting level, must be reported if the increase does not correct itself in the second thirty (30) day period of monitoring and it must be reported to PSTD within twenty-four (24) hours of the owner, operator, their employees, or agents discovering the monitoring results.

(5) Monitoring results, including investigation of an alarm, from a release detection method required by this Chapter that indicate a release may have occurred unless:

(A) The monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result;

(B) The leak is contained in the secondary containment and;

(i) Any liquid in the interstitial space not used as the interstitial monitoring method is immediately removed.

(ii) Any defective system equipment or component is immediately repaired or replaced.

(C) The alarm was investigated and determined to be a non-release event (for example, from a power surge or caused by filling the tank during release detection testing).

(c) While aboveground releases of petroleum of less than twenty-five (25) gallons need not be reported to PSTD, they must be recorded by the owner/operator and contained and cleaned up immediately. All of the following releases must be reported to PSTD electronically or by telephone within twenty-four (24) hours of discovery, by the owner, operator, their employees, or agents, with a written confirmation to PSTD within twenty (20) days in accordance with the requirements established in this Chapter:

(1) All known belowground releases in any quantity; for example, a release resulting from a line broken during an excavation.

(2) Any aboveground release of petroleum greater than twenty-five (25) gallons.

(3) Any aboveground release of petroleum which is less than twenty-five (25) gallons, but cannot be contained and cleaned up within twenty-four (24) hours.

(d) All owners/operators of underground storage tank systems must maintain records of all reportable and nonreportable events listed in this section sufficient to permit adequate inspection and review by PSTD. These records must be kept for three (3) years following the date of the event.

(e) If any of the possible, probable or definite release conditions set forth above are not reported within twenty-four

(24) hours, the owner/operator may be subject to fines, Formal Enforcement Action or shutdown of operations.

(f) Any releases requiring emergency corrective action must be reported immediately to PSTD at (405) 521-4683 or 1-888-621-5878. After office hours, weekends or holidays, calls must be reported to PSTD's emergency number at (405) 823-0994.

SUBCHAPTER 5. UPGRADES

165:25-5-1. Alternatives allowed

No later than December 23, 1998, owners/operators of existing underground storage tank systems shall:

(1) Comply with the requirements for new underground storage tank systems under Subchapter 2 of this Chapter; or

(2) Comply with the upgrading requirements in OAC 165:25-5-2 and 165:25-5-3; or

(3) Permanently close the underground storage tank system and take any necessary corrective action, in accordance with this Chapter.

SUBCHAPTER 8. SPECIAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS UTILIZED BY MARINAS

PART 5. DISPENSER REQUIREMENTS

165:25-8-15. Nozzles

Dispensing nozzles used at marine service stations must be the automatic closing type. Hold-open latch devices from nozzles intended for marina service are not allowed.

SUBCHAPTER 18. INSPECTIONS, NOTICES OF VIOLATION, FIELD CITATIONS, AND FORMAL ENFORCEMENT ACTIONS

PART 3. NOTICES OF VIOLATION, FIELD CITATIONS, AND FORMAL ENFORCEMENT ACTIONS

165:25-18-11. Notices of Violation

(a) When a PSTD Fuel Specialist finds a violation of any statute, rule, requirement or order of the Commission regarding the regulation of petroleum storage tanks, the Fuel Specialist may issue a Notice of Violation (NOV).

(1) A Notice of Violation is to alert the tank owner or operator that a violation has been found. The NOV will describe the violation and advise that further PSTD enforcement action may occur if the violation is not corrected. If the violation cannot be corrected, the violation will be referred to the PSTD Compliance and Inspection

Manager or Director's designee who may initiate Formal Enforcement Action or issue a Field Citation.

(2) At PSTD's discretion, serious violations can be immediately turned over to the Commission's Judicial and Legislative Services Division for Formal Enforcement Action.

(23) The NOV must explain what the offense is and how the person can correct it.

(b) Notices of Violation will state the following information:

- (1) A clear description of the violation(s).
- (2) A date by which the violation(s) must be corrected.
- (3) The name of the PSTD Fuel Specialist issuing the NOV, along with a telephone number and address so that the tank owner or operator can ask the PSTD Fuel Specialist questions.

(c) NOV(s) are issued to the owner/operator of the storage tank facility. If the owner/operator is not present, NOV(s) can be given to store personnel.

(d) All notifications and/or correspondence will be mailed or electronically delivered to the owner and/or operator.

165:25-18-12. Re-inspection, Field Citation and Formal Enforcement Action

(a) On or after the date that the violation is to be corrected, a Fuel Specialist will re-inspect the storage tank facility to verify that the violation has been corrected.

(b) If the re-inspection shows that the violation has not been corrected, the Fuel Specialist may:

- (1) Refer the violation to the PSTD Compliance and Inspection Manager or the Director's designee who may initiate Formal Enforcement Action or issue a Field Citation; and/or
- (2) Shut down the storage tank ~~facility system~~ pending a correction of the problem or a hearing on the issue.

165:25-18-13. Issuance of a Field Citation and payment of fine or hearing

(a) The storage tank owner/operator can either pay the amount of the fine as stated in the Field Citation or request a hearing.

(b) The tank owner/operator will have thirty (30) days from the date the Field Citation was issued to pay the fine.

- (1) A fine may be paid with cash, money order, check or electronic method approved by the Commission. Any

cash payment must be made at the Commission's cashier window. All checks must be made payable to the Oklahoma Corporation Commission - Petroleum Storage Tank Division. If sending payment through the mail, a copy of the Field Citation must be sent with the payment to ensure proper credit.

(2) Payment of a fine within the thirty (30) day time-frame will not be considered an agreement or disagreement with the Field Citation.

(c) If the storage tank owner/operator disagrees with the Field Citation, they may appear at the ~~Field Citation~~ hearing at the Commission as provided in the Field Citation. If found guilty at the hearing in violation of PSTD rules at the time the Commission order is issued, the tank owner or operator must pay the amount of the fine, as well as an administrative cost of \$250.00.

~~(d) If a Field Citation has not been paid within ninety (90) days of being issued or within ninety (90) days of a Commission order confirming the fine, the amount of the fine will double.~~—Refusal to comply with an order of the Commission may result in an additional fine being levied after notice and hearing in an amount as allowed by law, and shutdown of the facility tank system for failure to pay fines.

(e) Failure of a tank owner/operator to appear at the hearing may result in additional enforcement action.

(f) ~~An appeal from Any exceptions to~~ the hearing must be made in accordance with OAC 165:5.

(g) A tank owner/operator is still responsible for following the Commission's rules regarding petroleum storage tanks regardless of paying a fine or correcting a violation.

PART 5. PENALTIES

165:25-18-19. Penalties

(a) Pursuant to 17 O.S. § 311(A), any person who violates any of the provisions of this Chapter shall be liable for a fine not to exceed \$10,000.00 for each day that the violation continues.

(b) If the person disagrees with the violation(s) listed in the Formal Enforcement Action, they may appear at the hearing at the Commission. If found guilty at the hearing in violation of PSTD rules at the time the Commission order is issued, the person must pay the amount of the fine, as well as an administrative cost of \$250.00.

APPENDIX S. FIELD CITATIONS TABLE [REVOKED]

APPENDIX S. FIELD CITATIONS TABLE [NEW]

*Field Citation Table fine amounts will be used when Field Citations are issued, and may be used as a suggested fine amount in a Formal Enforcement Action, not to exceed the statutorily set limitations in 17 O.S. § 311(A).

Rule	Violation	Fine Amount
Registration & Permit Requirements		
165:25-1-41	Failure to amend registration within 30 days to reflect changes or tank status	\$500
165:25-1-42	Failure to register tanks within 30 days of bringing the system into service	\$500
165:25-1-42	Operating a tank without a valid permit	\$1,000
165:25-1-51	Failure to amend registration within 30 days to reflect change in ownership	\$500
165:25-1-64	Failure to pay permit fees prior to due date	Not > 50% of fee
165:25-1-126	Failure to certify training for all operator classes, per owner not facility	\$500
165:25-1-126	Second offense within 12 months Third offense thereafter, formal enforcement	\$1,000
Notification Requirements		
165:25-1-41	Failure to properly identify all storage tank systems in the online format established by PSTD after second request, including a letter advising tank owner of the penalty	\$1,000
165:25-1-42	Failure to notify PSTD prior to tank installation	\$500
165:25-1-42	Failure to provide installation information in the online format established by PSTD after second request, including a letter advising tank owner of the penalty	\$1,000
165:25-1-48	Failure to report tank and line tightness test results as required	\$500
165:25-2-131	Failure to notify PSTD prior to tank and/or line closure	\$500

Rule	Violation	Fine Amount
165:25-3-7.1	Failure to report to PSTD within 24 hours of discovering any PSTD regulated substances, conditions or monitoring results that indicate a reportable release may have occurred or a spill or overfill over 25 gallons has occurred	\$250
Required Reports		
165:25-1-41	Failure to submit required PSTD paperwork, test results, and/or reports in the required online format and timeframe	\$250
	Second offense	\$500
	Third offense	\$750
165:25-1-55(c)	Failure to submit tank closure report within 45 days	\$250
165:25-3-8(d)	Failure to submit required reports pertaining to suspected release investigations and/or corrective action activities in a timely manner	\$250
	Second offense for same case or facility number	\$500
	Third offense for same case or facility number	\$750
General Leak Detection Requirements		
165:25-1-53 165:25-1-54	Failure to retain records of calibration, maintenance, and/or repair of release or leak detection equipment	\$250
165:25-1-53(c)	Failure to maintain results of sampling, testing, or monitoring	\$250
165:25-1-53(d)(1)	Failure to maintain records of release or leak detection monitoring	\$250
165:25-3-6.20	Failure to provide adequate release or leak detection for storage tank system	\$250 (per period)
	Second offense or formal enforcement	\$500
	Third offense or formal enforcement	\$1,000
165:25-3-6.21	Failure to use an approved method of release or leak detection method for tanks	\$250
165:25-3-6.23	Failure to use a licensed technician for monitoring vapor wells as required	\$250
165:25-3-6.24	Failure to use a licensed technician for monitoring groundwater wells as required	\$250
165:25-3-6.29	Failure to use an approved method of release or leak detection monitoring for piping	\$250

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Rule	Violation	Fine Amount
Spill Protection & Overfill Prevention		
165:25-2-39(e)(1)	Tank owner/operator accepting delivery into UST without spill protection	\$1,000
165:25-2-39(e)(2)	Tank owner/operator accepting delivery into UST that does not have overfill prevention	\$1,000
Operation & Maintenance of Corrosion Protection		
165:25-1-56(b)	Failure to maintain records of cathodic protection installation, repair, inspections or testing	\$250
165:25-1-56(b)(1)	Failure to provide cathodic protection system design or suitability study	\$1,000
165:25-2-51	Tank owner/operator accepting delivery into a UST that does not have a required corrosion protection system	\$1,000
165:25-2-52 165:25-2-53 165:25-2-53.1	Failure to properly operate and maintain corrosion protection, inspect tank lining, or make necessary repairs	\$150
	Second offense or formal enforcement	\$500
	Third offense or formal enforcement	\$1,000
165:25-2-53(a)	Failure to test cathodic protection system within 6 months of installation or repair	\$250
165:25-2-53(a)	Failure to use a qualified cathodic protection tester to certify corrosion protection system operation at least once every 3 years	\$500
	Second offense or formal enforcement	\$1,000
165:25-2-53(c)	Failure to properly and/or timely test corrosion protection every 60 days	\$250 (per period)
Release Investigation		
165:25-3-7.1	Failure to clean up a spill or a spill resulting from overfill over 25 gallons	\$500
165:25-3-8	Failure to investigate a spill or a spill resulting from overfill over 25 gallons	\$100
165:25-3-8	Failure to conduct tightness test(s) to investigate suspected leak(s) from the storage tank system as required	\$250
Temporary Closure		
165:25-2-133(a)(1)	Failure to operate and maintain corrosion protection in a temporarily closed storage tank system as required	\$500

Rule	Violation	Fine Amount
165:25-2-133(c)(2)	Failure to provide adequate release or leak detection as required in a temporarily closed storage tank system	\$250
165:25-2-133(c)(3)	Failure to properly vent a temporarily closed storage tank system as required	\$250
165:25-2-133(c)(4)	Failure to cap and secure all storage tank related equipment for temporary closure	\$250
Permanent Closure		
165:25-2-131(d)	Failure to use a PSTD licensed UST Remover	\$500
165:25-2-135	Failure to remove tank system that has been out of service in excess of 12 months and does not comply with the requirements as stated in 165:25-2-133 and 165:25-2-134	\$500/tank
165:25-2-136	Failure to measure for the presence of a release before permanent closure as required	\$500
165:25-2-136(d)	Failure to use a PSTD licensed Environmental Consultant	\$500
165:25-5-1	Failure to upgrade UST with CP by December 1998 deadline or remove tank within 12 months of December 1998 deadline	\$500/tank
Operation & Maintenance		
165:25-1-53(d)(8)	Failure to provide records of annual operation and maintenance tests of release detection	\$250
165:25-1-57(b)	Failure to provide records of overfill prevention inspections and spill prevention equipment testing	\$250
165:25-1-60	Failure to provide records of walkthrough inspections	\$250
Repairs		
165:25-1-54	Failure to maintain repair records for operating life of storage tank	\$250
165:25-2-36 165:25-2-111	Failure to use a PSTD licensed UST Installer or repair person for installation or repair as required	\$500
	Second offense (per owner, not per facility)	\$1,000
165:25-2-40 165:25-2-111	Failure to perform tightness test on storage tank system after installation or repair	\$300

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Rule	Violation	Fine Amount
Other Violations		
165:15-7-1	Misrepresentation of octane level per location	\$500
	Second offense within one year	\$1,000
	Third offense – Closure and formal enforcement	\$5,000
Administrative Penalty	Any owner/operator of a storage tank system who fails to comply with any requirement or order issued by the Commission for corrective or enforcement actions may be subject, after notice and hearing, to a fine in an amount as allowed by law.	

TITLE 165. CORPORATION COMMISSION

CHAPTER 26. ABOVEGROUND STORAGE TANKS

[OAR Docket #20-602]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
 Part 1. Purpose and Definitions
 165:26-1-2. Definitions [AMENDED]
 Part 3. Scope of Rules
 165:26-1-22. Exclusions [AMENDED]
 Part 4. Administrative Provisions
 165:26-1-26. Hearings, orders and ~~appeals~~ exceptions [AMENDED]
 Part 7. Notification and Reporting Requirements
 165:26-1-41. General reporting requirements [AMENDED]
 165:26-1-42. New tank systems [AMENDED]
 Part 15. Licensing Procedures
 165:26-1-113. License penalties [AMENDED]
 Subchapter 2. General Requirements for Aboveground Storage Tank Systems
 Part 1. Design and Installation
 165:26-2-3. Aboveground storage tank spacing [AMENDED]
 165:26-2-4. Distance to be kept around tanks [AMENDED]
 165:26-2-5.1. General spill and overfill prevention requirements [AMENDED]
 165:26-2-7. Collision barriers [AMENDED]
 Part 9. Dispenser Requirements
 165:26-2-91.1. Display on dispenser [NEW]
 Subchapter 3. Release Prevention and Detection
 Part 14. Release Reporting Requirements
 165:26-3-77. Release reporting [AMENDED]
 Subchapter 4. Inspections, Notices of Violation, Field Citations and Formal Enforcement Actions
 Part 5. Notices of Violation, Field Citations, and Formal Enforcement Actions
 165:26-4-16. Notices of Violation [AMENDED]
 165:26-4-17. Re-inspection, Field Citation and Formal Enforcement Actions [AMENDED]
 165:26-4-18. Issuance of a Field Citation and payment of fine or hearing [AMENDED]
 Part 7. Penalties
 165:26-4-21. Penalties [AMENDED]
 Subchapter 8. Requirements for Aboveground Storage Tank Systems Utilized by Marinas
 Part 15. Dispenser Requirements
 165:26-8-62. Nozzles [AMENDED]
 Appendix G. Field Citations Table [REVOKED]
 Appendix G. Field Citations Table [NEW]

AUTHORITY:

Corporation Commission; 17 O.S. §§ 306(12), 307, 322, 342, and 347

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2019-11, the proposed rules were submitted to the Governor and Cabinet Secretary on September 18, 2019.

COMMENT PERIOD:

September 18, 2019 to November 15, 2019

PUBLIC HEARING:

December 10, 2019

ADOPTION:

December 10, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

December 20, 2019

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

October 1, 2020

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

Incorporated Standards:

NFPA 30 Flammable and Combustible Liquids Code; 16 CFR Parts 306.0 through 306.12, including Appendices; and National Institute of Standards and Technology ("NIST") Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices

Incorporating rules:

165:26-2-3 and 165:26-2-91.1

Availability:

8:00 a.m. to 4:30 p.m., Monday through Friday at the Petroleum Storage Tank Division, Oklahoma Corporation Commission, Jim Thorpe Building, 2101 N. Lincoln Blvd., Oklahoma City, OK 73105

GIST/ANALYSIS:

The approved rules make definitions consistent with those in other chapters; add language to clarify certain definitions; add definitions for electronic signature, maintenance, and mobile or temporary tank at construction site; and strike definitions already appearing in statute or which are not otherwise used in the rules. The approved rules exclude aboveground boiler tanks used for storing heating oil for consumptive use on the premises; add terminology consistent with Oklahoma Administrative Code ("OAC") 165:5; update the Petroleum Storage Tank Division's ("PSTD") electronic notification and release detection forms submission procedures; update PSTD's electronic notification for tank installation and registration procedures; and add a form for certifying tank and piping installation for unregistered tanks.

The approved rules also clarify terminology within the rule; move existing language in the rule to a new subsection; adopt National Fire Protection Association ("NFPA") standards for distance between tanks; strike unnecessary language regarding a fire-protected tank; clarify spill and overfill prevention requirements for aboveground tanks installed before and after 2018; and incorporate industry standards for size and type of collision barrier allowed. The approved rules add the requirements for displaying fuel contents on dispensers; provides that a release reporting email address will be located on the Commission's website; clarify that the violation of a statute may result in a Notice of Violation being issued; clarify which violations can be immediately referred to the Commission's Judicial and Legislative Services Division for Formal Enforcement Action; clarify a storage tank system can be shut down pending correction of a violation or until a hearing is held on the issue; and clarify if an owner disagrees with the fine the Field Citation instructs the owner as to how he or she may request a hearing.

The approved rules also clarify terminology related to a violation of PSTD rules; clarify terminology related to a tank system shutdown; and incorporate an industry standard recommended practice for dispenser nozzles at marinas. The adopted rules correct a grammatical error; strike redundant language; revoke and reenact Appendix G to correct rule citations, clarify some of the descriptions used in the violation column, move existing violations to the applicable section in the table, and update terminology; and revoke Appendix H.

CONTACT PERSON:

Travis N. Weedn, Deputy General Counsel, Judicial & Legislative Services Division, Oklahoma Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000, Telephone (405)521-4137, Email Travis.Weedn@occ.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. PURPOSE AND DEFINITIONS

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165:26-1-2. Definitions

In addition to the terms defined in 17 O.S. §§ 301 et seq., the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Aboveground storage tank" or "AST" means ~~any stationary tank and individual compartments not included within the definition of a petroleum storage tank in Oklahoma Administrative Code (OAC) 165:25-1-11, which is designed to contain PSTD-regulated substances without structural support of earthen material~~ a "Storage tank" as defined in 17 O.S. § 303(40) that has more than ninety percent (90%) of its volume above the surface of the ground.

"Aboveground storage tank system" means ~~an above-ground storage tank, a closed-plumbed system including, but not limited to, the aboveground storage tank(s), the individual storage tank compartments, and any connected aboveground or underground piping, dispensers and associated equipment and fixtures~~ the lines, the dispenser for a given product, containment sump, if any, ancillary equipment or a transport delivery truck that is connected to the storage tank system.

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Airports" mean landing facilities for aircraft which are routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private airstrips or private airports.

"Ancillary equipment" means any device including, but not limited to: devices, such as piping, fittings, flanges, valves, and pumps that are used to distribute, meter, or control the flow of regulated substances to or from a petroleum storage tank.

"ATG" means automatic tank gauging.

"Backfill" is the material that is placed in piping excavation to support and separate the piping from the natural environment.

"BTEX" means benzene, toluene, ethylbenzene and xylene.

"Bulk plant" means petroleum storage tank facility where regulated substances are received by tank vessels, pipelines, tank cars, or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distributing them by a tank vessel, pipeline, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"Cathodic protection" means a technique designed to prevent the corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, protection can be accomplished with an impressed current system or a galvanic anode system.

"Change in service" means a change in the status of a storage tank (i.e., from currently in use to temporarily out of use); or change of regulated substance that a storage tank contains.

"Commission" or "OCC" means the Oklahoma Corporation Commission ~~and includes its designated agents or representatives.~~

"Compatible" means the ability of two (2) or more substances to maintain their respective physical properties upon

contact with one another for the design life of the PST system under conditions likely to be encountered in the system.

"Construction tank" means a fuel tank used for less than twelve (12) months at a construction site.

"Corrosion expert" means an individual having the requisite knowledge, experience, certification, and training to design, install, test, and maintain corrosion protection systems.

"Division" means the Petroleum Storage Tank Division (PSTD) of the Corporation Commission.

"Emergency venting" means a construction method or device that relieves excessive internal pressure due to fire exposure.

"EPA" means the United States Environmental Protection Agency.

"Electronic signature" means an electronic signature as defined in OAC 165:5-1-3.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes but is not limited to fish hatcheries, rangeland, and nurseries with growing operations.

"Fire protected tank" means an aboveground storage tank that is listed in accordance with UL 2085, *Standard for Insulated Aboveground Tanks for Flammable and Combustible Liquids*, or an equivalent test procedure that consists of a primary tank provided with protection from physical damage and fire-resistive protection from exposure to a high-intensity liquid pool fire.

"Fire resistant tank" means a UL listed aboveground storage tank that provides fire-resistant protection from exposures to a high intensity liquid pool fire.

"Fleet and Commercial" means any facility that uses aboveground storage tanks to store regulated substances for use in its own vehicles or equipment.

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process.

"Formal Enforcement Action" means the process of ensuring compliance with Commission regulations, rules, orders, requirements, standards, and/or state law when a violation occurs and PSTD initiates an enforcement Complaint under the contempt procedure in OAC 165:5 Subchapter 19 to be heard at the Commission by an Administrative Law Judge or the Commissioners.

"Fund" means the Petroleum Storage Tank Indemnity Fund.

"Generation facilities" means ~~those tanks that are permanently installed, which routinely contain fuel to be used in emergency generators in the event of a power failure.~~

"Impervious barrier" means a barrier of sufficient thickness, density, and composition that is impenetrable to the regulated substance, has a permeability of at least 1×10^{-6} cm/sec., and will prevent the discharge to the environment

of any regulated substance for a period of at least as long as the maximum anticipated time during which the regulated substance will be in contact with the impervious material.

"Important building" means a building that is considered not expendable in an exposure fire.

"In service" means a petroleum storage tank that contains a regulated substance, and/or has a regulated substance added to or withdrawn from it.

"Licensed Environmental Consultant" means an individual who has a current license issued by PSTD to perform corrective action.

"Maintenance" means the normal operational upkeep necessary to prevent a petroleum storage tank system from releasing product.

"Marina" means any fuel storage tank system located on or by the water for the purpose of fueling watercraft.

"Mobile or Temporary Tank at Construction Site" means a fuel tank used for less than twelve (12) months at a construction site.

"Operator" means any person in control of or having responsibility for the daily operation of the storage tank system, whether by lease, contract, or other form of agreement. The term "operator" also includes a past operator at the time of a release, tank closure, violation of the Oklahoma Petroleum Storage Tank Consolidation Act, or a rule promulgated thereunder, or a requirement of the Commission. In the case of a storage tank system in service/use before November 8, 1984, but no longer in service/use on that date, the last person to operate the storage tank system immediately before the discontinuation of its service/use.

"Owner" means: any person as set forth in 17 O.S. § 303(27).

~~(A) In the case of a storage tank system in service/use on November 8, 1984, or brought into service/use after that date, any person who holds title to, controls, or possesses an interest in a storage tank system used for the storage, use, or dispensing of regulated substances, including the real property owner where the storage tank system is still present, the storage tank system presence is a trade fixture or improvement or both. It is not necessary that the real property owner sold, used, or stored regulated substances in, of, or from the storage tank system.~~

~~(B) In the case of a storage tank system in service/use before November 8, 1984, but no longer in service/use on that date, any person who holds title to, controls, or possesses an interest in a storage tank system immediately before the discontinuation of its service/use. However, a real property owner who has a storage tank system located on their property that was taken out of service/use prior to November 8, 1984, is not considered to be a storage tank owner for any PSTD regulated purpose.~~

"Permanent out of use" or "POU" means a petroleum storage tank system that is not in service/use, does not contain regulated substances, and is not intended to be placed back in service/use.

"Pier" means dock, floating dock, and wharf.

"Positive sampling, testing, or monitoring results" means the results of sampling, testing or monitoring using any of the release detection methods described in this Chapter that indicate that a release from a petroleum storage tank system may have occurred.

"Private airport" means an airport used only by its owner and regulated as a fleet and commercial facility.

"Private airstrip" means a personal residential takeoff and landing facility attached to the airstrip owner's residential property and used only by the owner.

"PSTD" means Petroleum Storage Tank Division.

"Public Utility" means any entity providing gas, electricity, water, or telecommunication services for public use.

"Recalcitrant owner" means an owner/operator who is responsible for a tank system and after notice will not adhere to a PSTD enabling statute, Commission rule, requirement or order.

"Regulated substances" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel as set forth in 17 O.S. § 305. It does not include compressed natural gas, liquid natural gas ~~and~~ or propane.

"Release detection" means the methodology used in determining whether a release of regulated substances has occurred from a petroleum storage tank system into the environment or into the interstitial area between the storage tank system and its secondary barrier.

"Residential tank" is a tank located on real property used primarily for dwelling purposes.

"Retail facility" means a service station, convenience store or any other facility selling a PSTD regulated substance that is open to the general public.

"Sacrificial anode" means a device to reduce or prevent corrosion of a metal in an electrolyte by galvanic coupling to a more anodic metal.

"Secondary containment" means a system installed around a petroleum storage tank or system that is designed to prevent a release from migrating beyond the secondary containment system outer wall (in the case of a double-walled tank system) or excavation area (in the case of a liner or vault system) before the release can be detected. Such a system may include, but is not limited to, impervious barriers (both natural and synthetic), double walls, or vaults.

"TPH" means total petroleum hydrocarbons.

"Tampering" means willful intention in an attempt to deceive, cheat or misrepresent facts to the public. Tampering also presents a risk to the environment as well as public health, safety, and welfare.

"Tank tightness testing" or "precision testing" means a procedure for testing a petroleum storage tank system's integrity.

"Temporary out of use" or "TOU" means the status of a petroleum storage tank system that has been taken out of service/use with the intent to permanently close or return to service.

"Total venting capacity" means the sum of the normal and emergency vent capacities and is determined by the wetted area of the tank as provided in Appendix I.

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"Used Motor Oil" is any spent motor oil removed from a motor vehicle.

"Vault" means an enclosure consisting of four (4) walls, a floor, and a top for the purpose of containing a liquid storage tank and not intended to be occupied by personnel other than for inspection, repair, or maintenance of the vault, the storage tank or related equipment.

"Wetted area of cylindrical tank" means seventy-five percent (75%) of the total exposed area of the tank ends and shell.

"Wetted area of rectangular tank" means one hundred percent (100%) of the surface area of the bottom, sides, and ends of the tank.

"Wetted area of vertical tank" means the first thirty feet (30') above grade of the exposed shell and floor.

PART 3. SCOPE OF RULES

165:26-1-22. Exclusions

(a) The following classes of aboveground storage tanks or systems are specifically excluded from all provisions of this Chapter:

- (1) All tanks used in the exploration or production of oil and gas, including well service equipment and natural gas compression equipment.
 - (2) All mobile or temporary tanks used at construction sites.
 - (3) All farm and ranch tanks.
 - (4) All tanks used by public utilities in the generation of electric power for public use.
 - (5) All tanks used by manufacturers in the production of goods.
 - (6) Emergency generator tanks.
 - (7) All tanks that contain motor oil, used motor oil or antifreeze located at retail motor vehicle lubrication facilities or automotive service centers.
 - (8) Tanks used for storing heating oil for consumptive use on the premises where stored.
- (b) These exclusions do not extend to permanently located fuel storage tanks used to fuel company vehicles, even though the vehicles may be driven to production or construction sites.

PART 4. ADMINISTRATIVE PROVISIONS

165:26-1-26. Hearings, orders and ~~appeals~~ exceptions

- (a) The Commission will issue orders after notice and hearing as necessary to enforce the provisions of this Chapter or PSTD enabling statutes to protect property, ~~human~~ the public health and safety, and the environment.
- (b) Hearings to enforce or ~~appeal~~ exceptions to the provisions of this Chapter or PSTD enabling statutes will be ~~done~~ conducted in accordance with ~~Chapter 5 of Commission rules~~ OAC 165:5.

PART 7. NOTIFICATION AND REPORTING REQUIREMENTS

165:26-1-41. General reporting requirements

PSTD requires owners and/or operators of aboveground storage tank systems to provide information it deems necessary for the protection of human health, the environment and to assure the safety of people and property. Owners and operators must notify PSTD within thirty (30) days when their mailing address changes or when the status of the aboveground storage tank system changes. Use of the designated PSTD online format is required for reporting, scheduling, tank registration, change in ownership, thirty (30) day release detection, testing, temporary change in service, permanent closure, or return to service. Owners and operators of aboveground storage tanks must notify PSTD ~~using the PSTD scheduling form~~ in the online format established by PSTD at least thirty (30) days prior to switching regulated substances containing greater than ten percent (10%) ethanol or twenty percent (20%) biodiesel ~~using the PSTD scheduling form~~ in the online format established by PSTD. ~~These Required release detection forms are available at the OCC on the Commission website, PST Division webpage: www.oceeweb.com; follow the link to Petroleum Storage Tank Division and link to PST Compliance Forms.~~ Failure to notify and/or submit PSTD paperwork in the online format established by PSTD within the timeframe required may result in an enforcement action.

165:26-1-42. New tank systems

- (a) Persons intending to install a new aboveground storage tank and/or new aboveground or underground piping must give PSTD notification of the installation at least forty-eight (48) hours before the tank and/or lines are to be installed ~~by submitting the PSTD scheduling form in the online format established by PSTD~~ and receiving confirmation of the scheduled installation and the Temporary Authorization for Receipt of Fuel from PSTD. If events require the owner to change the date of installation, the Division should be given forty-eight (48) hours notice of the new date. Any storage tank system permanent removal or a removal associated with replacement of tanks or lines requires at least fourteen (14) day notification prior to the removal activity.
- (b) ~~Upon receipt of the scheduling form an authorization letter giving temporary approval to receive fuel into an unpermitted tank for testing purposes only will be sent to the owner. This letter will expire ninety (90) days after the date of issuance.~~ After the tank installation is complete, the PSTD registration ~~form~~ must be submitted to PSTD in the online format established by PSTD along with copies of required installation testing, photographs of the tank and piping system components before they are covered, an as-built drawing of the entire tank system, and manufacturer installation checklists within thirty (30) days. The tank owner and the AST Licensee are both responsible for timely submittal of all installation paperwork. The registration ~~form~~ must be approved and tank fees paid in order to receive a tank permit to dispense fuel. No regulated storage tank system can be operated without a valid permit from the Corporation Commission.

(c) Owners and AST Licensees must certify on the PSTD Registration ~~form~~ that the installation of tanks and piping meet the requirements of this Chapter. A PSTD Certification of Installation Inspection Form may also be submitted to satisfy certification of tank and piping installation.

PART 15. LICENSING PROCEDURES

165:26-1-113. License penalties

(a) PSTD shall have the responsibility to deny, suspend, refuse to renew or revoke the license of, or reprimand, any licensee who is found ~~guilty in violation of~~:

- (1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.
- (2) Any gross negligence, incompetence or misconduct in installation work performed pursuant to this Chapter.
- (3) Knowingly making false statements or signing false statements, certificates or affidavits to PSTD or to clients ~~with the intention to induce payment.~~
- (4) Aiding or assisting another person in violating any provision of this Chapter.
- (5) Signing a verification statement for work performed pursuant to this Chapter which was not performed by the aboveground storage tank licensee.
- (6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.
- (7) Failure to comply with this Chapter, OAC 165:25, 165:26, 165:27, 165:29, and/or the Oklahoma Petroleum Storage Tank Consolidation Act (17 O.S. §§ 301 et seq.) may result in PSTD seeking a suspension and/or revocation of the license.
- (8) Being under indictment or convicted of a felony for any criminal offense that impacts their obligation to PSTD.
- ~~(9) Failure to submit Commission required paperwork, test results, and reports in the format established by PSTD within the required timeframe may result in enforcement action.~~

(b) Failure to submit Commission required paperwork, test results, and reports in the online format established by PSTD within the required timeframe may result in enforcement action.

~~(bc)~~ Disciplinary action levels against PSTD licensees include but are not limited to informal reprimand, formal reprimand, license suspension, license revocation and refusal to renew.

~~(ed)~~ Any licensee in violation of Commission enabling statutes, PSTD rules, requirements and/or Commission orders may be subject to disciplinary action levels mentioned above and/or fines assessed by the Commission after notice and hearing.

SUBCHAPTER 2. GENERAL REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS

PART 1. DESIGN AND INSTALLATION

165:26-2-3. Aboveground storage tank spacing

Spacing (shell to shell) between any two adjacent aboveground tanks for tanks storing Class I, II, or IIIA stable liquids must be according to the ~~table in Appendix H standards in NFPA 30.~~ The minimum distance between tanks shall be no less than 3 feet. Variances can be made by PSTD for pre-existing facilities where deviation from these rules does not pose a serious hazard to people or property.

165:26-2-4. Distance to be kept around tanks

(a) The following distances, at a minimum, must be kept around aboveground storage tanks.

- (1) 50 ft (15 meters) from the nearest important building as defined by this Chapter;
- (2) 50 ft (15 meters) from any fuel dispenser;
- (3) 50 ft (15 meters) from the nearest side of a public way; and
- (4) 100 ft (30 meters) from any property line that is or might be built upon, including the opposite side of a public way.

(b) The distances as set forth in (a) of this may be reduced by 50 percent if the tanks are fire-resistant. The distances as set forth in (a) may be further reduced if the tanks are a fire-protected ~~type aboveground~~ tank or tanks in vaults as per NFPA 30A-4.3.2.4.

(c) A variance may be granted for pre-existing facilities where compliance would be difficult and expensive and the current distances between tanks, property lines or dispensers pose no serious threat to people or property.

165:26-2-5.1. General spill and overfill prevention requirements

(a) Owners and operators of aboveground storage tank systems, their employees or agents, as well as those who transport regulated substances to these systems must do everything reasonably possible to ensure that releases due to spilling and overfilling do not occur.

(b) Tanks with a fill pipe must be filled through a liquid tight connection mounted inside at least a five (5) gallon spill container. A spill bucket is not required if the fill pipe is located within an impervious containment dike. Where an aboveground tank is filled by means of fixed piping, either a check valve and shutoff valve with a quick-connect coupling or a check valve with a dry-break coupling shall be installed in the piping at a point where connection and disconnection is made inside the spill containment between the tank and the delivery vehicle. This device shall be protected from tampering and physical damage. Tampering with equipment is prohibited. Any violation of this section may result in fines, enforcement action and/or shutdown of operations.

(c) For existing aboveground storage tank systems installed ~~after July 1, 2007~~ before October 13, 2018, any one of the following methods must be used to prevent overfilling.

- (1) High liquid level alarms with an audible or visual signal that alerts personnel when the tank reaches ninety

percent (90%) capacity at a constantly attended operation or surveillance station.

- (2) High liquid level pump cutoff devices set to stop flow at a predetermined container content level.
 - (3) Direct audible or code signal communication between the tank gauger and the pumping station.
 - (4) A fast response system for determining the liquid level of each bulk storage container such as digital computers, telepulse, or direct vision gauges. If this alternative is used a second person must be present to monitor gauges and the overall filling of the tank.
- (d) For installations after October 13, 2018, a fill valve which automatically stops delivery of liquid when the tank reaches ninety-five percent (95%) capacity in addition to one of the following methods must be used to prevent overfilling.
- (1) High liquid level alarms with an audible or visual signal that alerts personnel when tank reaches ninety percent (90%) capacity at a constantly attended operation or surveillance station.
 - (2) Direct audible or code signal communication between the tank gauger and the pumping station.
 - (3) A fast response system for determining the liquid level of each bulk storage container such as digital computers, telepulse, or direct vision gauges. If this alternative is used, a second person must be present to monitor gauges and the overall filling of the tank.
- (e) Liquid level sensing devices must be tested at least annually to ensure proper operation.
- (f) Means shall be provided for determining the liquid level in each tank and this means shall be accessible to the delivery operator. Tank filling shall not begin until the delivery operator has determined that the tank has sufficient available capacity (ullage).

165:26-2-7. Collision barriers

- (a) Aboveground storage tanks exposed to traffic must be resistant to damage from the impact of a motor vehicle ~~or be protected~~ by suitable collision barriers. The secondary containment dike may serve as a collision barrier provided that it cannot be penetrated by a motor vehicle.
- (b) When guard posts or collision barriers are installed, the following design shall be acceptable:
- (1) They shall be constructed of steel not less than 4 in. (100 millimeters) in diameter and shall be filled with concrete.
 - (2) They shall be spaced not more than 4 ft. (1.2 meters) on center.
 - (3) They shall be set not less than 3 ft (0.9 meters) deep in a concrete footing of not less than 15-in. (380 millimeters) diameter.
 - (4) They shall not be less than three feet (3') above grade and concrete barriers not less than thirty-two inches (32") above grade.
 - (5) They shall not be less than five feet (5') from the tank shell.
- (c) Dispensing devices, except those attached to containers, must either be mounted on a concrete island or otherwise protected against collision damage by suitable means and must

be securely bolted in place. If located indoors, the dispensing device will be located in a position where it cannot be struck by a vehicle that is out of control descending a ramp or other slope. The installation must be in accordance with the manufacturer's instructions.

PART 9. DISPENSER REQUIREMENTS

165:26-2-91.1. Display on dispenser

- (a) Every dispenser or delivery device regulated by the Commission used for sale of motor fuel to the public must legibly display the type of motor fuel offered for sale.
- (b) Any motor fuel must be displayed in accordance with 16 CFR Part 306.0 through 306.12, including Appendices; and sold as provided for by Commission rules and National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices".

SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION

PART 14. RELEASE REPORTING REQUIREMENTS

165:26-3-77. Release reporting

- (a) The reporting requirements of this Part do not relieve the owner or operator of the responsibility to take necessary corrective action pursuant to OAC 165:29 to protect the public health, safety and the environment, including the containment and cleanup of spills and overfills that are not required to be reported by this Chapter. No person shall allow a confirmed or suspected release of regulated substances from an aboveground storage tank system to continue without reporting to PSTD or initiating an investigation within twenty-four (24) hours of discovery as required by this Chapter. Owners and operators of aboveground storage tank systems, as well as persons who transport regulated substances must ensure that spills and overfills do not occur.
- (b) All aboveground storage tank system owners, operators, their employees or agents, or transporters must report to PSTD within twenty-four (24) hours of discovering any substances, conditions or monitoring results that indicate a release may have occurred using the link provided on the release reporting tab on PSTD's webpage ~~at the OCC website, www.okccweb.org (PSTReleaseReporting@okccemail.com); on the Commission website; by email at PSTReleaseReporting@okcc.ok.gov; or by telephone at (405) 521-4683 or 1-888-621-5878. If after hours, or on weekends or holidays, call the PSTD emergency phone number at (405) 823-0994. Owners or operators must provide written confirmation to follow within twenty (20) days in accordance with the requirements established in this Chapter. Events indicating a release include, but are not limited to, the following:~~

(1) The discovery of released regulated substances at the aboveground storage tank system facility or in the surrounding area (such as the presence of free product or vapors in soils, basements, crawlspaces, sewer and utility lines, and nearby surface water) whether on-site or off-site.

(2) Any unusual operating conditions observed by owners, operators, their employees, or agents such as the unexplained erratic behavior of product dispensing equipment, the sudden loss of product from the aboveground storage tank system, or an unexplained presence of water in the tank, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced.

(3) In the case of inventory control, two (2) consecutive thirty (30) day periods where the Total Gallons Over/Short is greater than the "Leak Check" (one percent (1%) of product sales plus 130 gallons) must be reported to PSTD within twenty-four (24) hours of the owner, operator, their employees, or agents discovering the inventory control results.

(4) Monitoring results from a release detection method required by this Chapter that indicate a release may have occurred unless the monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.

(c) While aboveground releases of petroleum of less than twenty-five (25) gallons need not be reported to PSTD, they must be recorded by the owner or operator and contained and cleaned up immediately. All of the following releases must be reported to PSTD electronically or by telephone within twenty-four (24) hours of discovery, by the owner, operator, employee, or agent, with a written confirmation to follow within twenty (20) days in accordance with the requirements established in this Chapter:

(1) All known belowground releases in any quantity; for example, a release resulting from a line broken during an excavation.

(2) Any aboveground release of petroleum greater than twenty-five (25) gallons.

(3) Any aboveground release of petroleum that is less than twenty-five (25) gallons, but cannot be contained and cleaned up within twenty-four (24) hours.

(d) All owners and/or operators of aboveground storage tank systems must maintain records of all reportable and non-reportable events listed in this section sufficient to permit adequate inspection and review by PSTD. These records must be kept for three (3) years following the date of the event.

(e) If any of the possible, probable or definite release conditions set forth in subsections (a) through (c) above are not reported within twenty-four (24) hours, the owner, operator, their employees, or agents may be subject to fines, Formal Enforcement Action and/or shutdown of operations.

(f) Any releases requiring emergency corrective action must be reported immediately to PSTD at (405) 521-4683 or 1-888-621-5878. After office hours, weekends or holidays, calls must be reported to PSTD's emergency number at (405) 823-0994.

SUBCHAPTER 4. INSPECTIONS, NOTICES OF VIOLATION, FIELD CITATIONS AND FORMAL ENFORCEMENT ACTIONS

PART 5. NOTICES OF VIOLATION, FIELD CITATIONS, AND FORMAL ENFORCEMENT ACTIONS

165:26-4-16. Notices of Violation

(a) When a PSTD Fuel Specialist finds a violation of any statute, rule, requirement, or order of the Commission regarding the regulation of petroleum storage tanks, the Fuel Specialist may issue a Notice of Violation ("NOV").

(1) A Notice of Violation is to alert the tank owner or operator that a violation has been found. The NOV will describe the violation, and ~~warn~~advise that further PSTD enforcement action may occur if the violation is not corrected.

(2) At PSTD's discretion, serious violations can be immediately turned over to the Commission's Judicial and Legislative Services Division for Formal Enforcement Action.

(23) The NOV must explain what the offense is and how it can be corrected.

(b) Notices of Violation will state the following information:

(1) A clear description of the violation(s).

(2) A date by which the violation(s) must be corrected.

(3) The name of the Fuel Specialist issuing the NOV, along with a telephone number and address so that the tank owner or operator can ask the Fuel Specialist questions.

(c) NOV(s) are issued to the owner or operator of the storage tank facility. If the owner/operator is not present, NOV(s) can be given to store personnel.

(d) All notifications and/or correspondence will be mailed or electronically submitted to the owner and/or operator.

165:26-4-17. Re-inspection, Field Citation and Formal Enforcement Actions

(a) On or after the date that the violation is to be corrected, a Fuel Specialist will re-inspect the storage tank facility to verify that the violation has been corrected.

(b) If the re-inspection shows that the violation has not been corrected, the Fuel Specialist may:

(1) Refer the violation to the PSTD Compliance and Inspection Manager or the Director's designee who may initiate Formal Enforcement Action or issue a Field Citation; and/or

(2) Shut down the storage tank ~~facility system~~ pending a correction of the problem or a hearing on the issue.

165:26-4-18. Issuance of a Field Citation and payment of fine or hearing

(a) The storage tank owner or operator can either pay the amount of the fine as stated in the Field Citation or request a hearing.

(b) The tank owner or operator will have thirty (30) days from the date the Field Citation was issued to pay the fine.

(1) A fine may be paid with cash, a money order, check or electronic method approved by the Commission. Any cash payment must be made at the Commission cashier window. All checks must be made payable to the Oklahoma Corporation Commission - Petroleum Storage Tank Division. If sending payment through the mail, a copy of the Field Citation must be sent with the payment to ensure proper credit.

(2) Payment of the citation within the thirty (30) day time frame will not be considered an agreement or disagreement with the Field Citation.

(c) If the storage tank owner or operator disagrees with the Field Citation, they may appear at the hearing at the Commission as provided on the Field Citation. If found ~~guilty at the hearing in violation of PSTD rules at the time the Commission order is issued~~, the tank owner or operator must pay the amount of the fine, as well as an administrative cost of \$250.00.

(d) ~~If a Field Citation has not been paid within ninety (90) days of being issued or within ninety (90) days of a Commission order confirming the fine, the amount of the fine will double.~~—Refusal to comply with an order of the Commission may result in an additional fine being levied after notice and hearing in an amount as allowed by law, and shutdown of the facility storage tank system for failure to pay fines.

(e) Failure of a tank owner or operator to appear at the hearing may result in additional enforcement action.

(f) ~~An appeal from Any exceptions to~~ the hearing may be made in accordance with OAC 165:5.

(g) A tank owner or operator is still responsible for following the Commission's rules regarding petroleum storage tanks regardless of paying a fine or correcting a violation.

PART 7. PENALTIES

165:26-4-21. Penalties

(a) Pursuant to 17 O.S. § 311(A), any person who violates any of the provisions of this Chapter shall be liable for an administrative penalty or fine not to exceed \$10,000.00 for each day that the violation continues.

(b) If the person disagrees with the violation(s) listed in the Formal Enforcement Action, they may appear at the hearing at the Commission. If found ~~guilty at the hearing in violation of PSTD rules at the time the Commission order is issued~~, the person must pay the amount of the fine, as well as an administrative cost of \$250.00.

SUBCHAPTER 8. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY MARINAS

PART 15. DISPENSER REQUIREMENTS

165:26-8-62. Nozzles

Dispensing nozzles used at marinas must be the automatic closing type. Hold-open latch devices from nozzles for marina service are not allowed.

APPENDIX G. FIELD CITATIONS TABLE [REVOKED]

APPENDIX G. FIELD CITATIONS TABLE [NEW]

*Field Citation Table fine amounts will be used when Field Citations are issued, and may be used as a suggested fine amount in a Formal Enforcement Action, but not to exceed the statutorily set limitations in 17 O.S. § 311(A).

Rule	Violation	Fine Amount
Registration & Permit Requirements		
165:26-1-41	Failure to amend registration within 30 days to reflect changes in tank status	\$500
165:26-1-42	Failure to register tanks within 30 days of bringing the system into service	\$500
165:26-1-42	Operating a tank without a valid permit	\$1,000
165:26-1-47	Failure to amend registration within 30 days to reflect change in ownership	\$500
165:26-1-70	Failure to pay AST permit fees prior to due date	Not > 50% of fee
Notification Requirements		
165:26-1-41	Failure to identify all storage tanks on notification form after third request, including a letter advising tank owner of the penalty	\$1,000
165:26-1-41	Failure to notify PSTD in the required online format and timeframe	\$250
	Second offense	\$500
	Third offense	\$750
165:26-1-42	Failure to notify PSTD prior to AST installation.	\$500
165:26-1-48	Failure to report non-passing tank or line tightness test results.	\$500
165:26-1-57	Failure to provide installation information on notification form after third request, including a letter advising tank owner of the penalty.	\$1,000
165:26-2-210	Failure to notify PSTD prior to AST closure	\$500
165:26-3-77	Failure to report to PSTD within 24 hours of discovering any PSTD regulated substances, conditions or monitoring results that indicate a reportable release may have occurred	\$250

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Required Reports		
165:26-1-57	Failure to submit tank closure report within 45 days	\$250
Rule	Violation	Fine Amount
165:26-3-171	Failure to submit required reports pertaining to suspected release investigations and/or corrective action activities in a timely manner	\$250
	Second offense for same case or facility number	\$500
	Third offense for same case or facility number	\$750
General Leak Detection Requirements		
165:26-1-55	Failure to maintain records of release or leak detection monitoring	\$250
165:26-1-58	Failure to retain records of calibration, maintenance, and repair of release or leak detection equipment	\$250
165:26-3-19	Failure to provide adequate release or leak detection for storage tank system	\$250
165:26-3-20	Second Offense	\$500
	Third Offense	\$1,000
165:26-3-20	Failure to monitor tank(s) for releases as required	\$250
165:26-3-20.1	Failure to use approved release or leak monitoring method for tank	\$250
165:26-3-20.1	Failure to use approved release or leak monitoring method for piping	\$250
165:26-3-20.2		
Spill & Overfill Prevention		
165:26-1-59	Failure to maintain spill and overfill records	\$250
165:26-2-5.1	Tank owner/operator accepting delivery into an AST that does not have spill or overfill protection	\$1,000
Operation and Maintenance of Corrosion Protection		
165:26-1-58	Failure to provide a Cathodic Protection Design or Suitability Study	\$1,000
165:26-2-40	Tank owner/operator accepting delivery into an AST that does not have a required corrosion protection system	\$1,000
165:26-2-41	Failure to properly operate and maintain corrosion protection system (first offense)	\$150
	Second Offense	\$500
	Third Offense	\$1,000
165:26-2-42	Failure to properly and/or timely test corrosion protection system	\$250
165:26-2-42	Failure to maintain records of cathodic protection system every 60 days	\$250 (per period)

165:26-2-42	Failure to use a qualified cathodic protection tester to inspect corrosion protection system at least once every three years (first offense)	\$500
	Second Offense	\$1,000
Rule	Violation	Fine Amount
165:26-2-42	Failure to test cathodic protection system within 6 months installation or repair	\$250
Release Investigation & Confirmation		
165:26-3-171	Failure to conduct tightness test(s) to investigate suspected leak(s)	\$250
165:26-3-171	Failure to investigate a spill or a spill resulting from overfill over 25 gallons	\$100
165:26-3-171	Failure to clean up a spill or a spill resulting from overfill over 25 gallons	\$500
Temporary Closure		
165:26-2-212	Failure to provide adequate release detection as required in a temporarily closed storage tank system	\$250
165:26-2-212(2)	Failure to properly vent a temporarily closed storage tank system as required	\$250
165:26-2-212(3)	Failure to secure all storage tank-related equipment for temporary closure.	\$250
Permanent Closure		
165:26-2-213	Failure to use a PSTD licensed AST Licensee	\$500
165:26-2-214	Failure to measure for the presence of a release before a permanent closure	\$500
165:26-2-214(d)	Failure to use a PSTD licensed Environmental Consultant	\$500
Repairs		
165:26-1-56	Failure to maintain repair records for operating life of storage tank	\$250
165:26-2-1.1 165:26-2-191	Failure to use a PSTD licensed AST Licensee to install or repair person to repair	\$500
	Second offense or thereafter by owner (per owner, not per facility)	\$1000
165:26-2-8	Failure to perform tightness test on tank system after installation or repair	\$300
Other		
165:15-7-1	Misrepresentation of octane level per location	\$500
	Second Offense within a year	\$1000
	Third Offense – Closure & Hearing	\$5000

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165:26-1-31	Failure to follow standard codes for installation	\$500
Rule	Violation	Fine Amount
Administrative Penalty	Any owner or operator of a storage tank who fails to comply with any order issued by the Commission for corrective or enforcement actions may be subject, after notice and hearing, to a fine in an amount as allowed by law.	

TITLE 165. CORPORATION COMMISSION CHAPTER 27. INDEMNITY FUND

[OAR Docket #20-603]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
165:27-1-2. Definitions [AMENDED]
165:27-1-6. Prescribed forms [AMENDED]
Subchapter 9. Administrative Provisions
165:27-9-1. Hearing, orders, and ~~appeals~~ exceptions [AMENDED]

AUTHORITY:

Corporation Commission; 17 O.S. §§ 52, 301, 306(12), 307, 322, 342, and 347.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2019-11, the proposed rules were submitted to the Governor and Cabinet Secretary on September 18, 2019.

COMMENT PERIOD:

September 18, 2019 to November 15, 2019

PUBLIC HEARING:

December 10, 2019

ADOPTION:

December 10, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

December 20, 2019

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

October 1, 2020

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The approved rules add language to clarify definitions; add statutory citations; and strike definitions appearing in statute, or not otherwise used in the rules. The approved rules also add current forms submittal procedures; add terminology consistent with Oklahoma Administrative Code ("OAC") 165:5; and strike redundant language.

CONTACT PERSON:

Travis N. Weedn, Deputy General Counsel, Judicial & Legislative Services Division, Oklahoma Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000, Telephone (405)521-4137, Email Travis.Weedn@occ.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

165:27-1-2. Definitions

In addition to the terms defined in 17 O.S. Sections 303, and in Oklahoma Administrative Code (OAC) 165:25-1-11, 165:26-1-2, and 165:29-1-11 the following words or terms, when used in this Chapter, are the Commission's interpretation

of enabling statutes and shall have the following meaning unless the context clearly indicates otherwise:

"Actual physical damage" means those damages to real and personal property directly related to corrective action performed on a release of petroleum from a Commission regulated storage tank system. Personal property damage is limited to the replacement value of the personal property less depreciation. Real property damage is limited to the lesser of the property value or diminution in property value directly associated with a release of regulated substances from a Commission regulated storage tank system. In no event will the Indemnity Fund reimburse speculative damages, inferred damages, unrealized damages or any other damages where damage costs are not actually incurred, paid, or otherwise established to the Commission's satisfaction. The burden of proof shall be upon the person seeking compensation from actual physical damages.

"Administrative Application" means an Application for eligibility and reimbursement made to the Commission by the Director of the Petroleum Storage Tank Division on behalf of an unavailable or unwilling Applicant to facilitate meeting the Program's obligation to protecting public health, safety and welfare.

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Allowable Costs" means costs that are reasonable, integral and necessary to corrective action.

"Assignment of Benefits" means a written directive from the Applicant of Record instructing the PSTD Indemnity Fund to pay reimbursement directly to the named Assignee.

"Assignment of Rights" (aka "Limited Power of Attorney") means a transfer of authority granting the Assignee the legal right to act on the Assignee's behalf for specified matters.

"Associated costs" means expenses that are not integral to the corrective action and not subject to reimbursement.

"Chemicals of Concern" or **"COC"** means chemicals that may pose a threat to human health and the environment.

"Claim" or **"Claims"** means a properly submitted request for reimbursement from the Fund for an eligible suspicion of release ("SOR") or confirmed release case when the co-pay is paid.

"Closed file case" means a ~~file petroleum release case~~ for which final resolution has been made of all invoices submitted for corrective action taken under an application for reimbursement from the Indemnity Fund and the PSTD Technical Department deems no further corrective action is necessary.

"Commission" or **"OCC"** means the Oklahoma Corporation Commission.

"Confirmed Release" means a release of a regulated substance from a regulated storage tank system resulting in free product, contaminated soils or groundwater that exceed state action levels, organic vapor readings significantly above background levels, petroleum staining or odors or any other indication that a release has occurred that could be harmful to human health, safety or the environment and to which a PSTD case number is assigned and further corrective action is required.

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"Contamination" means ~~pollution in the native environment caused by a release of a regulated substance above action levels for that substance as set by the Commission.~~

"Disbursement" includes all monies, actually paid, expended, encumbered, reserved or attributable to a reimbursable event(s).

"Dispenser" means equipment, gauge(s), hose(s), nozzle(s), immediately associated pipe or fittings and other such appurtenances located aboveground and intended for dispensing PSTD-regulated substances from a tank system.

"Electronic signature" means ~~any information in digital form that is included in or logically associated with an electronic document for the purpose of expressing the same meaning and intention as would a handwritten signature if affixed to an equivalent paper document with the same reference to the same content~~ an electronic signature as defined in OAC 165:5-1-3.

"Eligible Person" means the party who has made application to the Indemnity Fund and met applicable criteria to become eligible to receive reimbursement on an OCC suspicion of release or confirmed release, and who has been issued an Eligibility Letter from the Indemnity Fund. An eligible person may be an impacted party or adjacent owner.

"Eligible Release" means a suspicion of release or confirmed release that qualifies for Indemnity Fund reimbursement once Fund eligibility has been determined.

"Fund" means the Petroleum Storage Tank Indemnity Fund.

"Impacted Party" means an owner whose property has been impacted by a release from an on site or off site petroleum storage tank system that was never owned or operated by the impacted party and who has no OCC regulatory responsibility. An Impacted Party can apply for Fund eligibility and reimbursement, and the Fund deductible is not applicable.

"Investigation" means activities taken to identify, confirm, monitor or delineate the physical extent of a release and which result in the selection of an appropriate means to remediate a release and specific design criteria for such remediation upon currently used costing programs and/or reasonable competitive bids.

"Licensed Environmental Consultant" means an individual who has a current license issued by the PSTD to perform corrective action.

"Medical injury(ies)" means actual physical injury to a person in which medical costs have been incurred in association with the diagnosis and treatment of a physical injury directly caused by corrective action performed on a release of petroleum from a Commission regulated storage tank system.

"Modified eligibility" means the eligibility process for a suspicion of release ("SOR") case in which substantial compliance review is not required and the Indemnity Fund co-payment is paid upon closure of the SOR case. In the event the SOR case becomes a confirmed release case, a substantial compliance review is required and the statutory co-payment must be remitted within 30 days of the invoice date.

"Occurrence" means the release of a PSTD regulated substance into the soil or groundwater. Each PSTD regulated substance will be treated as one (1) occurrence regardless of the

composition of the substance released. Separate occurrences of the same PSTD regulated substance may be allowed if evidence establishes the PSTD regulated substance occurred in two (2) different tank system locations, are separated by time, or both.

"Operator" means any person in control of or having responsibility for the daily operation of the storage tank system, whether by lease, contract, or other form of agreement. The term "operator" also includes a past operator at the time of a release, tank closure, violation of the Oklahoma Petroleum Storage Tank Consolidation Act, or a rule promulgated thereunder, or a requirement of the Commission. In the case of a storage tank system in service/use before November 8, 1984, but no longer in service/use on that date, the last person to operate the storage tank system immediately before the discontinuation of its service/use.

"Owner" means: any person as set forth in 17 O.S. § 303(27).

(A) ~~In the case of a storage tank system in service/use on November 8, 1984, or brought into service/use after that date, any person who holds title to, controls, or possesses an interest in a storage tank system used for the storage, use, or dispensing of regulated substances, including the real property owner where the storage tank system is still present, the storage tank system presence is a trade fixture or improvement or both. It is not necessary that the real property owner sold, used, or stored regulated substances in, of, or from the storage tank system.~~

(B) ~~In the case of a storage tank system in service/use before November 8, 1984, but no longer in service/use on that date, any person who holds title to, controls, or possesses an interest in a storage tank system immediately before the discontinuation of its service/use. A~~ However, a real property owner who has a storage tank system located on their property that was taken out of service/use prior to November 8, 1984, is not considered to be a storage tank owner for any PSTD regulated purpose.

"Pay for Performance" or "PFP" means ~~a process where an environmental consulting company (Consultant) guarantees by contract that a release of a regulated substance will be remediated to Chemicals of Concern (COC) levels agreed to by the PSTD, the Consultant and tank owner/operator that are protective of human health, safety and the environment. This performance based process encompasses several steps, but is not limited to the contract signed by an officer/owner of the environmental consulting company, the applicant and the Administrator of the Indemnity Fund and an agreed to reasonable price. Scheduled payments are distributed only as performance based goals are attained.~~

"Petroleum storage tank system" means a closed-plumbed system including storage tank(s), line(s) and dispenser(s) for a given product, e.g. a facility site can have a gasoline and a diesel system, or systems for different grades of gasoline, or even separate systems for the same grade of gasoline. It also includes a transport delivery truck when attached to a tank system, and a used oil tank.

"PSTD" means Petroleum Storage Tank Division, or Division.

"Purchase Order" means a document submitted to PSTD online to obtain pre-approval by PSTD of a scope of work and the costs associated with the scope of work.

"Recalcitrant owner" means an owner/operator who is responsible for a tank system and after notice will not adhere to a PSTD enabling statute, Commission rule, requirement or order.

"Reimbursement" means repayment of a ~~an~~ approved claim to a qualified Claimant or Assignee, or for an Administrative Application, or ~~for such a payment of an approved claim submitted on behalf of a qualified Claimant, for incurred allowable costs resulting from an eligible release.~~

"Remedial Action Plan" means a plan implementing the required and approved remediation.

~~"Remediation" means the process or technique used to reduce concentration levels of regulated substances in the soil and groundwater, and/or to reduce the presence of free product in the environment to levels that are protective of human health, safety and the environment.~~

~~"Site assessment" means a multi-step process designed to determine if a site has possibly been impacted by an amount of regulated substance(s).~~

~~"Site characterization" means a report submitted to the Commission that defines the extent of the contamination. The report should include, as a minimum, all things required by OAC 165:29 for such a report.~~

"Suspicion of Release" or "SOR" means preliminary investigative work to determine if a release of a regulated substance has occurred.

"Work Plan" means a proposed scope of work submitted online to implement corrective action.

165:27-1-6. Prescribed forms

~~All current, recognized and approved division forms must be used and are available from the PSTD or on the web page at www.occweb.com, in person or by written request. Use of the online format established by PSTD is required.~~

SUBCHAPTER 9. ADMINISTRATIVE PROVISIONS

165:27-9-1. Hearing, orders, and ~~appeals exceptions~~

(a) ~~Hearings and appeals to enforce or exceptions to the provisions of this Chapter or PSTD enabling statutes shall be conducted in accordance with Chapter 5 of Commission rules shall be before an Administrative Law Judge on the PSTD Docket OAC 165:5.~~

(b) The Commission shall issue ~~such orders after notice and hearing as it deems necessary to enforce the provisions of this Chapter or PSTD enabling statutes to protect human property,~~

~~the public health and safety, and the environment within the State of Oklahoma.~~

[OAR Docket #20-603; filed 7-24-20]

TITLE 165. CORPORATION COMMISSION CHAPTER 29. CORRECTIVE ACTION OF PETROLEUM STORAGE TANK RELEASES

[OAR Docket #20-604]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
Part 3. Definitions
165:29-1-11. Definitions [AMENDED]
Part 7. National Industry Codes
165:29-1-32. Incorporated codes and standards [AMENDED]
Subchapter 3. Release Prevention, Detection and Correction
Part 1. Release Prohibition, Reporting, and Investigation
165:29-3-2. Release reporting [AMENDED]
Part 5. Corrective Action Requirements
165:29-3-71. General applicability; exception [AMENDED]
165:29-3-76. Tier 1A ORBCA [AMENDED]
165:29-3-80. Remedial Action Plan [AMENDED]
165:29-3-81. Property owners affected by releases; notice [AMENDED]
Part 7. Licensing Procedures for Environmental Consultants
165:29-3-92. License penalties [AMENDED]
Subchapter 5. Administrative Provisions
165:29-5-1. Hearings, orders and ~~appeals exceptions~~ [AMENDED]

AUTHORITY:

Corporation Commission; 17 O.S. §§ 306(12), 307, 322, 342, and 347.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2019-11, the proposed rules were submitted to the Governor and Cabinet Secretary on September 18, 2019.

COMMENT PERIOD:

September 18, 2019 to November 15, 2019

PUBLIC HEARING:

December 10, 2019

ADOPTION:

December 10, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

December 20, 2019

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

October 1, 2020

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

Incorporated standards:

PEI 1700 (2018 Edition), "Recommended Practices for the Closure of Underground Storage Tank and Shop-Fabricated Aboveground Storage Tank Systems."

Incorporating rules:

165:29-1-32

Availability:

8:00 a.m. to 4:30 p.m., Monday through Friday at the Petroleum Storage Tank Division, Oklahoma Corporation Commission, Jim Thorpe Building, 2101 N. Lincoln Blvd., Oklahoma City, OK 73105

GIST/ANALYSIS:

The approved rules add language to clarify definitions and make them consistent with other chapters; add statutory citations; add definitions for change in service, chemicals of concern, and site assessment; and strike definitions appearing in statute or not otherwise used in the rules. The

approved rules refer the public to the Commission's website and email address; clarify terminology within the Chapter; move existing language to a new subsection in the rule; add terminology consistent with Oklahoma Administrative Code ("OAC") 165:5; correct grammar; and strike redundant language.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 3. DEFINITIONS

165:29-1-11. Definitions

In addition to the terms defined in 17 O.S. § 303, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"ANSI" means the American National Standards Institute.

"API" means the American Petroleum Institute.

"ASTM" means the American Society for Testing and Materials.

"Aboveground release" means any release to the surface of the land or to surface water. It includes, but is not limited to, releases from the aboveground portion of an underground storage tank system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank system.

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Aquifer" means a formation that contains sufficient saturated, permeable material to yield significant quantities of water to wells and springs. This implies an ability to store and transmit water for beneficial uses.

"Ancillary equipment" means any device including, but not limited to, devices such as piping, fittings, flanges, valves, and pumps that are used to distribute, meter, or control the flow of regulated substances to or from a petroleum storage tank.

"Backfill" refers to only the material placed in the excavation zone to support the petroleum storage tank system.

"Belowground release" means any release to the subsurface of the land or to groundwater. It includes, but is not limited to, releases from belowground portions of petroleum storage tank systems and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from underground storage tank systems. "Belowground release" does not include releases to a secondary containment system.

"Beneath the surface of the ground" means beneath the ground's surface or otherwise covered with materials so that physical inspection is precluded or impaired.

"Beneficial uses" means a classification of the waters of the State, according to their best uses in the interest of the public.

"Change in service" means a change in the status of a storage tank (i.e., from currently in use to temporarily out of use); or change of regulated substance that a storage tank contains.

"Chemicals of Concern" or "COC" means chemicals that may pose a threat to human health and the environment.

"COC" means Chemical of Concern.

"Commission" or "OCC" means the Oklahoma Corporation Commission and includes its designated agents or representatives.

"Compatible" means the ability of two (2) or more substances to maintain their respective physical properties upon contact with one another for the design life of the petroleum storage tank system under conditions likely to be encountered in the system.

"Confirmed Release" means a release of a regulated substance from a regulated storage tank system resulting in free product, contaminated soils or groundwater that exceed state action levels, organic vapor readings significantly above background levels, petroleum staining or odors or any other indication that a release has occurred that could be harmful to human health, safety or the environment and to which a PSTD case number is assigned and further corrective action is required.

"Contaminants" or "contamination" means concentrations of regulated substances or dissolved compounds therefrom at levels that may cause adverse human health or environmental effects.

"Corrective action" means action taken to assess, monitor, minimize, eliminate or clean up a release from a storage tank system.

"Corrective Action Plan" means any plan submitted to the Division detailing the method and manner of corrective action to be taken for a release.

"DAF" means Dilution Attenuation Factor.

"DEQ" means the Oklahoma Department of Environmental Quality.

"DWS" means Drinking Water Standards.

"de minimis" means, for the purposes of this Chapter, very small, as in very small amounts or concentrations of regulated substances.

"Dielectric material" means a material that does not conduct direct electric current. Dielectric coatings are used to electrically isolate underground storage tank systems from the surrounding area. Dielectric bushings are used to electrically isolate portions of the underground storage tank system (e.g., tank from piping).

"Dilution Attenuation Factor" or "DAF" means a unitless number greater than or equal to unity and represents the

ratio of dissolved phase concentration at a downgradient location to the concentration at an upgradient location. It represents the reduction in concentration due to the combined influence of several factors (diffusion, dispersion, adsorption, decay, volatilization). It is applicable for all media, but is most commonly used for the unsaturated and saturated zones. DAF is generally estimated using a fate and transport model or based on site specific data.

"Director" means the Director of the Petroleum Storage Tank Division of the Corporation Commission.

"Division" means the Petroleum Storage Tank Division of the Corporation Commission.

"EPA" means the United States Environmental Protection Agency.

"Electrical equipment" means underground equipment that contains dielectric fluid necessary for the operation of equipment such as transformers and buried electric cable.

"Electronic signature" means any information in digital form that is included in or logically associated with an electronic document for the purpose of expressing the same meaning and intention as would a handwritten signature if affixed to an equivalent paper document with the same reference to the same content an electronic signature as defined by OAC 165:5-1-3.

"Environment" means any water, water vapor, any land including land surface or subsurface, fish, wildlife, air and atmosphere, and all other natural resources.

"Environmental experience" means work-related experience in any type of activities associated with soil, water or atmosphere impacted or potentially impacted by a PSTD regulated substance.

"Excavation zone" means the volume containing the underground storage tank system and backfill materials, bounded by the ground surface, walls, and floor of the pit and trenches into which the underground storage tank system is placed at the time of installation.

"Facility" means any location or part thereof consisting of one (1) or more petroleum storage tanks or systems containing regulated substances.

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process.

"FOC" means fraction organic carbon content.

"Fraction organic carbon content" or **"FOC"** means the fraction of organic carbon in soil that influences the adsorption of organic chemicals. It can be estimated in soils using high temperature combustion and oxidation techniques such as ASTM method D2974.

"Free product" means a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in water).

"Fresh groundwater" means groundwater with total dissolved solids (TDS) less than five thousand (5,000) parts per million.

"Fund" means the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund.

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during its production or gathering operations.

"Groundwater" means that part of water that is below the water table.

"Half-life" means the time required for the decay or transformation of one half (1/2) of the amount of a chemical.

"Hazard Index" means the sum of the Hazard Quotients.

"Hazard Quotient" means the estimated dose, or intake, for a specific chemical and a specific pathway, divided by the Reference Dose (RfD).

"Impervious barrier" means a barrier of sufficient thickness, density, and composition that is impenetrable to the regulated substance, has a permeability of at least 1×10^{-6} cm/sec., and will prevent the discharge to the environment of any regulated substance for a period of at least as long as the maximum anticipated time during which the regulated substance will be in contact with the impervious material.

"In service" means a petroleum storage tank that is not abandoned, or could contain regulated substances, and/or has regulated substances regularly added to or withdrawn from it.

"Inventory controls" means techniques used to identify a loss of regulated substances that are based on volumetric measurements in the tank and reconciliation of those measurements with product delivery and withdrawal records.

"Licensed Environmental Consultant" means an individual who has a current license issued by the Petroleum Storage Tank Division to perform corrective action.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil or gas production, gathering, and extraction operations (including gas production plants) to collect oil, water, and other liquids. Liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"MCL" means Maximum Contaminant Level.

"MtBE" means methyl tertiary butyl ether.

"Maintenance" means the normal operational upkeep necessary to prevent a petroleum storage tank system from releasing product.

"Motor fuel" means any petroleum product, oxygenate, or blend of products, that is suitable for use as a fuel in an internal combustion or diesel engine.

"Monitor well" means a piezometer or other cased and screened excavation, boring or drilled hole installed in any way that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors.

"NACE" means the National Association of Corrosion Engineers.

"NFPA" means the National Fire Protection Association, Inc.

"NPDES" means the National Pollutant Discharge Elimination System.

"Occurrence" means the release of a PSTD regulated substance into the soil or groundwater. Each PSTD regulated substance will be treated as one (1) occurrence regardless of the

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composition of the substance released. Separate occurrences of the same PSTD regulated substance may be allowed if evidence establishes that the PSTD regulated substance occurred in two (2) different tank systems locations, are separated by time, or both.

"ORBCA" or "Oklahoma Risk-Based Corrective Action" means a scientific risk-based analysis that governs petroleum storage tank site assessment and remediation. It determines acceptable concentration levels of petroleum constituents in order to protect the public health, safety or welfare or the environment.

"OSDA" means the Oklahoma State Department of Agriculture.

"OWRB" means the Oklahoma Water Resources Board.

"Observation Well" means a cased and screened boring or drilled hole, installed within the tank excavation or piping trench that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors as a method of release detection.

"Operational life" means the period beginning from the time installation of the tank or system is commenced until it is properly closed or removed as provided for in this Chapter.

"Overfill" means a release that occurs when a petroleum storage tank is filled beyond its capacity, resulting in a discharge of regulated substance to the environment.

"PEI" means the Petroleum Equipment Institute.

"POC" means Point of Compliance.

"POE" means Point of Exposure.

"PSI" means pounds per square inch.

"PSTD" means Petroleum Storage Tank Division or Division.

"Pay for Performance" or "PFP" means a process where an environmental consulting company (Consultant) guarantees by signing a mutual agreement (the contract) that a release of a regulated substance will be remediated to COC levels agreed to by the PSTD and the Consultant that are protective of human health, safety and the environment. This performance based process encompasses several steps, but is not limited to the contract signed by an officer/owner of the environmental consulting company, the applicant and the Administrator of the Indemnity Fund and an agreed to reasonable price. Scheduled payments are distributed only as performance based goals are attained.

"Permanent out of use" or "POU" means a petroleum storage tank system that is not in service/use, does not contain regulated substances, and is not intended to be placed back in service/use.

"Petroleum" means antifreeze, motor oil, gasoline, diesel, aviation fuel, and/or volatile blending materials used in motor fuels, like kerosene and ethanol and used oil the substances as set forth in 17 O.S. § 303(31). It does not include 100% biodiesel, compressed natural gas, liquid natural gas, methanol, or propane.

"Pipe" or "Piping" means a hollow cylinder or tubular conduit constructed of non-earthen materials.

"Pipeline facilities" means new and existing pipe rights-of-way and any equipment, facilities, or buildings regulated under:

(A) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671, et seq.).

(B) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001, et seq.).

(C) The State Hazardous Liquid Transportation System Safety Act, § 47.1 et seq. of Title 52 of the Oklahoma Statutes.

(D) Intrastate pipeline facilities regulated under state laws.

"Point of Compliance" means a select location where the concentration of a chemical released must be at or below back-calculated levels. The back-calculated levels are such that estimated concentrations at the Point of Exposure are below health-based levels.

"Point of Exposure" means a location at which an individual or population may be exposed to site-specific Chemicals of Concern through ingestion, inhalation and/or dermal contact.

"Positive sampling, testing, or monitoring results" means the results of sampling, testing, or monitoring using any of the release detection methods described in this Chapter that indicate a release from a petroleum storage tank system may have occurred.

"Potency Factor" means the plausible upper-bound estimate of the probability of a response (cancer) per unit intake of chemical over a lifetime. Also referred to as Slope Factor.

"RBCA" means Risk-Based Corrective Action.

"RfD" means Reference Dose.

"Reasonable Maximum Exposure" or "RME" means the highest rate of exposure that has a small probability five percent (5%) of being exceeded.

"Reference Dose" or "RfD" means the estimate of the daily intake of a chemical over a lifetime that is not likely to result in any significant adverse health effects (including in sensitive subpopulations).

"Regulated substances" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel as set forth in 17 O.S. § 305. It does not include compressed natural gas, liquid natural gas and/or propane.

"Release" means any spilling, overfilling, leaking, discharging, emitting, or escaping of a regulated substance from a regulated storage tank system onto the ground surface or into the groundwater, surface water or subsurface soils.

"Release detection" means the methodology used in determining whether a release of regulated substances has occurred from a petroleum storage tank or system into the environment or into the interstitial area between the petroleum storage tank system and its secondary barrier.

"Remediation" means a process or technique used to reduce concentration levels of regulated substances chemicals of concern in the soil and groundwater, and, or to reduce the presence of free product in the environment to levels that are protective of human health, safety and the environment. Generally remediation activities are scheduled after the site assessment is complete and the Remedial Action Plan (RAP) has been approved.

"Repair" means to restore a tank or petroleum storage tank system component to PSTD standards that has caused

a release of regulated substances from the petroleum storage tank system.

"Reportable Quantity" or "RQ" means the amount of a PSTD regulated substance release required to be reported to appropriate federal, state, and/or local officials.

"Residual Product" Petroleum hydrocarbons (product) that are absorbed or otherwise bound to geological materials (sand, silt, or clay) in any soil zone (vadose, capillary, or saturated zone), in such a manner that ground water in contact with the residual product or beneath the residual product is not contaminated with any petroleum constituent regulated by the OCC.

"Risk-Based Corrective Action" means all of the activities necessary to manage a site such that concentrations of chemicals from a release are at levels that are not detrimental to public health and the environment. It includes, but is not limited to, collection of site-specific data, analysis of the data to quantify the risk, comparison of the risk with acceptable levels, and implementation of engineering and non-engineering measures to ensure that concentrations of remaining Chemicals of Concern are not detrimental to human health.

"SCL" means Soil Cleanup Level.

"STI" means the Steel Tank Institute.

"Sacrificial anode" means a device used to reduce or prevent corrosion of a metal in an electrolyte by galvanic coupling to a more anodic metal.

"Saturated zone" means a subsurface zone below which all pore space is filled with water.

"Site assessment" means a multi-step process designed to determine if a site has possibly been impacted by regulated substance(s) above OCC action levels.

"Slope Factor" means the plausible upper-bound estimate of the probability of a response (cancer) per unit intake of chemical over a lifetime. Also referred to as Potency Factor.

"Smear Zone" Any soil zone containing petroleum hydrocarbons that can contaminate ground water in contact with the petroleum hydrocarbons or ground water beneath the petroleum hydrocarbons with petroleum constituents regulated by the PSTD.

"Soil zone" means and includes, but is not limited to, vadose zone, capillary fringe, or saturated soil zone.

"Source of contamination" means the location of the highest concentration of chemical contaminants in soil and groundwater.

"Source of release" means the location where regulated substances from a regulated tank system entered the environment.

"Spill" means a release that occurs during transfer operations of PSTD regulated substances to or from a petroleum storage tank system, resulting in a discharge of such substances into the environment.

"Storage Tank System" means one or a combination of tanks, including the individual compartments, and any connected aboveground or underground piping, hoses, dispensers, containment sump, if any, and ancillary equipment used to contain regulated substances, or the transport truck connected to the storage tank system.

"Stormwater collection system" or "wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport surface water runoff resulting from precipitation or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of stormwater and wastewater does not include treatment except where incidental to conveyance.

"Surface impoundment" means a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

"Suspicion of Release" or "SOR" means preliminary investigative work to determine if a release of a regulated substance has occurred.

"TCLP" means toxicity characteristic leaching procedure, a test procedure for determining if a solid waste is hazardous because it exhibits toxicity characteristics as enforced under Resource Conservation and Recovery Act.

"TDS" means Total Dissolved Solids.

"TPH" means Total Petroleum Hydrocarbon(s).

"Target Risk Level" means the level set by the Oklahoma Corporation Commission that must be achieved at each site prior to a risk-based closure of the site. For example, for current receptors this level has been set at one in a million (1E-06) and a Hazard Quotient of less than one (1.0).

"Temporary out of use" or "TOU" means the status of a petroleum storage tank system that has been taken out of service/use with the intent to permanently close or return to service.

"Transporter" means any person who transports, delivers, or distributes any quantity of regulated substance from one (1) point to another.

"UL" means Underwriter's Laboratory.

"USGS" means the United States Geological Survey.

"Usable groundwater" means fresh groundwater that may be produced from an aquifer for beneficial uses.

"Unsaturated zone" or "vadose zone" means the subsurface zone containing water under pressure less than that of the atmosphere, including water held by capillary forces within the soil, and containing air or gases generally under atmospheric pressure. This zone is limited by the ground surface and the upper surfaces of the water table.

"Waters of the State" means all bodies or accumulations of water, surface and/or underground, natural or artificial, and public or private, which are contained within, flow through, or border upon any part of the State of Oklahoma or any portion thereof.

PART 7. NATIONAL INDUSTRY CODES

165:29-1-32. Incorporated codes and standards

Specific references to documents listed in (1) through (13) below are made throughout this Chapter. Each of these documents or parts thereof are adopted and incorporated by reference as standards, but only to the extent that they are specifically referenced in this Chapter. These rules will

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supercede in any conflict between these rules and any standard. These codes and standards will be updated periodically through a formal rulemaking procedure initiated by PSTD to reflect any substantive or relevant changes.

- (1) National Fire Protection Association Standards:
 - (A) Standard Number 30, 2018, "Flammable and Combustible Liquids Code."
 - (B) Standard Number 329, 2018, "Handling Releases of Flammable and Combustible Liquids and Gases."
 - (C) Standard Number 385, 2012, "Tank Vehicles for Flammable and Combustible Liquids."
 - (D) Standard Number 326, 2015, "Safeguarding of Tanks and Containers for Entry, Cleaning or Repair."
 - (E) Standard Number 30A, 2015, "Motor Fuel Dispensing Facilities and Repair Garages."
- (2) American Petroleum Institute Standards:
 - (A) Recommended Practice 1615, 2011, "Installation of Underground Hazardous Substances or Petroleum Storage Systems."
 - (B) Recommended Practice 1632, 2002, "Cathodic Protection of Underground Storage Tank and Piping Systems."
 - (C) Recommended Practice 1604, R2010, "Closure of Underground Petroleum Storage Tanks, 3rd Edition."
 - (D) Recommended Practice 1631, 2001, "Interior Lining and Periodic Inspection of Underground Storage Tanks."
 - (E) Recommended Practice 1621, 2012, "Bulk Liquid Stock Control at Retail Outlets."
 - (F) Recommended Practice 1626, 2010, "Storing and Handling Ethanol and Gasoline - Ethanol Blends at Distribution Terminals and Service Stations."
 - (G) Recommended Practice 1627, 1993, "Storing and Handling of Gasoline - Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."
 - (H) Publication 1628, 1996, "A Guide to the Assessment and Remediation of Underground Petroleum Releases."
 - (I) Publication 2200, 2015, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines, 4th Edition."
 - (J) Publication 2015, 2018, "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks."
- (3) National Association of Corrosion Engineers:
 - (A) Standard Number SP0169-2013, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."
 - (B) Standard Number SP0285-2011, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection."
 - (C) Standard Number SP-0286-2007, "Electrical Isolation of Cathodically Protected Pipelines."
- (4) Underwriter's Laboratory Standards:

- (A) Standard UL58, 2018, "Steel Underground Tanks for Flammable and Combustible Liquids."
- (B) Standard UL1316, Bulletin-2013, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures."
- (C) Standard UL1746, Bulletin-2013, "External Corrosion Protection Systems for Steel Underground Storage Tanks."
- (D) Standard UL567, 2014, "Emergency Break-away Fittings, Swivel Connectors and Pipe-Connection Fittings for Petroleum Products and LP-Gas."
- (5) Petroleum Equipment Institute PEI/RP 100 (2011 Edition), "Recommended Practices for Installation of Underground Liquid Storage Systems."
- (6) PEI 1700 (2018 Edition), "Recommended Practices for the Closure of Underground Storage Tank and Shop-Fabricated Aboveground Storage Tank Systems."
- (67) Steel Tank Institute F894, ACT-100, "Specification for External Corrosion Protection of FRP Composite Underground Steel Storage Tanks 2006."
- (78) Factory Mutual 1920 (2007), "Pipe Coupling and Fitting for Aboveground Fire Protection Systems."
- (89) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension, Existing Steel UST by Lining Without Additional Cathodic Protection."
- (910) National Groundwater Association, 1986, "RCRA Ground Water Monitoring Technical Enforcement Guidance Document (TEGD)."
- (~~40~~11) American Society for Testing and Materials, ASTM Designation: E 1739-95 2015, Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites."
- (~~41~~12) U.S. Environmental Protection Agency Office of Water, 1997, Drinking Water Advisory: Consumer Acceptability Advice on Health Effects Analysis on Methyl Tertiary-Butyl Ether (MtBE).

SUBCHAPTER 3. RELEASE PREVENTION, DETECTION AND CORRECTION

PART 1. RELEASE PROHIBITION, REPORTING, AND INVESTIGATION

165:29-3-2. Release reporting

- (a) These reporting requirements do not relieve the owner or operator of the responsibility to take corrective action as required by this Subchapter to protect human health and the environment, including the containment and cleanup of spills and overfills that are not required to be reported.
- (b) All petroleum storage tank system owners, operators, their agents and employees, or transporters must report to PSTD within twenty-four (24) hours of discovering any substances, conditions or monitoring results that indicate a release may have occurred using the link provided on the release

reporting tab located on PSTD's webpage at the OCC on the Commission website, www.occweb.com; by email at PSTReleaseReporting@occ.ok.gov; or by telephone at (405) 521-4683 or 1-888-621-5878. If after hours, or on weekends or holidays, call the PSTD emergency phone number at (405) 823-0994. Owners or operators must send written confirmation within twenty (20) days in accordance with the release investigation and confirmation requirements of this Subchapter. Events indicating a release include, but are not limited to, the following:

(1) The discovery of released regulated substances at the petroleum storage tank system facility or in the surrounding area including, but not limited to, the presence of free product or vapors in soils, basements, crawlspaces, sewer and utility lines, and nearby surface water whether on-site or off-site.

(2) Any unusual operating conditions observed by the owner or operator, like the unexplained erratic behavior of product dispensing equipment, the sudden loss of product from the petroleum storage tank system, an unexplained presence of water in the tank, or liquid in the interstitial space of secondarily contained systems, unless the system equipment or component is found not to be releasing regulated substances to the environment; any defective system equipment or component is immediately repaired or replaced; for secondarily contained systems, any liquid in the interstitial space not used as part of the interstitial monitoring method (for example brine filled) is immediately removed.

(A) In the case of inventory control, two (2) consecutive thirty (30) day periods where the Total Gallons Over/Short is greater than the "Leak Check" (one percent (1%) of product sales plus 130 gallons) must be reported to PSTD within twenty-four (24) hours of the owner/operator discovering the inventory control results.

(B) Any UST system failure from a third party-certified Statistical Inventory Reconciliation (SIR) analysis must be reported to PSTD by the owner, operator, or SIR provider within twenty-four (24) hours of discovering the failure. An immediate investigation into the cause of the failed report must be conducted and results reported to PSTD within seven (7) days.

(C) An "Inconclusive" report from an SIR analysis must be reported by the SIR provider, owner or operator within twenty-four (24) hours of report generation. An Inconclusive means that the UST system has failed to meet leak detection requirements for that thirty (30) day period.

(3) An unusual level of vapor on the site that is of unknown origin. A vapor monitor well reading in excess of 4,000 units/ppm, or 1,500 units/ppm for diesel storage tanks, must be reported to PSTD within twenty-four (24) hours by the owner, operator, their agents, or employees discovering the monitoring results. If diesel and gasoline tanks share the same tankpit, the reporting level is 1,500 units/ppm. Within ten (10) days, the owner or operator must submit to PSTD all vapor monitoring well data,

including background data, for the last twelve (12) thirty (30) day periods. Upon examination of the submitted data, PSTD will advise the owner or operator what action, if any, he or she needs to take. Whenever these vapor thresholds are exceeded the tank owner must provide alternative test results that confirm the petroleum storage tank system is currently not leaking.

(4) An increase in vapor levels of 500 units/ppm above background or historical levels detected by thirty (30) day monitoring, even though below the twenty-four (24)-hour reporting level, must be reported if the increase does not correct itself in the second thirty (30) day period of monitoring and it must be reported to PSTD within twenty-four (24) hours of the owner, operator, their employees, or agents discovering the monitoring results.

(c) Monitoring results, including investigation of an alarm from a release detection method required by OAC 165:25 that indicate a release may have occurred, must be reported within twenty-four (24) hours of the owner or operator's receipt of them; and PSTD will advise what action should be taken to determine whether or not a release has occurred, unless:

(1) The monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result;

(2) The leak is contained in the secondary containment and;

(A) Any liquid in the interstitial space not used as the interstitial monitoring method is immediately removed.

(B) Any defective system equipment or component is immediately repaired or replaced.

(3) The alarm was investigated and determined to be a non-release event (for example, from a power surge or caused by filling the tank during release detection testing).

(d) All owners and/or operators of petroleum storage tank systems shall maintain records of all reportable and nonreportable events listed in 165:29-3-2 of Commission rules sufficient to permit adequate inspection and review by PSTD. These records shall be kept in permanent form for three (3) years following the date of the event. If any of the possible, probable, or definite release conditions in this Section are not reported within twenty-four (24) hours, the owner or operator must be prepared to provide documentation or evidence that would reasonably indicate an owner or operator's knowledge of release conditions or monitoring results was delayed.

(e) The owner or operator of a petroleum storage tank system must maintain records of all reportable and nonreportable events so that adequate inspection and review can be made by PSTD. These records must be kept for three (3) years following the date of the event.

(f) While aboveground petroleum releases of less than twenty-five (25) gallons need not be reported, they must be recorded by the owner or operator and cleaned up immediately. All of the following releases must be reported to PSTD by email or telephone within twenty-four (24) hours of discovery, by the owner, operator, employee or agent, with a written confirmation to PSTD within twenty (20) days in accordance with the requirements established in this Chapter:

- (1) All known belowground releases in any quantity; for example, a release resulting from a line broken during an excavation.
- (2) Any aboveground release of petroleum greater than twenty-five (25) gallons.
- (3) Any aboveground release of petroleum which is less than twenty-five (25) gallons, but cannot be contained and cleaned up within twenty-four (24) hours.
- (g) Owners and operators must contain and immediately clean up any spill or overfill of regulated substances less than twenty-five (25) gallons within twenty-four (24) hours of incident occurrence. If the spill or overfill cannot be cleaned up within twenty-four (24) hours, is more than twenty-five (25) gallons, or it causes a sheen on nearby surface water, then owners and operators must report to the PSTD within twenty-four (24) hours and begin corrective action in accordance with Part 5 (Corrective Action Requirements) of this Chapter.
- (h) Any releases requiring emergency corrective action must be reported immediately to PSTD at (405) 521-4683 or 1-888-621-5878. After office hours, weekends or holidays, calls must be reported to PSTD's emergency number at (405) 823-0994.
- (i) If any of the possible, probable or definite release conditions above are not reported within twenty-four (24) hours, the owner/operator may be subject to enforcement action.

PART 5. CORRECTIVE ACTION REQUIREMENTS

165:29-3-71. General applicability; exception

- (a) Every owner or operator of a petroleum storage tank system must, in response to a confirmed release from a petroleum storage tank system, comply with the requirements of this Part, with the exception of those systems excluded from regulation in OAC 165:25 and 165:26.
- (b) All work associated with the assessment, characterization, investigation, remedial action, and closure from a release or suspected release of a regulated substance should be pre-approved by PSTD.
- (c) Upon confirmation of a release, or after a release from the petroleum storage tank system is identified, the owner or operator must perform the following initial response actions:
 - (1) Report the release to PSTD using the link provided on the release reporting tab located on PSTD's webpage ~~at the OCC website (PSTReleaseReporting@occemail.com); on the Commission website; by email at PSTReleaseReporting@occ.ok.gov;~~ by telephone at 405-521-4683 or 1-888-621-5878; or fax to 405-521-4945. If after hours, or on weekends or holidays call the PSTD emergency number at 405-823-0994.
 - (2) Take immediate action to prevent any further release of the regulated substance into the environment, and prove that any system still containing fuel is tight by having a system tightness test performed.
 - (3) Identify and mitigate any fire, explosion, and vapor hazards.

- (4) Remove free product to the extent practicable as determined by PSTD while continuing, as necessary, any actions required by this Subchapter.

- (d) Any corrective action work performed at a release site must have prior documented verbal or written approval by a member of PSTD staff to be considered reimbursable by the Indemnity Fund. This requirement for pre-approval excludes required emergency spill mitigation measures. Additionally, field work associated with all corrective actions requires 48-hour (two working days excluding holidays and weekends) written notice to PSTD of scheduled field activities. Notice must be made to the PSTD staff member assigned to the case, his/her Supervisor and the PSTD Technical Manager.

165:29-3-76. Tier 1A ORBCA

- (a) Unless otherwise directed by the PSTD, the owner or operator must compile information in order to assess the site using the Risk-Based Corrective Action (RBCA) process described in the ORBCA Guidance Document. (The ORBCA Guidance Document is available ~~at www.occeweb.com or on the Commission website and~~ at the offices of the Petroleum Storage Tank Division of the Oklahoma Corporation Commission.) The RBCA process must be implemented with a three (3) tiered approach that must involve an increase in the level of data collection and analysis from one tier to the next. Some conservative default parameters under the Initial Site Characterization Tier 1A process must be replaced with more site-specific parameters under the Tier 2 and Tier 3 process. PSTD will review the results and recommendations at the completion of the Tier 1A analysis and decide if a more site-specific tiered analysis is required by initiating a Tier 2 or Tier 3 process, or whether remedial action should be performed as provided for in this Subchapter.
- (b) PSTD will only accept and review reports, worksheets, checklists, closure reports or other relevant documents which incorporate the RBCA process, or any other acceptable risk analysis, from a Commission Licensed Environmental Consultant.
- (c) The RBCA Tier 1A process is as follows:
 - (1) Tier 1A: Non-site-specific risk-based screening method used to determine corrective action goals using limited site-specific data.
 - (A) Tier 1A establishes conservative cleanup goals called modified Risk-Based Screening Levels (RBSLs). Only the Fate and Transport Parameters cited in the ORBCA Guidance Document may be replaced by site-specific information obtained through site investigation and assessment. Justification must be provided when changes in any of the default Fate and Transport Parameters are indicated. The default Exposure Factors cannot be modified, nor can degradation rates be used under a Tier 1A evaluation. This evaluation must be performed using the models cited in Appendix C of the ORBCA Guidance Document. The modified RBSLs take into consideration regional characteristics, aesthetic criteria, and other appropriate standards such as Maximum Contaminant Levels (MCLs) for water. Tier 1A modified RBSLs

are derived from standard exposure scenarios using current Reasonable Maximum Exposure (RME) toxicological parameters and conservative contaminant migration models. RBSL values are determined by the PSTD using one (1) in one million (1,000,000) as a Target Risk Limit for carcinogens and a Hazard Quotient (HQ) not greater than one (1.0) as a Target Risk Limit for non-carcinogens. One (1) in ten thousand (10,000) is the acceptable Target Risk Limit for carcinogens for future potential receptors.

(B) The most likely Point of Exposure (POE) for current and potential future beneficial use of fresh groundwater should be determined. The concentration at this Point of Exposure for each Chemical of Concern (COC) must not exceed the Target Risk Limits cited in this Section.

(C) Unless otherwise directed by PSTD under Tier 1A the owner or operator must drill and install a minimum of four (4) two-inch (2") diameter monitoring wells outside of the UST pit or AST containment or product piping trench excavation zones. These wells must be located as follows:

- (i) One (1) well must be installed in an apparent upgradient location to any known potential source at the site on or as close to the release as possible.
- (ii) One (1) well must be installed in a location most likely to be contaminated.
- (iii) One (1) well must be installed in a location that will allow the determination of an accurate groundwater gradient.
- (iv) One (1) well must be installed in the direction of the nearest probable Point of Exposure either at the nearest property line or fifty feet (50') from the source of contamination, whichever is closer, or at another location as determined by PSTD. This well will be the Point of Compliance (POC) well for the Tier 1A evaluation unless there is a Point of Exposure nearer to the source of contamination, in which case the Point of Exposure will also become the Point of Compliance. The concentration for each Chemical of Concern in the Point of Compliance well should not exceed the Tier 1A standards as calculated using the ORBCA Guidance Document. If a drinking water supply well has been identified within 330 feet of the site, groundwater MtBE must be tested at the Point of Compliance. 0.020 mg/L will be considered the level of concern for MtBE and may require further assessment and corrective action.

(2) Tier 1A: Risk-Based Screening Level corrective action goals developed using limited site-specific data.

(A) This evaluation must be performed using the same models as those which are cited in Appendix C of the Guidance Document.

(B) Only the Fate and Transport Parameters cited in the ORBCA Guidance Document may be replaced by site-specific information obtained through site

investigation and assessment. Justification must be provided when changes in any of the Tier 1A default Fate and Transport Parameters are indicated. The Tier 1A default Exposure Factors cannot be modified, nor can degradation rates be used under a Tier 1A evaluation.

(3) Within forty-five (45) days of release confirmation, or according to a schedule established by PSTD, the owner or operator must submit the information required in the Tier 1A evaluation as a report. This report must be submitted in ~~a~~ the online format established by PSTD.

(d) PSTD may re-evaluate a Tier 1A analysis of a site, for the purpose of closure, on a case-by-case basis.

165:29-3-80. Remedial Action Plan

(a) At any point after reviewing the information submitted, PSTD may require additional information or a Remedial Action Plan for contaminated soils and groundwater. If a plan is required, it must be submitted ~~on forms or~~ in the online format specified by PSTD.

(b) PSTD will approve a Remedial Action Plan only after the Licensed Environmental Consultant ensures that implementation of the plan will adequately protect human health, safety, and the environment as determined by using the process outlined in the ORBCA Guidance Document.

(c) As directed by PSTD, the owner or operator must implement the Remedial Action Plan, including any modifications to the plan made by PSTD. Implementation for the purposes of this Chapter means that the Remedial Action Plan approved by PSTD is fully operational and is performing the task for which it was designed.

(d) The owner or operator will be required to perform remediation and compliance monitoring as directed by PSTD.

(e) The owner or operator may, with verbal pre-approval documented by fax or email of PSTD staff, begin cleanup of soil and groundwater before the Remedial Action Plan is approved, provided that the owner or operator:

- (1) Notify PSTD of the intention to begin cleanup at least seven days prior to initiating any cleanup action, unless it is an emergency.
- (2) Comply with any conditions imposed by PSTD, including halting cleanup or mitigating adverse consequences from cleanup activities.
- (3) Incorporate these self-initiated cleanup measures in the Remedial Action Plan or closure by risk assessment that is submitted to PSTD for approval.

165:29-3-81. Property owners affected by releases; notice

(a) Upon confirmation that soil and/or groundwater contamination is above action levels, owners or operators must, at a minimum, notify adjacent or abutting property owners that have been, or may be impacted by the release. This notice should be made just after delineation of the release to Tier 2 clean-up levels or prior to a case closure based on Tier 1A modified RBSL's. The notice, unless otherwise directed by the PSTD, must include at a minimum:

- (1) The origin and extent of the release; impacted party, upon written request to owner/operator may receive reports;
 - (2) The nature of the substance(s) released;
 - (3) The name, address and telephone number of the owner or operator or his or her designee who may be contacted for more information about the release;
 - (4) The phone number and name of the Project Environmental Analyst at the PSTD whom the property owner can contact for additional information.
 - (5) If an adjacent or abutting property owner that has been or may be impacted by a release requests, in writing, copies of all reports, it is the responsibility of the owner/operator to assure past and future reports are delivered to the requesting property owner.
- (b) For each confirmed release that requires remediation or closure by a risk assessment or Risk-Based Corrective Action, the owner or operator must notify property owners that have been or may be impacted by the release and provide:
- (1) The origin and extent of the release;
 - (2) The nature of the substance(s) released;
 - (3) A description of any planned remedial action or closure based upon a risk assessment of the release;
 - (4) The name, address and telephone number of the owner or operator or his or her designee and of the PSTD Project Environmental Analyst working on the case who may be contacted for more information about the release, including any planned response action; and
 - (5) A statement that additional information about the release, including any planned response action, is on file with the PSTD and available for public review.
- (c) The notices required by this Section must be given by certified mail/return receipt requested. Copies of the return receipts must be included in the Public Participation Report submitted to the PSTD.
- (d) The PSTD must ensure that any and all information concerning the release is made available to the public for review upon request.
- (e) Before approving a remediation plan or closure based upon risk assessment, the PSTD may hold a public meeting to consider comments on the proposed remediation plan or closure if there is sufficient public interest, or for any other reasons. If no comments have been received within thirty (30) days of the receipt date of the certified mail notice letters required by paragraph (c) of this Section, then remediation or closure activities may commence. Any public comments related to the proposed remediation or case closure must be submitted in writing to the OCC to the attention of the PSTD Project Environmental Analyst working on this case, whose name and address will be on the notice letter.
- (f) The notice required by this Section must also be given;
- (1) after implementation, ~~see OAC 165:29-3-80(e)~~, of an approved Remedial Action Plan that does not achieve the cleanup levels established in the plan, and
 - (2) ~~and~~, when termination of the plan is subsequently approved by the PSTD.

PART 7. LICENSING PROCEDURES FOR ENVIRONMENTAL CONSULTANTS

165:29-3-92. License penalties

- (a) PSTD has the responsibility to deny, suspend, refuse to renew or revoke the license of, or reprimand, any Licensed Environmental Consultant who is found guilty in violation of:
- (1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.
 - (2) Reckless or willful disregard, incompetence or misconduct in work performed pursuant to this Chapter.
 - (3) Knowingly making false statements or signing false statements, certificates or affidavits to the PSTD or to clients.
 - (4) Aiding or assisting another person in violating any provision of this Chapter.
 - (5) Signing a verification statement for work performed pursuant to this Chapter that was not performed by the licensee.
 - (6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.
 - (7) Failure to comply with this Chapter, OAC 165:25, 165:26, 165:27, and/or the Oklahoma Petroleum Storage Tank Consolidation Act (17 O.S. §§ 301 et seq.).
 - (8) Being under indictment or convicted of a felony for any criminal offense that impacts their obligation to PSTD.
 - (9) ~~Failure to submit PSTD required paperwork, test results, and/or reports in the format established by PSTD within the time allowed may result in enforcement action.~~
- (b) Failure to submit required PSTD paperwork, test results, and/or reports in the online format established by PSTD within the required timeframe may result in enforcement action.
- (~~b~~c) Disciplinary action levels against PSTD licensees include but are not limited to informal reprimand, formal reprimand, license suspension, license revocation and refusal to renew.
- (~~e~~d) Any licensee in violation of Commission enabling statutes, PSTD rules, requirements and/or Commission orders may be subject to disciplinary action levels mentioned above and/or fines assessed by the Commission after notice and hearing.

SUBCHAPTER 5. ADMINISTRATIVE PROVISIONS

165:29-5-1. Hearings, orders and ~~appeals exceptions~~

- (a) ~~Hearings and appeals to enforce or exceptions to the provisions of this Chapter will be conducted in accordance with Chapter 5 of Commission rules OAC 165:5.~~
- (b) The Commission will issue orders ~~it deems after notice and hearing as necessary~~ to enforce the provisions of this Chapter or PSTD enabling statutes to protect property, the

public health, ~~and safety, or welfare or and~~ the environment ~~within the State of Oklahoma.~~

[OAR Docket #20-604; filed 7-14-20]

TITLE 165. CORPORATION COMMISSION CHAPTER 35. ELECTRIC UTILITY RULES

[OAR Docket #20-627]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 45. Wind Energy

165:35-45-2. Definitions [AMENDED]

165:35-45-4. Notification of intent to build a wind energy facility and other notices [AMENDED]

165:35-45-5. Commission consideration [AMENDED]

AUTHORITY:

Corporation Commission; Article IX, Section 18 of the Oklahoma Constitution; 17 O.S. §§ 160.11 *et seq.*

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2019-11, the proposed rules were submitted to the Governor and Cabinet Secretary on January 14, 2020.

COMMENT PERIOD:

January 14, 2020, through February 21, 2020

PUBLIC HEARING:

February 27, 2020

ADOPTION:

February 27, 2020

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 6, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 15, 2020

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 45. Wind Energy

165:35-45-2. Definitions [AMENDED]

165:35-45-4. Notification of intent to build a wind energy facility and other notices [AMENDED]

165:35-45-5. Commission consideration [AMENDED]

Gubernatorial approval:

October 2, 2019

Register publication:

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19-786

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The purpose of the approved rules is to make permanent the approved emergency rules that address changes to the Oklahoma Wind Energy Development Act, which was amended by House Bill 2118 during the Oklahoma Legislature's 2019 Regular Session. The approved changes to OAC 165:35, Subchapter 45 include: removing the definition of "Mitigation plan;" amending the definition of "Project boundary;" general grammatical changes; and modifying the notification of intent to build a wind energy facility section to align with the requirements in House Bill 2118.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2020:

SUBCHAPTER 45. WIND ENERGY

165:35-45-2. Definitions

In addition to terms defined in the Oklahoma Wind Energy Development Act, 17 O.S. § 160.11 *et seq.*, the following word(s) or term(s), when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Clearinghouse**" means the Military Aviation and Installation Assurance Siting Clearinghouse.

"**Determination of No Hazard**" means a document issued by the Federal Aviation Administration.

"**FAA**" means the Federal Aviation Administration.

~~"Mitigation plan" means a document issued by the Military Aviation and Installation Assurance Siting Clearinghouse.~~

~~"Project description boundary"~~ means a graphic depiction of a wind energy facility's outer boundary, which should adequately demonstrate the project's outer perimeter, inclusive of all wind turbines.

165:35-45-4. Notification of intent to build a wind energy facility and other notices

(a) ~~The~~ Within six (6) months of the initial filing with the FAA, the owner of a wind energy facility shall electronically submit notification of intent to build a facility to the Commission within six (6) months of the initial filing pertaining to commencement of construction with the FAA of an FAA Form 7460-1 (Notice of Proposed Construction or Alteration) or any subsequent form required by the FAA. Such notification shall be submitted to the PUD Director, and shall include any and all Notices of Proposed Construction, or Alteration required to be filed with the FAA concerning a specific wind energy facility to the PUD Director all initial 7460-1 forms for all individual wind turbines or any other individual structure that requires a FAA Form 7460-1 that is part of a wind energy facility, an attestation of compliance with the provisions of 17 O.S. § 160.20(A), and a map of the project boundary. Within thirty (30) days of the initial filing with the FAA, the owner of a wind energy facility shall submit copies of all initial 7460-1 forms for individual wind turbines and other individual structures that require a 7460-1 that are part of a wind energy facility to the Aeronautics Commission.

(b) PUD shall provide the owner of a wind energy facility with affirmation of submission of the notification of intent to build by either providing proof of receipt stamp or confirmation of receipt if submission is made electronically.

~~(c) In the event that an owner of a wind energy facility submits notification of intent to build a facility with the Commission and files subsequent forms with the FAA, the owner is not required to submit amended or additional notification of~~

Permanent Final Adoptions

intent to build a wind energy facility unless the project layout is expanded beyond the original project description. Movement within the original description will not require the notice process to start over. However, subsequent to submissions under (a) above, copies of FAA submissions for individual turbine modifications, additional turbines, or renewals shall be submitted to PUD within thirty (30) calendar days of submission to the FAA. If, during or after construction of an individual turbine, the FAA requires the developer to submit subsequent FAA filings, the developer shall submit all such subsequent submissions at the time the wind energy facility's first annual report is submitted.

(dc) The owner of the wind energy facility shall send copies of the notification with the board of county commissioners of every county in which all or a portion of the wind energy facility is to be located within twenty-four (24) hours of submission with the Commission. If all or a portion of the wind energy facility is to be located within the incorporated area of a municipality, copies of the notification shall also be sent to the governing body of the municipality within twenty-four (24) hours of submission with the Commission.

(e) ~~Within thirty (30) calendar days of submitting the notification, as described above in (a), to the PUD Director, the owner of the wind energy facility shall cause a copy of the notification to be submitted to the Oklahoma Strategic Military Planning Commission. Subsequent 7460-1s required to be filed shall also be submitted to the Oklahoma Strategic Military Planning Commission at the same time as submission to the PUD Director. When the Oklahoma Strategic Military Planning Commission submits its letter to the Clearinghouse, such letter shall be submitted at the same time to the PUD Director and the owner of the wind energy facility.~~

(fd) Within six (6) months of submitting the notification with the Commission as provided for in subsection (a) of this section, the owner of the wind energy facility shall cause a copy of the notification to be published in a newspaper of general circulation in the county or counties in which all or a portion of the wind energy facility is to be located. Proof of publication shall be submitted to the PUD Director.

(ge) Within sixty (60) calendar days of publishing the notification in a newspaper as provided for in subsection (f) of this section, the owner of the wind energy facility shall hold a public meeting. Notice of the public meeting shall be published in a newspaper of general circulation and submitted to the board of county commissioners in the county or counties in which all or a portion of the wind energy facility is to be located. The notice shall contain the place, date and time of the public meeting. Proof of publication of the notice shall be submitted to the PUD Director. The public meeting shall be held in one of the counties in which all or a portion of the wind energy facility is to be located.

(f) If the owner of a wind energy facility is required to file subsequent 7460-1 forms with the FAA due to changing locations or heights of individual structures from the locations or heights originally proposed in the initial 7460-1 forms submitted to the Oklahoma Aeronautics Commission, the owner shall, within ten (10) calendar days of filing with the FAA,

submit such subsequent 7460-1 forms to the Corporation Commission and Aeronautics Commission. A wind energy facility owner shall not be required to start the notification processes over unless the subsequent 7460-1 forms expand the project beyond its original project boundary submitted to the Corporation Commission.

(hg) The owner of a wind energy facility shall not commence construction on the facility until the notification and public meeting requirements of this section have been met. If an owner of a wind energy facility fails to submit the information as required in this section, the owner shall be subject to an administrative penalty from the Commission not to exceed One Thousand Five Hundred Dollars (\$1,500) per day, per violation following hearing and issuance of a final order of the Commission.

(i) ~~Subsequent to submitting the notification, as described above in (a), Determinations of No Hazard issued by the FAA, or, approved mitigation plans issued by the Clearinghouse shall be submitted to the PUD Director by the owner of a wind energy facility as follows:~~

(1) ~~Within thirty (30) calendar days of receipt of an active Determination of No Hazard issued by the FAA; or~~

(2) ~~Within thirty (30) calendar days of receipt of an approved mitigation plan from the Clearinghouse.~~

(3) ~~Any Determination of No Hazard or mitigation plan issued prior to the initial submission of the notification described above in (a) shall be submitted to the PUD Director by the owner of a wind energy facility within thirty (30) calendar days of such initial notification submission.~~

(h) No individual wind turbine or any other individual structure that requires a FAA 7460-1 form that is part of a wind energy facility may be constructed or expanded unless there is an active Determination of No Hazard from the FAA and adverse impacts to the United States Department of Defense, pursuant to Title 32 of the Code of Federal Regulations, Section 211.6, have been resolved as evidenced by documentation from the Clearinghouse for the individual wind turbine or other individual structure. The Mission Compatibility Certification Letter or successor form may serve as such evidence of adverse impacts being resolved with the Department of Defense or successor agency. Determinations of No Hazard and documentation of the resolution of adverse impacts to the Department of Defense shall be submitted by the owner of a wind energy facility to the Corporation Commission and the Aeronautics Commission.

(i) If an owner of a wind energy facility fails to submit an active Determination of No Hazard and documentation that adverse impacts to the Department of Defense have been resolved by the Clearinghouse for the individual turbine or other individual structure prior to the start of construction, the owner shall be subject to an administrative penalty not to exceed One Thousand Five Hundred Dollars (\$1,500.00) per day, per violation from the Corporation Commission.

(j) All notices, notifications, Determinations of No Hazard, ~~mitigation plans~~, and proof of compliance with all provisions of the Oklahoma Wind Energy Development Act, shall be retained by the wind energy developer, for a period of three (3) years after commercial operation date; and, upon reasonable

request, PUD may inspect these documents to ensure compliance.

(k) The owner of a wind energy facility shall electronically provide a notice to the PUD Director indicating that it has commenced the 60-day notice as required by 17 O.S. § 160.21(F). Such notice shall be sent to the PUD Director prior to commencement of construction of the wind energy facility. The notice to the PUD Director shall also include an affirmation that all required notices and notifications have been properly provided, and a list of the recipients of all required notices and notifications shall be retained by the wind energy developer and made available to PUD upon reasonable request.

(l) All submissions shall be submitted electronically to PUD, unless prior approval is granted by the PUD Director.

165:35-45-5. Commission consideration

(a) PUD shall review and may investigate all wind energy facility information reported or submitted for compliance with the annual reporting requirements in this Subchapter or in 17 O.S. § 160.18 or with the notice requirements in this Subchapter or in 17 O.S. § 160.20 or 17 O.S. § 160.21.

(b) After receiving a report or submission from a wind energy facility pursuant to the annual reporting requirements in this Subchapter or in 17 O.S. § 160.18 or the notice requirements in this Subchapter regarding notice of intent to construct or in 17 O.S. § 160.20 or 17 O.S. § 160.21, PUD will:

- (1) Determine whether the report or submission is compliant with the annual reporting or notice requirements; and
- (2) Inform the wind energy facility owner or operator of PUD's determination within thirty (30) calendar days of receipt of the report or submission if it is not in compliance. In the event PUD determines the wind energy facility's report or submission is not in compliance, PUD shall contact the owner or operator to require additional information; and, such information shall be provided within fifteen (15) calendar days of such notice. If the facility owner fails to correct such non-compliance, PUD may reject the report or submission and may open an investigation to inquire further into the reported or submitted information.

[OAR Docket #20-627; filed 7-16-20]

TITLE 170. DEPARTMENT OF CORRECTIONS

CHAPTER 1. ORGANIZATION

[OAR Docket #20-622]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- 170:1-1-4. Director [REVOKED]
- 170:1-1-7. Divisions, subdivisions, institutions, units, sections, offices, and positions [AMENDED]
- 170:1-1-8. Penal institutions [REVOKED]
- 170:1-1-9. Community corrections centers [REVOKED]
- 170:1-1-11. Community corrections districts [REVOKED]

170:1-1-14. Public access to public information [REVOKED]

170:1-1-15. Principle office [AMENDED]

AUTHORITY:

Board of Corrections; 57 O.S. 57-549; 57 O.S. 504(a); 57 O.S. 507(b)

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N/A

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The rules in this Chapter establish the current organizational structure of the Oklahoma Department of Corrections. The changes update the rules to align with current practices and legislation. Changes include removal of an outdated organizational chart, list of prison facilities and community corrections facilities, and method of appointing the director. The rule change is necessary because the rule as written is functionless. The agency no longer has the same organizational chart, the same facilities, or the same process to appoint the director. Eliminating these derelict portions will prevent the agency from needing to amend the admin rules every time a facility changes or moves.

CONTACT PERSON:

Justin Wolf, Legislative Liaison, (405) 425-7121, Justin.wolf@doc.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

170:1-1-4. Director [REVOKED]

~~The Oklahoma Department of Corrections shall be governed and managed by a director who is appointed by the Board of Corrections with the advice and consent of the Oklahoma Senate. Qualifications and removal of the director shall be as provided in 57 O.S. § 506. The powers and duties of the director shall be as set forth in 57 O.S. § 507 and § 510 as amended from time to time.~~

170:1-1-7. Divisions, subdivisions, institutions, units, sections, offices, and positions

The Oklahoma Department of Corrections, as determined by the director, subject to the approval of the Board of Corrections, shall consist of a sufficient number of divisions, subdivisions, institutions, centers, units, sections, offices, and positions as deemed appropriate to effectively manage the department, ~~all under the supervision and control of the director and Board of Corrections.~~

Permanent Final Adoptions

- (1) There shall be an Administrative Services Division; Community Corrections Division; Community Sentencing and Offender Information Division; Field Operations Division; and a Treatment and Rehabilitative Services Division.
- (2) As required by law, there shall be the Affirmative Action Officer who shall be responsible to the director.
- (3) There shall be an associate director, Administrative Services, who shall be responsible to the director.
- (4) There shall be an associate director, Field Operations, who shall be responsible to the director.
- (5) There shall be a deputy director, Community Corrections, who shall be responsible to the director.
- (6) There shall be a deputy director, Community Sentencing and Offender Information Services, who shall be responsible to the director.
- (7) There shall be a deputy director, Treatment and Rehabilitative Services, who shall be responsible to the director.
- (8) There shall be a General Counsel, who shall be responsible to the associate director, Administrative Services. The director shall employ or contract with attorneys as needed to advise and represent the director, Board of Corrections, and facility and administrative supervisors, in all legal proceedings and actions when required.
- (10) As required by law, there shall be an Internal Affairs Unit to conduct investigations, which shall be responsible to the associate director, Administrative Services.

170:1-1-8. Penal institutions [REVOKED]

The Oklahoma Department of Corrections shall operate, administer, and manage the following penal institutions:

- (1) R. B. "Dick" Conner Correctional Center, located in Hominy, Oklahoma;
- (2) Dr. Eddie Warrior Correctional Center, located in Taft, Oklahoma;
- (3) Jess Dunn Correctional Center, located in Taft, Oklahoma;
- (4) John Lilley Correctional Center, located in Boley, Oklahoma;
- (5) Howard McLeod Correctional Center, located in Atoka, Oklahoma;
- (6) Jackie Brannon Correctional Center, located in McAlester, Oklahoma;
- (7) Mack Alford Correctional Center, located in Stringtown, Oklahoma;
- (8) Oklahoma State Penitentiary, located in McAlester, Oklahoma;
- (9) Jim E. Hamilton Correctional Center, located in Hodgen, Oklahoma;
- (10) James Crabtree Correctional Center, located in Helena, Oklahoma;
- (11) William S. Key Correctional Center, located in Fort Supply, Oklahoma;
- (12) Oklahoma State Reformatory, located in Granite, Oklahoma;

- (13) Joseph Harp Correctional Center, located in Lexington, Oklahoma;
- (14) Lexington Assessment and Reception Center, located in Lexington, Oklahoma;
- (15) Mabel Bassett Correctional Center, located in McLoud, Oklahoma;
- (16) Charles E. "Bill" Johnson Correctional Center, located in Alva, Oklahoma;
- (17) Northeast Oklahoma Correctional Center, located in Vinita, Oklahoma; and
- (18) Other penal institutions approved by statute.

170:1-1-9. Community corrections centers [REVOKED]

The Oklahoma Department of Corrections shall operate, administer, and manage the following community corrections centers:

- (1) Muskogee Community Corrections Center, located in Muskogee, Oklahoma;
- (2) Enid Community Corrections Center, located in Enid, Oklahoma;
- (3) Lawton Community Corrections Center, located in Lawton, Oklahoma;
- (4) Clara Waters Community Corrections Center, located in Oklahoma City, Oklahoma;
- (5) Oklahoma City Community Corrections Center, located in Oklahoma City, Oklahoma;
- (6) Kate Barnard Community Corrections Center, located in Oklahoma City, Oklahoma;
- (7) Hillside Community Corrections Center, located in Oklahoma City, Oklahoma;
- (8) Union City Community Corrections Center, located in Union City, Oklahoma; and
- (9) Other community corrections centers approved by statute.

170:1-1-11. Community corrections districts [REVOKED]

(a) The Oklahoma Department of Corrections shall operate, administer, and manage the following community corrections districts:

- (1) Central District, located in Oklahoma City, Oklahoma;
 - (2) Northeast District, located in Muskogee, Oklahoma;
 - (3) Northwest District, located in Enid, Oklahoma;
 - (4) Oklahoma County Residential Services, located in Oklahoma City, Oklahoma;
 - (5) Southeast District, located in McAlester, Oklahoma;
 - (6) Southwest District, located in Lawton, Oklahoma; and
 - (7) Tulsa County District, located in Tulsa, Oklahoma.
- (b) Each district may have satellite office within the district for effective and efficient management.

**170:1-1-14. Public access to public information
[REVOKED]**

~~All official records, not privileged or protected from public access or publication shall be available to the public for inspection during regular business hours Monday through Friday at the principal office and headquarters of the department. Internal Affairs investigations and supporting documents shall be excluded from public and employee access.~~

~~(1) Notice. Ten days' notice shall be required without which the information may not be readily made available. Any inconvenience or disruption may result in loss of the inspection privilege. Any record or information deemed an unwarranted invasion of privacy may be restricted. If the information requested cannot be gathered and forwarded to the requestor within ten days, the requestor will be informed that the request has been received and will be provided an estimated completion date.~~

~~(2) Copying. All records and information listed in paragraph (1) of this section, not privileged or protected from public access or publication, shall be available to the public for copying at a cost of \$.25 per page, subject to the same restrictions contained in paragraph (1) of this section.~~

~~(3) The Department of Corrections website maintains publicly accessible information, including offender and sex offender lookup functions and the agency policy and procedures manual.~~

170:1-1-15. Principal office

- (a) The principal office of the Oklahoma Department of Corrections is located at 3400 Martin Luther King Avenue, Oklahoma City, Oklahoma 73111.
- (b) An additional mailing address is P.O. Box 11400, Oklahoma City, OK 73136-0400.
- (c) The main telephone number is (405) 425-2500.
- (d) The website address is <http://www.doc.state.ok.us.gov> ~~http://www.doc.ok.gov.~~
- (e) The regular business and office hours for the principal office shall be 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding state recognized holidays.

[OAR Docket #20-622; filed 7-15-20]

**TITLE 170. DEPARTMENT OF
CORRECTIONS
CHAPTER 10. PRISONER PUBLIC WORKS
CONTRACTS**

[OAR Docket #20-623]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Application and Approval

170:10-3-3. Approval process [AMENDED]

Subchapter 5. Project Administration

170:10-5-1. Calculation of the monthly invoice [AMENDED]

AUTHORITY:

Board of Corrections; 57 O.S. 57-549; 57 O.S. 504(a); 57 O.S. 507(b)

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INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The rules of this Chapter establish the procedures for public works agencies requesting to obtain prisoner labor for public works projects. The changes improve clarity and eliminate a reference to a specific person/job title within the agency. The rule change is necessary because the rule as written is overly specific and will require constant updating when ODOC changes the person making the determination. Removing the specific job title allows the agency flexibility and, further, it prevents potential inadvertent rule violations by parties when someone in another position performs the task.

CONTACT PERSON:

Justin Wolf, Legislative Liaison, (405) 425-7121, Justin.wolf@doc.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

**SUBCHAPTER 3. APPLICATION AND
APPROVAL**

170:10-3-3. Approval process

The department shall ~~determine~~ approve or deny the application, according to the Location of the project, the availability of prisoner labor, the department's costs, and the Suitability of the project for inmate labor. The term of the contract shall not extend beyond the fiscal year. A standard contract shall be maintained by the general counsel for the Oklahoma Department of Corrections and shall be available at the principal office of the Oklahoma Department of Corrections. All contracts and leases shall be approved by the general counsel for the Oklahoma Department of Corrections.

SUBCHAPTER 5. PROJECT ADMINISTRATION

170:10-5-1. Calculation of the monthly invoice

(a) The ~~facility business manager or designee~~ department shall maintain time sheets and records of prisoners who work on public works projects on a daily basis and shall prepare a monthly invoice.

Permanent Final Adoptions

- (b) Prisoner wages shall be calculated on a work month of 20 work days and in half-day increments.
- (c) The calculated monthly invoice shall be the total of the base costs times the number of prisoners provided, times the number of days worked, times 10 percent.

[OAR Docket #20-623; filed 7-15-20]

TITLE 170. DEPARTMENT OF CORRECTIONS CHAPTER 15. PRIVATE PRISON CONTRACTOR COMPLIANCE MONITORING

[OAR Docket #20-624]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

170:15-1-2. Scope: Initial point of contact [AMENDED]

Subchapter 13. Private Prison Emergency Plans

170:15-13-3. Departmental emergency response reimbursement [AMENDED]

AUTHORITY:

Board of Corrections; 57 O.S. 57-549; 57 O.S. 504(a); 57 O.S. 507(b)

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INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The rules in this Chapter establish the procedures and standards for the Oklahoma Department of Corrections to monitor and evaluate private prison contractors operating in the state who house inmates under the custody of the Oklahoma Department of Corrections, inmates from out of state jurisdictions, and inmates in federal custody who are housed in private prisons. The rule eliminates the specific building and office number for the initial point of contact and makes a grammatical correction to improve readability and clarity. The rule change is necessary because the rule as written is overly specific and will require constant updating when ODOC changes the address for the initial point of contact. Removing the specific office further prevents potential inadvertent rule violations by parties who use a different address by mistake.

CONTACT PERSON:

Justin Wolf, Legislative Liaison, (405) 425-7121, Justin.wolf@doc.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

170:15-1-2. Scope: initial point of contact

Section E of 57 O.S., Section 563.3 requires the Oklahoma Department of Corrections to promulgate and adopt rules for the implementation of this section.

(+) This Chapter is concerned with:

(1A) Approval by the department of internal and perimeter security;

(2B) Adequate food, housing, and medical care in the private prisons;

(3C) Financial condition of the private contractor;

(4D) The ability of the private prison contractor to comply with American Correctional Association standards; and

(5E) Adequate insurance coverage to indemnify the state, its political subdivisions, and its officers, agents, and employees for expenses or losses incurred in intervening in the operation of the private prison, and to indemnify and hold harmless the state, its political subdivisions, its officers and employees for acts resulting in liability by inmates, officers, and employees of the private contractor or stockholders;

(6F) Requirement to obtain written authorization for operation of a private prison from the governing board of the municipality in which the facility is located or from the county commissioners if the facility is located outside a municipality;

(7G) Conducting FBI and OSBI felony record searches of all employees;

(8H) Provision for regular on site monitoring by the Oklahoma Department of Corrections Private Prison Administration unit for statutory, contractual and operational compliance. Access shall be unrestricted;

(9I) Collection of fees for monitoring compliance with statutory requirements;

(10J) The creation of a continuing compliance process and a process for closing the private facility for noncompliance.

~~(2) The initial point of contact for prospective private prison contractors shall be the Private Prison Administration Office, 2901 Classen Blvd., Suite 200, Oklahoma City, Oklahoma, 73106; (405) 962-6080.~~

SUBCHAPTER 13. PRIVATE PRISON EMERGENCY PLANS

170:15-13-3. Departmental emergency response reimbursement

Any emergency response, to include serious incident investigation, provided by the Oklahoma Department of Corrections and/or state and/or local law enforcement agencies

will be at the sole expense of the private prison contractor/operator. Each responding agency will submit a written invoice detailing costs incurred which will be paid within 30 days of receipt by the private prison contractor/operator.

[OAR Docket #20-624; filed 7-15-20]

TITLE 175. STATE BOARD OF COSMETOLOGY AND BARBERING CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #20-643]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

175:1-1-2. Definitions [AMENDED]

Subchapter 5. Rules of Practice

175:1-5-15. Schedule of fines [AMENDED]

AUTHORITY:

59 O.S. § 199.3(B)(1) and § 199.7; State Board of Cosmetology and Barbering

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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GIST/ANALYSIS:

The proposed rules clarify that the practice of barbering does not include the application of makeup. The proposed rules also clarify that the fine schedule applies to final orders. The rules add definitions of "clean", "contact time", "disinfect", "non-porous", "porous" and "sterilize" in order to give licensees a clearer understanding of sanitation requirements. The proposed rules further clarify the disciplinary action the board can take after three citations. Currently the only possible disciplinary action listed is license revocation. The amendment clarifies that the board can suspend a license rather than revoke it and take other disciplinary action if appropriate.

CONTACT PERSON:

John Funderburk, Oklahoma, State Board of Cosmetology and Barbering.
Tel. 405-522-7616, John.Funderburk@cosmo.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 1. GENERAL PROVISIONS

175:1-1-2. Definitions

The terms and phrases defined in the Oklahoma Cosmetology Act shall have the same meaning when applied in the rules which are herein set forth in this Chapter to substantiate the Cosmetology and Barbering Law. The following rules and terms shall have the same meaning, unless the context clearly indicates otherwise:

"Act" means the Oklahoma Cosmetology and Barbering Act.

"Apprentice" means a person who is engaged in learning the practice of cosmetology or barbering in a cosmetology or barber establishment. [Title 59 O.S. Section 199.1]

"Assigned practice or clinic work" means demonstrations and lesson practice in which services may be performed on patron, student or model on clinic floor in classroom for the benefit of student observation, notes, etc. The practice or demonstration shall be assigned by or with approval of the instructor in charge and materials/supplies used for the education demonstration are the responsibility of the school.

"Barber/Barber Stylist" means any person who engages in the practice of barbering.

"Barber Establishment" means an Establishment or place of business where one or more persons are engaged in the practice of barbering but shall not include barber schools or colleges.

"Barbering" means any one or combination of practices done upon the upper part of the human body for cosmetic purposes and when done for payment either directly or indirectly for the general public, constitutes the practice of barbering, to wit: shaving or trimming the beard or cutting the hair; giving facial or scalp massages or treatment with oils, creams, lotions or other preparations, either by hand or mechanical appliances; singeing, shampooing or applying lighteners or color to the hair, applying hair tonics; applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to scalp, face, neck or upper part of the body, but excluding the application of makeup; and removing superfluous hair from the face, neck or upper part of the body.

"Barber school or college" means an Establishment operated for the purpose of teaching barbering.

"Board" means the State Board of Cosmetology and Barbering.

"Clean" means removal of surface and/or visible debris by using soap, detergent or chemical "cleaner", followed by a clean water rinse.

"Clock hour" means a measure of time determined to be sixty (60) minutes that a student spends in an educational or training activity.

"Contact time" means the amount of moist contact time required for a disinfectant to be effective against the pathogens on the label. Clean items or surfaces must remain completely immersed or visibly wet (sprays, wipes) for full contact time to be effective.

"Cosmetic studio" means any place or premises where demonstrators give demonstrations, without compensation, for the purpose only of advertising and selling cosmetics.

Permanent Final Adoptions

"Cosmetician" means a person licensed by the Board to perform patron services limited to hair arranging and application of make-up, including, but not limited to using hairstyling tools and products. Services must be performed in a licensed establishment.

"Cosmetologist" means any person who engages in, follows or performs any of the practices of cosmetology.

"Cosmetology" means any one or combination of practices generally and usually performed by and known as the occupation of beauticians, beauty culturists, beauty operators, cosmeticians, cosmetologists, or hairdressers, or any other person holding himself or herself out as practicing cosmetology by whatever designation and within the meaning of the Oklahoma Cosmetology and Barbering Act and in or upon whatever place or premises. Cosmetology shall include, but not limited to, any one or combination of the following practices: bleaching, cleansing, curling, cutting, coloring, dressing, removing, singeing, styling, waving or similar work upon the hair of any person by any means, whether with hands or mechanical or electrical apparatus or appliances. Nothing in the Oklahoma Cosmetology and Barbering Act shall be construed to prohibit the use of hands or mechanical or electrical apparatus or appliances for the non-permanent removal of hair from the human body without puncturing of the skin or the use of stimulating exercising, beautifying or similarly working the scalp, face, neck, arms or the manicuring of the nails of any person, exclusive of such of the foregoing practice as are within the scope of practice of the healing arts as provided by law.

"Cosmetology Establishment" means an Establishment or place of business where one or more persons are engaged in the practice of cosmetology but shall not include barber schools and colleges.

"Cosmetology or Barber school" means a school or department that is approved by the Board to conduct and provide cosmetology and/or barber training and education in Oklahoma. It means any place or premises where instruction in any or all the practices of cosmetology and or barbering are given. Any person, firm, institution or corporation, who holds himself, firm, institution or corporation who shall teach and train any other person or persons in any of the practices of cosmetology and/or barbering is hereby declared to be engaged in operating a cosmetology and/or barbering school, and shall be operating cosmetology and/or barbering school, and shall be subject to the provisions of the Oklahoma Cosmetology and Barbering Act. Licensed cosmetology and barbering schools may offer education to secondary and post secondary students in this state.

"Credit hour" means a unit of value awarded to a student for successful completion of a program, course or course lesson and credit to clock ratio is as recognized by the United States Department of Education or a regional or national accreditation entity recognized by the United States Department of Education.

"Demonstrator" means a person who is not licensed in this state as a Cosmetologist, Barber or Instructor and who demonstrates any cosmetic preparation. The person shall be required to obtain a Demonstrator license from the Board before making any such demonstrations.

"Disinfect" means the process of making a non-porous item safe for use. Requires the use of a chemical intended to kill or denature a bacteria, virus or fungus. Proper disinfection requires adherence to manufacturers label with regard to concentration and contact time. UV light is not acceptable disinfection.

"Dry sanitizer" means a clean, dry, closed (covered) cabinet, drawer, chest or other type container used in a cosmetology/barber establishment or school for the purpose of storing clean, dry disinfected combs, brushes and other implements without fumigant after the articles have been cleaned and disinfected in a wet sanitizer (or by other approved method in the case of metal implements).

"Emergency circumstances" means a serious injury, illness or death in the immediate family of applicant for registration, examination, licensure, etc.

"Establishment" means a place or premises, cosmetology salon or barber shop, cosmetic or other specialty shop/salon where any one or combination of cosmetology or barbering practices are performed on the public except that the term shall not include a cosmetology or barbering school.

"Esthetician/Facialist/Facial Operator" means a person licensed by the Board to perform skin care, make-up and hair removal services to the public provided the hair removal services shall not include electrolysis.

"Facial/Esthetics Instructor" means a person licensed by the Board as a qualified teacher of the art and science of skin care theory and practice.

"Hairbraiding Technician" means a person certified by the Board to perform hairbraiding, hairweaving techniques, and hair extensions in a licensed cosmetology establishment.

"Hybrid learning" means courses that combine face-to-face classroom instruction with on-line computer based learning.

"Manicurist/Nail Technician" means a person licensed by the Board to perform nail care services to the public in a place licensed by the Board where nail care/manicuring/pedicuring services may be performed.

"Manicurist/Nail Technician Instructor" means a person licensed by the Board as a qualified teacher of the art and science of nail technology theory and practice.

"Master Barber Instructor" means a person licensed by the Board who gives instruction in barbering or any practices thereof and trained in a school after November 1, 2014.

"Master Cosmetology Instructor" means a person licensed by the Board as a qualified teacher of cosmetology theory and practice.

"Mobile Establishment" means a specialty Establishment that is operated in a self-contained, self-supporting, enclosed mobile unit.

"Non-Porous" means material that has no pores and does not allow for liquids to be absorbed or pass through. Common non-porous materials include glass, metal and plastic.

"Post secondary institution" means a school licensed to teach students according to prescribed curriculum as in Title 59 O.S. § 199.7 (F) 1 Board rule 175:10-3-34(a).

"Porous" means material that has minute spaces or holes through which liquid or air may pass.

"**Secondary institution**" means a school licensed to teach students eligible for credit for 500 hours of related subjects as prescribed in Title 59 O.S. § 199.7 (f)2 and in Board rule 175:10-3-34(b).

"**Sterilize**" means the eradication of all microbial life through the use of heat, pressure, steam or chemical sterilant.

"**Student**" means a person who is enrolled in a cosmetology or barber school and appropriately registered with the Board for the purpose of being educated and trained in the practice of cosmetology or barbering.

"**Unassigned practice or clinic work**" means a personal service of cosmetology or barber practice (on student on another etc.); which shall be elective practice which one student chooses to perform or to receive (routine shampoo not included); and in which school supplies may be used (i.e. bleach/color/perm, etc.); and which practice and service is not assigned by the instructor and/or performed for the benefit of a group of students who have been scheduled to observe as a classroom or clinic demonstration; and for which a reasonable cost for supplies used in the practice may be charged to the student receiving the unassigned services.

"**Wet sanitizer**" means a large, pan-type covered container which shall contain a liquid chemical disinfecting agent used in a school or Establishment for the purpose of disinfecting combs, brushes and other non-metal tools and implements used in training and practice.

SUBCHAPTER 5. RULES OF PRACTICE

175:1-5-15. Schedule of fines

(a) The fine schedule for citations or final orders issued by the Board for violations of the Cosmetology and Barber Act or rules promulgated there under shall be subject to the fines as follows providing each day a violation continues shall be a separate offense:

- (1) Engaging in cosmetology or barbering in any of the licensed practices without a license
 - (A) First: \$250
 - (B) Subsequent: \$500
- (2) Employing an unlicensed person to perform cosmetology or barbering (per person):
 - (A) First: \$250
 - (B) Subsequent: \$500
- (3) Failure to comply with a specific provision of the Cosmetology and Barber Act or rules by an individual not licensed under the Act:
 - (A) First: \$250
 - (B) Subsequent: \$500
- (4) Operate a cosmetology or barber school without first obtaining a license from the Board:
 - (A) First: \$250
 - (B) Subsequent: \$500
- (5) Failure to comply with sanitation standards established by the Board.
 - (A) First violation: Warning
 - (B) Second violation of the same standard: \$50

(b) If the citation is paid prior to hearing date, the citation is still considered part of the licensee's permanent record but dismissed. After three fines, the Board may consider suspension or revocation of a license, or other disciplinary action, after full Board hearing.

[OAR Docket #20-643; filed 7-17-20]

TITLE 175. STATE BOARD OF COSMETOLOGY AND BARBERING CHAPTER 10. LICENSURE OF COSMETOLOGISTS, BARBERS, SCHOOLS AND RELATED ESTABLISHMENTS

[OAR Docket #20-644]

RULEMAKING ACTION:

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RULES:

Subchapter 1. General Provisions
175:10-1-3. [NEW]
Subchapter 3. Licensure of Schools
Part 1. Initial School Licensing
175:10-3-1 [AMENDED]
Part 7. General Operations and Licensing Requirements
175:10-3-67 [AMENDED]
Subchapter 5. Licensure of Cosmetology and Barber Establishments
175:10-5-1 [AMENDED]
Subchapter 13. Reciprocal and Crossover Licensing
175:10-13-1 [AMENDED]
175:10-13-2 [AMENDED]

AUTHORITY:

59 O.S. § 199.3(B)(1) and § 199.7; State Board of Cosmetology and Barbering

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INCORPORATION BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed new rules in subchapter 1 are necessary to comply with 2019 Session Law, ch. 363, sec. 1 (HB 1373) as codified at 59 O.S. § 4000.1, and 2019 Session Law, ch. 363, sec. 9 (HB 1373), amending 59 O.S. § 199.11. The rules establish a procedure by which the Board will adopt a list of crimes that could disqualify an applicant from licensure or certification by the Board. The rules also provide a procedure by which a person may seek an initial determination as to whether the person's criminal history would disqualify the person from licensure or certification.

The proposed rules in subchapter 3 state that cosmetology and barbering schools shall be inspected at least once a year in order to qualify for license renewal. The rules also remove the requirement that a school's bond cover

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substitute teachers. The rules further allow a student to relinquish pending hours and withdraw from a school in order to enroll in a different school.

The proposed rules in subchapter 5 require that the reprint fee be paid within ten days of a request for a reprinted license when the establishment changes address.

The proposed rules in subchapter 13 allow temporary permits to be issued to out-of-state reciprocity applicants. The rules also allow twelve hundred (1200) crossover over hours for licensed barbers seeking licensure as a cosmetologist and cosmetologists seeking licensure as barbers.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

175:10-1-3. Disqualifying criminal history and opportunity for initial determination

(a) Pursuant to 59 O.S. § 4000.1, the Board of Cosmetology and Barbering shall adopt a list of felony crimes that could disqualify a person from holding a license or certification under the Oklahoma Cosmetology and Barbering Act (59 O.S. § 199.1 - 199.15). The Board shall adopt the list at its first meeting of the fiscal year and may modify the list as needed to protect public health and safety.

(b) A person who has been convicted of a crime on the list may at any time, including before obtaining any required education or applying to sit for any necessary examination, request an initial determination as to whether the person's criminal history would potentially disqualify the individual from licensure or certification in Oklahoma. The request shall be in writing and shall include either a copy of the person's criminal history record or a statement describing each conviction including the date of conviction, the court of jurisdiction, and the sentence imposed. The person may submit any additional information including, but not limited to, the person's current circumstances, the length of time since the completion of any sentence, including probation, evidence of rehabilitation, and testimonials or personal reference statements, as well as the person's professional aspirations.

(c) Upon receipt of a written request for consideration of a person's criminal history record, the Executive Director and the Chair of the Board of Cosmetology and Barbering, in consultation with Board legal counsel, shall evaluate the request and make an initial determination based upon the information provided. A notice of initial determination shall be issued within sixty (60) days from the date the request was received. If the person is not satisfied with the response, the person may request that the matter be placed on the agenda of the Board's next regularly scheduled meeting.

(d) The notice of initial determination shall be in writing and mailed to the requestor at the address provided in the request, and shall contain the following statements:

(1) Whether the person appears eligible for licensure or certification at the current time based upon the information submitted by the requestor;

(2) Whether there is a disqualifying offense prohibiting the person's licensure or certification at any time and a statement identifying such offense in the criminal history record or information submitted for consideration;

(3) Any actions the person may take to remedy what appears to be a temporary disqualification, if any;

(4) The earliest date the person may submit another request for consideration, if any; and

(5) A statement that the notice of initial determination is only an initial determination for eligibility for licensure or certification based upon the information provided by the requestor. Additional information or intervening events may result in a different final determination

SUBCHAPTER 3. LICENSURE OF SCHOOLS

PART 1. INITIAL SCHOOL LICENSING

175:10-3-1. Application for initial and renewal of school license

In order to be in compliance with current Cosmetology and Barbering Act as pertains to public and privately owned cosmetology and barber school and license issuance to cosmetology and barber schools, the application procedures for an initial (new) cosmetology and barber school are as follows:

(1) **Privately owned schools.** Any person, corporation or company, who proposes to provide cosmetology or barber training courses designed to qualify persons who complete courses for a professional license to practice cosmetology or barbering, shall be required to obtain a license for the private post secondary school from the Board.

(A) **Letter of intent.** The applicant shall first submit a letter of intent to the Board of Cosmetology and Barbering and shall request Cosmetology or Barber School license application forms from the Board. The letter of intent shall state at least the full name, address and phone number of the applicant and the city where the proposed school is to be located. If the applicant proposes to assume ownership of an existing school, the letter of intent shall specify the name and address of the existing school.

(B) **Application form.** The license application form shall be completed in full making note whether the school intends to operate as a secondary/post secondary establishment and returned to the Board and shall contain the following information:

(i) Proposed name and location (city, street and number), and a brief description of the building.

(ii) Name, address and phone number of the proposed owner(s). If a corporation, the name, address and phone number(s) of the officers and

principal stockholders are required to be submitted.

(iii) Names of Oklahoma license held and the file numbers of the persons to be the instructors of the proposed school and that of the manager, if other the owner.

(C) **Initial license fee;** expiration date. Each initial public and privately owned cosmetology or barber school shall be required to pay to the Board, the initial license fee of \$400.00. Each public and privately owned school shall also pay the annual license renewal fee of \$125.00. Each school license shall expire annually on June 30th. No provision is made for pro rata of any license fee. A school must be inspected at least once each year in order to be eligible for renewal.

(D) **Surety bond.** A surety bond in the amount of two thousand dollars (\$2,000.00) for the first instructor and one thousand dollars (\$1,000.00) for each additional instructor is required to be submitted for cosmetology or barber school license. The bond shall be in an amount sufficient to meet bonding requirements for all staff ~~instructors and for each substitute instructor for the specific school in which license application is made.~~

(E) **Financial statement.** A current financial statement of the license applicant, prepared by a Public Accountant or a Certified Public Accountant, is required to be submitted to the Board. The financial statement shall be prepared in accordance with generally accepted accounting principles and shall reflect the applicant's total property inventory, assets and liabilities which shall show a net worth of at least one hundred thousand dollars (\$100,000.00) for each school owned. Intangible assets will not be considered in net worth.

(F) **Proof of building lease or ownership.** Applicant must obtain a lease of at least one year or be owner of building in which school is proposed to operate. Month to Month lease is not acceptable. Applicant must submit a copy of lease agreement.

(2) **Public schools.** Any public school wherein administrator or other authorized person proposed to provided course(s) in training and education designed to qualify a person who shall complete the public post secondary course(s) for examination and licensure, shall follow instructions for license application procedures in (1) of this Section as may be applicable in requesting school license application and approval from the Board.

(A) Names, address and phone number(s) of Public School Administrator and other supervisory person (Principal, Assistant Principal, Coordinator or Counselor), of school/department and of each instructor proposed to teach in the school shall be submitted to the Board. File number of the instructor(s) shall be submitted.

(B) Applicant shall provide to the Board a notarized affidavit stating source of sufficient bond

coverage and that building wherein the school is proposed to be conducted is publicly owned.

(C) Applicant shall provide phone numbers of public school main campus and school facility and a brief general description of the facility location within campus and other building training sections and parking areas.

(3) **Privately owned school license renewal.** A privately owned school license shall expire annually on June 30th. Renewal must be received by June 30th each year.

(A) Private school license renewal application, forms and instructions are mailed annually to schools by the Board. Forms include a surety bond renewal form, power- of-attorney and verification form.

(4) **Public school license renewal.** A public school license shall expire annually on June 30th. Renewal must be received by June 30th each year.

(A) Public school license renewal application and invoice is mailed annually to schools.

(B) Fee of \$125.00 is required for school license renewal.

(5) Any advertisement for recruitment of students must state school is proposed to be open and shall not contain deceptive or misleading language and shall state that school has applied for licensure.

PART 7. GENERAL OPERATIONS AND LICENSING REQUIREMENTS

175:10-3-67. Student re-registration fee and transfer process

(a) **Student re-registration.** Each time a student registers, re-registers, or transfers, in addition to other requirements, the registration fee of \$5.00 must be submitted to the Board with registration application.

(b) **Student transfer.** An affidavit, signed by official of transferring school must be received by the Board within five (5) days of termination provided tuition is paid in full according to contractual agreement. A notarized affidavit submission is notification to the Board that tuition has been paid in full to the school the student is transferring from.

(c) **Student withdrawal.** A student who withdraws from a school and relinquishes any pending hours shall notify the Board prior to registering in another school.

(ed) **Out-of-state student transfer.** A student may transfer out-of-state hours provided the student submits the necessary proof of training to the Board for evaluation. Necessary papers will be forwarded upon request. The reciprocity processing fee for transfer of out-of-state hours is \$30.00.

SUBCHAPTER 5. LICENSURE OF COSMETOLOGY AND BARBER ESTABLISHMENTS

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175:10-5-1. Cosmetology and barber Establishment license application; authorization open to pending first inspection

- (a) The Board will issue an Establishment license upon receipt of application for license, appropriate fee and notarized affidavit of applicant which reflects compliance with all Establishment license requirements. Initial inspection will be conducted to confirm compliance of license requirements.
- (b) In the event the Establishment should fail to be approved at initial inspection, the Establishment may be required to close and cease to provide services to the public until applicant/establishment shall be in compliance of all license requirements.
- (c) When the ownership of an Establishment changes, it will be considered a new Establishment and shall be required to comply with requirements for initial Establishment license.
- (d) Establishment owner is required to submit a Establishment change of location affidavit when the location of a Establishment changes. ~~No fee is required unless a new license with new address information is requested.~~ A \$5 fee is required within 10 days of change for reprint of license with new address.
- (e) Establishment owner is required to submit a Establishment name change affidavit when the Establishment name changes. ~~No fee is required unless a new license with new Establishment name is requested.~~ A \$5 fee is required within 10 days of change for reprint of license with new name.

SUBCHAPTER 13. RECIPROCAL AND CROSSOVER LICENSING

175:10-13-1. Reciprocal license requirements

The Board, in accordance with the Oklahoma Cosmetology and Barbering Statutes 59 O.S. Section 199.13, has ruled to accept any applicant for applicants from other states in accordance with the following requirements:

- (1) The applicant for license as a cosmetologist, manicurist, facialist, or barber:
- (A) must have met the requirements for the same licensure in another state
 - (B) must hold a current license from another state as verified by a valid certification
 - (C) must have successfully passed Oklahoma's state rules, regulations and law test administered by the Board
- (2) If an applicant for a license as a cosmetologist, manicurist, facialist, or barber is from another territory, province, or foreign county that does not issue a license after required occupational training, but can provide sufficient proof that he or she has continuously engaged in the practices or occupation at issue in the reciprocity license application for at least three years immediately prior to such application, the Board may approve the reciprocity license if there is sufficient proof that applicant has at least an eighth grade education, and the applicant has passed Oklahoma's state rules, regulations and law test administered by the Board.

(3) If an applicant for a license as an instructor is from another territory, province, or foreign county, that does not issue a license after required occupational training, but can provide sufficient proof that he or she has continuously engaged in the practices or occupation at issue in the reciprocity license application for at least three years immediately prior to such application, the Board may approve the reciprocity license if there is sufficient proof that applicant has at least a high school education, and the applicant has passed Oklahoma's state rules, regulations and law test administered by the Board.

(4) Any non-English speaking reciprocity licensee or transfer of hours applicant, and transfer of hours applicant must contact the Board's office concerning requirements for licensing and transfer of hours.

(5) After the application is complete, all required documents are attached, and the application is filed, each applicant for reciprocity license must make an appointment and appear personally in the Board's office for an interview before the reciprocity license may be considered.

(6) The applicant from a foreign country, territory or providence may be required to provide evidence that documents have been certified as valid by a creditable agency as recognized by the Board. Validation of documents is at applicant's expense.

(7) No temporary permit shall be issued to ~~an~~ out of state or a foreign reciprocity applicant.

175:10-13-2. Credit allowed for barber/cosmetology crossover training

(a) A barber who holds a current Oklahoma barber license in good standing, who shall apply to register for the Board's examination for a Basic Cosmetologist license, shall be awarded 1200 hours and may be eligible to sit for the written examination upon showing proof of the completion of three hundred (300) hours of training in a cosmetology school. Training shall be in accordance with a curriculum and schedule approved by the Board and developed specific to Cosmetology techniques including manicuring, pedicuring and Cosmetology/Barber law. Training evaluation and curriculum is approved at time of enrollment in a cosmetology school.

(b) A cosmetologist who holds a current Oklahoma cosmetology license in good standing, who shall apply to register for the Boards examination for a Barber license, shall be awarded 1200 hours and may be eligible to sit for the written examination upon showing proof of the completion of three hundred (300) hours of training in a barber school. Training shall be in accordance with a curriculum and schedule approved by the Board and developed specific to Barbering techniques including shaving and clipper cuts and Cosmetology/Barber law. Training evaluation and curriculum is approved at time of enrollment in a barber school.

[OAR Docket #20-644; filed 7-17-20]

**TITLE 175. STATE BOARD OF
COSMETOLOGY AND BARBERING
CHAPTER 10. LICENSURE OF
COSMETOLOGISTS, BARBERS, SCHOOLS
AND RELATED ESTABLISHMENTS**

[OAR Docket #20-645]

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Subchapter 7. Sanitation, Disinfection and Safety Standards for Establishments and Schools

175:10-7-3 [AMENDED]

175:10-7-4 [AMENDED]

175:10-7-5 [AMENDED]

175:10-7-6 [AMENDED]

175:10-7-12 [AMENDED]

175:10-7-14 [AMENDED]

175:10-7-18 [AMENDED]

175:10-7-25 [AMENDED]

175:10-7-28 [AMENDED]

175:10-7-29 [AMENDED]

175:10-7-30 [AMENDED]

175:10-7-31 [REVOKED]

175:10-7-33 [NEW]

175:10-7-34 [NEW]

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The proposed rules clarify sanitation standards with regards to the storage or chemicals, waste disposal, the use of disinfectants, the use of towels and linens, the cleaning of pedicure bowls, and the proper use of hair and skin products. The rules clarify that service animals as defined in the Americans with Disabilities Act are permitted in schools and establishments. The new rules establish sanitation standards for makeup and eyelash extensions and waxing. A superfluous section is revoked. The proposed rules also contain clean-up language.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

**SUBCHAPTER 7. SANITATION, DISINFECTION
AND SAFETY STANDARDS FOR
ESTABLISHMENTS AND SCHOOLS**

175:10-7-3. Adequate ventilation/chemical safety

(a) All rooms must have good ventilation adequate to quickly rid immediate premises of fumes from products (i.e. artificial nail products, bleach etc.) according to the city/state codes.

(b) Chemicals shall be transported and stored in accordance with the manufacture's label

(c) Chemicals must be stored in the original containers

(d) Chemicals must be stored in overhead cabinets or locked cabinets. They may not be stored in areas used by customers such as bathrooms.

(e) Chemicals may only be mixed and applied to customers specifically as instructed on manufacturer's label, including patch test.

(f) Chemicals must be discarded in accordance with manufacturer's label, local, state and federal rules.

(g) Chemicals shall not be mixed with any other substance unless expressly instructed on the label.

175:10-7-4. Furnishings; windows; ceilings; walls; floors

(a) Furniture shall be of washable material and shall be kept clean. Breaks or cracks in furniture must be repaired immediately.

(b) Windows must be kept in a clean condition.

(c) Each work/styling station shall be provided with adequate light and fixtures which shall be kept in a sanitary and safe condition.

(d) Ceilings and walls shall be of an easily cleaned, smooth and unbroken surface.

(e) Curtains, partitions ~~or~~ and wall hangings shall be kept clean at all times

(f) Floors in Establishments and schools shall be maintained in a clean manner.

(g) Carpet is prohibited for use in work areas (shampoo and styling areas) of an Establishment or school.

(h) Each work/styling station shall be provided with a waste container which shall be emptied and cleaned each day. There shall be 1 covered trash container for:

(1) every two chairs in a salon or barbershop.

(2) each room used for services (e.g. waxing, massage etc.).

(3) each nail station

(4) between every 2 pedicure chairs

(5) each restroom, dispense area and any break room where food is prepared.

(i) Trash containers must have solid sides and liners should be used. Trash containers must be emptied when full.

175:10-7-5. Disinfectants required for use in schools and related establishments

(a) Every precaution shall be taken to prevent infection by disinfecting all tools.

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- (b) All items shall be cleaned and disinfected by removing all visible debris from an item or surface by using soap/water or a cleaning agent.
- (c) Items shall be rinsed thoroughly in plain water.
- (d) Items shall be placed in a wet sanitizer, which is a large, pan-type container which may be of plastic, enamel, stainless steel, or rubber and shall be fully immersed in an EPA approved disinfectant prepared according to manufacturer's directions.
- (e) For immersion the items must stay completely immersed for full contact time according to manufacturer's instructions.
- (f) For spray, place clean item on clean surface and spray with disinfectant until thoroughly saturated. Ensure that all surfaces of item stay visibly moist for full contact time listed on the label for all pathogens listed on the label to be effectively destroyed.
- (g) For EPA registered wipes - wipe all surfaces and ensure that all surfaces remain visibly moist for full contact time listed on the label.
- (h) Combs may be disinfected in a cylinder jar by immersing in an EPA approved disinfectant prepared according to manufacturer's directions. The combs must stay immersed for full contact time according to manufacturer's directions.
- (fi) If an autoclave is used to sterilize items after disinfection, in order to destroy all microbial life (including spores), periodic testing and maintenance must be performed on system according to manufacturer's instructions.
- (gj) All disinfected items must be stored in a dry/closed cabinet, drawer, or other closed/covered/light type container without fumes.

175:10-7-6. Disinfecting agents and procedures for use in schools and related establishments

- (a) Disinfectants for use by Establishments and schools shall be used only if registered with the Environmental Protection Agency (EPA) for use as a disinfectant to achieve its intended purpose in accordance with the product label.
- (b) To disinfect and minimize corrosion of metal instruments, immerse and wipe thoroughly with an EPA approved disinfectant or spray with approved oil base disinfectant and store in a cabinet or closed container free from contamination between use and service for each patron.
- (c) All disinfectants must be mixed as directed on the manufacturer's label.
- (d) All disinfection immersion liquid must be changed daily or sooner if visibly contaminated.
- (e) All disinfectant containers must be covered at all times.
- (df) All customer contact items, including neck rests, arm rests and seats, must be cleaned and disinfected between customers.
- (g) A manufacturer's label for all disinfectant concentrate must be available at all times. If concentrate bottle is emptied, it must remain available until a new bottle is available.
- (h) When disinfectant is placed in a secondary container such as a spray bottle, tub or jar, that container must be labeled to indicate what chemical is in the container.
- (i) Disinfectant must be disposed of in accordance with all local, state and federal requirements.
- (ej) UV light boxes for sanitation purposes are prohibited.

(fk) Any products banned by the FDA shall not be used for any cosmetology/barbering service.

(l) Disinfecting electrical items with plastic/metal guards, clipper blades, drill bits and any metal or nonmetal removable parts must be removed, cleaned and disinfected by first removing all visible debris. Use EPA registered spray or wipe disinfectant as instructed on manufacturer's label for full contact time. Allow to air dry. Tool housing must also be disinfected. Store in a clean place such as a stand, hook or on a clean towel and covered by a clean towel.

(m) Shears and razors must be wiped to remove visible debris and disinfected with an EPA-registered disinfectant, spray or wipe after each use. The surface must remain wet for the full contact time listed on the disinfectant label.

(n) Once properly cleaned and disinfected, all multi-use items must be stored in a clean, covered container marked "clean" or "disinfected".

(o) Disinfectant Options

(1) EPA registered bactericidal, virucidal and fungicidal disinfectant that is approved for use in beauty salon, salon, barber or spa settings, following instruction label for dilution ratio and contact time

(2) EPA registered Sodium Hypochlorite 5.25% or higher (household/disinfecting bleach) with instructions for disinfection, diluted as instructed on the label and observing a 5-minute contact time. Bleach must be active (not expired) with a manufacture date of less than 6 months prior to use.

175:10-7-12. Towels/linens

- (a) Clean towels shall be used for each patron.
- (b) Clean towels and other linens shall be kept in a closed container, cabinet or drawer that is free from contamination.
- (c) A suitable hamper-type container shall be provided for soiled towels.
- (d) The headrest of the facial chair shall be covered with a clean towel for each patron.
- (e) An appropriate supply of clean towels, linens and neck strips shall be maintained in the Establishment.
- (f) All linens (towels, sheets, robes, etc.) cannot be re-used and must be laundered prior to use.
- (g) Linens shall be washed on hot with detergent and dried until "hot to the touch".
- (h) There shall be 1 vented, covered container provided for soiled linens (towels, capes, sheets) in salons, barber shops spa and nail salons and each individual room used for services and any customer changing area.
- (i) Containers for used linens must be covered and have vented sides to reduce the growth of pathogens.
- (j) Towel warmers must be disinfected daily with a disinfectant wipe or spray.
- (k) Salons using hot steamed towels in services must meet these requirements;
 - (1) Towels used in a warmer must be washed with detergent and bleach and dried using a hot dryer setting.
 - (2) Practitioners preparing towels for the warmer must first wash their hands or wear gloves.

(3) Wet towels used in services must be prepared fresh each day. At the end of the day, unused steamed towels must be removed and laundered.

(4) Towel warmers must be left open overnight to allow unit to dry completely.

175:10-7-14. Manicuring station and equipment; methyl methacrylate (MMA) prohibited

(a) Manicuring station and equipment shall be kept in a clean and disinfected condition at all times.

(b) Manicuring bowls, brushes, and other washable items shall be cleaned and disinfected after each use and shall be kept in a closed area, free from contamination, when not in use.

(c) Manicuring instruments, tweezers, and other non-metal implements shall be cleaned and disinfected. Implements shall be sanitized using an EPA registered product. Disinfected implements shall be stored in a sealed plastic bag or must remain in a dry closed/covered/light drawer, cabinet or box-type container until ready for use on next patron. At least two (2) sets of manicuring implements shall be maintained for each practicing manicurist in order that one set is appropriately disinfected for use on each patron.

(d) Hot oil or lotion manicuring units shall be maintained in a safe, clean and disinfected condition. A disposable type liner shall be used in unit cup to hold lotion. The used liner and oil or lotion shall be disposed of immediately after use and shall not be reused.

(e) Maximum precautionary, safe, disinfection and appropriate preparation and application shall be observed in sculptured nails, tips, and other artificial nail procedures. Each licensee shall be knowledgeable and alert to nail diseases and potential health hazards which may be present before or after artificial nail application. If evidenced prior to service, the licensee shall not proceed with application. If infection or other condition of disease is evidenced after application, the patron shall be referred to a physician or health clinic for appropriate treatment. No further manicuring services shall be performed until hands, nails, and/or fingers are free and clear of the disease or infection.

(f) Each licensee shall be knowledgeable of product ingredients. If not listed on the product, the manufacturer should be contacted for content information. The use of methyl methacrylate (MMA) is prohibited.

(g) Metal drill bits may be soaked in acetone to remove nail product. When removed from the acetone they must be washed using a brush and soap/water, then rinsed prior to immersion in disinfectant. Bits must remain in disinfectant for full contact time.

175:10-7-18. Disinfection precautions before and after each patron service

(a) The hands of the licensee, student or apprentice shall be washed and the integrity of the skin carefully examined before and after performing a service for any person. If any abrasion, cut, scratch, open lesion or infection is evidenced, protective or disposable gloves shall be worn while performing

services in order to reduce risk or transmission of infectious bacteria/virus/disease.

(b) All licensees are required to wash hands prior to any service, following eating, smoking or the use of the restroom. Hands must be washed with running water and soap and then dried with a disposable towel. Antibacterial soap is not recommended.

(c) Styptic pencils and lump alum are prohibited. Liquid or powdered astringent shall be used to check bleeding and shall be applied with separate, clean, sterile gauze or cotton which shall be disposed of immediately after use.

(ed) Any licensee who can reasonably anticipate, as the result of performing any cosmetology or barbering service, contact with blood and other potentially infectious material, shall use universal precautions, and shall wear protective disposable gloves while performing the services. Gloves shall not be re-used and shall be disposed of properly immediately after use.

(de) Implements and tools that cannot be disinfected must be disposed of after one use.

175:10-7-25. Animals, birds, pets prohibited in schools and related Establishments

Animals, birds, and/or other pets shall be prohibited in an Establishment or school, ~~unless otherwise provided by law.~~ The use of fish or other animals in performing a cosmetology/barbering service in an Establishment or school, including but not limited to fish pedicures is prohibited. The prohibition in this section shall not apply to a service animal as defined in the Americans with Disabilities Act (P.L. 101-336) as amended.

175:10-7-28. Product use, knowledge and procedures

(a) All licensees shall be held individually liable for product knowledge. Maximum precautionary, safe, disinfection and appropriate preparation prior to service and application, as required by product label, shall be practiced at all times upon the public. For products that contain a requirement for a patch test, licensees may provide a consumer advisory that is clearly visible in the area of the application, or provide the client with a printed fact sheet with information that describes the label requirement for the patch test, or utilize a signed statement of release of liability regarding the patch test warning.

(b) All products removed from a multi-use container such as a tub or tube, must be done so in a manner that the remaining product in the container is not contaminated.

(c) Products such as pomades, wax and gels must be removed with a single use spatula that is disposed of immediately after a single use or a disinfected multi use spatula. Fingers may not be used to remove product.

(d) Powders and lotions may be dispensed from a shaker or pump ensuring that the licensee's or client's hands never touch the dispensing portion of the container.

175:10-7-29. Facial procedures, devices and equipment

(a) Licensees are prohibited from performing facial procedures using cosmetic exfoliating substances or devices that

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effect more than the top layer (stratum corneum) or outer most layer of dead cells on the skin. Procedures which use any cosmetic exfoliation substance or device to remove viable (living) skin below the stratum corneum are deemed beyond the scope of practice of persons and Establishments licensed by the Board of Cosmetology and Barbering.

(b) Cosmetic exfoliating substances may include alpha hydroxyl acids (glycolic and lactic acids), beta hydroxyl acids, salicylic acid, Jessner's solutions, resorcinol and other substances intended to affect no more than the stratum corneum.

(c) Cosmetic exfoliating devices may include FDA (U.S. Food and Drug Administration) registered and/or approved devices, provided that such devices affect no more than the stratum corneum.

(d) Invasive procedures which ablate or destroy, remove, or make an incision or pierce the skin beyond the stratum corneum is prohibited.

(e) Roll on wax products are prohibited.

(f) Superficial exfoliation treatments on the stratum corneum using commercially available products and devices used in accordance with manufacturer's written instructions.

(1) Only the stratum corneum may, by any method or means, be removed, and then only for the purpose of improving the appearance of the skin.

(2) Skin removal techniques and practices which result in destruction of living tissue beyond the stratum corneum layer of skin is prohibited.

(g) Use of esthetic devices approved by rule, that are intended to be used for cosmetic skin care purposes, beautifying, and improving the appearance of the skin. Including but not limited to:

(1) galvanic current

(2) High frequency

(3) Mechanical brushes

(4) Vacuum spray devices

(5) Steamers

(6) Micro current devices

(7) Microdermabrasion devices

(8) Low Level radio frequency devices

(9) Light emitting Diode devices

(h) Extraction techniques including but not limited to; Metal extractor tool

(i) Esthetic devices must be commercially available and be operated within manufacture written guidelines and be FDA registered if required under 201 (h) of the Federal Drug and Cosmetic (FD&C) Act and may not fall within class 3 designation.

175:10-7-30. Pedicure equipment and procedures for cleaning and disinfecting after each client use

(a) Pedicure equipment is a unit that holds water for a pedicure service, including whirlpool spas, 'pipe-less' units, footbaths, basins, tubs, sinks and bowls which shall be cleaned by scrubbing surface with a brush, using an enzymatic or surfactant detergent (soap) and water. After cleaning, pedicure equipment, tools and implements shall be disinfected by using an EPA-registered disinfectant as prescribed in Board rule

175:10-7-6. ~~Board rules regarding the cleaning and disinfecting of cosmetology tools and implements apply to all tools and implements used for pedicures. The Board recommends the use of NIC approved "Cleaning and Disinfecting of Circulating and Non-Circulating Tubs and Spa's For All Industry Modalities".~~

(b) All pedicure bowls must be cleaned and disinfected prior to each use by the following method:

(1) Empty pedicure bowl

(2) Remove all removable parts - clean with soap/detergent and water, rinse and immerse in EPA registered disinfectant following manufacturer's directions for proper contact time.

(3) Scrub tub with soap/detergent and rinse

(4) Replace removable cleaned and disinfected parts

(5) Fill tub and add EPA registered disinfectant to achieve proper concentration

(6) Allow to sit, or run through system (jetted tubs) for manufacturer's contact time

(7) Drain tub and air dry or wipe dry with a clean paper towel.

(c) Any item that cannot be properly cleaned and disinfected is considered single use and must be disposed of after single use. This includes, but is not limited to, all nail files/emery boards that are not made entirely of metal or glass, pumice stones, buffing blocks, orangewood sticks, cotton, toe separators, and flip-flops.

(d) Metal drill bits may be soaked in acetone to remove nail product. When removed from the acetone they must be washed using a brush and soap/water, then rinsed prior to immersion in disinfectant. Bits must remain in disinfectant for full contact time.

(e) Credo blades or any implement used to remove skin such as razors, cheese graters and rasp are prohibited.

175:10-7-31. Manicuring equipment [REVOKED]

~~The use of the credo blade, rasp or knife is prohibited for use by licensees.~~

175:10-7-33. Make-up/Eyelash Extensions

(a) Make-up pencils that do not require sharpening, should not be used.

(b) Make-up pencils that require a sharpener, must be sharpened prior to each use

(c) Pencil sharpeners must be cleaned out and properly disinfected by immersion or spray with an EPA registered disinfectant after each use

(d) Disposable applicators must be used in the application of mascara

(e) Liquid foundation must be dispensed with a pump style bottle or removed from container without allowing mouth of container to be contaminated.

(f) Make up that is in a cake format should be scraped off onto a single use or disinfected surface, such as a palette for application.

(g) When make-up displays are accessible to the public, disposable applicators for all make-up must be readily available.

- (h) Eyelash extensions may only be performed by a licensed cosmetologist or esthetician
- (i) Tables/Beds/Chairs used during eyelash services must be covered by a:
- (1) Disposable sheet/paper
 - (2) Non-Porous Plastic cover (disinfected between clients)
 - (3) Clean sheet or linen
 - (4) Disposable paper towel like product or hand sized towel may be used under the head of each new client.
- (j) Tray Barrier - a fresh/new disposable barrier such as a paper towel will be used on tray or counter space on which items for clients replaced before each service begins.
- (k) Mask will be worn properly over both nose and mouth during eyelash service.
- (l) Forehead Barrier - disposable, single use or freshly laundered forehead barrier must be used.
- (m) Lash use and Storage
- (1) Lashes must be stored in covered container
 - (2) Once lashes are removed from original container, they cannot be placed back in original container and may not be used on another client and may not be stored for later use of same client.
 - (3) Any cutting implement used to cut lashes into sections (to render lash strips on time use) must be disinfected and stored in covered container.
 - (4) Glue stones, lash tiles, lash pallets and like items used to pull lasses from during service, must be disinfected between clients.
- (n) De-tacking tape used for taping back eye lid skin or lashes cannot be de-tacked on skin. De-tacking must be done on a clean towel.
- (o) Any nozzle or dropper used for rinsing or flushing the eye during the service cannot come in direct contact with the eye or skin.
- (p) Make up application on the face and beautifying lashes and brows with the use of commercially available products use in accordance with manufacturer written instructions, include but not limited to:
- (1) Lash extension application
 - (2) Lightening hair on the body except the scalp
 - (3) Temporary tattoo application, i.e. henna, crystals.

175:10-7-34. Waxing

- (a) Roll on wax is prohibited
- (b) Wax pots must remain covered and free from debris when not in use
- (c) Wax may be removed for use by one of the following methods:
- (1) Single use spatula disposed of after a single dip/application
 - (2) Disinfected plastic spatula - new spatula for each dip into the pot
 - (3) Removal of wax needed for entire service into a single use, disposable cup. Only in this circumstance may the same applicator(s) be used for the entire service. Cup (including all remaining wax) and applicator(s) must be

disposed of immediately after use. Remaining wax may not be put back into the pot.

- (d) If wax becomes contaminated or has visible debris, pot must be emptied and disinfected. No wax may be re-used - only new wax may be used in the pot.
- (e) Area to be waxed must be cleaned with antiseptic wipe prior to service to reduce the risk of infection.
- (f) Waxing of nasal hair is prohibited
- (g) Paraffin wax must be portioned out for each client in a bag or other container, or dispensed in a manner that prevents contamination of the unused supply. All portions used on a client must be disposed of immediately following use.
- (h) Double dipping is expressly prohibited - HPV and HSV can both be easily transmitted in the wax pot environment.

[OAR Docket #20-645; filed 7-17-20]

**TITLE 175. STATE BOARD OF
COSMETOLOGY AND BARBERING
CHAPTER 20. MASSAGE THERAPY**

[OAR Docket #20-646]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Licensure of Massage Therapists

175:20-5-1. Original Licensure [AMENDED]

175:20-5-2. Licensure by Reciprocity [AMENDED]

175:20-5-3. License renewal [AMENDED]

175:20-5-7. Disqualifying criminal history and opportunity for initial determination [NEW]

AUTHORITY:

59 O.S. § 199.3(B)(1) and § 199.7; State Board of Cosmetology and Barbering

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

January 29, 2020

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APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

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EFFECTIVE:

September 11, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rules establish a procedure by which the Board will adopt a list of crimes that could disqualify an applicant from licensure or certification by the Board pursuant as required by 2019 Session Law, ch. 363, sec. 1 (HB 1373) as codified at 59 O.S. § 4000.1, and 2019 Session Law, ch. 363, sec. 73 (HB 1373), amending 59 O.S. § 4200.5. The rules also provide a procedure by which a person may seek an initial determination as to whether the person's criminal history would disqualify the person from licensure or certification in compliance with 59 O.S. §§ 4000.1 and 4200.5. The rules also clarify the

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criminal history that an applicant must disclose in order to determine eligibility pursuant to 59 O.S. § 4200.5 and § 4200.11(A) and (B).

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 5. LICENSURE OF MASSAGE THERAPISTS

175:20-5-1. Original Licensure

(a) The Board may issue a license to practice massage therapy to a person who:

- (1) files a completed application on a form prepared by the Board;
- (2) submits satisfactory evidence in the form of a birth certificate, driver's license or other government-issued identification that the person is at least eighteen (18) years of age;
- (3) provides documentation that the applicant currently maintains liability insurance for practice as a massage therapist;
- (4) provides a certificate and certified transcript from a state-licensed massage school showing successful completion of at least five hundred (500) hours of formal education in massage therapy;
- (5) provides a certified copy of test scores showing the applicant has completed and passed the Massage and Bodywork Licensing Examination (MBLEx);
- (6) states under penalty of perjury in a manner prescribed on the application as to whether the applicant has in any jurisdiction:

(A) whether the applicant has pleaded guilty, nolo contendere or been convicted of a felony crime other than a minor traffic violation in any jurisdiction; and

(B) pleaded guilty, nolo contendere or been convicted of a misdemeanor involving moral turpitude or a misdemeanor involving an act of violence;

~~(C) pleaded guilty, nolo contendere or been convicted of a violation of federal or state controlled dangerous substance laws whether the applicant has had a massage therapy license revoked in another jurisdiction or been the subject of disciplinary action in another jurisdiction.~~

(7) submits a current criminal history information report obtained from the Oklahoma State Bureau of Investigation.

(b) A criminal history background information report required by this section shall be current if dated no more than thirty (30) days prior to the date on which the applicant submits a completed application to the Board. The OSBI criminal

history background report shall include a search of the Department of Corrections Sex Offender Database and Violent Offender Database. All fees required for the criminal history background report shall be paid by the applicant.

(c) The Board may deny a license or impose probationary conditions if the applicant has

(1) pleaded guilty, nolo contendere or been convicted of a felony that substantially relates to the practice of massage therapy or poses as reasonable threat to public safety;

(2) ~~pleaded guilty, nolo contendere or being been convicted of a misdemeanor involving moral turpitude or a misdemeanor involving an act of violence;~~

(3) ~~pleaded guilty, nolo contendere or being been convicted of a violation of federal or state controlled dangerous substance laws;~~

(4) engaged in unprofessional conduct as described in this chapter that has endangered or is likely to endanger the health, welfare or safety of the public;

~~(5)~~ violated any provision of the Massage Therapy Practice Act or any rule of the Board; or

~~(6)~~ had a license revoked in another jurisdiction or been the subject of disciplinary action in another jurisdiction.

(d) As used in this section:

(1) "Substantially relates" means the nature of criminal conduct for which the person was convicted, or to which the person pleaded, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to massage therapy; and

(2) "Poses a reasonable threat" means the nature of criminal conduct for which the person was convicted, or to which the person pleaded, involved an act or threat of harm against another and has a bearing on the fitness or ability to serve the public or work with others in massage therapy.

175:20-5-2. Licensure by Reciprocity

(a) The Board may issue a license by reciprocity to a person who:

(1) submits an application on a form prepared by the Board;

(2) possesses a valid license or registration to practice massage therapy issued by the appropriate examining board under the laws of any other state or territory of the United States, the District of Columbia or any foreign nation;

(3) has met educational and examination requirements equal to or exceeding those established pursuant to the Massage Therapy Practice Act;

(4) provides documentation that the applicant currently maintains liability insurance for practice as a massage therapist;

(5) states under penalty of perjury in a manner prescribed on the application as to whether the applicant has in any jurisdiction:

(A) whether the applicant has pleaded guilty, nolo contendere or been convicted of a felony crime other than a minor traffic violation in any jurisdiction; and

- (B) ~~pleaded guilty, nolo contendere or been convicted of a misdemeanor involving moral turpitude;~~
 (C) ~~pleaded guilty, nolo contendere or been convicted of a violation of federal or state controlled dangerous substance laws whether the applicant has had a massage therapy license revoked in another jurisdiction or been the subject of disciplinary action in another jurisdiction.~~
- (6) submits a current criminal history information report obtained from the state or territory of the United States, the District of Columbia or foreign nation where the applicant is licensed. If no such report is available from the state, territory or foreign nation, the applicant shall submit a criminal history background information report from the Oklahoma State Bureau of Investigation.
- (b) The applicant from another state or territory of the United States, the District of Columbia or a foreign nation may be required to provide evidence that documents have been certified as valid by a creditable agency as recognized by the Board. Any cost incurred for validation of documents shall be paid by the applicant.
- (c) A criminal history background information report required by this section shall be current if dated no more than thirty (30) days prior to the date on which the applicant submits a completed application to the Board and shall include a search of sex offender and violent offender databases. All fees required for the criminal history background report shall be paid by the applicant.
- (d) The Board may deny a license or impose probationary conditions if the applicant has
- (1) ~~pleaded guilty, nolo contendere or been convicted of a felony that substantially relates to the practice of massage therapy or poses as reasonable threat to public safety;~~
 - (2) ~~pleaded guilty, nolo contendere or being been convicted of a misdemeanor involving moral turpitude or a misdemeanor involving an act of violence;~~
 - (3) ~~pleaded guilty, nolo contendere or being been convicted of a violation of federal or state controlled dangerous substance laws;~~
 - (4) engaged in unprofessional conduct as described in this chapter that has endangered or is likely to endanger the health, welfare or safety of the public;
 - (5-3) violated any provision of the Massage Therapy Practice Act or any rule of the Board; or
 - (6-4) had a license revoked in another jurisdiction or been the subject of disciplinary action in another jurisdiction.
- (e) As used in this section:
- (1) "Substantially relates" means the nature of criminal conduct for which the person was convicted, or to which the person pleaded, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to massage therapy; and
 - (2) "Poses a reasonable threat" means the nature of criminal conduct for which the person was convicted, or to which the person pleaded, involved an act or threat of harm against another and has a bearing on the fitness or

ability to serve the public or work with others in massage therapy.

175:20-5-3. License renewal

- (a) Massage therapy licenses shall be renewed biennially on the last day of the birth month of the licensee.
- (b) In order to renew a license, a licensee shall:
- (1) submit a renewal application on a form prepared by the Board;
 - (2) demonstrate completion of all continuing education requirements in a manner prescribed by the Board;
 - (3) provide documentation that the applicant currently maintains liability insurance for practice as a massage therapist;
 - (4) remit all required fees for renewal; and
 - (5) states under penalty of perjury in a manner prescribed on the application as to ~~whether the applicant has in any jurisdiction:~~
- (A) whether the applicant has pleaded guilty, nolo contendere or been convicted of a felony crime other than a minor traffic violation in any jurisdiction; and
 - (B) ~~pleaded guilty, nolo contendere or been convicted of a misdemeanor involving moral turpitude;~~
 - (C) ~~pleaded guilty, nolo contendere or been convicted of a violation of federal or state controlled dangerous substance laws whether the applicant has had a massage therapy license revoked in another jurisdiction or been the subject of disciplinary action in another jurisdiction.~~
- (d) A thirty-day grace period shall be allowed after the end of the renewal period. During the grace period, a license may be renewed upon payment of the renewal fee and a late fee as prescribed by the Board.
- (e) If a massage therapist license is not renewed by the end of the thirty-day grace period, the license shall be placed on inactive status for a period not to exceed one (1) year. No person shall practice massage therapy while the license is in inactive status.
- (f) If within a period of one (1) year from the date the license was placed on inactive status the massage therapist wishes to resume practice, the massage therapist shall notify the Board in writing and, upon receipt of proof of completion of all continuing education requirements and payment of a reactivation fee, the license shall be restored in full.
- (g) If a license is not reactivated within one (1) year from the date that it was placed in inactive status, the license shall automatically expire. If the person who held the expired license wishes to practice as a massage therapist, the person shall apply for an original license and shall meet all requirements for original licensure as prescribed in this chapter.

175:20-5-7. Disqualifying criminal history and opportunity for initial determination

- (a) Pursuant to 59 O.S. § 4000.1, the Board of Cosmetology and Barbering shall adopt a list of crimes that could disqualify a person from being licensed as a massage therapist. The Board

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shall adopt the list at its first meeting of the fiscal year and may modify the list as needed to protect public health and safety.

(b) A person who has pleaded guilty, nolo contendere or been convicted of a crime on the list may at any time, including before obtaining any required education or applying to sit for any necessary examination, request an initial determination as to whether the person's criminal history would potentially disqualify the individual from licensure as a massage therapist in Oklahoma. The request shall be in writing and shall include either a copy of the person's criminal history record or a statement describing each conviction or plea including the date of conviction or plea, the court of jurisdiction, and the sentence imposed. The person may submit any additional information including, but not limited to, the person's current circumstances, the length of time since the completion of any sentence, including probation, evidence of rehabilitation, and testimonials or personal reference statements, as well as the person's professional aspirations.

(c) Upon receipt of a written request for consideration of a person's criminal history record, the Executive Director, the Chair of the Board of Cosmetology and Barbering, and the Chair of the Advisory Board, in consultation with Board legal counsel, shall evaluate the request and make an initial determination based upon the information provided. A notice of initial determination shall be issued within sixty (60) days from the date the request was received. If the person is not satisfied with the response, the person may request that the matter be placed on the agenda of the Board's next regularly scheduled meeting.

(d) The notice of initial determination shall be in writing and mailed to the requestor at the address provided in the request, and shall contain the following statements:

(1) Whether the person appears eligible for licensure at the current time based upon the information submitted by the requestor;

(2) Whether there is a disqualifying offense prohibiting the person's licensure at any time and a statement identifying such offense in the criminal history record or information submitted for consideration;

(3) Any actions the person may take to remedy what appears to be a temporary disqualification, if any;

(4) The earliest date the person may submit another request for consideration, if any; and

(5) A statement that the notice of initial determination is only an initial determination for eligibility for licensure based upon the information provided by the requestor. Additional information or intervening events may result in a different final determination.

(e) A person who has pleaded guilty, nolo contendere or been convicted of a crime on the list adopted by the Board pursuant to this section shall not be eligible for licensure for a period of three years from the date of the plea or conviction. Applicants whose pleas or convictions occurred more than three years prior to the date of application for licensure shall be evaluated on a case-by-case basis.

[OAR Docket #20-646; filed 7-17-20]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 1. STATE BOARD OF EDUCATION

[OAR Docket #20-715]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

210:1-1-2. Definitions [AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 1-116; 70 O.S. § 6-101.10; 70 O.S. § 6-103.15 (repealed); 70 O.S. § 6-194; 75 O.S. § 314

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Approved by Governor's declaration on June 25, 2020

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rule setting out definitions for the State Board of Education chapter of Title 210, last amended in 1998, is being updated to remove outdated content and align appropriately with current law and other State Department of Education regulations.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 1. GENERAL PROVISIONS

210:1-1-2. Definitions

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

"Administrator" means a duly certified person who devotes a majority of time to service as a superintendent, principal, vice principal, or in any other administrative or supervisory capacity in a school district.

"Nonreemployment" means the nonrenewal of a teacher's contract upon expiration of the contract (end of school term).

"Policies" means principles adopted by the State Board of Education (Board) to help it identify and select actions to guide and determine its present and future decisions.

"Policy of evaluation" means the development of a document a school district's policy, developed pursuant to 70 O.S. § 6-101.10, describing the total teacher and administrator evaluation system including the purposes of evaluating, the criteria to be used as standards, and the procedure to be followed in implementing the evaluation process.

"Procedures" means actions specified by rules and regulations to be followed in carrying out a policy or law. It may also mean processes used in the implementation of a program.

"Professional development program" means the program mandated by this act 70 O.S. § 6-194 for the continuous improvement and enrichment of the certified and licensed teachers and administrators of this state.

"Sexual conduct" means the soliciting, or imposing, of criminal activity when such soliciting or imposing occurs during school or school-related activities, or when such soliciting or imposing occurs during nonschool times and is directed toward a student. (70-6-103.15)

"Revocation" or "revoked" means the invalidation of a teacher or administrator certification by the State Board of Education pursuant to due process procedures provided for by applicable laws and regulations.

"Student teacher" means any student who is enrolled in an institution of higher learning approved by the State Board of Education for teacher training and who is jointly assigned by such institution of higher learning and a school district's board of education to perform practice teaching under the direction of a regularly employed and certified teacher. A student teacher, while serving an internship under the supervision of a certified teacher, shall be accorded the same protection of the laws that accorded the certified teacher.

"Suspension" or "suspended" means the temporary discontinuance of a teacher's teaching service or an administrator's administrative duties temporary discontinuance of a teacher or administrator certification pursuant to 75 O.S. § 314, upon a finding by the State Board of Education that public health, safety, or welfare imperatively requires emergency action.

"Teacher (Certified)" means any teacher individual who has been issued a certificate by the Board in accordance with the rules and regulations of the Board, and who falls under the definition of "Teacher" at 70 O.S. § 1-116.

"Teacher (Licensed)" means any person who holds a valid license to teach, issued by the State Board of Education in accordance with the rules and regulations of the Board.

"Teacher (Residency Year)" means any licensed teacher who is employed in a local school to serve as a classroom teacher under the guidance and assistance of a mentor teacher and a residency committee. Any such person shall have completed the program of the college or school of education from the accredited institution of higher learning from which the person has been graduated.

"Teacher (Student)" means any student who is enrolled in an institution of higher learning approved by the State Board of Education for teacher training and who is jointly assigned by such institution of higher learning and a school district's board of education to perform practice teaching under the direction of a regularly employed and certified teacher. A student teacher, while serving as a nonsalaried internship under the supervision of a certified teacher, shall be accorded the same protection of the laws that accorded the certified teacher.

[OAR Docket #20-715; filed 7-27-20]

TITLE 210. STATE DEPARTMENT OF EDUCATION

CHAPTER 10. SCHOOL ADMINISTRATION AND INSTRUCTIONAL SERVICES

[OAR Docket #20-716]

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RULES:

Subchapter 1. General Provisions
210:10-1-4. Length of term [AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 1-109

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The rule that addresses requirements for the length of a school year has been updated to reflect changes in law. 70 O.S. § 1-109 provides that beginning with the 2021-2022 school year, public schools must be in session for not less than one thousand eighty (1,080) hours with a minimum of one hundred sixty-five (165) days of instruction each school year. A waiver of the 165-day minimum for school academic calendars is authorized provided a school district "meets the requirements established by the State Board of Education." Pursuant to Senate Bill 441 (2019), the State Board of Education is directed to promulgate rules establishing the minimum guidelines for student performance and cost savings for school districts that wish to apply for a waiver of the 165-day minimum school year. The rule amendment outlines these eligibility guidelines for an alternate length school year waiver, developed through a process involving stakeholder input and alignment with Oklahoma's *Every Student Succeeds Act* (ESSA) state plan. The requirements for elementary and middle school sites include a growth indicator of "C" or higher on the most recent Oklahoma School Report Card, and not currently being identified as in need of Support and Improvement under ESSA. Requirements for high school sites include a 4-year cohort graduation rate of at least 82% or the state average (whichever is higher), having both an academic

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indicator and a postsecondary indicator of "C" or higher on the most recent Oklahoma School Report Card, and not currently being identified as in need of Support and Improvement under ESSA.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

210:10-1-4. Length of term

(a) **Minimum length of the school year.** The minimum length of the school year will be one hundred eighty (180) days or one thousand eighty (1,080) hours, provided up to five (5) days or thirty (30) hours per school year may be used for attendance of professional meetings. A school district that adopts a 1,080 hours policy rather than a 180 day policy shall notify the State Board of Education prior to October 15 of the applicable school year, and provide a copy of the school calendar as approved by the district's board of education. Except as otherwise authorized by law, beginning with the 2021-2022 school year, school must be in session and classroom instruction offered for a minimum of one hundred sixty-five (165) days each school year in every public school. Where professional days are taken, they shall be so recorded in the register of attendance in a like manner as holidays are recorded. The legal aggregate days attendance will be divided by days actually taught to obtain the legal average daily attendance. Any school district holding less than a full term will have its state aid reduced proportionately. No district may have less than a full term of school unless conditions over which it has no control exist that would prevent the district's holding a full term. In cases where sites within a district have different length terms the average daily membership (ADM) and average daily attendance (ADA) should be calculated for each site separately.

(b) **Criteria for an alternate school calendar authorization.** Beginning with the 2021-2022 school year, a school district or charter school must meet the eligibility requirements below in order to request a waiver from the State Board of Education authorizing the district to implement a school year calendar for one or more site(s) that includes fewer than one hundred sixty-five (165) days when school is in session and classroom instruction offered. A district that wishes to apply for a waiver authorizing an alternate length school year shall submit an application addressing all criteria in this subsection no later than June 30 prior to the school year for which the waiver is requested. In order to enable school districts to adequately plan their academic calendars, a waiver application for this purpose may be submitted at any time after the student performance data and federal Every Student Succeeds Act (ESSA) status designations addressed under (b)(1) have been released to schools, provided all such applications must be received by

June 30 prior to the applicable school year. The State Board of Education shall render a decision on school calendar waiver applications within sixty (60) days of receipt of a completed application and all necessary supporting materials. The term of a waiver granted under this Section shall be one (1) school year. To be eligible to apply for an alternate school calendar authorization, a school district must submit a narrative detailing how the proposed calendar is intended to benefit students, and evidence that the district meets all of the following requirements:

(1) **Student performance.** Specific performance criteria apply to schools with different grade ranges, and a district applying for a school calendar waiver must demonstrate that each of its school sites for which the waiver is requested meets the appropriate requirements for which data is available.

(A) **Requirements for early childhood centers (pre-kindergarten through 2nd grade).** The elementary school(s) that the early childhood site feeds into must meet all eligibility criteria under (b)(1)(B).

(B) **Requirements for elementary schools and middle schools (pre-kindergarten through 8th grade).**

(i) The school's student growth indicator letter grade is a "C" or higher on the most recent Oklahoma School Report Card issued under the school accountability system. A school's math and English Language Arts (ELA) growth is therefore a compensatory calculation for the purpose of waiver eligibility.

(ii) The school is not currently identified for Comprehensive Support and Improvement (CSI), Targeted Support and Improvement (TSI), or Additional Targeted Support and Improvement (ATSI).

(C) **Requirements for high schools (9th grade through 12th grade).**

(i) The school's 4-year cohort graduation rate is at or above the most recently reported state average graduation rate or 82%, whichever is higher.

(ii) The school's Academic Achievement indicator letter grade is a "C" or higher on the most recent Oklahoma School Report Card issued under the school accountability system.

(iii) The school attained a postsecondary indicator of a letter grade of "C" or higher on the most recent school report card issued under the school accountability system.

(iv) The school is not currently identified for Comprehensive Support and Improvement (CSI), Targeted Support and Improvement (TSI), or Additional Targeted Support and Improvement (ATSI).

(2) **Financial criteria.** Due to significant differences in the size and resources of school districts that make a universal standard for cost savings impractical, each district applying for a school calendar waiver shall submit a

budget and a narrative describing cost savings. The budget submitted with the narrative describing cost savings shall be the most recent Estimate of Needs submitted by the school district or charter school to the County Excise Board.

(bc) Attendance determination for students participating in school activities. School activities must be under the direction or supervision of the teacher or supervisor whether such activities take place within or without the school building or school grounds in order to be considered a school day or part of a school day for attendance purposes. Pupils dismissed and not under the direction or supervision of the teacher cannot be considered as participating in scheduled school activities, provided that a student participating in online coursework or other remote instruction authorized by law for public school students may be included in attendance if the attendance requirements of the instruction program are satisfied. A student serving as a Page to the Legislature may be counted in attendance.

(ed) All pupils attending any school within a school district ~~including underage, overage, non resident, and non transferred pupils~~ shall have their names entered in the attendance register and the district's student information system (SIS) ~~and have their attendance recorded in the same manner as any other pupil.~~

[OAR Docket #20-716; filed 7-27-20]

TITLE 210. STATE DEPARTMENT OF EDUCATION

CHAPTER 10. SCHOOL ADMINISTRATION AND INSTRUCTIONAL SERVICES

[OAR Docket #20-717]

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RULES:

Subchapter 1. General Provisions

210:10-1-16. Oklahoma Academic Scholar ~~Recognition and other student recognitions~~ [AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 11-103.2

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New provisions have been adopted amending the Oklahoma Academic Scholar Recognition rule, to provide for a "Seal of Biliteracy" to be made available for inclusion on the transcript and diploma of a student who meets appropriate eligibility criteria for competence in English and another language.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

210:10-1-16. Oklahoma Academic Scholar Recognition and other student recognitions

(a) **Purpose.** The rules of this subchapter have been adopted for the purpose of providing requirements for recognition as an Oklahoma Academic Scholar and other recognitions of student achievement. The purpose of the program is to recognize those secondary students within the State of Oklahoma who exceed the basic graduation requirements and who, through diligence, achieve academic ratings above those of their peers.

(b) **Requirements for recognition as an Oklahoma Academic Scholar.** Students who meet all the requirements listed below shall be recognized by the local school district and the State Board of Education as an Oklahoma Academic Scholar.

(1) Accumulate over grades 9, 10, 11 and the first semester of grade 12, a minimum grade point average of 3.7 on a 4.0 scale or be in the top 10% of their graduation class.

(2) Complete (or will complete) the curricular requirements for a standard diploma.

(3) Score at least a composite of 27 on the American College Test (ACT) or a 1220 combined score on the Scholastic Assessment Test (SAT). The ACT or SAT must have been taken on a national test date or state-administered test date before the date of graduation. For students with documented disabilities requiring testing accommodations not available on a national or state administration date, a qualifying score on the ACT or SAT may be demonstrated using alternate administration dates.

(c) **Requirements for the Seal of Biliteracy.** Students who meet the requirements listed below for both English and another language shall be recognized by the local school district and the State Board of Education with a Seal of Biliteracy in English and another language, which shall be noted on the student's transcript upon completion of the eligibility requirements and noted on the student's diploma upon graduation. The Seal of Biliteracy shall be available in two levels of distinction, Gold and Platinum, based on the following eligibility requirements:

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(1) **Proficiency in English.** The student must score at least the level indicated on one or more of the assessments below:

(A) **ACT.** A score on the English Language Arts section of at least 18 for Gold level recognition or at least 21 for Platinum level recognition.

(B) **SAT.** A score on the Evidence-Based Reading and Writing (formerly verbal) section of at least 570 for Gold level recognition or at least 650 for Platinum level recognition.

(C) **PSAT**

(i) **10th grade.** For a PSAT taken when the student is in 10th grade, a score on the Evidence-Based Reading and Writing section of at least 470 for Gold level recognition or at least 600 for Platinum level recognition.

(ii) **11th grade.** For a PSAT taken when the student is in 11th grade, a score on the Evidence-Based Reading and Writing section of at least 570 for Gold level recognition or at least 620 for Platinum level recognition.

(D) **International Baccalaureate (IB).** A score of at least a 3 for Gold level recognition or at least a 4 for Platinum level recognition on the International Baccalaureate Test of English.

(E) **Advanced Placement (AP).** A score of at least a 3 for Gold level recognition on the Advanced Placement Test of English Language or Advanced Placement Test of English Literature, or a score of at least a 4 for Platinum level recognition on the Advanced Placement Test of English Language or Advanced Placement Test of English Literature.

(F) **WIDA ACCESS.** A score of at least 4.5 through 5.7 on the WIDA ACCESS test for Gold level recognition, or a score of at least 5.8 on the WIDA ACCESS test for Platinum level recognition.

(2) **Proficiency in a language other than English.** In addition to achieving a qualifying score in English on one of the assessments listed in (c)(1) above, the student must score at least the level indicated in a language other than English on one or more of the proficiency measures listed below:

(A) **AAPPL or ALIRA.** A score of at least Intermediate-Mid (I-4) on the Assessment of Performance of Progress toward Proficiency in Languages (AAPPL) or ACTFL Latin Interpretive Reading Assessment (ALIRA) for Gold level recognition, or a score of at least Advanced-Low (A-1) on the AAPPL or ALIRA for Platinum level recognition.

(B) **STAMP.** A score of at least 5 on the Standards Based Measurement of Proficiency (STAMP) for Gold level recognition, or a score of at least 7 on the STAMP for Platinum level recognition.

(C) **OPI, OPIc, or WPT.** A score of at least Intermediate-Mid for Gold level recognition, or at least Advanced-Low for Platinum level recognition, on the Oral Proficiency Interview (OPI), the Oral

Proficiency Interview - Computer (OPIc), or the Written Proficiency Test (WPT).

(D) **Advanced Placement (AP).** A score of at least a 3 for Gold level recognition, or at least a 4 for Platinum level recognition, on the Language and Culture Advanced Placement (AP) test for the target language.

(E) **SLPI.** A score of at least Intermediate for Gold level recognition, or at least Advanced for Platinum level recognition, on the Sign Language Proficiency Interview (SLPI).

(F) **Native American languages.** The State Department of Education (OSDE) will consult with each tribal nation as appropriate to identify an appropriate measure of proficiency.

(G) **Languages for which there is no standard assessment.** If a request for a Seal of Biliteracy is received regarding a language for which there is no standard assessment but which is not a Native American language, the OSDE will work with relevant linguistic and/or cultural entities to identify an appropriate measure of proficiency.

[OAR Docket #20-717; filed 7-27-20]

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

[OAR Docket #20-718]

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RULES:

Subchapter 13. Student Assessment

210:10-13-20. Academic Performance Index [REVOKED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 1210.545

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The Academic Performance Index (API) rule from 2002 has been revoked, due to the API system having been replaced by the current school accountability system pursuant to the federal *Every Student Succeeds Act*

(ESSA). Public school accountability in Oklahoma is now governed by 70 O.S. § 1210.545, and the framework described by the revoked rule is no longer in place.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 13. STUDENT ASSESSMENT

**210:10-13-20. Academic Performance Index
[REVOKED]**

Pursuant to Title 70 O.S. § 3-150 through § 3-152 so long as the requirements exist in statute. The Academic Performance Index (API) will measure school performance using a formula that includes a growth index.

(1) **Indicators.** The formula will include the following indicators of school performance:

- (A) Oklahoma School Testing Program
- (B) Attendance Rate
- (C) Graduation Rate
- (D) Dropout Rate
- (E) Advanced Placement
- (F) ACT Score and Participation
- (G) College Remediation

(2) **Components.** The formula is based on three major components, which include the seven indicators mandated by Oklahoma State Law, Title 70 O.S. § 3-150. The three major components include:

(A) ~~Oklahoma School Testing Program (OSTP)—Data from the OSTP for all state tests in the subjects of math and reading, calculated as an index using the percent of students at each performance level, multiplied by specified weights.~~

(i) ~~School sites with core grade spans that do not include indicator data for the OSTP (e.g., K-2 or a sixth and seventh grade center) will share data with the schools that they feed into and will be classified by the school configuration with which they share data.~~

(ii) ~~All end-of instruction (EOI) tests will be used in high school accountability.~~

(B) ~~School Completion—Data regarding school completion, including attendance, graduation, and dropout rates.~~

(i) ~~Attendance data calculated as Average Daily Attendance (ADA) divided by Average Daily Membership (ADM).~~

(ii) ~~Graduation rate calculated as Number of Graduates, divided by the sum of Number of Graduates and Number of 12th-grade Dropouts.~~

(iii) ~~Dropout rate calculated according to criteria set by the National Center for Educational Statistics (NCES) for common core data.~~

(iv) ~~Each of these indicators is equally weighted within the School Completion component, each contributing 33.3 percent.~~

(C) ~~Academic Excellence—Data including ACT scores and participation, Advanced Placement, and college remediation rates.~~

(i) ~~ACT data: average composite score and percent of senior students participating.~~

(ii) ~~Advanced Placement credit awarded at one of three levels based on student AP examination scores.~~

(iii) ~~College remediation rates calculated as first time college freshman enrolled in reading/math remediation divided by total first time college freshman at Oklahoma public colleges and universities.~~

(iv) ~~These indicators are weighted within the Academic Excellence component as follows: ACT data contributes 60 percent; AP information contributes 30 percent; and college remediation rates contribute 10 percent.~~

(3) **Weighting.** District configurations will be defined as a K-12 district, K-8 district or a K-6 district. The schools will be configured as high school, middle school, and elementary school. A district or school type is based on the highest grade level in which the OSTP indicators are available. Each of the components will be weighted according to district/school configuration as follows:

(A) ~~K-12 districts will be calculated using 80 percent from the Oklahoma School Testing Program indicators, 10 percent from the school completion indicators and 10 percent from the Academic Excellence indicators.~~

(B) ~~K-8 districts will be calculated using 90 percent from the Oklahoma School Testing Program indicators and 10 percent from the school completion indicators.~~

(C) ~~K-6 districts will be calculated using 90 percent from the Oklahoma School Testing Program indicators and 10 percent from the school completion indicators.~~

(D) ~~High Schools will be calculated using 80 percent from the Oklahoma School Testing Program indicators, 10 percent from the school completion indicators and 10 percent from the Academic Excellence indicators.~~

(E) ~~Middle Schools will be calculated using 90 percent from the Oklahoma School Testing Program indicators and 10 percent from the school completion indicators.~~

(F) ~~Elementary Schools will be calculated using 90 percent from the Oklahoma School Testing Program indicators and 10 percent from the school completion indicators.~~

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- (4) **Growth.** Growth targets will be calculated as 5 percent of the difference between school/district API and API upper limit.

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

[OAR Docket #20-719]

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RULES:

Subchapter 13. Student Assessment

210:10-13-24. Medical exemptions from chronic absenteeism
[REVOKED]

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State Board of Education; 70 O.S. § 3-104; 70 O.S. § 1210.545

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GIST/ANALYSIS:

House Bill 1988 (2019) amended 70 O.S. § 1210.545 to eliminate the mandate for the State Board of Education to implement rules governing medical exemptions from the chronic absenteeism provisions of the school accountability system. This rule for determining such medical exemptions at the state level has been revoked, and a new rule was adopted by emergency at 210:10-13-25 that addresses school district authority to determine medical exemptions from inclusion in chronic absenteeism calculations.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 13. STUDENT ASSESSMENT

210:10-13-24. Medical exemptions from chronic absenteeism [REVOKED]

(a) ~~**Purpose of the chronic absenteeism indicator.**~~ Because chronic absenteeism has been linked to lower academic performance, higher dropout rates, and diminished success after high school, Oklahoma has included chronic absenteeism as an indicator in the school accountability system adopted under the requirements of the *Every Student Succeeds Act* (ESSA). By highlighting the importance of regular school attendance to student success in school and beyond, the State of Oklahoma encourages schools to actively engage with students and their families in eliminating barriers to regular attendance, and to ensure students receive the supports needed to attend school every day.

(b) ~~**Purpose of the medical exemption from chronic absenteeism.**~~ The State Board of Education is directed in 70 O.S. § 1210.545 to promulgate rules providing for a medical exemption from the chronic absenteeism indicator. A public school district or charter school may request an exemption from inclusion in the school's chronic absenteeism indicator calculations for the related absences of a student who meets the criteria established in this Section for a significant medical condition.

(c) ~~**Definitions.**~~ The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) ~~**"Chronic absenteeism"**~~ means absence from school at least ten percent (10%) of the time that school is in session and the student is included in membership, eighteen (18) or more days on a 180-day school calendar or ten percent (10%) or more of school days on a 1,080 hours school calendar.

(2) ~~**"Significant medical condition"**~~ means, for the purposes of this Section, a severe, chronic, or life-threatening physical or mental illness, infection, injury, disease, or emotional trauma that meets all of the following criteria:

(A) The condition affects the student so severely as to incapacitate the student from attending school for an identifiable time period or number of school days, or for which the student must receive regular medical care requiring absence from school;

(B) The student is unable to receive instruction through homebound education services for an identifiable time period or number of school days due to the medical condition or its treatment, or homebound education is not appropriate due to brief recurring absences for the purpose of receiving treatment;

(C) The school or school district has been provided with written documentation of the condition that is verified in writing by a physician licensed to practice in the State of Oklahoma, or by a physician licensed in another state if the student has received related treatment out of state. A copy of the documentation verifying the student's condition shall be filed in the student's educational record.

(D) The term "significant medical condition" shall not include:

- (i) Minor illnesses or injuries that do not incapacitate the student or require recurring treatment;
- (ii) Short term illnesses or injuries resulting in absences of ten (10) or fewer consecutive instructional days, including those that require short term hospitalization of ten (10) or fewer consecutive instructional days;
- (iii) Pregnancy, unless complications of the pregnancy otherwise meet this Section's criteria for a significant medical condition; or
- (iv) Refusal of a parent/guardian to permit the student to attend school or receive homebound services due to the illness, injury, or trauma.
- (v) The occurrence of one of the conditions listed in (D) shall not disqualify a student who is eligible for a medical exemption on a different basis.

(E) Examples of conditions that could be considered "significant medical conditions" for the purposes of this Section may include, but are not limited to:

- (i) The student is in the final stages of a terminal disease or degenerative illness, or the student has been placed in hospice care;
- (ii) The student is comatose;
- (iii) The student has a serious chronic medical condition (a condition lasting three months or more), and is absent for the purpose of receiving condition-related treatment such as chemotherapy or dialysis;
- (iv) The death or life-threatening injury of an immediate family member of the student (student's parent/guardian, sibling, or child); or
- (v) The student has sustained serious mental or physical injury as a result of a catastrophic event such as:

- (I) A natural disaster or other event resulting in a declared state of emergency;
- (II) An act of violence, including but not limited to: acts of physical assault, sexual assault, kidnapping, homicide, torture, or terrorism;
- (III) Drowning;
- (IV) Poisoning, fall, or traumatic brain injury; or
- (V) Fire or explosion in the student's home when the student was present.

(d) **Absences from school that do not accrue toward chronic absentee status.** A student with disabilities who is on an Individualized Education Program (IEP), or a student with a physical or mental impairment who is on a Section 504 Plan, is considered in attendance and does not accrue absences while receiving offsite services addressed in the IEP or Section 504 plan. A student on an IEP or Section 504 Plan whose condition worsens or who requires more frequent treatments should have their IEP or Section 504 Plan updated accordingly. A student who is receiving homebound education services from their school district is considered in attendance and does not accrue absences while in homebound status.

(e) **Effect of exempt absence.** The exempt absence(s) of a student who has been granted an exemption of one or more absences from school in accordance with the provisions of this Section shall not be included in the calculation of the chronic absenteeism indicator on the school site report card.

(f) **Applications for exemption of one or more student absences.** A school district's application for a significant medical condition exemption for one or more student absences must include all supporting documentation, including physician verification and documentation of each date for which an exemption is requested, and must be submitted in the time, place, and manner designated by the State Department of Education.

(g) **Appeal of a denial of a medical exemption.** A request for a medical exemption that has been denied by the State Department of Education for failure to meet the criteria for "significant medical condition" outlined in (c)(2) of this Section may be appealed to the State Board of Education in accordance with the following procedures:

- (1) **Petition for appeal.** The school district or charter school in which the student is enrolled may appeal the Department's denial of a medical exemption to the State Board of Education. The parent or legal guardian of a student, an individual who has been issued letters of guardianship of the person of a student pursuant to the Oklahoma Guardianship and Conservatorship Act, or an adult who has assumed permanent care and custody of a student in accordance with local district policies and applicable state law must grant permission to the school district or charter school to file a petition for appeal to the State Board of Education. Parental consent shall be provided in writing and shall be documented by the requesting school district or charter school.

(2) **Filing requirements.** A petition for appeal must comply with the following requirements:

(A) **Time of filing.** The petition for appeal must be submitted in writing to the Secretary of the State Board of Education within ten (10) business days after the date the school district receives notice of the Department's denial of the medical exemption.

(B) **Method of filing.** Petitions for appeal may be submitted to the Secretary of the State Board of Education in person or by mail. A petition submitted by mail will be accepted as timely if the mailing envelope contains a postmark dated on or before the date of the filing deadline.

(C) **Verification of a petition for appeal.** The petition for appeal must be signed by the school Superintendent or the school Superintendent's designee, or charter school administrator or designee, for the purpose of verifying that, to the best of the individual's knowledge, the information submitted in the appeal is accurate and correct.

(D) **Acceptance of a petition for filing.** Upon receipt of the petition for appeal, the Secretary of the Board of Education shall file the petition and obtain copies of all records and information submitted by

~~the school district or charter school to the State Department of Education pursuant to (f) of this Section. Copies of agency records and additional documentation submitted in the petition for appeal shall be provided to members of the State Board of Education for consideration. Only timely filed petitions for appeal shall be brought to the State Board of Education for consideration. The Board shall take action on the petition at the next regularly scheduled State Board of Education meeting, unless the petition is received ten (10) or fewer calendar days prior to the next regularly scheduled meeting. A petition received ten (10) or fewer calendar days prior to the next regularly scheduled meeting of the Board will be considered at the following month's regularly scheduled meeting.~~

(3) Review of petitions. ~~Because the privacy of individual student data is protected by the Family Educational Rights and Privacy Act (FERPA) and Oklahoma's Student Data Accessibility, Transparency, and Accountability Act, the State Board of Education shall review petitions for appeal in executive session as authorized by 25 O.S. § 307 (A)(7). The State Board of Education shall evaluate each petition for appeal based on the following criteria to determine whether a "significant medical condition" exists as contended by the appealing school district or charter school:~~

~~(A) The applicability of the criteria outlined in (c)(2) of this section related to the determination of a "significant medical condition";~~

~~(B) The extent of the student's incapacitation or need for treatment; or~~

~~(C) The existence of newly discovered documentation or newly available information that significantly and substantively reflects on the student's mental and/or physical state of being and that would have resulted in an exemption being granted for one or more absences if the newly discovered information had been available when the request was denied.~~

(4) Actions on a petition for appeal. ~~After review of the petition for appeal in accordance with (g)(3) of this section, the State Board of Education shall take action on a petition for appeal based on the merits of the information provided in the written appeal.~~

~~(A) The Board shall consider each petition for appeal on an individual basis and shall issue an approval or denial of the request for a medical exemption.~~

~~(B) The Secretary of the Board shall notify the school district or charter school and the State Department of Education in writing of the Board's determination.~~

~~(C) The State Department of Education shall document each determination to maintain an accurate agency record of each request for a medical exemption.~~

~~(D) Requests for student medical exemptions granted by the State Board of Education will be processed pursuant to (f) and (g) of this Section. The absences of students denied medical exemptions by~~

~~the State Board of Education will be included in the calculation of the chronic absenteeism indicator of the school and/or school district.~~

[OAR Docket #20-719; filed 7-27-20]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 15. CURRICULUM AND INSTRUCTION

[OAR Docket #20-720]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 13. Special Education

210:15-13-9. Guidelines for minimizing seclusion and restraint of students
[NEW]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 24-100.4; 20 U.S.C. § 1400 *et seq.*

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n/a

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The rule codifies state level guidance for minimizing the use of seclusion and restraint on students, particularly students who are identified as needing special education services under the *Individuals with Disabilities Education Act* (IDEA). The rule gives definitions for terms, including seclusion (the involuntary confinement of a student alone in an area they are physically prevented from leaving) and different types of restraint. Based on current best practices, case law, and federal guidance, guidelines are outlined for reducing the use of such measures on students and for tracking incidents of restraint and seclusion in Oklahoma schools. The rule also prohibits the application of corporal punishment to students with disabilities entitled to special education services under the IDEA.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 13. SPECIAL EDUCATION

210:15-13-9. Guidelines for minimizing seclusion and restraint of students

(a) **Definitions.** The following terms, when used in this Section, shall have the following meanings unless the context clearly indicates otherwise:

- (1) **"Behavior Intervention Plan (BIP)"** means a plan that is based on the results of a functional behavioral assessment (FBA) and, at a minimum, includes a description of the problem behavior, global and specific hypotheses as to why the problem behavior occurs, and intervention strategies that include positive behavioral supports and services to address the behavior.
- (2) **"Chemical restraint"** means a drug or medication used on a student to control behavior or restrict freedom of movement, when such substance is not administered as prescribed to the student by a licensed physician or other qualified health professional acting under the scope of their professional authority.
- (3) **"Corporal punishment"** means, as defined in 70 O.S. § 13-116, the deliberate infliction of physical pain by hitting, paddling, spanking, slapping, or any other physical force used as a means of discipline.
- (4) **"Functional Behavioral Assessment (FBA)"** means a process that uses direct and indirect data collection to determine why a student engages in behaviors that impede learning, and how the student's behavior relates to the environment. The FBA includes, but is not limited to: the identification of the problem behavior, the definition of the behavior in concrete terms, the identification of the contextual factors that contribute to the behavior, and the formulation of a hypothesis regarding the general conditions under which a behavior usually occurs and probable consequences that serve to maintain it.
- (5) **"Mechanical restraint"** means the use of any device or equipment to restrict a student's freedom of movement. This term does not include motor vehicle safety restraints or devices utilized by a student, or appropriately trained school personnel, which are used as prescribed by a medical or related services professional for specific approved purposes such as: mechanical supports used to achieve proper body position or allow greater freedom of mobility, restraints for medical immobilization, or orthopedically prescribed devices.
- (6) **"Physical escort"** means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of directing a student to move to a safe location if they are in distress or acting out.
- (7) **"Physical restraint"** means a personal restriction that immobilizes or reduces the ability of a student to move their torso, arms, legs, or head freely. Physical restraint does not include an appropriately applied temporary physical escort.
- (8) **"Prone restraint"** means a prohibited type of physical restraint that positions a student face down on their stomach, potentially restricting the student's ability to breathe freely.

(9) **"Seclusion"** means the involuntary confinement of a student alone in a room or area which the student is physically prevented from leaving. Seclusion does not include short-term monitored separation in a monitored and non-locked timeout setting.

(10) **"Seclusion room"** means a room or other confined area in which a student is involuntarily placed in isolation from other persons and which the student is physically prevented from leaving.

(11) **"Timeout"** means a technique that is part of an approved behavior management program and involves the monitored separation of the student in a non-locked setting for the purpose of calming.

(b) **Student seclusion.** Seclusion should never be used for the purposes of discipline, punishment, forcing compliance, or as a convenience to staff. Seclusion may only be used under emergency circumstances as outlined below.

(1) **Circumstances under which seclusion of a student is authorized.** A student may be placed in seclusion only if:

- (A) The student's actions pose an imminent danger of serious physical harm to the student or other individuals, and not merely a threat to property;
- (B) Positive behavior intervention strategies and less restrictive measures appropriate to the behavior exhibited by the student are currently being implemented, but have not effectively de-escalated the threat of danger or harm;
- (C) School personnel are present who have completed appropriate training that addresses conflict de-escalation, the crisis cycle and associated interventions, appropriate use of seclusion rooms, and possible effects of seclusion; and
- (D) The seclusion only lasts as long as necessary to resolve the threat of danger or harm.

(2) **Conditions required during an authorized use of seclusion.** If a student is placed in seclusion during an emergency situation that meets the criteria of (b)(1) above, the following precautions must be exercised throughout the time the student is in seclusion:

- (A) The student must be continuously monitored visually and aurally by an appropriately trained school employee;
- (B) The student must be allowed to go to the restroom upon request;
- (C) The student must be permitted to drink water upon request; and
- (D) Immediate action must be taken if the student displays any signs of medical distress.

(3) **Requirements for seclusion rooms.** A room or area where a student is placed in seclusion must meet the following criteria:

- (A) Continuous visual and aural monitoring of a secluded student is possible;
- (B) There must be adequate space for the student to sit or lie down;
- (C) There must be adequate lighting;

(D) The room must be equipped with heating, cooling, and ventilation systems comparable to such systems in the rest of the building where the seclusion room or area is located;

(E) The room or area used for seclusion must be free of any objects that pose a potential risk of harm to a student with disabilities or a student in distress; and

(F) If equipped with a door that locks, the lock must automatically disengage in case of an emergency such as a fire or severe weather.

(c) **Student restraint.** Chemical restraint and/or mechanical restraint of a student is prohibited in Oklahoma public schools. Physical restraint of a student should never be used for the purposes of discipline, punishment, forcing compliance, or as a convenience to staff. In cases where a student has a history of dangerous behavior for which physical restraint was used or considered, the school should have a plan in place for teaching and supporting more appropriate behavior and determining positive methods to prevent behavioral escalations that have previously resulted in the use or consideration of restraint. Physical restraint may only be used under emergency circumstances as outlined below.

(1) **Circumstances under which physical restraint of a student is authorized.** A student may be physically restrained only if:

(A) The student's actions pose an imminent danger of serious physical harm to the student or other individuals, and not merely a threat to property;

(B) Positive behavior intervention strategies and less restrictive measures appropriate to the behavior exhibited by the student are currently being implemented, but have not effectively de-escalated the threat of danger or harm;

(C) The physical restraint is applied by school personnel who have completed appropriate training that addresses conflict de-escalation, the crisis cycle and associated interventions, CPR and First Aid (including certifications), possible effects of physical restraint, and monitoring the wellbeing of a restrained student; and

(D) The physical restraint lasts only as long as necessary to resolve the threat of danger or harm.

(2) **Conditions required during an authorized use of physical restraint.** If a student is placed in physical restraint during an emergency situation that meets the criteria of (c)(1) above, the following precautions must be exercised throughout the time the student is restrained:

(A) Under no circumstances may a student be restrained using a prone (facedown) restraint, any restraint that prevents the student from breathing or speaking, or any maneuver that places pressure or weight on the chest, sternum, lungs, diaphragm, neck, throat, or back;

(B) The degree of restriction of the student's freedom of movement may not exceed what is necessary to protect the student or other individuals from the threat of serious physical harm; and

(C) The restraint of the student is continuously witnessed by at least one school employee who is not involved in the physical restraint.

(d) **Corporal punishment of students with disabilities not authorized.** For all students, the State Department of Education strongly encourages Oklahoma schools to implement disciplinary policies and practices that use evidence based, developmentally appropriate methods informed by an awareness that many students have endured Adverse Childhood Experiences (ACEs) and related trauma. As applied to students with disabilities entitled to special education services under the *Individuals with Disabilities Education Act* (IDEA), the use of corporal punishment by employees or agents of an Oklahoma public school is prohibited beginning in the 2020-2021 school year.

(e) **Incident reporting.** Each incident of seclusion, restraint, or corporal punishment of a student with disabilities shall be reported immediately to a school site administrator and documented using the statewide online IEP reporting system. A copy of the documentation shall be placed in the student's file and provided to the student's parent(s) or guardian(s). For each incident of seclusion, restraint, or corporal punishment of a student, the student's parent(s) or guardian(s) shall be notified as soon as possible, and must be notified no later than the school day following the incident or within twenty-four (24) hours of the incident, whichever is first. An IEP meeting may be needed to review or implement a Behavior Intervention Plan (BIP) for the student.

(f) **End-of-year reporting.** At the end of each school year, and no later than June 30th, each school district or charter school shall report to the State Department of Education (OSDE) Office of Special Education Services information regarding all incidents of seclusion, restraint, or corporal punishment of a student with disabilities within the district during the school year that just closed. The end-of-year summary report shall include the total number of each type of incident, as well as the number and type of incidents associated with each student to whom seclusion, physical restraint, or corporal punishment was applied. This information will be used to identify districts in need of additional support, training, and guidance in the areas of conflict de-escalation, crisis intervention, Functional Behavior Assessments, the possible effects of seclusion and restraint, and effective behavior intervention planning.

[OAR Docket #20-720; filed 7-27-20]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 15. CURRICULUM AND INSTRUCTION

[OAR Docket #20-721]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 27. Reading Sufficiency Act

210:15-27-1. District Reading Sufficiency Plans and Summer Academy Reading Programs [AMENDED]

210:15-27-2. Good cause exemptions for promotion under the Reading Sufficiency Act [AMENDED]
 210:15-27-3. Standards for mid-year promotion of retained third graders [AMENDED]
 210:15-27-4. ~~Program of reading instruction~~Individualized Program of Reading Instruction [AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 12.508C

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n/a

GIST/ANALYSIS:

The rules addressing the Reading Sufficiency Act (RSA) have been updated to reflect changes to the RSA statutes and other relevant education laws. Updates include amended terminology to reflect language changes in the school accountability system, and the codification of the due dates for schools' required data submissions to ensure timely distribution of RSA funds.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 27. READING SUFFICIENCY ACT

210:15-27-1. District Reading Sufficiency Plans and Summer Academy Reading Programs

(a) **Definitions.** The following terms, when used in this Subsection, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Individualized Program of Reading Instruction"**, also referred to as **"Academic Progress Plan" ("APP")**, means the program of reading instruction developed pursuant to 70 O.S. § 1210.508C for a student in first, second, or third grade who is not meeting grade level targets in reading, which is designed to enable the student to acquire the appropriate grade level reading skills.

(2) **"READ Initiative"** means the Reading Enhancement and Acceleration Development Initiative that each

school district is directed to establish pursuant to 70 O.S. § 1210.508C, which shall be focused on preventing the retention of third grade students, and which comprises statutory components including but not limited to: availability to all kindergarten through third grade students at risk of retention as identified by Reading Sufficiency Act assessments; provision of services during regular school hours; and a reading curriculum that provides skill development in phonemic awareness, phonics, reading fluency, vocabulary, and comprehension.

(b) **District Reading Sufficiency Plans.** Each public school district will develop a ~~district reading sufficiency plan~~District Reading Sufficiency Plan that includes a plan for each school site. The district and site reading plans shall provide for all students to receive at least ninety (90) minutes of reading instruction. Each Reading Sufficiency Plan must be updated annually, signed by the school site principal, and electronically submitted to and approved by the Oklahoma State Department of Education (OSDE) Office of Curriculum and Instruction of the State Department of Education no later than August 30 as part of the requirements for receiving accreditation, provided that electronic submission and approval of annual updates to the district plan shall not be required if:

- (1) The last plan submitted by the school district was approved; and
- (2) Expenditures for the district's reading program include only expenses relating to:
 - (A) Individual and small group tutoring;
 - (B) Purchase of and training in the use of screening and assessment measures;
 - (C) Summer school programs; or
 - (D) Saturday school programs.

(~~b~~c) **Conditions requiring annual submission of Plans.** If any expenditure for the district's reading program is deleted or changed or if any other type of expenditure for the district's reading program is implemented, the school district shall be required to submit the latest annual update for approval. Notwithstanding the provisions of (a)(1) and (2) of this Section, if a district has one or more schools that are not achieving the annual improvement goals as outlined in the Reading Sufficiency Act, or if a district has one or more schools designated as ~~a school in need of improvement~~a Targeted Support and Improvement (TSI) or Additional Targeted Support and Improvement (ATSI) site, the district shall submit its ~~district reading sufficiency plan~~District Reading Sufficiency Plan for approval no later than August 30 of the applicable school year.

(~~e~~d) **Submitting data for the annual report to the Legislature.** Each school district and each school site shall submit to the State Department of Education the information to be used for the ~~annually required Reading Sufficiency Act Annual Reading Report Card~~report to the Oklahoma Legislature by the submission deadline to be determined by the Office of Instruction of the State Department of Education.

(~~d~~e) **Reporting the number of students in need of remediation.** Each school district will submit to the ~~State Department of Education~~OSDE the "Beginning of Year" report indicating the number of students in kindergarten, first, second and third grades found to be in need of remediation in reading based on

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screening instruments approved by the State Board of Education by October 1 ~~the submission deadline to be determined by the Office of Instruction of the State Department of Education.~~

(e) ~~Pursuant to the Reading Sufficiency Act, each school district which has any schools that are not achieving the required annual reading goal set forth in 70 O.S. § 1210.508B shall submit to the State Department of Education its annual improvement goals necessary to progress from the baseline established September 1, 2005, to achieving the reading goal for all third grade students set forth at 70 O.S. 1210.508B(D). These improvement goals shall be submitted to the State Board of Education by the submission deadline to be determined by the Office of Instruction of the State Department of Education.~~

(f) **Funding.** Contingent on the availability of appropriated funds designated for the Reading Sufficiency Act, the State Department of Education may allocate funds to public school districts in accordance with the provisions of 70 O.S. § 1210.508D. Superintendents of school districts allocated such funds will sign and submit an assurance statement that their reading program meets the requirements of the Reading Sufficiency Act prior to receipt of funding. In order to be eligible for Reading Sufficiency Act funds, a school district must submit its District Reading Sufficiency Plan to the OSDE by August 30, and must submit its "Beginning of Year" report of the number of students in need of remediation by October 1. A school district that has not submitted either of these documents by the applicable due dates will not be eligible to receive Reading Sufficiency Act funds for the school year in which the submission was not provided to the OSDE by the due date. A district that is unable to meet a submission deadline due to a technical problem in its Student Information System or in a system operated by the OSDE should immediately notify the Office of Curriculum and Instruction of the technical difficulty preventing a timely submission, and may be provided an extension of the applicable due date until the relevant technical issue is resolved. A district that is unable to meet a submission deadline due to circumstances that are beyond the district's control, but not attributable to a technical issue, may file an appeal with the State Board of Education. Such appeals shall be considered by the Board within forty-five (45) days of receipt.

(g) **Authorized expenses for RSA funds.** Reading sufficiency funds allocated pursuant to subsection ~~(f)(e)~~ of this Section must be used for expenses relating to individual and small group tutoring, purchase of and and/or development of instructional training in the use of screening assessment measures, summer academy reading sufficiency plan programs, Saturday school programs, and any other reading program or professional development training contemplated as necessary by the districts to perform the goals of the Reading Sufficiency Act for students in the kindergarten, first, second, and third grades who have been identified by the elementary site as in need of a program of reading instruction. Professional development funded pursuant to this Section shall be consistent with guidance made available on the OSDE website by the Office of Curriculum and Instruction.

(h) **Summer Academy Reading Programs.** Summer ~~academy reading programs~~ Academy Reading Programs for

students, as authorized by 70 O.S. § 1210.508E shall be courses that:

- (1) provide at least four (4) weeks of tutoring ~~a half (1/2) day~~ a minimum of three (3) hours each day for four (4) days;
- (2) incorporate the content of a ~~reading~~ program ~~reading sufficiency plan~~ that meets the criteria set forth in the Reading Sufficiency Act;
- (3) are taught by teachers who have successfully completed a professional development institute or program in reading as prescribed by the statutory provisions of the Reading Sufficiency Act; and
- (4) include only eligible students not reading at grade level based on results from an assessment approved by the State Board of Education.

(i) **Alternative schedule for Summer Academy Reading Program.** School districts observing a continuous learning calendar may request to implement a ~~summer academy reading program~~ Summer Academy Reading Program on an alternative schedule throughout the extended school year (e.g., during intersession breaks) by submitting a proposed alternative ~~summer academy reading program~~ Summer Academy Reading Program schedule to the ~~State Department of Education~~ OSDE for approval prior to the deadline established by the Office of Curriculum and Instruction ~~of the State Department of Education~~, provided that any proposed alternative schedule ~~must meet the requirements set forth in (i) of this Section.~~

~~(j) Superintendents of districts will sign and submit an assurance statement that their reading program(s) meet the requirements of the Reading Sufficiency Act prior to receipt of funding.~~

(k) **Promotion upon completion of a Summer Academy Reading Program.** Upon completion of a Summer Academy Reading Program pursuant to 70 O.S. § 1210.508E, a student may demonstrate successful completion of the required competencies for reading necessary for promotion to fourth grade upon the student's completion of either:

- (1) A student portfolio in accordance with the criteria set forth in 210:15-27-2(b)(4); or
- (2) An acceptable level of performance on an alternative reading assessment in accordance with the criteria set forth in 210:15-27-2(b)(3)(A); or
- (3) An acceptable level of performance on one of the screening instruments approved by the State Board of Education.

210:15-27-2. Good cause exemptions for promotion under the Reading Sufficiency Act

(a) ~~Beginning with the 2013-2014 school year, students who score at the Unsatisfactory level do not meet grade-level criteria as established by the Office of Educational Quality and Accountability (OEQA) on the Reading reading foundations/processes and vocabulary portions of the third grade criterion referenced test(s) assessment administered pursuant to 70 O.S. § 1210.508 may only be promoted to fourth grade if the student qualifies for a good cause exemption pursuant to authorized by 70 O.S. § 1210.508C. Only the scores from the reading comprehension foundations/processes~~

and vocabulary portions of the third grade ~~critereon-referenced test/assessment~~ shall be used to determine the promotion and retention of third grade students pursuant to the Reading Sufficiency Act.

(b) Good cause exemptions shall be limited to the ~~seven (7)~~ statutory exemptions outlined in 70 O.S. § 1210.508C (K) as follows:

(1) Students with limited English proficiency may be granted a good cause exemption for promotion to the fourth grade ~~pursuant to 70 O.S. § 1210.508C(K)(1)~~. To qualify for this exemption, the student must:

- (A) Be identified as Limited-English Proficient (LEP)/English Language Learner ~~(ELL)(EL)~~ on a screening tool approved by the Oklahoma State Department of Education Office of Bilingual/Migrant Education and have a ~~Language Instruction Educational Plan (LIEP)~~ an English Language Academic Plan (ELAP) in place prior to the administration of the third grade ~~critereon-referenced test/assessment~~; and
- (B) The student must have had less than two (2) years of instruction in an English ~~Language-Learner (ELL)(EL)~~ program that meets the definition of a "language instruction educational program" set forth in 20 U.S.C. § 7011.

(2) Students with disabilities who are assessed with alternate achievement standards ~~(AA-AAS)~~ under the Oklahoma School Testing Program (OSTP) with the Oklahoma Alternative Assessment Program (OAAP) qualify for ~~the~~ a good cause exemption for promotion to fourth grade pursuant to 70 O.S. § 1210.508C(K)(2). To qualify for this exemption, the student must meet all of the following criteria:

- (A) The student must be identified as needing special education services prior to the administration of the third grade ~~critereon-referenced test/assessment~~;
- (B) The student must have an Individualized Education Program (IEP) in place prior to the administration of the third grade ~~critereon-referenced test/assessment~~; and
- (C) The student's IEP must direct that the student is to be assessed with alternate achievement standards through the Oklahoma Alternative Assessment Program (OAAP) based upon the OSDE Criteria Checklist for Assessing Students with Disabilities on State Assessments.

(3) Students who demonstrate an acceptable level of performance on an alternative standardized reading assessment may be granted a good cause exemption for promotion to the fourth grade ~~pursuant to 70 O.S. § 1210.508C(K)(3)~~. To promote a student using an alternative standardized reading assessment, the following criteria shall apply:

- (A) The student must score an acceptable level of performance on an approved alternative standardized reading assessment. The following are approved alternative standardized reading assessments that may be used to justify a good cause promotion ~~pursuant to 70 O.S. § 1210.508C(K)(3) under this exemption~~.

The listed score constitutes an acceptable level of performance, and the student must score at or above the following percentiles:

- (i) Stanford Achievement Test, ~~Tenth Edition, (SAT-10)~~ - 45th Percentile
- (ii) Iowa Test of Basic Skills (ITBS) Complete Battery ~~Form A, C or E, Level 9~~, Reading Comprehension - 45th Percentile
- (iii) Iowa Test of Basic Skills (ITBS) Core Battery, ~~Form A, C, or E, Level 9~~, Reading Comprehension - 45th Percentile
- (iv) TerraNova, ~~Third Edition~~ Complete Battery Level 13, Reading - 45th Percentile

(B) Alternative standardized reading assessments may only be administered following the administration of the Reading foundations/processes and vocabulary portions of the third grade ~~critereon-referenced test(s)/assessment~~. The spring test form of the exam shall be administered.

(C) An approved alternative standardized reading assessment may be administered at any time prior to the start of the next academic year, if there are at least twenty (20) calendar days between administrations and different test forms are administered.

(4) Students who can demonstrate evidence through a student portfolio that the student has mastered state standards beyond the retention level and that the student is reading on grade level or higher may be granted a good cause exemption ~~pursuant to 70 O.S. § 1210.508C(K)(4)~~. To promote a student through the use of a student portfolio, the following criteria shall apply:

(A) The student portfolio shall include evidence demonstrating the student's mastery of the Oklahoma state standards in reading equal to grade level performance on the reading ~~comprehension~~ foundations/processes and vocabulary portions of the ~~statewide~~ third grade critereon-referenced test(s)/assessment. Such evidence shall be documented through an organized collection of work representing the student's mastery of such standards, including a demonstration of mastery of all of the following essential components of reading:

- (i) Phonemic awareness;
- (ii) Phonics (i.e., The student demonstrates awareness of letter-sound correspondence for consonants, vowels, and consonant diagraphs, syllable types, and two to three syllable words);
- (iii) Reading fluency (i.e., The student demonstrates timed letter and word identification, sight words, modeled paragraph reading);
- (iv) Vocabulary (i.e., The student demonstrates ability to determine the meaning of general academic-specific and domain-specific words and phrases in a text relevant to a grade three topic or subject area); and
- (v) Comprehension (i.e., The student demonstrates ability to read and comprehend informational text independently and proficiently).

- (B) The student portfolio shall include clear evidence that the standards assessed by the reading comprehension foundations/processes and vocabulary portions of the statewide third grade criterion-referenced test(s) assessment have been met. ~~Clear evidence must include multiple choice items and passages that are 50% literary text and 50% expository text that are between 200-600 words, with an average of 350 words. Such evidence could consist of:~~
- Chapter or unit tests from the district's adopted core reading curriculum that are aligned with the Oklahoma State Academic Standards; or
 - Teacher-prepared assessments.
- (C) Each standard and objective assessed by the reading comprehension foundations/processes and vocabulary portions of the third grade criterion-referenced test(s) assessment must include a minimum of four (4) work samples of mastery whereby the student attained a grade of 70% or above. Demonstrating mastery of each objective for each standard is required.
- (D) The student portfolio shall include copies of ~~the any screening, diagnostic, or assessments and benchmark/~~progress monitoring assessments administered pursuant to 70 O.S. § 1210.508C(B) ~~and (C)~~, as well as a copy of the student's Individualized Program of Reading Instruction (also known as "Academic Progress Plan").
- (E) The student portfolio shall be signed by the certified classroom teacher responsible for the student's Reading instruction and the principal of the school, attesting that:
- The portfolio is an accurate assessment of the student's reading achievement level;
 - The portfolio includes only work that has been independently produced by the student in the third grade, including programs of reading instruction provided after regular school hours, on Saturdays, and during the summer following the student's third grade year; and
 - The student possesses required reading skills to be promoted to fourth grade.
- (5) Students with disabilities who participate in the statewide criterion-referenced test assessments and have an IEP may qualify for a good cause exemption pursuant to 70 O.S. § 1210.508C(K)(5) for promotion to fourth grade. To qualify for this exemption, the student must meet the following criteria:
- (A) ~~The student must have been previously retained in pre-kindergarten for academic reasons, kindergarten, first grade, second grade, or third grade; and~~
- (B) The student's IEP must:
- Identify Reading as an area of education need for the student or identify some type of special education service in the area of Reading reflect that the student has received intensive remediation in reading; and

~~(#B) Reflect that the student has received intensive remediation for more than two (2) years. Intensive remediation may include any type of program offering intensive reading instruction that is identified as appropriate by the IEP team made adequate progress in reading pursuant to the student's IEP.~~

- (6) Students who demonstrate a reading deficiency and have been previously retained may qualify for a good cause exemption pursuant to 70 O.S. § 1210.508C(K)(6) for promotion to fourth grade. To qualify for this exemption, the student must meet the following criteria:

(A) The student must have been previously retained in pre-kindergarten for academic reasons, kindergarten, first grade, second grade, or third grade for a total of two (2) years; and

(B) The student must have received intensive reading instruction for two (2) or more years.

- (7) Students who have been granted an exemption for medical emergencies by the State Department of Education may qualify for a good cause exemption pursuant to 70 O.S. § 1210.508C(K)(7). To qualify for this exemption, the student must have been granted a medical emergency exemption pursuant to 70 O.S. § 1210.508-2 and 210:10-13-23, applicable to the testing window during which the reading comprehension foundations/processes and vocabulary portions of the third grade criterion-referenced test assessment were administered to the student's class.

- (c) Each student completion of a transitional grade between kindergarten and third grade shall be considered a previous retention for purposes of 70 O.S. § 1210.508C(K). A transitional grade consists of subject area curriculum selected from two consecutive grade levels to provide differentiated instruction needed for a student to master appropriate skills required for promotion.

(d) Documentation shall be maintained in the student record of any student promoted on the basis of a good cause exemption listed in 70 O.S. § 1210.508C(K). Documentation shall include the student's criterion-referenced test assessment score on the reading foundations/processes and vocabulary portions and any documentation relied upon to grant a good cause exemption ~~or exemption pursuant to (b) of this Section~~.

(e) Any student promoted on the basis of a good cause exemption listed in 70 O.S. 1210.508C(K) should continue to receive intensive reading instruction and intensive instructional services and supports through the continued implementation of an Academic Progress Plan (APP) Individualized Program of Reading Instruction to remedy the reading deficiency.

(f) Each student's APP Individualized Program of Reading Instruction ~~required under this section~~ shall be documented on a form approved by the OSDE Office of Curriculum and Instruction of the State Department of Education, and shall include, but not be limited to, the following information:

- Identification of assessments used for diagnostic purposes and periodic progress monitoring;
- The results of the assessment(s) used to identify the reading deficiency;

- (3) A list of the developmental reading skill areas targeted for improvement (i.e., phonemic awareness, phonics, reading fluency, vocabulary, or comprehension);
- (4) A description of the supplemental and/or remedial services and supports provided to the student in accordance with the provisions of 70 O.S. § 1210.508C(4)(2);
- (5) A description of parental involvement strategies; and
- (6) Identification of any collaborative services provided to the ~~child~~ student in order to facilitate the ~~APPI~~ Individualized Program of Reading Instruction (i.e., Title I, IDEA, ~~ELL~~ Title III).

210:15-27-3. Standards for mid-year promotion of retained third graders

- (a) ~~District school~~ School district boards of education shall adopt and implement a policy for the mid-year promotion of any student retained in third grade due to a reading deficiency as required by 70 O.S. § 1210.508C. Such mid-year promotions of retained third grade students must occur during the first semester of the academic year, and ~~must~~ shall occur prior to November 1 of that academic year.
- (b) To be eligible for mid-year promotion, a student must demonstrate by reasonable expectation that ~~he or she~~ they:
 - (1) ~~Is~~ Are a successful and independent reader as demonstrated by reading at or above grade level;
 - (2) ~~Has~~ Have progressed sufficiently to master appropriate fourth grade reading skills; and
 - (3) ~~Has~~ Have met any additional requirements, such as satisfactory achievement in other curriculum areas, as determined by the policies of the district school board.
- (c) Standards that provide a reasonable expectation that the student has met the requirements of (b) of this Section include demonstrating a level of proficiency required to ~~score above the Unsatisfactory level~~ meet grade-level criteria as established by the Office of Educational Quality and Accountability (OEQA) on the ~~Grade 3~~ third grade criterion referenced test(s) assessment and mastery of reading skills, consistent with the month of promotion to fourth grade, as presented in the scope and sequence of the school district's core reading program. Evidence of demonstrated mastery shall be shown by the following:
 - (1) Successful completion of portfolio elements that meet state criteria in (d) of this Section; or
 - (2) Satisfactory performance on a subsequent alternative standardized assessment as specified in (e) of this Section.
- (d) To promote a student mid-year using a student portfolio as provided for in (c)(1) of this Section, there must be evidence of the student demonstrating a level of proficiency required to ~~score above the Unsatisfactory level~~ meet criteria on the Oklahoma state standards as assessed by the reading comprehension and vocabulary portions of the ~~Grade 3~~ third grade criterion referenced test(s) assessment administered pursuant to 70 O.S. § 1210.508, and mastery of the Oklahoma state standards Academic Standards as assessed by the reading comprehension foundations/processes and vocabulary portions of the ~~Grade 4~~ fourth grade criterion referenced test(s) assessment.

as specified in (b) of this Section. The student portfolio must meet the following requirements:

- (1) Consist only of work selected by the certified classroom teacher responsible for the student's Reading instruction;
- (2) Be an accurate representation of the student's reading achievement level, and only include work that has been independently produced by the student in the classroom of the certified classroom teacher responsible for the student's Reading instruction;
- (3) Include evidence demonstrating a level of proficiency required to ~~score above the Unsatisfactory level~~ meet criteria on the standards assessed by the reading comprehension and vocabulary portions of the ~~Grade 3~~ third grade criterion referenced test(s) assessment by meeting all portfolio requirements set forth in 210:15-27-2(b)(4);
- (4) Include evidence of beginning mastery of fourth grade state standards that are assessed by the ~~Grade 4~~ fourth grade reading comprehension foundations/processes and vocabulary portions of the criterion referenced test(s) assessment. ~~Clear evidence must include multiple choice items and passages that are 50% literary text and 50% expository text that are between 200-600 words, with an average of 350 words.~~ Such evidence could consist of:
 - (A) Chapter or unit tests from the district's adopted core reading curriculum that are aligned with the Oklahoma State Standards; or
 - (B) Teacher-prepared assessments;
- (5) Each standard and objective assessed by the ~~Grade 4~~ fourth grade reading comprehension foundations/processes and vocabulary portions of the criterion referenced test(s) assessment must include a minimum of three (3) work samples of mastery whereby the student attained a grade of 70% or above. Demonstrating mastery of each objective for each standard is required; and
- (6) Be signed by the certified classroom teacher responsible for the student's reading instruction and the principal of the school, both attesting that the portfolio is an accurate assessment of the student's ability and that the student possesses the required reading skills to be promoted to fourth grade.
- (e) To promote a student mid-year using an alternative standardized assessment as provided for in (c)(2) of this Section, there must be evidence that the student scored at or above grade level on the reading portion of an alternative standardized reading assessment listed in OAC 210:15-27-2(b)(3)(A), as demonstrated by standard scores or percentiles consistent with the month of promotion to the fourth grade. Alternative assessments administered for the purpose of determining a student's eligibility for mid-year promotion must also comply with the requirements of 210:15-27-2(b)(3)(B) (C) and the school district's policy for mid-year promotion, provided that alternative assessments administered for this purpose may be administered until November 1 of the school year.

Permanent Final Adoptions

~~(f) The Academic Progress Plan (APP) for any retained third grade student who has been promoted mid-year to fourth grade must continue to be implemented for the entire academic year.~~

~~(g) A mid-year promotion shall only occur upon agreement of the parent or legal guardian of the student, and the principal of the school. Such decision should be made in consultation with the student's third and fourth grade teachers.~~

(g) The Individualized Program of Reading Instruction for any retained third grade student who has been promoted mid-year to fourth grade shall be re-evaluated and modified as appropriate to support success in fourth grade, and shall be implemented for the entire academic year.

210:15-27-4. ~~Program of reading instruction~~Individualized Program of Reading Instruction

(a) **Eligible students.** Each student enrolled in kindergarten, first, second, and third grade in the public schools of Oklahoma shall be assessed at the beginning, ~~middle,~~ and end of each school year using a screening instrument approved by the State Board of Education. Any student found not to be reading at grade level shall be provided ~~a program of reading instruction~~ an Individualized Program of Reading Instruction designed to enable the student to acquire the appropriate grade level reading skills. Diagnostic assessment shall be provided if determined appropriate, and progress monitoring shall continue throughout the year.

(b) **Student Reading Proficiency Team.** For students found not to be reading at the corresponding grade level upon completion of an approved screening instrument, a Student Reading Proficiency Team shall be created. The following guidelines apply to Student Reading Proficiency Teams:

(1) For a student not reading at the corresponding grade level in first grade or second grade as identified by an approved screening instrument, the Student Reading Proficiency Team shall develop an individualized program of reading instruction. The team shall be composed of:

- (A) The student's parent(s) or guardian(s);
- (B) The teacher assigned responsibility for the student's reading instruction in that academic year;
- (C) A teacher assigned responsibility for reading instruction in the student's next grade level; and
- (D) A certified reading specialist, if available.

(2) For a third grade student who is not eligible for automatic promotion and who ~~scores at the unsatisfactory or limited knowledge levels~~ does not meet criteria on the reading foundations/processes and vocabulary portions of the third-grade statewide criterion referenced test assessment administered pursuant to 70 O.S. § 1210.508, a Probationary Promotion Reading Proficiency Team may evaluate the student for probationary promotion. Upon the unanimous recommendation of the Probationary Promotion Reading Proficiency Team and approval of the school principal and district superintendent, a student recommended for probationary promotion shall be promoted to fourth grade. The Probationary Promotion Reading Proficiency Team shall be composed of:

- (A) The student's parent(s) or guardian(s);
- (B) The teacher assigned responsibility for the student's reading instruction in that academic year;
- (C) A teacher assigned responsibility for reading instruction in the student's next grade level; and
- (D) A certified reading specialist.

(c) **Program requirements.** Each program of reading instruction shall include provisions of the READ Initiative adopted by the school district as provided for in 70 O.S. § 1210.508C. For purposes of the Reading Sufficiency Act, a "program of reading instruction" shall be based upon a ~~three-tiered Response to Intervention ("RtI")~~ Multi-Tiered Systems of Support (MTSS) model, and shall include:

(1) **Tier I.** For students identified for Tier I intervention, a minimum of ninety (90) minutes of uninterrupted daily scientific research-based reading instruction; Tier I, or core instruction, is research-based reading instruction for all students that is based on the science of how students learn to read and is aligned with the Oklahoma Academic Standards. Tier I instruction provides all students a minimum of ninety (90) minutes of reading instruction.

(2) **Tier II.** For students identified for Tier II intervention, at least an amount of uninterrupted scientific research-based reading instructional time that is: Tier II intervention is supplemental, direct, research-based instruction based on the cognitive science of how students learn to read, designed to supplement core instruction and address students' reading skill deficits. Tier II intervention is:

- (A) Based on specific student needs;
- (B) Reflects the needed intensity and/or frequency as identified ~~on a screening tool, by diagnostic~~ appropriate reading assessment, and/or progress monitoring instrument; and
- (C) Is determined by the ~~classroom~~ teacher responsible for grade level Tier I reading instruction, reading specialist (if available), and building principal.

(3) **Tier III.** For students identified for Tier III intervention, at least forty five (45) to sixty (60) minutes of additional uninterrupted daily scientific research-based reading instruction in addition to the ninety (90) minutes of uninterrupted daily reading instruction provided under Tier I. Tier III intervention is supplemental, direct, customized, and intensive research-based instruction based on the cognitive science of how students learn to read, designed to supplement core instruction and address students' reading skill deficits by targeting the area(s) of greatest need. Tier III intervention is:

- (A) Based on specific student needs;
- (B) Reflects the needed intensity and/or frequency as identified by a diagnostic assessment; and
- (C) Is determined by the teacher responsible for grade level Tier I reading instruction, reading specialist (if available), and building principal.

(d) **District review of program.** Each district shall conduct a review of the program of reading instruction for all students ~~who score below the proficient level~~ do not meet criteria on

the reading ~~comprehension~~ foundations/processes and vocabulary portions of the third grade ~~statewide criterion referenced tests assessment~~ and do not qualify for a good-cause exemption under 70 O.S. § 1210.508C(K). For each student retained under the provisions of the Reading Sufficiency Act, the school district shall require a student portfolio to be completed. The district review of each retained student's program of reading instruction shall address additional supports and services needed to remediate the identified areas of reading deficiency, which may include but not limited to:

- (1) Small group instruction;
- (2) Reduced teacher-student ratios;
- (3) More frequent progress monitoring;
- (4) Tutoring or mentoring;
- (5) Transition classes containing third and fourth grade students;
- (6) Extended school day, week, or year; and
- (7) ~~Summer reading academies~~ Summer Academy Reading Programs as provided for in 70 O.S. § 1210.508E, if available.

(e) ~~Transition to ACE remediation for students~~ Students approved for probationary promotion. For a student who is approved for probationary promotion, the Probationary Promotion Reading Proficiency Team shall continue to review the student's reading performance and repeat the evaluation and recommendation process described in 1210.508C(H)(4) each academic year until the student demonstrates grade-level reading proficiency on an approved screening instrument or transitions to ~~remediation provided under the Achieving Classroom Excellence Act (ACE)~~ another school. If a student who has been approved for probationary promotion transitions to another school before demonstrating grade-level proficiency on an approved screening instrument, a copy of the student's Individualized Program of Reading Instruction shall be provided to the student's subsequent school.

[OAR Docket #20-721; filed 7-27-20]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 20. STAFF

[OAR Docket #20-722]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. Professional Standards: Teacher Education and Certification
Part 9. Teacher Certification
210:20-9-96. Requirements for renewal or reissuance of certificates
[AMENDED]

AUTHORITY:

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

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n/a

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n/a

GIST/ANALYSIS:

Provisions have been added to the rule governing the renewal of educator certificates issued by the State Board of Education, to provide for the availability of a due process hearing in the event a standard certificate is denied for renewal. The procedures substantially align with the due process provisions that apply to the revocation of a teaching certificate.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 9. TEACHER CERTIFICATION

210:20-9-96. Requirements for renewal or reissuance of certificates

(a) Standard certificate.

(1) To renew a standard certificate a teacher must submit the appropriate application, pay the appropriate processing fee specified in subsection 210:20-9-9 (d) and complete one of the following options:

(A) Option I--the applicant shall have completed a minimum of three (3) years of school experience in an accredited school during the five (5) year validity of the standard certificate. Applicants who have completed fewer than three (3) years of school experience may substitute coursework in professional education and/or specialization from an accredited college or university for each year of experience they are lacking at the following rate: with two (2) years of experience, complete three (3) semester hours; with one (1) year of experience, complete four (4) semester hours; or with zero (0) years of experience, complete five (5) semester hours. College credit must be completed within the five (5) year period immediately preceding the date of application for renewal. Teachers who teach one-half day in an accredited school each school year for the five (5) year validity period of

their certificate may renew a standard certificate. The following provisions apply if the certificate has been expired more than five (5) years: If the certificate has been expired for more than five years and the teacher was certified in and teaching in another state and has three years of experience within the five year period immediately preceding the date of application for renewal the experience will apply toward renewal.

(B) Option II--a teacher or administrator who is not employed as a teacher or administrator and holds a valid Oklahoma Standard Teaching Certificate may satisfy requirements for renewal of the Standard Teacher Certificate by completing seventy-five (75) points in professional development programs, conferences and seminars approved by a public school district. A combination of professional development points, higher education credits and/or teaching experience may also be used for renewal of a valid standard teaching certificate. Only programs, conferences and seminars recognized for professional development credit by an Oklahoma public school district at the time the teacher attends the programs, conferences or seminars may be used to fulfill the renewal requirement. The individual seeking certification renewal is responsible to maintain his/her professional development attendance forms to submit to the State Department of Education. Exact combinations of professional development points, college credit hours and years of teaching experience will be determined by the Professional Standards Section of the State Department of Education.

(C) Option III--Issue a two-year certificate immediately and then complete the following requirement. Successful employment for one year in an Oklahoma accredited school or accredited college or university. An administrator will provide supervision and a teacher or appropriate colleague will provide assistance as needed. Ultimately, certification is contingent on the district or college/university-level evaluation of the candidate.

(2) School experience, for purposes of renewing a standard certificate, is experience as a teacher, supervisor, or administrator in a school, college, or university accredited by either a state board of education or state board of regents.

(3) If a standard certificate has been expired for one (1) year or more, the applicant must undergo a new criminal history record check, as provided for at 70 O.S. § 5-142. Applicant is responsible for any fees associated with the criminal history record check.

(b) **Provisional certificates.**

(1) **Nonvocational provisional certificates.** Non-vocational provisional certificates may be renewed if requirements outlined by the State Department of Education toward meeting requirements for a standard certificate are met during the term of validity of the provisional certificate.

(2) **Vocational provisional certificates.** Vocational provisional certificates may be renewed if requirements outlined by the State Department of Education and/or the Oklahoma Department of Vocational and Technical Education toward meeting requirements for a standard certificate are met during the term of validity of the provisional certificate.

(c) **Supplemental renewal regulations.**

(1) Experience as a professional employee of a state education agency or professional educational organization is considered valid experience for the renewal of a standard or professional certificate.

(2) Teachers who teach one-half day in an accredited school (nursery--higher education) each year for the validity period of their certificate may renew a standard or professional certificate.

(3) Teaching experience with the Oklahoma Department of Corrections Educational System, the Oklahoma Department of Human Services as a vocational rehabilitation counselor, with optional/special function schools in Oklahoma accredited by the North Central Association of Colleges and Schools, experience in the Head Start Program, full-time active military service, or experience as a member of the Oklahoma Legislature may be accepted in meeting requirements for renewal of a standard or professional certificate.

(4) The State Board of Education shall recognize full-time service as a member of the staff of the ~~house of representatives~~House of Representatives, the ~~senate~~Senate or the ~~legislative service bureau~~Legislative Service Bureau in an area related to education as valid experience for renewal of the standard certificate. This experience is calculated at the same rate as it is for other teachers.

(5) Any person who is receiving retirement compensation from the Teacher Retirement System may renew the last standard or professional certificate for the purpose of substitute teaching.

(6) A minimum of two-thirds of a school year (120 days or 720 hours) acquired in not more than two (2) contractual school years during the validity of the certificate in accredited schools may be considered as one (1) year of school experience.

(7) A teacher who has taught more than one-half of a day for 120 days or more will be considered as having had one year of experience.

(8) Substitute teachers, unless under contract, may count experience acquired in not more than two (2) consecutive years during the validity of the certificate.

(9) Student teaching, experience in nonaccredited schools, experience while not holding a valid certificate, and experience while providing contracted services will not be accepted as school experience for purposes of renewal.

(10) Applications for renewal of standard certificates will not be accepted prior to January 1 of the year in which the certificate expires.

(d) **Due process procedures in case of denial to renew a certificate.** Upon the denial of an individual's application to renew a standard teaching certificate, the State Board of Education shall notify the superintendent of the district that currently employs or most recently employed the certified individual based on the personnel reports currently on file with the State Department of Education. An individual whose application for renewal of a standard certificate is denied may request a hearing to be conducted by the State Board of Education or a hearing officer delegated such authority by the Board. Such a hearing shall not be available to an individual who holds an emergency or provisional teaching certificate. A request for a hearing on denial of renewal shall be filed with the Executive Secretary of the State Board of Education. The following procedures apply to hearings and deliberations held pursuant to such requests:

(1) **Hearing procedures.**

(A) **Hearing and appointment of a hearing officer.** Upon filing the application with the Secretary of the Board, the Secretary shall set the matter for a hearing. The Board, at its discretion, may utilize a hearing officer to conduct the hearing. If utilized, the hearing officer shall be appointed by the Chairperson of the Board.

(B) **Attendance of witnesses.** If the complainant, or the holder of the certificate wants any person to attend the hearing and testify as a witness, the individual shall notify the Chairperson of the State Board of Education at least fifteen (15) calendar days prior to the hearing, in writing, giving the name and address of the desired witness, and the Chairperson shall thereupon subpoena, by mail, the desired witness to attend in accordance with the provisions of this subsection. Every person testifying at a revocation hearing shall be sworn to tell the truth. The parties to the hearing shall exchange witness and exhibit lists and any exhibits no later than fifteen (15) calendar days prior to the hearing.

(C) **Subpoenas.** Subpoenas and/or subpoenas duces tecum may be issued in accordance with the following procedures:

(i) **Issuance of subpoenas.** Subpoenas for the attendance of witnesses, or for the production of books, records, papers, objects, or other evidence of any kind as may be necessary and proper for the purposes of a proceeding shall be issued by the Secretary of the Board at the direction of the Chairperson; upon order of the Board; or at the request of any party to a proceeding before the Board. The signature of the Secretary shall be sufficient authentication for any subpoena.

(ii) **Service of subpoenas.** Subpoenas shall be served in any manner prescribed for service of a subpoena in a civil action in the district courts of the State of Oklahoma.

(iii) **Objections to and compliance with subpoenas.** Any party to the proceeding may move to quash a subpoena or subpoenas duces tecum issued

in accordance with the provisions of this Section, provided that, prior to quashing a subpoena or subpoenas duces tecum the agency shall give notice to all parties. A subpoena or subpoenas duces tecum may not be quashed if any party objects.

(iv) **Enforcement of subpoenas.** Upon the failure of any person to obey a subpoena, or upon the refusal of any witness to be sworn or make an affirmation or to answer a question put to her or him in the course of any individual proceeding or other authorized action of the Board, the Board as soon as convenient shall consider the issue of enforcement of the subpoena. By resolution, it may direct application to the district or superior court of the county of such person's residence or to any judge thereof for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony. Meanwhile, the hearing or other matters shall proceed, so far as is possible, but the Board at its discretion at any time may order a stay or continuance of the proceedings for such time as may be necessary to secure a final ruling in the compliance proceedings.

(v) **Costs of issuance and service of subpoenas.** The costs covering the issuance and service of subpoenas and all witness fees incurred on behalf of a party to the proceedings, other than the Board, shall be borne by the party on whose behalf they are incurred.

(D) **Right to representation.** Any party to the individual proceeding shall at all times have the right to representation by counsel, provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma, and provided further that counsel shall have the right to appear and act for and on behalf of the party represented.

(E) **Legal counsel to State Board of Education.** An attorney for the State Board of Education shall present evidence to the Board, in furtherance of the application. If deemed necessary by the Chairperson of the Board, a request may be made of the Attorney General to provide counsel to the Board to rule on questions of admissibility of evidence, competency of witnesses, and any other questions of law. In the event that counsel is not requested from the Attorney General the Chairperson of the Board will rule on the evidence, competency of the witness and other questions of law.

(F) **Disqualification of a Board member or hearing officer.** A Board member or hearing officer shall withdraw from any individual proceeding in which the individual cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification on the ground of their inability to give a fair and impartial hearing by filing an affidavit promptly upon discovery of the alleged disqualification, stating with particularity

the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the Board, or if it affects a member of the Board, by the remaining members thereof, if a quorum. Upon the entry of an order of disqualification affecting a hearing officer, the Board shall either assign a replacement hearing officer, or conduct the hearing itself. Upon the entry of an order of disqualification affecting a Board member, the Governor immediately shall appoint a member pro tempore to sit in place of the disqualified member in that proceeding.

(G) **Notice of facts.** The Board shall give notice to all parties, prior to, or at the hearing, of any facts of which it proposes to take official notice. Any party or their attorney may request that official notice be taken of any fact qualified for such notice by the statutes of this state. If such official notice is taken, it shall be stated in the record, and all parties shall have opportunity to contest and give evidence in rebuttal or derogation of the official notice.

(H) **Presentation and consideration of evidence.** The State Board of Education shall consider only evidence upon the specific cause contained in the notice, and evidence will be heard for such cause. Questions of the admissibility of evidence shall be governed by the provisions of 75 O.S. § 310.

(I) **Order of procedure.** The order of procedure at the hearing shall be as follows:

- (i) Opening statements by legal counsel of both parties;
- (ii) Presentation of evidence by both parties followed by cross-examination of witnesses, and questions by State Board members or the hearing officer;
- (iii) Closing arguments by legal counsel of both parties; and
- (iv) Submission of case to the Board or the hearing officer for decision.

(J) **Continuance of a hearing.** The Board or hearing officer may continue or adjourn the hearing at any time for a specified time by notice or motion. The Board or hearing officer may grant a continuance upon motion of a party for good cause shown if written request is filed and served on all parties of record and filed with the Secretary of the Board at least five (5) days prior to the date set for hearing. A respondent may be granted only one (1) continuance.

(2) **Deliberations and decisions.** Deliberations by the Board or the hearing officer in an individual proceeding may be held in executive session pursuant to the provisions of the Open Meeting Act set forth at 25 O.S. § 307.

(A) **Decision.** Decisions shall be issued in accordance with the following procedures:

- (i) After hearing all evidence, and all witnesses, the State Board of Education or, if applicable, the hearing officer, shall render its decision on whether the certificate shall be revoked.

(ii) The decision of the State Board of Education or a hearing officer presiding at the hearing shall be announced at the conclusion of the hearing and notification of that decision shall be by certified or registered mail, restricted delivery with return receipt requested to the holder of the certificate.

(iii) If the holder of the certificate fails to appear at the scheduled hearing without prior notification within the time frame to request a stay or continuance set forth in (d)(1)(J) of this Section, demonstration of good cause, the Board or hearing officer shall hold the party in default and issue an order sustaining the allegations set forth in the application.

(iv) If the applicant fails to appear at the scheduled hearing without prior notification within the time frame to request a stay or continuance set forth in subsection (d)(1)(J) of this Section, demonstration of good cause, or fails to prove the allegations by clear and convincing evidence, the application shall be dismissed.

(B) **Findings of fact and conclusions of law.** After the decision is announced, but before issuance of the final order, if the Board has not heard the case or read the record of the individual proceeding, the hearing officer shall provide the parties with an opportunity to prepare and submit proposed findings of fact and conclusions of law in accordance with the provisions of 75 O.S. § 311. After the parties have been given notice and an opportunity to file exceptions, present briefs and oral arguments to the proposed findings of fact and conclusions of law, the Board may take action to accept, reject, or modify the proposed Findings and Conclusions of the hearing officer. The Board shall render findings of fact and conclusions of law. All findings of fact made by the Board shall be based exclusively on the evidence presented during the course of the hearing or previously filed briefs, (made a part of the record), of the testimony of witnesses taken under oath.

(C) **Final order.** As the final determination of the matter, the final order shall constitute the final agency order and shall comply with the requirements set forth at 75 O.S. § 312. If no motion for rehearing, reopening or reconsideration of the order is filed in accordance with (h) of this Section, the final agency order shall represent exhaustion of all administrative remedies by the State Board of Education. All final orders in an individual proceeding shall be in writing and made a part of the record. Final orders are to be issued by the Chairperson of the Board or the presiding officer for transmission to the parties by the Secretary of the Board. Within five (5) business days of the date of issuance of the final order, parties shall be notified of a final order either personally or by certified mail, return receipt requested. Upon request, a copy of the order shall be delivered or mailed to each party and

the party's attorney of record, if any. If an individual's appeal of a denial of renewal is successful following a hearing held under this Section, the certificate shall be reissued. If a certificate that was initially denied for renewal is reissued based on a successful appeal, the State Board of Education shall notify the superintendent of the district that currently employs or most recently employed the certified individual based on the personnel reports currently on file with the State Department of Education.

(D) **Communication with parties.** Unless required for the disposition of ex parte matters authorized by law, the Chairperson and the members of the Board, the hearing officer, or the employees or the agents of the Board shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his or her representative except upon notice and opportunity for all parties to participate. The Chairperson and members of the Board or their employees may communicate with one another and have the aid and advice of one or more personal assistants. Advice may also be secured from the Attorney General's office.

(3) **Record of hearing.**

(A) The record of a hearing shall be set forth in such form and detail as the Chairperson or the Board may direct. The hearing may also be fully transcribed, and shall be placed on file in the Secretary's office. Parties to the proceeding may have the proceedings transcribed by a court reporter at their own expense. In accordance with the requirements of 75 O.S. § 309, the record shall include:

- (i) All pleadings, motions, and intermediate rulings;
- (ii) Evidence received or considered during the individual proceeding;
- (iii) A statement of matters officially noticed;
- (iv) Questions and offers of proof, objections, and rulings thereon;
- (v) Proposed findings and exceptions;
- (vi) Any decision, opinion, or report by the Board or a hearing officer presiding at the hearing; and
- (vii) All other evidence or data submitted to the Board or hearing officer in connection with their consideration of the case.

(B) The State Board shall electronically record the proceedings, with the exception of executive sessions. The recording shall be made and maintained in accordance with the requirements of 75 O.S. § 309, and a copy shall be provided to any party to the proceeding upon request. If the requesting party should desire the tape(s) to be transcribed by a court reporter, the requesting party shall bear the expense.

(4) **Rights to a rehearing, reopening or reconsideration.**

(A) A petition for rehearing, reopening or reconsideration of a final order must be filed with the Secretary of the State Board within ten (10) days from the entry of the order. It must be signed by the party or his or her attorney, and must set forth with particularity the statutory grounds upon which it is based. However, a petition based upon fraud practiced by the prevailing party or upon procurement of the orders by perjured testimony or fictitious evidence may be filed at any time. All petitions for rehearing, reopening, or reconsideration will be considered and ruled upon as soon as the convenient conduct of the Board's business will permit.

(B) A petition for a rehearing, reopening, or reconsideration shall set forth the grounds for the request. The grounds for such a petition shall be either:

- (i) Newly discovered or newly available evidence, relevant to the issues;
- (ii) Need for additional evidence adequately to develop the facts essential to proper decision;
- (iii) Probable error committed by the Agency in the proceeding or in its decision such as would be grounds for reversal on judicial review of the order;
- (iv) Need for further consideration of the issues and the evidence in the public interest; or
- (v) A showing that issues not previously considered ought to be examined in order to properly dispose of the matter. The grounds which justify the rehearing shall be set forth by the State Board of Education which grants the order, or in the petition of the individual making the request for the hearing.

(C) It is the burden of the party requesting a rehearing to notify the opposing party of the appeal.

(D) Rehearing, reopening, or reconsideration of the matter may be heard by the State Board of Education or may be referred to a hearing officer. The hearing must be confined to those grounds on which the recourse was granted.

(5) **Judicial review.** Any person or party aggrieved or adversely affected by a final order in an individual proceeding is entitled to certain judicial review in accordance with the provisions of the Oklahoma Administrative Procedures Act, and the procedures set forth therein shall govern appeals.

[OAR Docket #20-722; filed 7-27-20]

TITLE 210. STATE DEPARTMENT OF EDUCATION

CHAPTER 20. STAFF

[OAR Docket #20-723]

RULEMAKING ACTION:
PERMANENT final adoption

Permanent Final Adoptions

RULES:

- Subchapter 41. Teacher and Leader Effectiveness
- 210:20-41-1. Teacher and Leader Effectiveness Evaluation System overview [AMENDED]
- 210:20-41-3. Qualitative components of the Teacher and Leader Effectiveness Evaluation System [AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 6-101.16

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rules for the Teacher and Leader Effectiveness (TLE) Evaluation System have been updated to reflect changes in the law since the rules' original adoption. Terminology clarifications have been made to reflect current law, including alignment with the current statutory definition of "Teacher." The governing statute also now authorizes career teachers to be evaluated every three (3) years if they receive a district evaluation rating of "Superior" or "Highly Effective," and the rule language has been updated accordingly.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 41. TEACHER AND LEADER EFFECTIVENESS

210:20-41-1. Teacher and Leader Effectiveness Evaluation System overview

(a) **Purpose and application.** To ensure that each Oklahoma student is provided with effective instruction that contributes to student success, each school district board of education shall maintain and annually review a written policy of evaluation for all teachers and leaders, to be based upon the minimum criteria for the Teacher and Leader Effectiveness Evaluation System (TLE) outlined at 70 O.S. § 6-101.16. For purposes of the TLE, "leader" means a principal, assistant principal, or any other school administrator who is responsible for

supervising classroom teachers. "Teacher" means a duly certified person who is employed to serve as a counselor, librarian, or classroom teacher, or in any other instructional capacity.

(b) **Five-tier rating system.** Each teacher and leader evaluated under the TLE shall be rated on a five-tier scale. The evaluation framework selected by a school district for teachers shall apply to all teachers of the district in its entirety, and the evaluation framework selected by a school district for administrators shall apply to all administrators of the district in its entirety, with the exception of the district superintendent who is evaluated by the board of education. Regardless of any additional rating terminology used in an evaluation framework implemented by a school district, a teacher's or leader's district evaluation rating shall be expressed as one of the following five ratings:

- (1) Superior;
- (2) ~~Highly effective~~ Effective;
- (3) Effective;
- (4) Needs ~~improvement~~ Improvement; or
- (5) Ineffective.

(c) **Periodic observations and ~~Annual~~ annual evaluations.** Every teacher and leader shall be evaluated annually, and provided with feedback for the purpose of improving student learning outcomes. Each teacher or leader shall receive a district evaluation rating based on the components of the TLE as set forth in 70 O.S. § 6-101.16(b), and expressed as a rating on the five-tier scale shown in subsection (b). For all district evaluations, student performance, including performance on the statewide criterion-referenced tests if available, shall be discussed with the teacher and may be one of the considerations for the teacher's district evaluation rating. ~~A career teacher as defined in 70 O.S. § 6-101.3 who has received a "Superior" or "Highly effective" rating under the TLE may be evaluated once every three (3) years, but shall participate annually in developing a professional growth goal. A probationary teacher as defined in 70 O.S. § 6-101.3 shall be provided formative feedback from the evaluation process at least two times per school year, once during the fall semester and once during the spring semester.~~

(1) **Career teachers.** A career teacher as defined in 70 O.S. § 6-101.3 shall be observed in their instructional setting once during the first semester of the school year and once during the second semester of the school year. The career teacher shall receive their evaluation during the second semester of the school year. A career teacher who has received "Superior" or "Highly Effective" as their most recent rating under the TLE may be evaluated once every three (3) years, but shall participate every year in developing a professional development goal (known as a "Professional Learning Focus" or "PL Focus").

(2) **Probationary teachers.** A probationary teacher as defined in 70 O.S. § 6-101.3 shall be observed in their instructional setting, and provided with formative feedback, at least once during the first semester of the school year and at least once during the second semester of the school year. The probationary teacher shall receive their evaluation during the second semester of the school year.

(d) Individualized programs of professional development. Every school district board of education shall maintain and annually review a written policy of professional development in addition to, or as a component of, its written policy of evaluation. The policy of professional development adopted by a school district shall provide for the development of a focused and individualized program of professional development for the teacher or administrator that is consistent with the qualitative components of the TLE. Each teacher or administrator's individualized program of professional development shall designate a Professional Learning Focus ("PL Focus") topic. Professional development completed pursuant to an individualized program of professional development shall count toward the total number of points a teacher or administrator is required to complete as established by the school district pursuant to 70 O.S. § 6-194, provided that the implementation of individualized programs of professional development does not increase the professional development points requirements. Every school district policy of professional development shall:

- (1) Establish an annual professional growth goal for the teacher or administrator that is developed by the teacher or administrator in collaboration with the evaluator. Every teacher or administrator with the exception of the district superintendent will participate in establishing an annual professional growth goal (Professional Learning Focus), including career teachers with a "Superior" or "Highly Effective" rating during the years they are not required to be evaluated.
- (2) Be tailored to address a specific area or criteria identified through the qualitative components of the TLE.
- (3) Allow the teacher or administrator to actively engage with learning practices that are evidence-based, researched practices that are correlated with increased student achievement.
- (4) Be supported by resources that are available and supplied by the school district and the State Department of Education.

(e) Evaluator training. Prior to conducting evaluations, every individual designated by a school district board of education to conduct personnel evaluations shall participate in training that addresses the requirements of Oklahoma's Teacher and Leader Effectiveness Evaluation System. Training provided to a school district's evaluators through a vendor which addresses the district's adopted framework, but does not specifically address Oklahoma's TLE components, will not satisfy the TLE training requirement.

(f) Reporting. Every school district must transmit data collected for TLE purposes to the State Department of Education through the current information upload system designated by the agency.

(g) Confidentiality of records. The State Department of Education shall keep records of annual evaluations received pursuant to TLE confidential. TLE records which in any way identify a current or former public employee shall not be subject to disclosure under the Oklahoma Open Records Act.

210:20-41-3. Qualitative components of the Teacher and Leader Effectiveness Evaluation System

(a) Qualitative assessment of teachers. An evidence-based qualitative assessment tool for the assessment of teachers must include observable and measurable characteristics of personnel and classroom practices that are correlated to student performance success. These characteristics shall include, but not be limited to:

- (1) Organizational and classroom management skills;
- (2) Ability to provide effective instruction;
- (3) Focus on continuous improvement and professional growth;
- (4) Interpersonal skills; and
- (5) Leadership skills.

(b) Qualitative assessment of leaders. An evidence-based qualitative assessment tool for the assessment of administrators must include observable and measurable characteristics of personnel and site management practices that are correlated to student success. These characteristics shall include, but not be limited to:

- (1) Organizational and school management, including retention and development of effective teachers and dismissal of ineffective teachers;
- (2) Instructional leadership;
- (3) Professional growth and responsibility;
- (4) Interpersonal skills;
- (5) Leadership skills; and
- (6) Stakeholder perceptions.

(c) TLE Qualitative Report. A TLE Qualitative Report shall be submitted to the Oklahoma State Department of Education (OSDE) annually by each school. The Qualitative Report shall indicate the evaluation model used to evaluate the teacher or administrator, include the qualitative results of the teacher or administrator's evaluation, and indicate the Professional Learning Focus topic and completion status for each certified educator with the exception of the district superintendent. The Qualitative Report shall list both the certificate number of each educator evaluated and the certificate number of the individual who conducted their evaluation.

[OAR Docket #20-723; filed 7-27-20]

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 25. FINANCE**

[OAR Docket #20-724]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Funding Criteria
210:25-3-4. Personnel [AMENDED]

AUTHORITY:

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

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND
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Permanent Final Adoptions

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rule that details requirements for the employment of certified teachers by public schools, and conditions that apply to the accrual of teaching experience for certified educators, has been amended to address the effect of Workers' Compensation status on a teacher's accrual of experience. The new provisions in the Personnel rule allow a teacher who receives temporary total disability benefits while employed by a public school to have time that they received Workers' Compensation included in the calculation of their cumulative teaching experience. The authorization for periods of temporary total disability during school employment to apply toward teaching experience parallels the process through which the Oklahoma Teacher Retirement System (OTRS) authorizes Workers' Compensation to apply toward years of experience for retirement purposes.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 3. FUNDING CRITERIA

210:25-3-4. Personnel

(a) Teachers who have not yet received their degrees shall be considered as having a degree if all requirements have been completed except participation in graduation exercises.

(b) A teacher who has taught more than one-half of a day for 120 days or more shall be considered as having had one year of experience. A teacher who has taught the equivalent of 120 days within not more than two contractual years shall be considered as having had one year of experience. Experience shall be counted if the individual was legally employed and paid from funds under the supervision of a school board of education or any school accredited by the State Board of Education. Practice teaching or a practicum in a teacher-training institution shall not be considered as experience. Veterans Agricultural training instructors or any teacher employed full-time by an accredited college or university shall be considered as having one (1) year of teaching experience for each year of service after July 1, 1945, if such teaching experience is approved by the State Board of Education, provided such

teacher held a bachelor's degree at the time these services were performed and was eligible to have been issued a teaching certificate. A teacher who has received Workers' Compensation benefits while employed by a public school district or charter school shall be eligible to have the time spent on Workers' Compensation included in the calculation of their cumulative teaching experience, provided all of the following conditions apply:

(1) The individual held a valid Oklahoma teaching certificate during the time period they received Workers' Compensation benefits;

(2) The individual received temporary total disability benefits;

(3) The individual was employed by a public school immediately prior to and during the period of absence due to work-related injury or illness;

(4) The individual's public school employer certifies in writing the dates during which temporary total disability benefits were paid to the individual; and

(5) Service credit for time during which a certified teacher received temporary total disability benefits through the Workers' Compensation system shall be capped at a cumulative maximum of five (5) years.

(c) Any district identified as contracting with a teacher, or administrator without a valid certificate shall be penalized in state aid. The state aid penalty amount shall be the salary amount paid by the district for the number of days the teacher or administrator taught without a valid certificate in excess of allowable substitute days.

(d) All teachers must have an official transcript on file with the Professional Standards Section showing the degree completed.

(e) The timeframe for submitting Initial Personnel Reports shall be open from September 1 through October 1 of each year. No later than October 1, all public school districts must file an accurate Initial Personnel Report with the State Department of Education. The report shall list all personnel in the district and shall list for each person the position code, compensation, degree, certification information, years of qualified experience, number of days employed and other information as deemed necessary. Beginning with the 2004-2005 school year the school district will report to the State Department of Education the salary and benefit information disaggregated as required by law. For each employee not returning from the previous year, a reason for no return code shall be recorded. The Initial Personnel Report must be certified no later than October 15.

(f) From November 1 through December 15 of each year, a school district superintendent shall have access to the district's Initial Personnel Report. During this period, the superintendent will be permitted to make necessary corrections and updates to the report. Any changes made by a superintendent to the school district's Initial Personnel Report must be submitted no later than December 15. Reports are to be recertified after updates are complete.

(g) The timeframe for submitting Mid-Year Personnel Reports shall be open from January 1 through February 1 of each year. No later than February 1, all public school districts must file an accurate revised Mid-Year Personnel Report with the

State Department of Education. The report shall contain any corrections, departures, and additions that have occurred since the October 1 Initial Personnel Report was filed so that more accurate information is available for state aid calculations, legislative projections and other statistical requirements. State Aid funds shall be withheld from any school district that does not submit the Mid-Year Personnel Report by February 1. Only after the accurate report has been received by the State Department of Education shall the withheld State Aid funds be released to the school district.

(h) From February 15 through May 15 of each year, a school district superintendent shall have access to the district's Mid-Year Personnel Report. During this period, the superintendent will be permitted to make necessary corrections and updates to the report. Any changes made by a superintendent to the school district's Mid-Year Personnel Report must be submitted no later than May 15. Reports are to be recertified after updates are complete.

(i) All public school districts must file an accurate End-of-Year Supplemental Personnel Report showing the changes for personnel previously listed as well as all information required on any new employees not previously listed. This report shall contain any corrections or changes to be made to the February 1 Mid-Year Personnel Report. All employees that departed the school district prior to completion of the school year shall be given a "Reason-For-Leaving" code and have salary and days employed adjusted. School districts shall also file the Certified Substitute Teachers Report listing the number of days taught in the school year by all certified substitute teachers. The timeframe for submitting End-of-Year Supplemental Personnel Reports and Certified Substitute Teachers Reports shall be open from June 1 to July 15 of each year. These two reports shall be filed with the State Department of Education no later than July 15.

(j) If the district pays a teacher less than the minimum salary required by law, the difference shall be deducted from the next payment of state aid, or a claim shall be filed by the Director of Finance to recover any such overpayment to the school district.

(1) The School Personnel Records Section will notify the school superintendent of all potentially underpaid teachers after the Mid-Year Personnel Reports are filed with the State Department of Education in February. The school superintendent shall notify the School Personnel Records Section of the district's intent to pay the teacher the underpaid amount or to dispute the amount. If disputed, the school superintendent is responsible for providing documentation to the School Personnel Records Section to show the teacher was not underpaid based on the state minimum salary schedule. The State Aid Section shall withhold from state aid the amount underpaid by October 1 in the school year following the year in which the underpayment occurred.

(2) The method for calculating teacher salaries to ensure state minimums are met shall be determined by the School Personnel Records Section.

(k) If a teacher asserts that the school district he or she is employed by and was employed by the previous year, (or if underpayment occurred prior to July 1, 2002, and the teacher

filed an action to recover an underpayment in a court of competent jurisdiction before July 1, 2002), has reduced the salary and/or fringe benefit level without a proportionate reduction in hours or duties, the teacher may file a complaint with the State Department of Education's School Personnel Records Section. The complaint must be accompanied by documentation sufficient to justify the allegations in the complaint. The teacher shall also send a copy of the complaint and supporting documentation to the superintendent of the school district. The documentation shall include, but not be limited to, the teacher's salary and benefit amount for each year in question. The superintendent shall be given an opportunity to submit documentation to refute the teacher's claim within 20 calendar days of receipt of the complaint. The School Personnel Records Section shall review all the documentation presented and present the complaint to the State Board of Education for determination of whether the school district willfully reduced the teacher's salary and benefits in violation of the law. If the school district does not provide a response and supporting documentation to the complaint, the complaint shall be upheld. In the event the review of the documents reveals that the complaint is valid, the State Board of Education shall withhold the amount underpaid from the district's state aid as a penalty. Additionally, the same amount shall be withheld and that amount shall be sent to the teacher.

(l) Any superintendent, principal, or teacher shall not be considered as having received their minimum salary unless such salary is paid by school district warrants issued by the board of education or the school district.

(m) Personnel on the staff of the Oklahoma Department of Career and Technology Education shall be approved by the State Board of Education for increment purposes.

(n) Certified personnel teaching in Manpower Skill Centers and other Manpower Development Training Programs approved by the Oklahoma Department of Career and Technology Education shall be considered as teaching in a school approved by the State Board of Education for increment purposes as provided by Oklahoma School Law.

(o) Under the federal *Uniformed Services Employment and Reemployment Rights Act* (USERRA), a teacher who is called to active duty in the uniformed services is entitled to certain continuing benefits of civilian employment, including the accrual of Oklahoma teaching experience for minimum salary schedule purposes during their active duty service. For purposes of this subsection, the term "uniformed services" incorporates the definition at 38 U.S.C. § 4303 and includes the Air Force, Army, Coast Guard, Marine Corps, Navy, and the reserve components of these services, as well as the Air National Guard and Army National Guard. There is a cumulative limit of five (5) years on Oklahoma teaching experience accrued during active duty service while contracted as a public school teacher. Because teachers who are called to active duty while under contract with a school district are entitled to this benefit of employment under federal law, this category of up to five (5) years of service is separate from the up to five (5) years of active duty military service accrued *prior to* service as a teacher that an applicant for Oklahoma teaching certification may be eligible to have applied toward their initial step on

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the minimum salary schedule under 70 O.S. § 18-114(D). An individual who has been awarded up to five (5) years of credit for active duty service accrued prior to teaching, under 70 O.S. § 18-114(D), may also be eligible for up to five (5) years of credit awarded under this subsection if they are called to active duty while serving as a teacher.

(p) Certified personnel who are employed in the SoonerStart Early Intervention Program, a joint operation of the State Department of Education and the State Department of Health that delivers educational services to children from birth through age two (2) under Part C of the *Individuals with Disabilities Education Act* (IDEA), shall be eligible to accrue Oklahoma teaching experience for services provided through SoonerStart that are substantially equivalent to educational services that the certified individual would provide if employed by a public school. Credit will be awarded based on the guidelines in subsection (b) of this rule, with at least one-half day of SoonerStart service provision for at least one hundred twenty (120) days per year, or at least three hundred sixty (360) hours per calendar year, resulting in one (1) year of Oklahoma teaching experience for salary schedule and retirement system purposes.

[OAR Docket #20-724; filed 7-27-20]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 30. SCHOOL FACILITIES AND TRANSPORTATION

[OAR Docket #20-725]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Transportation

210:30-5-8. School bus driver certification [AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 9-101 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rule that establishes requirements for school bus driver certification has been amended to allow for Commercial Driver License (CDL) holders with current valid CDL licenses issued in other states to be eligible to apply for Oklahoma school bus driver certification. The rule as amended also allows

for physicians licensed in other states to sign the annual health certificates required for school bus drivers, and for Department of Veterans Affairs (VA) physicians to sign health certificates for school bus drivers who are veterans of the United States Armed Forces.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 5. TRANSPORTATION

210:30-5-8. School bus driver certification

(a) General criteria.

(1) Pursuant to the authority granted to the State Board of Education in 70 O.S. § 3-104(6) to regulate school bus drivers and 47 O.S. § 15-109, no board of education shall have authority to enter into any written contract with a school bus driver who does not hold a valid Oklahoma School Bus Driver's Certificate issued by the State Board of Education authorizing said bus driver to operate a school bus within the State of Oklahoma.

(2) In order to obtain and maintain a standard Oklahoma School Bus Driver's Certificate, the State Board of Education requires all public school bus drivers to:

(A) Successfully complete a school bus driver training course approved by the State Department of Education;

(B) Possess and maintain a valid Commercial Driver's License (CDL) ~~issued by the Oklahoma State Department of Public Safety~~, which includes the following endorsements required by ~~7047~~ O.S. § 6-110.1 in accordance with the qualifications determined by the Department of Public Safety:

(i) A school bus "S" endorsement; and

(ii) For drivers of vehicles designed to transport sixteen (16) or more passengers (including the driver), a passenger "P" endorsement; and

(C) Comply with all other health and safety qualifications set forth in this Section.

(3) No school district board of education shall assign or allow to be assigned any school bus driving duty involving the transportation of students to any employee or volunteer, regardless of contract status (e.g. coach, teacher, mechanic), unless that person has all required supporting documentation required for school bus drivers on file with the school district and a valid Oklahoma State Department of Education School Bus Driving Certificate as provided for in this section.

(4) The State Board of Education recognizes the substantial public interest in safe school bus transportation of children. Therefore, in addition to meeting the vision standards required to obtain a CDL from the Department of

Public Safety, in order to obtain a standard or emergency Oklahoma School Bus Driver's Certificate, all school bus drivers must have:

- (A) A visual acuity of not less than twenty-fourty (20/40) (Snellen) in each eye with or without corrective lenses; and
 - (B) Not less than twenty-fourty (20/40) (Snellen) with both eyes with or without corrective lenses; and
 - (C) A minimum field of vision of 70 degrees horizontal median vision in each eye.
- (5) The use of tobacco by a school bus driver is not permitted during the operation of the bus while hauling pupils. The use of any intoxicating or non-intoxicating alcoholic beverage by the driver eight (8) hours prior to or during the operation of a school bus is strictly prohibited. The use of any controlled dangerous substance seventy-two (72) hours prior to or during the operation of a school bus is strictly prohibited. The possession of any controlled dangerous substance on a school bus is strictly prohibited.
- (6) All school bus drivers shall have an annual health certificate signed by a physician licensed by ~~this any~~ state within the United States of America (U.S.), or a nurse or physician assistant who is licensed to practice in ~~this any~~ state within the U.S. and who is working under the supervision of a medical doctor (MD) or doctor of osteopathy (DO) licensed by ~~this state any state within the U.S.~~ A school bus driver who is a veteran of the United States Armed Forces may submit a health certificate signed by a licensed physician of the U.S. Department of Veterans Affairs Veterans Health Administration. The certificate shall be filed in the office of the chief administrative officer of the local school district or designee of the chief administrative officer attesting that such physician, or other authorized health care professional working under the supervision of a physician, has examined the applicant and that the applicant has no sign or symptoms of ill health, and is otherwise, from the observation of such physician or other authorized health care professional, physically and mentally capable of safely operating a school bus. As an alternative to the annual physical examination requirements for school bus drivers, school districts may adopt a policy that utilizes a biannual physical examination, provided the examination is in compliance with the physical qualifications and examination requirements at Subpart E of the Federal Motor Carrier Safety Regulations, 49 CFR §§ 391.41 to 391.50.
- (7) Substitute and activity school bus drivers shall meet all the requirements prescribed for regular bus drivers.
- (8) At a minimum, the chief administrative officer of the local school district or designee of the chief administrative officer shall conduct an annual driving record check of all school bus drivers, including substitute and activity drivers. The Oklahoma State Department of Education shall be immediately notified of any violation(s) that make a school bus driver ineligible to hold an Oklahoma School Bus Driver's Certificate.

(9) The State Board of Education shall revoke the bus driver's certificate of any holder who fails to comply with the provisions of this Section.

(10) School districts who fail to comply with the provisions of this section shall be subject to penalty pursuant to 210:30-5-2.

(b) **School bus driver certificate requirements.**

(1) The chief administrative officer of the local school district or designee of the chief administrative officer shall certify to the State Department of Education that each applicant submitted for Standard Five-Year Certification:

- (A) Is at least 18 years of age;
- (B) Has successfully completed a special school bus drivers' course approved by the State Department of Education;
- (C) Holds a valid Commercial Drivers license (CDL) appropriate for the type of vehicle driven with the proper endorsements required by the Department of Public Safety;
- (D) Has not been convicted of a felony, or pled guilty or nolo contendere to a felony during the last ten years; and
- (E) Has passed a driving record check, and no certificate shall be issued to any person who, within the preceding three (3) years:
 - (i) Has had a license suspended or revoked, canceled or withdrawn pursuant to the Implied Consent Laws at 47 O.S. § 751 et seq.;
 - (ii) Has a conviction for a violation of 47 O.S. § 11-902 which includes driving, operating or being in actual physical control of a vehicle while under the influence of alcohol or any intoxicating drug;
 - (iii) Has been convicted or plead guilty to a violation of 47 O.S. § 761, operating a motor vehicle while impaired by consumption of alcohol;
 - (iv) Has been convicted of any municipal violation of driving under the influence of alcohol or drugs or operating a motor vehicle while impaired or being in actual physical control of a motor vehicle while impaired; or
 - (v) Has had four (4) or more traffic violations (excluding parking violations).

(2) The chief administrative officer of the local school district or designee of the chief administrative officer shall certify to the State Department of Education that the applicant for an Emergency One-Year School Bus Driver Certificate (Not Renewable):

- (A) Is at least 18 years of age;
- (B) Holds a valid Commercial Driver's License with the proper endorsements required by the Department of Public Safety; and
- (C) Has passed a driving record check and meets the requirements set forth in (1)(D)-(E) of this subsection.

(3) Requirements for Renewal of the Standard Five-Year Certificate include:

- (A) Every five (5) years, each driver shall have successfully completed four (4) hours per year of

inservice training approved by the State Department of Education;

(B) The chief administrative officer of the local school district or designee of the chief administrative officer shall certify to the State Department of Education that the applicant meets all requirements for standard certification; [47 O.S. § 15-109]

(C) Each applicant has a health certificate on file signed by a licensed physician, or a nurse or physician assistant who is licensed to practice in ~~this any~~ state within the U.S. and who is working under the supervision of a medical doctor (MD) or doctor of osteopathy (DO), and meets all vision requirements;

(D) Each applicant has not been convicted or pled guilty to a felony in the last ten (10) years;

(E) The applicant's driving record has been checked and meets all other State Board of Education requirements for certification; and

(F) Notwithstanding the provisions of this paragraph, in order to renew any school bus driver certificate which has been expired for more than one year, a driver must successfully complete a renewal course approved by the State Department of Education. Such a course must, at a minimum, include topics on:

- (i) Railroad crossings;
- (ii) Emergency evacuation procedures;
- (iii) Mirror placement;
- (iv) Pick-up and drop-off procedures;
- (v) Sound driving practices; and
- (vi) Accident procedures.

(4) During the period that the application for issuance of a new or renewed school bus driver certificate is pending, applicants must immediately notify the State Department of Education Transportation Section of any arrest, citation, or conviction of any disqualifying offense set forth in (1)(E) of this subsection; any moving violation; or any involvement in a traffic accident.

(c) Certification of drivers with a monocular vision condition.

(1) Individuals who wish to obtain an Oklahoma School Bus Driver's Certificate and meet all other requirements of this Section, but cannot meet the vision requirements in (a)(3) of this Section in both eyes due to the presence of a monocular vision condition, may obtain an exemption from the vision requirements of (a)(3) of this Section by providing evidence showing that Applicant is exempt from the requirements of 49 C.F.R. § 391.41, has fully adapted to the monocular vision condition, and is capable of safely operating a school bus for the purpose of transporting school children. Such evidence must consist of documentation for each one of the following:

(A) Documentation establishing that Applicant's vision condition has been present and unchanged for three years or more prior to the application for an exemption from the vision requirements of (a)(3) of this Section;

(B) Documentation establishing that Applicant has experience in safely operating a Commercial Motor

Vehicle with the monocular vision condition within the three (3) year period immediately preceding the date of the application for an exemption from the vision requirements of (a)(3) of this Section; and

(C) One of the following:

(i) An authority letter issued by the ~~Oklahoma State Department of Public Safety (DPS)~~ Applicant's CDL licensing jurisdiction qualifying the individual as exempt from the vision requirements of 49 C.F.R. § 391.41; or

(ii) A letter or waiver issued by the Federal Motor Carrier Safety Administration (FMCSA) documenting that the applicant has received a waiver from the vision requirements of 49 C.F.R. § 391.41.

(2) Documentation of the evidence required by (1)(A) of this subsection shall consist of documentation for each one of the following:

(A) Applicant must have been examined by a licensed ophthalmologist or optometrist within sixty (60) days prior to obtaining the Commercial Driver License and within one year of applying for the State Department of Education monocular vision exemption. Applicant must provide the State Department of Education a copy of ~~the official documentation of Oklahoma State Department of Public Safety vision form documenting the vision examination from the Applicant's CDL licensing jurisdiction.~~

(B) In addition, if not included on the official ~~Oklahoma State Department of Public Safety~~ documentation of the vision form exam, Applicant must submit additional documentation, in which a licensed ophthalmologist or optometrist identifies and describes:

- (i) The nature of the vision deficiency, including how long the individual has had the deficiency;
- (ii) The date of the examination;
- (iii) Whether the applicant's vision is stable;
- (iv) The visual acuity of each eye, corrected and uncorrected;
- (v) The field of vision of each eye, including central and peripheral fields, testing to at least 120 in the horizontal. (Formal perimetry is required. The doctor must submit the formal perimetry test for each eye and interpret the results in degrees of field of vision.);
- (vi) Whether the applicant has the ability to recognize the colors of traffic control signals and devices showing red, green, and amber; and
- (vii) The ophthalmologist/optometrist's medical opinion as to whether the individual has sufficient vision to perform the driving tasks required to operate a school bus.

(3) Documentation of the evidence required by (1)(B) of this subsection shall consist of each of the following:

(A) Applicant must provide documentation of experience in operating a commercial motor vehicle (as defined by 47 O.S. §§ 1-107.1, 1-107.2, or 1-107.3)

while the Applicant has a monocular vision condition for the three (3) year period immediately preceding the date of this application which includes the following information:

- (i) For any applicant employed as a driver of a commercial motor vehicle, the DOT # or ICC# of Applicant's employer(s); for any applicant with driving experience as an independent motor carrier, a list of names, addresses, and phone numbers of customers for whom Applicant performed transportation services through the operation of a commercial motor vehicle on public highways;
- (ii) A list of all dates (month/date/year) during the three (3) year period for which Applicant performed services driving and/or operating a commercial motor vehicle, and the number of hours driven per week; and
- (iii) A list of all types of commercial motor vehicles operated by Applicant and gross vehicle weight rating ("GVWR") of each vehicle operated by Applicant;
- (B) Acceptable forms of required documentation of the Applicant's driving experience described in (3) of this paragraph may include either:
 - (i) A signed, notarized statement from the individual's present or past employer(s) on company letterhead; or
 - (ii) An affidavit by the Applicant.
- (C) Applicant shall provide the State Department of Education with a Motor Vehicle Report demonstrating that applicant's driving record during the three (3) year period prior to the date the application is filed:
 - (i) Contains no suspensions or revocations of Applicant's driver's license for the operation of any motor vehicle (including Applicant's personal vehicle);
 - (ii) Contains no record of involvement in an accident involving negligence attributable to the monocular vision condition;
 - (iii) Contains no record of a serious traffic offense attributable to the monocular vision condition (e.g., erratic unsafe lane changes, following too closely, etc.)
- (4) Individuals who receive the vision exemption to drive a bus for an accredited school in Oklahoma must submit to their employer a copy of the documentation required by (1)(C) of this subsection.
- (d) **Certification of drivers with insulin-dependent diabetes mellitus.**
 - (1) Any person with diabetes mellitus requiring insulin by injection shall not be eligible for a school bus certificate unless the individual meets all other requirements of (a) and (b) of this Section, and the individual possesses and maintains either:
 - (A) An authority letter issued by ~~the Oklahoma State Department of Public Safety (DPS)~~ Applicant's

CDL licensing jurisdiction qualifying the individual as exempt from the physical requirements of 49 C.F.R. § 391.41; or

- (B) A letter or waiver issued by the Federal Motor Carrier Safety Administration (FMCSA) documenting that the applicant has received a waiver from the physical requirements of 49 C.F.R. § 391.41.
- (2) Upon hire, exempted individuals will be required to agree to and comply with the following conditions:
 - (A) Blood glucose levels shall be self-monitored one (1) hour prior to driving and at least once every four (4) hours while driving a school bus or on duty by using a portable glucose monitoring device with a computerized memory, and take corrective action if necessary;
 - (B) The individual shall maintain blood glucose logs, three months from the current date (or the date that insulin use began, whichever is shorter).
 - (i) If the employing district has cause to require a medical evaluation as authorized by (5) of this subsection, logs maintained pursuant to this subsection must be provided to the ~~Oklahoma~~ board certified medical doctor (MD) or doctor of osteopathy (DO) treating the individual.
 - (ii) Blood glucose logs must be created by an electronic blood glucose meter that stores every reading, records date and time of reading, and from which data can be downloaded and printed.
 - (C) The individual shall carry a source of rapidly absorbable glucose at all times while operating a school bus; and
 - (D) The individual shall meet the annual physical examination requirements for drivers with metabolic diseases set forth by the Department of Public Safety in OAC 595:10-5.
 - (E) The individual shall notify the Department of Public Safety and the State Department of Education of any changes in physical or mental ailments or conditions which may cause loss of control or partial control or may otherwise render the individual incapable of properly controlling a school bus.
- (3) Superintendents or their designees who hire individuals who hold a diabetes exemption certification must keep on file in a separate medical record:
 - (A) A current copy of the diabetes exemption certificate of the individual;
 - (B) The contact information of the board certified medical doctor (MD) or doctor of osteopathy (DO) who is treating the individual;
 - (C) Record of the annual medical certification issued by the board certified medical doctor (MD) or doctor of osteopathy (DO) pursuant to (1)(B) of this subsection; and
 - (D) Copies of any medical certifications obtained pursuant to (5) of this subsection.
- (4) An individual holding a diabetes exemption certificate shall immediately notify the superintendent (or the superintendent's designee) of the school district in which

the individual is employed if the individual's blood glucose level is outside of a range of 100 mg/dl to 400 mg/dl one (1) hour prior to driving. Upon receipt of such notice, the superintendent or the superintendent's designee shall not allow the individual holding the diabetes exemption certificate to drive. If the individual's blood glucose level is below 100 mg/dl or above 400 mg/dl, then the driver cannot operate a school bus or transport school children as an employee of any school district until the blood glucose measure is within the target range.

(5) In the event an individual holding a diabetes exemption is involved in an incident directly caused by the individual's diabetic condition, the individual cannot operate a school bus or transport school children as an employee of any school district until the individual has been certified in writing as medically able to safely resume work related duties by the certified medical doctor (MD) or doctor of osteopathy (DO) by whom they are being treated.

[OAR Docket #20-725; filed 7-27-20]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

[OAR Docket #20-726]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 23. Honor Societies

210:35-23-2. Oklahoma middle, junior high, or high school Honor Society

[AMENDED]

AUTHORITY:

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

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 9, 2019

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Approved by Governor's declaration on June 25, 2020

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rule that authorizes public schools to organize Honor Societies, and lays out requirements for student eligibility, has been amended to provide

further guidance to schools. A provision has been added to clarify that a school may establish a policy for determining the top ten percent (10%) of enrolled students eligible for Honor Society membership in the event of a tie in Grade Point Average (GPA). The rule as amended also provides that in the event of a tie in the top 10% of students as ranked by GPA in a school that has not established a "tiebreaker" policy, all students tied for the eligible GPA shall be nominated for membership.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 23. HONOR SOCIETIES

210:35-23-2. Oklahoma middle, junior high, or high school Honor Society

Rules and regulations which apply to Oklahoma middle, junior high, or high school Honor Society are:

(1) The organization shall be known as either the Oklahoma Middle, Junior High or High School Honor Society.

(2) The purpose of this society shall be to promote high standards of scholarship among the students in the schools of Oklahoma.

(3) Every accredited middle, junior high or high school in the state is eligible to organize a local chapter of the society.

(4) Each chapter shall take the name of the local school. The full name of the local organization shall be (Name of School) Chapter, Oklahoma (Middle, Junior High, or High School) Honor Society."

(5) Ten percent (10%) of the middle, junior high, or high school enrollment, whichever is applicable, will be eligible for membership. Only those students enrolled in grades included in the school are eligible for membership.

(6) The ten percent (10%) of the student body making the highest average marks in the school may be nominated.

(7) Forms to be used in listing students that have been nominated for membership will be sent to the local school authorities prior to February 1 of each year. Membership will be based upon work done during the first semester of the current year and the second semester in the preceding year. The standing of students enrolled in the first year of a particular organizational level will be based on the work done during the first semester of the current year.

(8) The local chapter may be organized as soon as nominations are made. Nominations should be approved by the local school officials not later than March 15 of each year. A list of students nominated should be sent to the State Department of Education, Office of Accreditation Section, on forms furnished for that purpose. A certificate of membership for each person approved will be sent to the local school authorities. These certificates will be

distributed in time for closing exercises of the school in the spring.

(9) At the time the certificates are presented, there should be appropriate ceremonial exercises. This is usually done in connection with the commencement program or special awards assembly.

(10) The local school officials shall have authority to make additional rules pertaining to school attendance, deportment, and student activities. A school district or charter school that organizes an Honor Society may establish a policy for determining eligibility for membership based on such additional factors in the event that Grade Point Average (GPA) alone cannot be used to identify ten percent (10%) of the student population for eligibility. Such factors may only include those conditions and activities that are available to all students in the school, such as attendance and participation in school-sponsored extracurricular activities. If a school has not established a policy for identifying the highest performing ten percent (10%) of students in the event of a tie in GPA among two or more students, all students tied for the eligible GPA shall be nominated for membership.

[OAR Docket #20-726; filed 7-27-20]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 40. GRANTS AND PROGRAMS-IN-AID

[OAR Docket #20-727]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 87. Charter Schools

210:40-87-7. Charter school contracts [AMENDED]

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 3-137

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

February 7, 2020

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

New provisions have been added to the rule addressing charter school contracts, outlining contracting requirements for charter schools sponsored by the State Board of Education. The contracting requirements incorporated

into the rule for charter schools sponsored by the State Board of Education substantially align with the contracting requirements for statewide virtual charter schools sponsored by the Statewide Virtual Charter School Board (SVCSB).

CONTACT PERSON:

Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 87. CHARTER SCHOOLS

210:40-87-7. Charter school contracts

(a) **Contract requirement.** The sponsor of a charter school must enter into a written contract with the governing body of the charter school. The initial contract for sponsorship shall be for a period of five (5) years. The contract must meet all statutory requirements listed in 70 O.S. § 3-135(A). A charter contract may provide for one or more schools by the same applicant, to the extent approved by the sponsor and consistent with applicable law. An applicant or the governing board of an applicant may hold one or more charter contracts. Each charter school that is part of a charter contract shall be separate and distinct from any other charter school under the same charter contract, and the sponsor shall evaluate each charter school's performance separately.

(b) **Written procedure for consideration, approval, and disapproval.** Sponsors shall establish a written procedure and criteria for accepting, approving, and disapproving charter school applications in accordance with 70 O.S. § 3-134(E). A copy of this procedure and criteria shall be made available on request to charter school applicants, potential applicants, and members of the public.

(c) **Performance provisions.** Each charter contract shall contain performance provisions based on a performance framework that sets forth the academic and operational performance indicators, measures, and metrics that will guide the sponsor's evaluations of the charter school. The sponsor shall not request any metric or data from a charter school that it does not produce or publish for all school sites in the district or under its sponsorship, unless the metric or data is unique to the charter school. To avoid duplication of administrative efforts, the sponsor shall require that data submitted under the performance provisions must be submitted by the charter school in the exact format required for submission of data to the Oklahoma State Department of Education (OSDE). Alternately, a sponsor may allow a charter school to provide permission to OSDE to share data required by the performance framework with the sponsor of the school. The performance framework must include measures that indicate, at a minimum:

- (1) Student academic proficiency;
- (2) Student academic growth;

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- (3) Achievement gaps in both proficiency and growth among major student subgroups;
 - (4) Student attendance;
 - (5) Recurrent enrollment from year to year as determined by the methodology used for public schools in Oklahoma;
 - (6) In the case of high schools, graduation rates as determined by the methodology used for public schools in Oklahoma;
 - (7) In the case of high schools, postsecondary readiness;
 - (8) Financial performance and sustainability; and
 - (9) Governing board performance and stewardship, including compliance with all applicable laws, regulations, and terms of the charter contract.
- (d) **Copies of all modified contracts to be sent to State Department of Education.** A charter school must provide the OSDE Office of Accreditation with a copy of any modified contract within thirty (30) calendar days of execution. The requirement to send a copy of any modified charter contract to the OSDE Office of Accreditation applies to any change in terms, not only to changes that could potentially affect state funding.
- (e) **Contracts for charter schools sponsored by the State Board of Education.** Contracts for sponsorship between the State Board of Education and the governing body of a charter school sponsored pursuant to a successful appeal authorized under 70 O.S. § 3-132(A)(9) shall include terms that meet all of the following requirements:
- (1) The contract shall incorporate the provisions of the charter of the school in accordance with the requirements of 70 O.S. § 3-135, and the charter shall comply with the provisions of 70 O.S. § 3-136.
 - (2) The contract shall contain terms addressing all of the requirements set forth in 70 O.S. § 3-135.
 - (3) The contract shall contain terms setting forth measurable goals and objectives for student performance.
 - (4) The contract shall contain terms specifying standards for fiscal accounting and management that ensure the compliance of the charter school with all applicable provisions of state and federal statutes and regulations pertaining to requests for appropriations and recording and reporting receipt and expenditures of public funds, including, but not limited to:
 - (A) Terms providing that the charter school shall conduct annual financial audits in accordance with the requirements of the Oklahoma Public School Audit Law;
 - (B) Terms providing that the charter school shall comply with all State Department of Education deadlines necessary for budgeting, calculation of appropriations and/or disbursements of state aid and/or federal aid;
 - (C) Terms providing that the charter school shall comply with all deadlines for recording and reporting of state aid revenue and expenditures;

- (D) Terms providing that the charter school shall comply with all requirements of the Oklahoma Cost Accounting System (OCAS);
 - (E) Terms providing that the charter school shall comply with all provisions of the School District Transparency Act at 70 O.S. § 5-135.4;
 - (F) Terms providing that the charter school will provide any and all records of the school including, but not limited to, financial records upon request by the sponsor;
 - (G) Terms providing that the charter school will provide any and all school records including, but not limited to, financial records from education service providers upon request by the sponsor;
 - (H) Terms providing that the school is subject to requests for audit by the State Auditor's office;
 - (I) Terms providing that the charter school shall adopt a viable conflict of interest policy and a code of ethics;
 - (J) Terms providing that the charter school submit at least three data-driven goals and measurement criteria, including one non-academic goal, and included in the Performance Framework.
- (5) The policies and procedures governing administration and operation of the charter school shall be incorporated into the terms of the contract.
 - (6) The term of the initial contract shall be effective for five (5) years from the first day of operation in accordance with the provisions of 70 O.S. § 3-137. 3
 - (7) The term of the contract shall designate at least one contact name and address of record of the governing body of the charter school to which all notices required by the terms of the contract and/or this Section shall be served, including the name, title, mailing address, email address, and phone number of all individual(s) authorized to receive service of notices required by this Section and pursuant to the terms of the contract.
 - (8) The contract shall contain any other terms necessary to ensure compliance with applicable provisions of state and/or federal law.

[OAR Docket #20-727; filed 7-27-20]

TITLE 218. OFFICE OF EDUCATIONAL QUALITY AND ACCOUNTABILITY

CHAPTER 10. EDUCATIONAL QUALITY

[OAR Docket #20-478]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Educator Preparation Program Accreditation

218:10-5-3 [AMENDED]

Subchapter 7. Educator Assessment Regulations

218:10-7-1 [AMENDED]

AUTHORITY:

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

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Approved by Governor's declaration on June 25, 2020

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September 11, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Adopted rules reflect changes in educator preparation accreditation requirements and allows for teacher candidates to substitute an approved assessment of general knowledge score in place of a passing score on the Oklahoman General Education Test (OGET).

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 5. EDUCATOR PREPARATION PROGRAM ACCREDITATION**218:10-5-3. Specific state requirements for program accreditation**

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

(1) Membership on the educator preparation governing unit shall be defined by written policy to include:

(A) A majority of the members who have a minimum of three years teaching experience in public schools;

(B) A majority of the members in the governance unit who are currently teacher education faculty members;

(C) Some faculty members who shall represent the arts and sciences;

(D) A designated director of educator preparation defined as the institution's official representative for educator preparation. The authority and responsibilities of this individual shall be clearly defined in written policies; and

(E) A clearly defined process whereby faculty members and administrators become members and the terms of office.

(2) The responsibilities of the educator preparation governing unit shall be defined by written policy to include:

(A) Responsibilities of the officers of the unit;

(B) Responsibilities of the unit's standing committees; and

(C) Responsibilities in the following areas as they are related to educator preparation:

(i) Admission/retention in educator preparation;

(ii) Field experience and student teaching (admission and placement);

(iii) Development of courses and program curricula; and program review, evaluation and planning.

(3) Program review, evaluation and revision responsibilities include:

(A) The governance unit shall conduct at least one systematic review, evaluation, and when appropriate, revision of all educator preparation programs within each accreditation period;

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

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

(i) Educator preparation faculty and arts and science faculty;

(ii) Graduates of the programs;

(iii) Students currently in the program;

(iv) Teachers and administrators from the public schools;

(v) Parents of P-12 students and business and community leaders who are actively involved in assisting P-12 schools.

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

(A) A clearly defined budget-making process for all teacher education programs; and

(B) An analysis showing that the institution's financial support for programs in educator preparation are maintained at a level appropriate for a professional preparation program.

(b) Educator preparation faculty workload policies, including class-size and online course delivery, should allow faculty

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members to be effectively engaged in teaching, scholarship, assessment, advisement, collaborative work in P-12 schools, and service. Faculty loads for teaching on campus and online generally do not exceed 12 hours for undergraduate teaching and nine hours for graduate teaching per semester or the equivalent. Supervision of clinical practice does not generally exceed 18 candidates for each full-time equivalent faculty member per semester or the equivalent.

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

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

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

(2) The conceptual framework shall consist of:

(A) The program's philosophy, purposes, professional commitments and dispositions;

(B) A knowledge base that provides the foundation for the framework;

(C) Performance expectations for candidates that align with professional, state and institutional standards; and

(D) A system by which candidate performance is regularly assessed.

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

(1) The institution shall establish a process which seeks information and program input from educator preparation faculty; faculty from arts and sciences and other programs and disciplines which are appropriate; candidates within the educator preparation program; teachers, administrators, parents, guardians or custodians of students; and business and community leaders.

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

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

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

(5) Annual reviews and reports indicating program changes.

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

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

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

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

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

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

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

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

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

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

(10) Early childhood, elementary education and special education candidates; training includes research-based instructional strategies for instruction, assessment and intervention for literacy development for all students, including advanced readers, typically developing readers and struggling readers who are coping with a range of challenges, including, but not limited to, English learners and learners with handicapping conditions and learning disabilities (including dyslexia).

(11) Teacher candidates must complete the equivalent of twelve (12) weeks of student teaching and have a minimum of 60 hours of diverse field experiences prior to their student teaching internship.

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

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

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

- (15) Teacher candidates are provided with opportunities to have parental, family and community involvement within their pre-service programs.
- (16) The unit establishes and publishes a set of criteria/competencies for exit from each professional education program. These criteria/competencies reflect the Oklahoma Department of Education General Teacher Competencies and/or subject matter competencies outlined in the CAEP national (professional) learned societies' standards.
- (17) The unit establishes and publishes the criteria/competencies for exit and satisfactory completion adhering to all rules and regulations established by the Oklahoma State Department of Education.
- (18) A candidate's mastery of a program's stated exit criteria or competencies is assessed through the use of multiple sources of data such as culminating experience, portfolios, interviews, videotaped and observed performance in schools, standardized tests and course grades.
- (19) Effective September 1, 2015 mentor teachers are required to have minimum of three years of teaching experience in the area in which they are certified.
- (g) The following guidelines are to be used to facilitate the professional learning of faculty: Teacher education faculty continue their professional learning during their tenure at an institution of higher education to ensure that the future teachers of Oklahoma are taught by professional educators fully trained in their areas of expertise. Professional development for teacher educators and arts and sciences faculty should be focused on the faculty members' ability to model such effective teaching strategies as inquiry, group discussions and collaborative learning.
- (h) The following policies are to be used to evaluate individual program areas at each institution:
- (1) The institution shall submit program reviews for each required program area based upon the CAEP and/or State policies, guidelines and accreditation schedule.
 - (i) Gifted Education and Elementary Math Specialist programs, requiring no more than eighteen hours of graduate level coursework, designed as endorsement programs for certified educators are submitted to OEQA for process approval.

SUBCHAPTER 7. EDUCATOR ASSESSMENT REGULATIONS

218:10-7-1. Educator assessment regulations

- (a) **Examinees - initial licensure and certification.**
- (1) Any individual who applies for a teaching license/certification must successfully complete the competency examination as defined by the OEQA. The competency examination is made up of three components: The Oklahoma General Education Test (OGET) or an approved assessment of general knowledge, the Oklahoma Subject Area Test (OSAT) and the Oklahoma Professional

Teaching Exam (OPTE) or an approved performance assessment measuring professional knowledge and skills.

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

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

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

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

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

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

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

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

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

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

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

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

[OAR Docket #20-478; filed 6-26-20]

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

[OAR Docket #20-625]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Records and Inspections

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

AUTHORITY:

Oklahoma Employment Security Commission; 40 O.S. §§4-302, 4-310.1, and 4-508.

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

This rule is being amended due to an amendment made by the legislature to the governing statute, 40 O.S. §4-508(C). The amendment is being made at subparagraph (b)(18) and changes the name of the Wage Record Interchange System to the State Wage Interchange System.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 3. RECORDS AND INSPECTIONS

240:1-3-9. Release of confidential information to specific government agencies

(a) Pursuant to 40 O.S. § 4-508(C), the government agencies, public entities and political subdivisions specified in part (b) of this rule may obtain confidential information maintained by the Oklahoma Employment Security Commission after entering into an agreement with the Oklahoma Employment Security Commission that sets out the purpose the information will be used for, how the information will be transmitted, and how the information will be safe guarded. All costs involved

in providing information to government agencies, public entities, or political subdivisions will be set out in the agreement. The information shall be held confidential by the receiving government agency, public entity or political subdivision at all times and shall not be disclosed or open to public inspection. It shall be allowable for the receiving government agency, public entity or political subdivision to release aggregated data.

(b) Government agencies authorized to obtain confidential information from the Oklahoma Employment Security are:

(1) The Oklahoma Department of Commerce, to accomplish specific goals, missions or tasks of the agency as determined by the Oklahoma Legislature;

(2) The Oklahoma Department of Transportation for use in federally mandated regional transportation planning, which is performed as a part of its official duties;

(3) The Oklahoma State Treasurer's office to verify or evaluate the effectiveness of the Oklahoma Small Business Linked Deposit Program on job creation;

(4) The Oklahoma Attorney General for use in investigation of workers' compensation fraud, insurance fraud and health care fraud;

(5) The Oklahoma Department of Labor for use in investigation of workers' compensation fraud;

(6) The Oklahoma Workers' Compensation Commission for use in investigation of workers' compensation fraud;

(7) The Oklahoma Insurance Department for use in investigation of workers' compensation fraud, insurance fraud and health care fraud;

(8) The Oklahoma State Bureau of Investigation for use in the investigation of insurance fraud and health care fraud;

(9) Any Oklahoma state, Oklahoma county or Oklahoma municipal law enforcement agency for use in criminal investigations and the location of missing persons or fugitives from justice;

(10) The Center of International Trade of Oklahoma State University for the development of international trade for employers doing business in the State of Oklahoma;

(11) The Oklahoma State Regents for Higher Education for use in the default prevention efforts and/or collection of defaulted student loans guaranteed by the Oklahoma Guaranteed Student Loan Program;

(12) The Center for Economic and Management Research of the University of Oklahoma to identify economic trends;

(13) The Center for Economic and Business Development at Southwestern Oklahoma State University to identify economic trends;

(14) The Office of Management and Enterprise Services to identify economic trends;

(15) The Department of Mental Health and Substance Abuse Services to evaluate the effectiveness of mental health and substance abuse treatment and state or local programs utilized to divert persons from inpatient treatment;

(16) Public housing agencies for purposes of determining eligibility pursuant to 42 U.S.C., Section 503(I);

- (17) An agency of this state or its political subdivisions that operates a program or activity designated as a required partner in the Workforce Innovation and Opportunity Act One-Stop delivery system pursuant to 29 U.S.C.A., Section 3151(b)(1), based on a showing of need made to the Commission;
- (18) The national ~~State Wage Record~~-Interchange System, at the discretion of the Commission;
- (19) The Bureau of the Census of the U.S. Department of Commerce for the purpose of economic and statistical research;
- (20) The Oklahoma Health Care Authority for use in determining eligibility for subsidies for health insurance premiums for qualified employers, employees, self-employed persons, and unemployed persons; or
- (21) The Oklahoma State Department of Rehabilitation Services for use in assessing results and outcomes of clients served.
- (22) The Office of Juvenile Affairs for use in assessing results and outcomes of clients served as well as the effectiveness of state and local juvenile and justice programs including prevention and treatment programs.
- (23) Any county Public Defender's office in the state of Oklahoma and the Oklahoma Indigent Defense System for the purpose of determining financial eligibility for the services provided by these entities.

[OAR Docket #20-625; filed 7-15-20]

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

[OAR Docket #20-626]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
- 240:10-1-2. Definitions [AMENDED]
- 240:10-1-7. Independent Contractors/Employees - 20 Factor Test [NEW]
- Subchapter 3. Benefits
- Part 1. General Provisions
- 240:10-3-3. Cancellation of a Benefit Claim [NEW]
- Part 5. Eligibility
- 240:10-3-21. Educational institutions - between academic terms [AMENDED]
- Subchapter 5. Contributions
- Part 19. Maintenance and Production of Work Records
- 240:10-5-90. Records [AMENDED]
- 240:10-5-91. Employer's Quarterly Contribution Wage Reports [AMENDED]

AUTHORITY:

Oklahoma Employment Security Commission; 40 O.S. §§4-302, 1-210(14), 3-102, 4-310.1, 4-503, and 4-508.

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GIST/ANALYSIS:

Due to the passage of House Bill 1095 in the 2019 legislative session, the definition of "independent contractor" is being deleted from this rule.

240:10-1-7. Independent Contractors/Employees - 20 Factor Test. This is a new rule being proposed in response to the amendment of 40 O.S. §1-210(14) by House Bill 1095 in the 2019 legislative session. The amendments to the statute stated that independent contractor determinations would be made by using the 20 Factor Test set out in Internal Revenue Ruling 87-41. This revenue ruling has been replaced in Internal Revenue Service regulations by another classification system and Revenue Ruling 87-41 no longer appears in the Internal Revenue Service website. The only place where an accurate copy of Revenue Ruling 87-41 can be found is in the archives of George Mason University. This archive will be difficult for employers, claimants, and OESC staff to find. In order to assist those wishing to reference the "20 Factor Test" the relevant provisions of Revenue Ruling 87-41 have been reproduced, word for word, within this rule. This will make it much easier for all parties to research and use the provisions of Revenue Ruling 87-41.

240:10-3-3. Cancellation of a Benefit Claim. This is a new rule that sets out the process a claimant may use to cancel an unemployment benefit claim and the reasons for which a claim may be cancelled. The cancellation of benefits claims has been done through policy guidelines for many years. OESC staff feels that this procedure carries with it extensive consequences for the claimant and employer. Procedures of this type should be in the rules of the agency instead of merely in policy.

240:10-3-21. Educational institutions - between academic terms. In the 2019 legislative session, SB 988 repealed the statute pertaining to educational service contractors at 40 O.S. §2-209.1. The references to section 2-209.1 and educational service contractors must now be removed from this rule. The proposed amendment will make these deletions. No other changes are proposed for this rule.

240:10-5-90. Records. This rule is being amended at subsection (11) to clarify the records that must be kept by an employer for each employee.

240:10-5-91. Employer's Quarterly Contribution Wage Reports. The amendment to this rule will add a new subsection (e) to the rule that will require all employers and third-party administrators to pay taxes on or before the last day of the month following the quarter to which the taxes relate through electronic fund transfer or credit card. This will make the OESC tax process more efficient and will allow for more automation which will then allow OESC to reduce its personnel costs for tax collections. It will also reduce the need for armored car carriers to transport checks and cash for bank deposits. The rule provides that the Commission may grant an exception to an employer or third-party administrator if a payment by cash or check becomes necessary.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

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240:10-1-2. Definitions

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

"Commuting distance" means an automobile driving distance of fifty (50) miles from a claimant's place of residence.

"Full-time work" means employment in thirty-two (32) or more hours of work per week.

"Good cause" means reasons beyond the control of the party seeking relief.

"Independent contractor" means:

(A) ~~Any person who performs services according to their own methods and without control except as to results is an independent contractor, if they are:~~

- ~~(i) Customarily engaged in an independently established business; or~~
- ~~(ii) Performing service outside the usual course of the contractor's business and outside the places of such business.~~

(B) ~~In order to be considered "without control" the individual providing the service shall:~~

- ~~(i) Provide their own tools and equipment;~~
- ~~(ii) Pay their own ordinary and customary business expenses;~~
- ~~(iii) Risk losing money from the contract;~~
- ~~(iv) Be free to hire their own assistants; and~~
- ~~(v) Be responsible for obtaining and maintaining all business, tax registrations and all business occupational licenses required by federal, state, or local laws or ordinances.~~

(C) ~~A written contract relating to such services shall be considered under 40 O.S. Section 1-210 (14), along with all other pertinent evidence in determining employment status and shall not be accorded any greater weight than any other evidence.~~

(D) ~~This definition shall not be interpreted or construed as conflicting with Section 3304 (a) (6) (a) of the Federal Unemployment Tax Act.~~

"Interested Party" means:

(A) In an unemployment claim appeal - the Commission, a claimant who files a claim for unemployment benefits with the Commission, and any employer who properly files a written objection to the claim pursuant to 40 O.S. § 2-503 (E) and 2-507.

(B) In an unemployment tax protest - the Commission and the employer with an account that is directly affected by a decision made by the Commission or its representative.

(C) In a supplemental unemployment benefit plan appeal - the Commission, the employer that made application for approval of the plan, and the collective bargaining agent of the employees, if any exists.

"Leases" and "Rents" means a contract between an owner of a business, building, or property and a leasee, in which:

(A) Space is leased, sublet, or rented for the purpose of operating or conducting a trade or business by the leasee;

(B) The lease or rental fee is set at a fixed amount per month, that remains constant for the term of the lease, sublease, or rental contract; and

(C) Is not based upon a percentage of income or revenue earned in the trade or business.

"Mail", "Mailed", and "Mailing", as used in 40 O.S. §1-224, shall mean the mailing of a document through the United States Postal Service or a private delivery service designated by the United States Secretary of the Treasury pursuant to 26 U.S.C. ~~§7520(f)~~ §7502(f), as a delivery service that may deliver returns, claims, statements, or other documents to the Internal Revenue Service.

"Part-time work" means employment of less than thirty-two (32) hours of work in a week.

"Reasonable cash value" [40:1-218] means an amount estimated and determined by consideration of the position held, type of work performed, duration of the work, and customary compensation of like providers in like industries.

"Reemployment Services" means those services which provide job search assistance and job placement services, which are counseling, testing, and providing occupational and labor market information, assessment, job search workshops, job clubs and referrals to employers, and other similar services.

"RESEA" means Re-Employment Services and Eligibility Assessment.

"RESEA Selection" means:

(A) A systematic computer generated process that:

- (i) Identifies those claimants most likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment;
- (ii) Refers identified claimants to reemployment services; and
- (iii) Collects follow-up information relating to the services received.

(B) Data elements which may be used in the identification process for RESEA selection are:

- (i) Recall status;
- (ii) Union hiring hall agreement;
- (iii) Education;
- (iv) Job tenure;
- (v) Industry;
- (vi) Occupation;
- (vii) Unemployment rate;
- (viii) Number of prior UI claims; and
- (ix) Maximum weekly benefit amount.

(C) Data elements prohibited for usage in RESEA selection are:

- (i) Age;
- (ii) Race or ethnic group;
- (iii) Sex;
- (iv) Color;
- (v) National origin;
- (vi) Disability;
- (vii) Religion;
- (viii) Political affiliation; and
- (ix) Citizenship.

"Temporary Layoff" means a short term cessation of work or employment in which the employer maintains an attachment to an employee by means of a recall date. A temporary layoff may be requested by an employer for no more than eight (8) weeks in any benefit year. A request for a temporary layoff must be made by the employer to the Commission in writing and must include a specific recall date within eight (8) weeks of the cessation of work or employment. The employer may apply to the Commission for an extension of the recall date. The extension shall not exceed four (4) additional weeks in the benefit year.

"Temporary Layoff-Federal" means a short-term cessation of work or employment in cases involving a federal agency or federal contractor with employees who have agreed to refrain from seeking employment elsewhere as part of their terms of employment when work is ceased due to the needs of the federal government, and the federal employer or federal contractor maintains an attachment to an employee by means of its contract of employment. In these cases, a recall date will not be required. The provisions of 40 O.S. §2-105.1 on reimbursed pay or back pay shall apply to this type of temporary layoff.

"Wages"

(A) **"Gratuities"** or **"Tips"** The employer shall include as wages all monies paid as gratuities or tips received by an individual in the course of his or her work pursuant to 40 O.S. Section 1-218 or, if actual information is not available, gratuities and tips shall be allocated to the employer in the amount of 8% of gross receipts.

(B) **"Noncash remuneration"** Noncash remuneration means meals, lodging or any other payment in kind received by a worker from the employing unit in addition to or in lieu of cash payments for services except for meals and lodging that are furnished on the business premises of the employer for the convenience of the employer pursuant to 40 O.S. Section 1-218(6).

"Wages paid"

(A) The term "wages paid", as defined in 40 O.S. Section 1-219, shall include both wages actually received by the worker and wages constructively paid. Wages shall be considered constructively paid when they are credited to the account of or set apart for a worker so that they may be drawn upon by the worker at any time although not then actually in the worker's possession. A mere crediting of the wages to the worker's account, without actually making them available to the worker so that they may be drawn upon by him/her at any time, does not constitute constructive payment.

(B) In the case of an employer who terminates his/her coverage as of January 1st of some year, the term "wages paid" shall include all wages earned for all pay periods up to and including the last payroll period ending in that year, at the end of which, the employer's coverage is terminated.

(C) "Wages paid" to the worker are to be reported in the calendar quarter in which they were actually paid.

"Week" For the purpose of paying benefits and for the purpose of this Chapter, a "week" as defined in 40 O.S. §1-220 shall consist of a calendar week which begins at 12:01 A.M. Sunday and ends at midnight the following Saturday.

"Working day" means:

(A) For employers, any day the employer is open and conducting its regular business activities.

(B) For claimants, any day the claimant's employer or former employer scheduled the claimant to work and the claimant was present and working at his or her assigned activities for part or all of the scheduled work hours for that day.

240:10-1-7. Independent Contractors/Employees - 20 Factor Test

Independent contractors are not subject to the control of an employer. Employees are subject to the control of an employer. The issue in a worker classification case is, "whether sufficient control is present to establish an employer-employee relationship" in a particular situation. The existence of an employer's control of an individual, or lack thereof, shall be decided using the twenty-factor test used by the Internal Revenue Service of the United States Department of Treasury in Revenue Ruling 87-41, 1987-1 C.B. 296.

(1) The twenty factors set out in Revenue Ruling 87-41 are as follows:

(A) **Instructions.** A worker who is required to comply with other persons' instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions.

(B) **Training.** Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner.

(C) **Integration.** Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

(D) **Services Rendered Personally.** If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.

(E) **Hiring, Supervising, and Paying Assistants.** If the person or persons for whom the services are performed hire, supervise, and pay assistants, that factor generally shows control over the workers on the job.

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However, if one worker hires, supervises, and pays the other assistants pursuant to a contract under which the worker agrees to provide materials and labor and under which the worker is responsible only for the attainment of a result, this factor indicates an independent contractor status.

(F) **Continuing Relationship.** A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals.

(G) **Set Hours of Work.** The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control.

(H) **Full Time Required.** If the worker must devote substantially full time to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time the worker spends working and impliedly restrict the worker from doing other gainful work. An independent contractor, on the other hand, is free to work when and for whom he or she chooses.

(I) **Doing Work on Employer's Premises.** If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required.

(J) **Order or Sequence Set.** If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own pattern of work but must follow the established routines and schedules of the person or persons for whom the services are performed. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. It is sufficient to show control, however, if such person or persons retain the right to do so.

(K) **Oral or Written Reports.** A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control.

(L) **Payment by Hour, Week, Month.** Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. Payment made by the job or on a straight commission generally indicates that the worker is an independent contractor.

(M) **Payment of Business and/or Traveling Expenses.** If the person or persons for whom the services are performed ordinarily pay the worker's business and/or traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities.

(N) **Furnishing of Tools and Materials.** The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

(O) **Significant Investment.** If the worker invests in facilities that are used by the worker in performing services and are not typically maintained by employees (such as the maintenance of an office rented at fair value from an unrelated party), that factor tends to indicate that the worker is an independent contractor. On the other hand, lack of investment in facilities indicates dependence on the person or persons for whom the services are performed for such facilities and, accordingly, the existence of an employer-employee relationship. Special scrutiny is required with respect to certain types of facilities, such as home offices.

(P) **Realization of Profit or Loss.** A worker who can realize a profit or suffer a loss as a result of the worker's services (in addition to the profit or loss ordinarily realized by employees) is generally an independent contractor, but the worker who cannot is an employee. For example, if the worker is subject to a real risk of economic loss due to significant investments or a bona fide liability for expenses, such as salary payments to unrelated employees, that factor indicates that the worker is an independent contractor. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and thus does not constitute a sufficient economic risk to support treatment as an independent contractor.

(Q) **Working for More Than One Firm at a Time.** If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. However, a worker who performs services for more than one person may be an employee of each of the persons, especially where such persons are part of the same service arrangement.

(R) **Making Service Available to General Public.** The fact that a worker makes his or her services

available to the general public on a regular and consistent basis indicates an independent contractor relationship.

(S) **Right to Discharge.** The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications.

(T) **Right to Terminate.** If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

(2) Revenue Ruling 87-41 states that the degree of importance of each factor in subparagraph (a) varies depending on the occupation and the factual context in which the services are performed. The twenty factors in subparagraph (a) are designed only as guides for determining whether an individual is an employee; special scrutiny is required in applying the twenty factors to assure that formalistic aspects of an arrangement designed to achieve a particular status do not obscure the substance of the arrangement; that is, whether the person or persons for whom the services are performed exercise sufficient control over the individual for the individual to be classified as an employee.

(3) Revenue Ruling 87-41 states that when making a classification determination using the twenty factors set out in subparagraph (a), the relationship of employer and employee exists when the person or persons for whom the services are performed have the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but as to how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so.

SUBCHAPTER 3. BENEFITS

PART 1. GENERAL PROVISIONS

240:10-3-3. Cancellation of a benefit claim

(a) After the filing of an initial claim for unemployment benefits, the claimant may cancel the claim up to the point of issuing the first unemployment benefit payment, except for claims cancelled under subparagraph (c)(1).

(b) In order to cancel a claim, the claimant shall submit a request to cancel the claim in writing to the Commission. The

claimant must certify that the cancellation of the claim was not induced by duress, coercion, or the promise of the payment of money or other consideration by a third party.

(c) Claims can be cancelled for the following reasons:

(1) Where a claimant has base period wages in another state and can be awarded a higher benefit amount in the other state.

(2) Claims filed as a result of incorrect information given by a Commission representative.

(3) Claims filed when the claimant was not unemployed.

(4) When cancelling a claim is warranted to provide fundamental fairness to the claimant.

(d) The separating employer shall be notified of the cancellation of the claim.

(e) The Commission may deny the request for cancellation of the claim if the Commission determines that the request was submitted as a result of duress, coercion, or an agreement with a third party to pay money or other consideration, or if the Commission believes the request is part of a fraud scheme or would interfere with the proper administration of the Employment Security Act of 1980.

PART 5. ELIGIBILITY

240:10-3-21. Educational institutions - between academic terms

Pursuant to 40 O.S. §2-209 and 26 U.S.C.A. §3304(a)(6)(A) or 40 O.S. §2-209.1, benefits based on service and employment defined in 40 O.S. §1-210(3) or (4) or for an education service contractor shall be payable on the same terms and conditions as benefits payable on the basis of other service subject to the Employment Security Act of 1980, except that individuals providing services to an educational institution shall not be paid benefits based on services to the educational institution for any week of unemployment commencing during the period between two successive academic years or terms, if the individual performs services in the first academic year or term and there is a contract or a reasonable assurance that the individual will perform services for the educational institution in the second academic year or term. A determination of the denial of benefits between an academic year or term shall be made based on the following subsections of this rule:

(1) Prerequisites. Before making a determination concerning the existence of a contract or reasonable assurance of employment in the following academic year or term, the Commission representative must find that three prerequisites exist. If any one of the three prerequisites is not met, unemployment benefits must be allowed. The three prerequisites are:

(A) An offer of employment. The offer may be written, oral or implied. The offer must be genuine and made by an individual with authority to offer the employment.

(B) The employment offered in the following academic year or term must be in the same capacity as that of the previous academic year or term.

(C) The economic conditions of the job offered in the following academic year or term may not be considerably less than the conditions present in the previous academic year or term. If the claimant is offered a salary or wage for the following academic year or term that is less than 90% of the salary or wage paid in the previous academic year or term, this shall be considered economic conditions that are considerably less from the previous to the following academic year or term.

(2) The term "contract" means an enforceable, non-contingent agreement that provides for compensation: (i) for an entire academic year; or (ii) on an annual basis, though the contract terms describing compensation are not expressed as an annual salary.

(3) The term "reasonable assurance" means that there is a high probability that employment will be available based on the totality of circumstances and contingent nature of the offer made to the claimant. The following rules apply in making the determination:

(A) If the offer of employment contains a contingency, the Commission representative must determine if the contingency is within the employer's control or not in the employer's control. If the offer of employment is contingent upon a factor within the employer's control, such as course programming, allocation of funding, final course offerings, program changes, and faculty availability, the claimant does not have reasonable assurance and benefits shall be allowed. If the offer of employment is contingent on factors outside of the employer's control such as enrollment levels, legislative funding, or seniority, this would be considered to not be in the employer's control and further examination of the facts is required.

(B) If the employer's offer to a claimant contains a contingency that is not in the employer's control, the Commission representative must examine the contingent nature of the offer. The Commission representative must give primary weight to the contingency when making the determination on the claim. If the Commission representative finds that it is highly probable that the contingency will be met, that is, the issue upon which the contingency is based will probably be concluded in a way that will allow employment to occur in the next academic year or term, then reasonable assurance can be found. If it is not highly probable that the contingency will be met, that is, there is a good probability the contingency will be resolved in a way that will prevent employment from occurring in the next academic year or term, then reasonable assurance cannot be found.

(C) The Commission representative must analyze the totality of circumstances for each offer of employment to determine whether it is highly probable that

there will be a job available for the claimant in the following academic year or term. This element requires considering factors such as legislative appropriations, funding levels, enrollment, the nature of the course of study to be taught, the claimant's seniority, budgeting and assignment practices of the school, the number of offers made in relation to the number of potential teaching assignments, the period of student registration, and any other contingencies. In order to find that there is reasonable assurance, the Commission representative is required to find, through evidence presented by the employer and the claimant, that it is highly probable that a job is available in the next academic year or term. In making a determination of reasonable assurance, the Commission representative is not required to find that there is a certainty of a job.

(4) Employer requirements.

(A) If the educational institution employer ~~or educational service contractor~~ did not enter into a formal employment contract with the claimant, the employer shall submit a written statement to the Commission representative explaining the manner in which the employee was given a reasonable assurance of employment in the following academic period or term. The employer shall state whether the assurance was given in writing, orally, or implied through other means. The employer shall state the information that was given to the claimant about the offer of employment in the next academic year or term, including contingencies.

(B) If the educational institution employer ~~or educational service contractor~~ entered into a formal employment contract with the claimant, the employer shall provide a copy of the contract to the Commission representative.

(C) The educational institution employer ~~or educational service contractor~~ will be responsible to provide any other information necessary to make the determination of a contract of employment or reasonable assurance and any other information requested by the Commission representative.

(5) Claimant requirements. The claimant will be responsible to provide sufficient information for the Commission representative to make a determination of reasonable assurance of employment or a contract of employment in the next academic year or term, and the claimant shall provide any information or documents requested by the Commission representative.

SUBCHAPTER 5. CONTRIBUTIONS

PART 19. MAINTENANCE AND PRODUCTION OF WORK RECORDS

240:10-5-90. Records

Records shall be maintained by employers for a period of four (4) years. For purposes of audits, investigations, verifications, or certifications, each employer shall be required to maintain and produce to a representative of the Commission, the following records:

- (1) Records that show the proprietary interest, type of organization and identity of the employing unit.
- (2) All accounting records, business and personal.
- (3) All bank statements and banking records for all checking and savings accounts, business and personal.
- (4) All federal and state income tax returns, business and personal, including all schedules.
- (5) All payroll records including federal Internal Revenue Service forms W-2, W-3, 940, 941, and 1099.
- (6) All general ledgers, cash disbursement ledgers or journals, cash receipts journals, check registers, and check stubs for the employer's business.
- (7) For each pay period, records that show:
 - (A) The beginning and ending dates of such period.
 - (B) The total amount of wages paid with respect to all employment.
- (8) For each worker, records that show:
 - (A) Name.
 - (B) Social Security account number.
 - (C) Wages for each pay period showing separately:
 - (i) Cash wages.
 - (ii) Reasonable cash value of all remuneration in any medium other than cash (See OAC 240:10-1-2(b), Wages, Noncash remuneration).
 - (iii) Actual or estimated amount of gratuities received from persons other than his/her employing unit (See OAC 240:10-1-2 (a), Wages, Gratuities and tips).
 - (iv) Special payments for services rendered in prior periods, designating the period in which the service was performed.
 - (v) The total amount of wages paid for each pay period.
- (9) Records showing the date on which the worker was hired, and the date he/she was separated from employment.
- (10) Records showing the circumstances under which the worker was separated from employment shall be maintained with respect to the following:
 - (A) If separation from employment was because of lack of work, the records shall so state.
 - (B) If separation from employment was voluntary on the part of the worker, the records shall reflect the fact together with any reason(s) given by the worker.
 - (C) If separation from employment was a discharge of the worker due to misconduct, the record shall reflect the circumstances of the misconduct and the reason given by the employer to the worker for the discharge.
 - (D) If the separation from employment was other than those three listed above, the record shall reflect details of such "other reason."

(11) Records showing each day during the pay period that ~~such individual~~ each employee was in employment if the individual was not regularly employed employed by the employer, the hours worked and the wages earned.

(12) Records showing the state or states in which his/her services are performed, and if such services are performed outside of this state, his/her base of operations (or if there is no base of operations, then the place from which his/her services are directed or contracted) and his/her residence (by state). All work records required by the Commission shall be kept safely and readily accessible at the place of business of the person or firm required to keep same. Nonresident employing units who customarily maintain work records required by OAC 240:10-5-90 outside the State of Oklahoma shall furnish to the Commission, upon request, certified copies of such records.

(13) For each quarter in the records retention period, a copy of the Employer's Quarterly Contribution and Wage Report, and any amended reports, as filed with the Commission.

(14) Records that will confirm, verify, or supply data that is required in any field on any Commission report form that is required to be filed by an employer or on behalf of an employer.

(15) Any other books, papers, correspondence, memoranda, and any other records deemed necessary for review by a Commission representative.

240:10-5-91. Employer's Quarterly Contribution Wage Reports

(a) **Due date of report.** Each employer shall report both contributions and "wages paid" (as defined in OAC 240:10-1-2) through the Employer Portal on the Commission Internet website, or if an exception has been granted, on paper Form OES-3, Employer's Quarterly Contribution and Wage Report, for each quarterly period in which the employer is subject to the Employment Security Act of 1980, on or before the last day of the month following the calendar quarter to be reported. However, an employing unit which has not previously qualified as an employer under the Employment Security Act of 1980 and who first qualifies as an employer during a calendar year shall file Form OES-3, Employer's Quarterly Contribution and Wage Reports, for all past periods of that calendar year on or before the due date for the quarterly report for that quarter in which such employing unit becomes an employer subject to the Employment Security Act of 1980.

(b) **Information required.**

(1) All instructions furnished with the official forms must be followed.

(2) All information required on the official forms shall be given.

(c) **Date of filing.** The date of filing of the Employer's Quarterly Contribution and Wage Report shall be determined by the date that an employer's fully completed report form is submitted for filing with the Commission pursuant to 40 O.S. §1-224.

(d) **Report filing.**

Permanent Final Adoptions

(1) This subsection shall apply to all Employer's Quarterly Contribution and Wage Reports that are due for filing after January 1, 2011.

(2) All employers with an assigned Oklahoma State Unemployment Tax Act (SUTA) account number shall be required to file the Employer's Quarterly Contribution and Wage Report through the employer portal on the Commission Internet website, unless an exception is granted by the Commission.

(3) All third party administrators shall be required to file the Employer's Quarterly Contribution and Wage Report through the employer portal on the Commission Internet website for clients with an assigned Oklahoma SUTA account number, unless an exception is granted by the Commission.

(e) **Payment of Tax.** All employers with an assigned Oklahoma State Unemployment Tax Act (SUTA) account number and all third-party administrators shall be required to pay all amounts due for quarterly state unemployment taxes on or before the last day of the month following the calendar quarter to which the taxes relate. All employers and third-party administrators shall make payment through an electronic fund transfer or a credit card acceptable to the Commission; unless an exception is granted by the Commission for the employer or third-party administrator to make payment in an alternative method.

(f) **Authorization.** This rule is authorized by 40 O.S. §§3-102, 4-302, and 4-503.

[OAR Docket #20-626; filed 7-15-20]

TITLE 245. STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS CHAPTER 2. ADMINISTRATIVE OPERATIONS

[OAR Docket #20-696]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

245:2-1-10. Official records [AMENDED]

245:2-1-18. Fees and penalties [AMENDED]

245:2-1-22. Powers and authority of Board [NEW]

AUTHORITY:

Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors; 59 O.S. Sections 475.1 et seq.; 65 O.S., 1991 Sections 3-116 et seq.; 75 O.S. Sections 301 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The revisions shall update administrative fees and penalties to reflect fee waivers for military and military spouses, and make downward adjustments to the reinstatement fees. Removes fee waiver for persons 70 years of age or older. Creates the "Building Maintenance, Improving and Operating Fund".

CONTACT PERSON:

Kathy Hart, Executive Director, (405) 521-2874

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF NOVEMBER 1, 2020:**

245:2-1-10. Official records

Among other official records required by law, or by rules of other agencies in support of law, the Board shall maintain accurate and current records including, but not limited to:

(1) A record of minutes, in proper order, containing a summary of actions of all meetings of the Board.

(2) Records of Licensees, containing the name and license number of all persons to whom Certificates of Licensure are issued, date of original license, the last known physical and e-mail addresses of all current licensees and renewals affected through biennial licensure, and the discipline(s) of engineering in which the applicant is claiming competency.

(3) Licensee files for each current licensee containing the original application, relevant verification and evaluation data, record of examination results, and when applicable, records of alleged violations, suspensions, revocations, refusal to renew, orders issued, hearing transcripts and penalties levied.

(4) Certificate of Authorization files containing the name of each current firm holding a current certificate, the engineer(s) or land surveyor(s) of record, a record of all partners, officers and directors of the entity, managing agent(s) and their license numbers and states which they are licensed, if applicable, and the last known address.

(5) A system of finance records indicating funds received, budgeted, committed, spent, remaining and projections of appropriate request for consideration in budget development.

245:2-1-18. Fees and penalties

Schedule of fees and penalties, effective July 1, ~~2013~~2020, are as follows:

(1) Application:

(A) Original (Initial)

(i) Engineer/Surveyor - \$150.00

(ii) Intern - ~~\$50.00~~ no charge

- (iii) Firm - \$200.00
 - (B) Comity
 - (i) Engineer/Surveyor - \$250.00
 - (ii) Intern - ~~\$50.00~~ no charge
 - (iii) Firm - ~~\$250.00~~ \$200.00
 - (C) Re-license
 - (i) Engineer/Surveyor - \$250.00
 - (ii) Intern - ~~\$50.00~~ no charge
 - (iii) Firm - ~~\$250.00~~ \$200.00
 - ~~(D) Requalifications~~
 - ~~(i) Engineer/Surveyor - \$150.00~~
 - ~~(ii) Intern - \$25.00~~
 - (2) Biennial renewals:
 - (A) ~~Individuals~~ Individual: _____ (Renewal fees are waived for Oklahoma licensed engineers and surveyors at 70 years old. Individuals must be 70 years old prior to their biennial renewal date and comply with the administrative renewal requirements of the Board to qualify.) However, beginning January 1, 2021, no renewal fees shall be waived and all licensees shall be required to pay the required renewal fee as long as the licensee chooses to maintain an active license. An individual may choose to retire their license at no cost and maintain a retired professional engineer or retired professional land surveyor status pursuant to the provisions of OAC 245:15-1-3. However, no privilege to offer or practice engineering or surveying shall exist without an active license.
 - (i) Engineer/Surveyor - \$150.00
 - (ii) Intern ~~B~~ WAIVED ~~no charge~~
 - (B) Firm - \$200.00
 - (3) Reinstatement penalty (in addition to the renewal fee): The following reinstatement penalty schedule refers to payments received by the Board within the prescribed number of days following the expiration date of the renewal:
 - (A) ~~1 B-60~~ 30 days:
 - (i) Engineer/Surveyor - ~~\$100.00~~ \$50.00
 - (ii) Firm - ~~\$100.00~~ \$50.00
 - (B) ~~61 B-31~~ 90 ~~120~~ days:
 - (i) Engineer/Surveyor - ~~\$150.00~~ \$100.00
 - (ii) Firm - ~~\$150.00~~ \$100.00
 - (C) ~~121 B-91~~ 180 days:
 - (i) Engineer/Surveyor - ~~\$250.00~~ \$200.00
 - (ii) Firm - ~~\$250.00~~ \$200.00
 - (D) Reinstatement penalties for professional engineers and land surveyors may be waived if the licensee was unable to renew because they were in non-compliance with the Oklahoma Tax Commission or if other documented hardships occur. Application for waiver of reinstatement penalties must be submitted to the board office in writing with appropriate documentation for board review prior to license renewal or payment of the reinstatement penalty.
 - (4) Re-examination application:
 - (A) ~~Engineer/Surveyor~~ - \$50.00 (Oklahoma Law and Surveying Examination)
 - ~~(B) Intern - \$10.00~~
 - (5) Temporary ~~Permit~~ License (Engineering): ~~\$750.00~~ \$500.00
 - (6) Administrative fee for returned checks: \$25.00
 - (7) Duplicate certificate: \$25.00
 - (8) Application fee to revise license or authorization
 - (A) Engineer/Surveyor - \$50.00
 - (B) Intern ~~B~~ no charge
 - (C) Firm - \$100.00
 - (9) Transcript of hearing - Actual cost
 - (10) Copy of public records (per page): \$.25
- (b) The Board shall make no refunds of any fees or penalties to any applicant or licensee.
- (c) These fees and penalties apply to the Rules in this Chapter and Chapter 15 of this Title.
- (1) The administrative fee for returned checks shall be applied to any check returned to the Board for insufficient funds.
 - (2) Any such check returned to the Board shall be replaced with a cashier's check or money order within ten (10) days following notification from the Board of the returned check.
- (d) Any member of the Armed Forces of the United States who is deployed on active duty who at the time of deployment was duly licensed in good standing as a professional engineer or land surveyor in Oklahoma may renew their license without the payment of renewal or reinstatement fees. The license or certificate issued pursuant to the provisions of this section may be continued as long as the licensee or certificate holder is a member of the Armed Forces of the United States on active duty and for a period of at least one (1) year after discharge from active duty.
- (e) Pursuant to O.S., Title 59, Section 4100(2)(D), active duty military personnel and their spouse who are a licensed professional engineer or land surveyor in another state, upon receiving notice or orders for military transfer or honorable discharge to this state, may in advance of actual transfer or discharge apply for an expedited temporary or comity license per this act and Board Policy, and shall not be required to pay an application fee or pro-rated license fee for the issuance of an expedited temporary or comity license.
- 245:2-1-22. Powers and authority of Board**
- The Board is authorized to create and maintain a fund, which may accrue interest, for the purpose of maintaining, improving, and operating property and all other provisions as described and authorized by O.S. Title 59, 475.8(C).

[OAR Docket #20-696; filed 7-24-20]

TITLE 245. STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS CHAPTER 15. LICENSURE AND PRACTICE OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

[OAR Docket #20-697]

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PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
245:15-1-3 [AMENDED]
Subchapter 3. Application and Eligibility for Licensure
245:15-3-1 [AMENDED]
245:15-3-2 [AMENDED]
245:15-3-4 [AMENDED]
245:15-3-6 [AMENDED]
245:15-3-7 [AMENDED]
245:15-3-8 [AMENDED]
245:15-3-9 [AMENDED]
245:15-3-10 [AMENDED]
Subchapter 5. Examinations
245:15-5-1 [AMENDED]
245:15-5-3 [AMENDED]
245:15-5-4 [AMENDED]
Subchapter 7. Licensure
245:15-7-4 [AMENDED]
245:15-7-5 [AMENDED]
Subchapter 9. Rules of Professional Conduct
245:15-9-3 [AMENDED]
245:15-9-4 [AMENDED]
Subchapter 11. Continuing Education
245:15-11-5 [AMENDED]
245:15-11-7 [AMENDED]
245:15-11-11 [AMENDED]
245:15-11-13 [AMENDED]
Subchapter 13. Minimum Standards for the Practice of Land Surveying
245:15-13-2 [AMENDED]
Subchapter 17. Licensee's Seal
245:15-17-1 [AMENDED]
245:15-17-2 [AMENDED]

AUTHORITY:

Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors; 59 O.S. Sections 475.1 et seq.; 65 O.S., 1991 Sections 3-116 et seq.; 75 O.S. Sections 301 et seq.

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions to the subchapters are as follows: Subchapter 1. General Provisions: Delete duplicated definition of "Practice of land surveying" and provide a definition for "Professional surveyor".

Subchapter 3. Application and Eligibility for Licensure: The proposed amendments will modify the application process to allow for an online licensing system. Further the engineering and land surveying requirements for licensure will remain the same; however, the process by which an applicant applies will be modified to allow the applicant to apply once all requirements for education, examination and experience are met. Also, this revised language removes the 'good character' language throughout to be in congruence with statutory changes enacted as well as the temporary license provisions for military personnel and their qualifying spouses.

Subchapter 5. Examinations: The proposed amendments further describe qualifying examinations and the revised administrative process for applying for and taking examinations. Further, the definition for "examination subversion" was modified to include licensees seeking to obtain access to examination materials or access to the examination questions.

Subchapter 7. Licensure: The proposed amendment removes the waiver for licensees 70 years of age or older to not be required to pay the renewal fee.

Subchapter 9. Rules of Professional Conduct: The proposed amendments update the language and clarify its intent.

Subchapter 11. Continuing Education: Update language and provide further definitions.

CONTACT PERSON:

Kathy Hart, Executive Director, (405) 521-2874

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF NOVEMBER 1, 2020:**

SUBCHAPTER 1. GENERAL PROVISIONS

245:15-1-3. Definitions

The following words or terms, when used in the Rules of Procedure, shall have the following meaning, unless the context clearly indicates otherwise. Definitions in 59 O.S. Section 475.2 and 65 O.S. Section 3-118 shall be read together with the definitions and interpretations provided in the Rules of Procedure of the Board.

"**Accessory to a corner**" means any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal filled bottles, steel or wooden stakes, or other objects.

"**Certify**" or "**Certification**" or similar expressions relating to engineering or land surveying services shall mean a statement based upon facts and knowledge known to the licensee and is not a guarantee or warranty, either expressed or implied.

"**Closure error**" means the ratio between the horizontal linear error of closure to the total horizontal distance traversed, with the numerator of the ratio being the number "one".

"**Control surveying**" means the establishment of horizontal and/or vertical control which will be the basis for future phases of a project including, but not limited to: extraction of geospatial data, engineering design projects, construction staking, surveys to layout horizontal and vertical alignments, topographic surveys using field methods, collection of topographic and planimetric data using photogrammetric methods

and construction surveys of engineering or architectural public works project.

"Engineering surveys" means all survey activities required to support the sound conception, planning, design, construction, maintenance and operation of engineered projects, but exclude the surveying of real property for the establishment of land boundaries, rights-of-way, easements and the dependent or independent surveys or resurveys of the public land survey system. Unless a Professional Land Surveyor has provided the Professional Engineer with geocentric/geodetic control coordinates which meet the accuracy standards set forth in OAC 245:15-13-2, the Professional Engineer shall only use a coordinate system based on assumed values for the project, and so state on the documents.

"Geospatial" means the relative position of features on, above, or below the earth's surface defined by a localized or globalized system.

"Land or boundary survey" means a survey, the primary purpose of which includes, but is not limited to, the determining of the perimeter of a parcel or tract of land by establishing or reestablishing corners, monuments and boundary lines.

"Linear closure" means a measure of the horizontal linear error without regard to direction, between the computed location of the first and last points of a traverse when either the traverse actually returns to its beginning point (geometrically and mathematically closed), or the traverse ends at a point of previously established control relative to the beginning point (geometrically open, but mathematically closed).

"Mortgage Inspection Report" means a representation of the boundaries of a parcel of real property and the improvements thereon, prepared incident to a mortgage of real property.

"Monument" means a physical structure that occupies the exact position of a corner.

"Planimetric mapping surveys" mean a map that presents the horizontal positions only for the features represented. This is distinguished from a topographic map by the omission of relief in measurable form.

"Positional error" means the difference between the actual position of a corner monument and it's described or computed position. This error may be determined by computing the difference between the measured position and the adjusted position of the monument or by measurement of angle and distance between three of the corner monuments on the survey if made with precise surveying instruments using proper procedures.

~~**"Practice of land surveying"** as defined by Title 59 O.S. Section 475.2(8)(a) also includes monumenting the subdivision of land into smaller parcels and the preparation of legal descriptions in connection therewith; however, the preparation of legal descriptions by a person who does not monument the land so described is not the practice of land surveying. Preparation of the control portion of geographic information systems and land information systems means the authoritative and monumented ground survey of a system of marks or objects to establish horizontal or vertical positions.~~

"Professional Engineer, Retired" - The term "Professional Engineer, Retired" as used in these rules, shall mean

an individual who has been duly licensed as a professional engineer by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board to be granted the use of the title "Professional Engineer, Retired."

"Professional Land Surveyor, Retired" - The term "Professional Land Surveyor, Retired" as used in these rules, shall mean an individual who has been duly licensed as a professional land surveyor by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board to be granted the use of the title "Professional Land Surveyor, Retired."

"Rules of professional conduct for Professional Engineers and Land Surveyors" means those rules promulgated by the Board.

"Professional Surveyor" or "P.S." - The term "Professional Surveyor" or "P.S." may be used when describing a lawfully licensed Professional Land Surveyor or P.L.S. in Oklahoma, as defined pursuant to Title 59, 475.2(6).

"Signature" means "manual signature" or "digital signature" and shall be defined as follows:

(A) Manual signature means the handwritten name of a person applied to a document that identifies the person, serves as a means of authentication of the contents of the document, provides responsibility for the creation of the document and provides for accountability for the contents of the document.

(B) A digital signature shall carry the same weight, authority, and effects as a manual signature.

"Significant structures", beginning November 1, 2020, shall mean buildings and other structures that represent a substantial hazard to human life in the event of failure or are designated as essential facilities, including but not limited to:

(A) Buildings and other structures whose primary occupancy is public assembly with an occupant load greater than 300,

(B) Elementary schools, secondary schools or day care facilities with an occupant load greater than 50,

(C) Adult education facilities, such as colleges and universities, with an occupant load greater than 500,

(D) Hospitals, nursing homes, mental hospitals and detoxification facilities with an occupant load of 50 or more resident care recipients and/or surgery or emergency treatment facilities,

(E) Prisons, jails, reformatories, detention centers, correctional centers,

(F) Any building or other structure with an occupant load greater than 5,000,

(G) Primary power-generating structures above 50 kilowatts,

(H) Structures at water treatment facilities for potable water and wastewater treatment facilities serving more than 5,000 people,

(I) Structures for public utility facilities containing quantities of toxic or explosive materials that are sufficient to pose a threat to the public if released,

(J) Fire, rescue, ambulance and police stations and emergency vehicle garages,

(K) Designated tornado, earthquake or other non-residential emergency shelters,

(L) Designated emergency preparedness, communications and operations centers and other facilities required for emergency response,

(M) Aviation control towers, air traffic control centers and emergency aircraft hangars,

(N) Buildings and other structures having critical national defense functions,

(O) Elevated water storage structures, and

(P) Buildings and other structures with high lateral loadings including:

(i) those subjected to ultimate design 3 second wind gust speeds equaling or exceeding wind speeds corresponding to approximately a 3% probability of exceedance in 50 years, or

(ii) those that are in Seismic Design Category D and above.

(Q) "Significant structures" shall exclude bridges and geo-structures. As defined in this document, "bridges" will not include elevated structures linking buildings. "Geo-structures" shall mean engineered structures that are loaded by the earth or whose resistance is derived from the earth. A project defined as a "Significant structure" for which a permit has not been applied for or granted as of October 31, 2020, shall be required to have an engineer of record who is a licensed Professional Structural Engineer. Beginning November 1, 2020, all new projects defined as "significant structures", shall require an Oklahoma Licensed Professional Structural Engineer to be the engineer of record.

"Survey plat", "sketch", or "map", or similar document, shall mean any drawing of a parcel or tract of real property used for the purpose of depicting the results of a field survey.

"Topographic surveys" mean surveys that have as their major purpose the determination of the configuration (relief) of the earth (ground) and the location of natural or artificial objects thereon.

SUBCHAPTER 3. APPLICATION AND ELIGIBILITY FOR LICENSURE

245:15-3-1. Availability of forms and Board records

Applications required to be submitted to the Board are available ~~online and at the Board office and other locations~~ as deemed appropriate by the Board. ~~Completed applications, with all attachments and the required fee, when received by the Board will be entered into the Board records.~~

245:15-3-2. Documents required for licensing

(a) Every individual applying for a license shall submit an application ~~as required by Board policy, which shall be the forms furnished by the Board, or its designee, or forms located~~

~~on the Board's website~~, accompanied by the applicable fees. All application fees are non-refundable.

~~(b) All information filled in on the application forms must be typewritten or computer generated. In case there is not sufficient room on the form to present all the subject matter necessary, the applicant shall set forth the additional information on additional sheets of plain white paper, 8 1/2" x 11" in size. Such sheets shall be typewritten or computer generated on one side only, shall be marked and numbered consecutively and in series with the regular pages of the application.~~

~~(e) An affidavit certifying the truthfulness of the statements in the application shall constitute a part of each application. Withholding information or providing statements which are untrue or misrepresent the facts may be cause for denial of an application or disciplinary action taken against a license or certification.~~

(d) An applicant shall request the university or college, or its designee, from which credit has been obtained to forward directly to the Board, or its designee, a properly certified university or college transcript showing all academic work. All application forms and information furnished thereon and all examinations and answers thereto shall be entirely in the English language.

245:15-3-4. Board action required

(a) Individual professional engineer, professional engineer with a structural engineer designation, and professional land surveyor comity applicants meeting the requirements of a NCEES Model Law Engineer, NCEES Model Law Structural Engineer, or NCEES Model Law Surveyor, or other requirements as determined by Board statutes, rules and policy may be reviewed and evaluated by the ~~Principal Assistant~~, Executive Director, or the Board's designee, to determine if the applicant meets or exceeds the approved criteria. If the applicant meets or exceeds these requirements, the applicant may receive a contingent license authorizing the individual to offer or provide engineering or surveying services in Oklahoma. A list of all engineers issued contingent licenses will be placed on the agenda of the next meeting of the Board for formal approval by the Board. A list of all surveyors who have been issued contingent licenses and who have passed the appropriate Oklahoma-specific examination will be placed on the agenda of the next meeting for formal approval by the Board. All other complete comity applicants will be reviewed and evaluated by the Board at the next regularly scheduled meeting of the Board to determine if they meet or exceed the criteria to be licensed as a professional engineer, professional engineer with a structural engineer designation or a professional land surveyor.

(b) Certificate of Authorization applications for firms which meet the statutory and rule requirements may also be approved by the ~~Principal Assistant~~, Executive Director, or the Board's designee. If the firm meets or exceeds these requirements, the firm may receive a contingent authorization allowing the firm to offer or provide engineering or surveying services in Oklahoma. A list of all firms issued contingent authorizations will be placed on the agenda of the next meeting of the Board for formal approval by the Board.

(c) A contingent license or authorization will be in effect from its date of issuance until such time as the Board takes final action on the application for licensure or authorization. If the Board determines that the applicant does not meet the requirements for issuance of a license or authorization, the contingent license or authorization shall be immediately and automatically revoked upon notice to the applicant and no license will be issued.

(ed) Initial applicants for a professional engineer or professional land surveyor license shall apply to the Board when all education, examination and experience requirements have been met. who are applying prior to obtaining the requisite experience for licensure, but have met the education requirement and have passed the Fundamentals of Engineering or Fundamentals of Surveying examination, respectively, may be approved to sit for the requested professional examination upon approval by the Principal Assistant, Executive Director, or the Board's designee.

(de) Intern applications for certification may be approved by the Executive Director, Principal Assistant, or the Board's designee.

(ef) All other applications for Professional Engineer, Professional Engineer with a Structural Engineer Designation, Professional Land Surveyor and Certificate of Authorization submitted for a license or authorization shall be first considered by the Board for approval or disapproval.

245:15-3-6. Active and inactive applications

(a) Incomplete applications not yet presented to the Board, will be withdrawn from consideration by the Board after one year from the date submitted to the Board and a new and complete application shall be required from an applicant seeking licensure.

(b) The Board shall adopt a policy regarding the number of attempts an examinee may be granted for any NCEES or Board-approved examination, as well as requirements for re-applying for future examination attempts. An applicant's application will be closed after a prescribed number of failures of any NCEES examination or other Board-approved examinations, regardless of the jurisdiction in which the examination is administered. For further consideration, an applicant shall file a new and complete application for re-examination, to include evidence of additional education, knowledge or skill sufficient to materially improve the applicant's qualifications for re-examination which shows that the additional requirements outlined in the Board's policy for re-examination have been met. NCEES examinations will be administered per NCEES policy and the policies of the Board.

(c) If an applicant requests that the applicant's application be withdrawn from consideration, the Board will reject the application. Any further consideration will require a new and complete application and fee.

245:15-3-7. Qualifications for original professional engineer license and engineer intern certification

To be eligible for consideration for original licensure as a Professional Engineer or certification as an Engineer Intern, ~~the applicant must be of good character and reputation. Applicants~~ an applicant must meet all qualifications as contained within the Statutes and the Rules of the Board. An application for an Engineer Intern certification or Professional Engineer license shall be ~~individually~~ reviewed by the Board or its designee. Evidence of minimum qualifications is required by the Board in accordance with Title 59, 475.12a. and the following requirements:

(1) Engineer Intern and Professional Engineer - education requirements for certification or original license:

(A) Completion of one of the following shall be considered as minimum evidence that the applicant has fulfilled the education requirement for certification as an Engineer Intern or licensure as a Professional Engineer:

(i) a bachelor's degree in engineering from an EAC/ABET-accredited program, or the equivalent, which may include a bachelor's degree in engineering from a degree program accredited by the Canadian Engineering Accreditation Board (CEAB) or signatories of the Washington Accord, a bachelor's degree in engineering from a program that meets the NCEES Engineering Education Standard, or a bachelor's degree in engineering from a program that, upon evaluation, does not meet the NCEES Engineering Education Standard, but deficiencies outlined in the degree evaluation have been corrected with further education approved by the Board or its designee,

(ii) a bachelor's degree in a Board approved related science degree program which meets the Board's statutory definition of a related science degree,

(iii) a master's degree in engineering from an institution that offers EAC/ABET-accredited programs,

(iv) a master's degree in engineering from an EAC/M-ABET-accredited program, or

(v) an earned doctoral degree in engineering acceptable to the Board.

(B) The Board may accept a bachelor's degree in an engineering or engineering technology program if the program is EAC/ETAC ABET accredited within 3 years of the date of the conferred degree. All other degree programs which are not EAC/ETAC ABET accredited at the time of conferment of the degree, but are currently EAC/ETAC ABET accredited, will be considered by board policy.

(2) Professional Engineer- experience (original license):

(A) Experience credit may be claimed to the date of the application. Part-time experience shall be pro-rated after a review by the Board or its designee.

Permanent Final Adoptions

Experience record is to be continuous from beginning to the date of the application. Experience time shall not exceed elapsed calendar time. ~~Application fees are non-refundable.~~ Only experience obtained directly within the professional field will be considered as qualifying experience by the Board and must be verified by reference. Experience ~~shall~~should be gained under the supervision of a licensed professional engineer or, if not, an explanation shall be made showing why the experience should be considered acceptable. Experience gained under the technical supervision of an unlicensed individual may be considered if the appropriate credentials of the unlicensed supervisor are submitted and approved by the Board or its designee. In evaluating experience that indicates to the Board that the applicant may be competent to practice engineering, the following will be considered:

- (i) Experience must be progressive on engineering projects ~~to indicate that it is of and must demonstrate an~~ increasing quality and ~~requiring greater~~ responsibility.
- (ii) Experience must not be obtained in violation of the licensure act.
- (iii) Experience gained in the armed services must be of a character equivalent to that which would have been gained in the civilian sector doing similar work.
- (iv) Sales experience must demonstrate that engineering principles were required and used in gaining the experience.
- (v) Teaching experience must be in engineering or engineering-related courses at ~~an advanced~~ a junior-, senior-, or graduate-level level in a college or university offering an engineering program of 4 years or more that is approved by the Board.
- (vi) Experience may be gained in engineering research and design projects by members of an engineering faculty, where the program is approved by the Board, or by industry or government employees.
- (vii) Experience in construction must demonstrate the application of engineering principles.
- (viii) Experience should include demonstration of knowledge of engineering mathematics, physical and applied science, properties of materials, and the fundamental principles of engineering design.
- (ix) Experience ~~should~~must include demonstration of the application of engineering principles in the practical solution of engineering problems.
- (x) The board may deem professional experience acquired by applicants outside the United States to be equivalent to the minimum Board requirements established by regulations for professional experience in that jurisdiction.

(B) Partial experience credit may be given for experience earned prior to receipt of a baccalaureate degree, at the discretion of the Board, if the employment is at least half-time and the work is performed under the supervision of a professional engineer. At the time the experience was gained, the applicant must have passed upper level engineering or related engineering science courses and applied relevant engineering knowledge in the claimed experience. In no case shall the experience credit exceed one half of that required for approved qualifying experience.

(C) A graduate degree that is used to satisfy education requirements cannot be applied for experience credit toward licensure. To be eligible for experience credit, graduate degrees shall be relevant to the applicant's area of professional practice. Experience credit for a graduate degree cannot be earned concurrently with work experience credit. Concurrent time spent in engineering work while attending school will be credited either as education experience or work experience but not both.

(D) Applicants shall submit a minimum of five (5) acceptable references, three (3) of whom shall be Professional Engineers having personal knowledge of the applicant's engineering experience, none of whom may be current members of the Board or immediate family members. ~~References verifying experience, who have been disciplined by any professional licensure board within the past 10 years, must submit a copy of the formal disciplinary action taken for the Board's review and consideration. References will~~must verify the periods of qualifying experience since the beginning of the history, leaving no gaps in dates. The Board shall not give credit for engineering experience that has not been verified by one or more references.

(E) Applicants may apply for a waiver of the NCEES Fundamentals of Engineering examination by showing proof of a minimum of fifteen (15) years of acceptable progressive engineering experience following the date of the conferred degree qualifying the applicant for licensure. The required experience shall be verified by reference, and may not be self-verified. Experience earned prior to the conferred qualifying degree shall not be considered in the years of required experience. All elements of the application shall be evaluated by the Board when considering application for a waiver of the exam, including but not limited to; reference responses, disciplinary actions and criminal history~~all convictions~~.

(F) An applicant with a Board-approved doctoral degree in engineering shall be required to obtain two (2) years of experience credit after the doctoral degree is conferred, whether or not an M.S. degree was also conferred, to qualify for licensure.

(G) An applicant with an education path described in OAC 245:15-3-7(1)(A)(i) or (1)(A)(ii), who further

obtains a master's degree in engineering from an institution that offers EAC/ABET-accredited programs or CEAB-accredited programs, shall be required to obtain three (3) years of experience following the master's degree to qualify for licensure. Under the same conditions, if a Board-approved doctoral degree is conferred, the applicant shall be required to obtain two (2) years of experience following the Ph.D. in engineering.

(H) An applicant with a bachelor's degree in engineering from a program that is a signatory of the Washington Accord shall obtain experience per Board policy and may be required to, who chooses not to obtain a degree evaluation from a Board-approved evaluation service, shall be required to obtain six (6) years of experience following the date of the conferred bachelor's degree to qualify for licensure.

(I) Non-U.S., non-EAC/ABET-accredited degrees, non-CEAB-accredited degrees which are not approved by the Board may be considered only following a degree evaluation obtained through a degree evaluation service approved by the Board. If the degree evaluation states that the degree is equivalent to the NCEES Education Standard, then four (4) years of experience will be required following the conferred degree. If the degree does not meet the NCEES Education Standard and deficiencies outlined in the degree evaluation are corrected by further education as approved by the Board, then four (4) years of experience will be required following the conferred degree to qualify for licensure. If the applicant described in this paragraph obtains a master's degree in engineering from an institution that offers EAC/ABET-accredited programs or CEAB-accredited programs, they may be required to obtain three (3) years of experience credit following the master's degree to qualify for licensure. Under the same conditions, if a Board-approved doctoral degree is conferred, the applicant shall be required to obtain two (2) years of experience following the Ph.D. in engineering to qualify for licensure.

(J) Non-U.S., non-EAC/ABET-accredited degrees or non-CEAB-accredited degrees which are not approved by the Board which upon evaluation are not deemed equivalent to the NCEES Education Standard shall be considered at a maximum equivalent to a related science degree.

(K) No examination shall be administered following July 1, 2020, for applicants who qualified prior to July 1, 2016 applying with a non-accredited technology degree or non-related science degree for licensure as a Professional Engineer if the applicant's application was originally approved by the Board prior to July 1, 2016.

(3) Professional Engineer - examination requirements (original license):

~~(A) Applicants for professional engineering licensure must take and pass the FE examination prior to~~

~~being admitted to take the PE examination, unless the Board has approved a waiver request for the FE examination.~~

~~(B) Applicants applying to take the PE examination prior to obtaining the required number of years' experience for licensure shall submit a board approved application and required documents verifying their degree program and verifying passage of the FE examination. The Board or its designee shall review the application for compliance with the education and exam requirements prior to admitting the applicant to the PE examination. Once the applicant has passed the PE examination and has obtained the required experience for professional engineering licensure, the remaining application requirements shall be submitted and verified prior to final consideration.~~

~~(C) When the education requirements of the Statutes and of this Chapter are met, the applicant shall apply to NCEES to take and pass the Fundamentals of Engineering Examination and the Principals and Practice of Engineering Examination. Once these examinations are successfully completed and requisite qualifying experience is complete, the applicant shall apply to the Board for approval and may be admitted to, and must pass, required to pass an examination covering the laws, rules, procedures and practices pertaining to engineering in the state of Oklahoma, prior to being licensed as a Professional Engineer.~~

245:15-3-8. Qualifications for original land surveying license

To be eligible for consideration for original licensure as a Professional Land Surveyor or certification as a Land Surveyor Intern, an applicant ~~must be of good character and reputation.~~ Applicants must meet all qualifications as contained within the Statutes and the Rules of the Board. Applications for Land Surveyor Intern certification or Professional Land Surveyor licensure shall be individually reviewed by the Board or its designee. Evidence of minimum qualifications is required by the Board in accordance with Title 59, 475.12b and the following requirements:

(1) Professional Land Surveyor - experience (original license):

(A) Experience record may be claimed to the date of the application. Part-time experience shall be pro-rated after a review by the Board or its designee. Experience record is to be continuous from the beginning to the date of the application. Experience time shall not exceed elapsed calendar time. ~~Application fees are non-refundable.~~ Only experience obtained directly within the land surveying area will be considered as qualifying experience ~~by the Board.~~ Experience shall be gained under the supervision of a licensed professional surveyor; or if not, an explanation shall be made showing why the experience should be considered acceptable. Experience gained under the technical supervision of an unlicensed individual

may be considered if the appropriate credentials of the unlicensed supervisor are submitted and approved by the Board or its designee. In evaluating experience which indicates to the Board that the applicant may be competent to practice surveying, the following will be considered:

- (i) Experience must be progressive on surveying projects and must demonstrate an increasing quality and greater responsibility.
- (ii) Experience must be obtained in compliance with the Statutes and Rules of the Board.
- (iii) Experience gained in the armed services must be of a character equivalent to that which would have been gained in the civilian sector doing similar work.
- (iv) Teaching experience must be in surveying or surveying-related courses at an advanced level in a surveying program that is approved by the Board.
- (v) ~~A substantial portion of the experience must be spent in charge of work.~~ Experience related to property conveyance and/or boundary line determination must be demonstrated.
- (vi) Experience in the technical field aspects of the profession must be demonstrated.
- (vii) Experience must include demonstration of the application of surveying principles in the practical execution of surveying tasks.
- (viii) Experience may be gained in surveying research projects by members of a surveying faculty where the program is approved by the Board.
- (ix) The Board may deem professional experience acquired by applicants outside the United States to be equivalent to the minimum Board requirements established by statutes or rules for professional experience.

(B) Professional land surveyor applicants shall submit a minimum of five (5) acceptable references, at least three (3) of whom shall be Professional Land Surveyors having personal knowledge of the applicant's land surveying experience and none of whom may be current members of the Board. ~~References verifying experience who have been disciplined by any professional licensure board within the past 10 years must submit a copy of the formal disciplinary action taken for the Board's review and consideration. References should~~ must verify the periods of qualifying experience since the beginning of the history, leaving no gaps in dates. The Board cannot give credit for surveying experience that has not been verified by one or more references.

(C) Pursuant to O.S. Title 59, 475.12b(A)(4), all qualifying courses must be successfully completed at an accredited institution of higher education and, other than the Board-approved core curriculum, must be equivalent to general education requirements typically contained in an approved two (2) or four (4) year surveying degree program.

(2) Professional Land Surveyor - examination requirements (original license):

(A) When the education requirements of the Statutes and of this Chapter are met, the Applicants applicant for professional land surveyor licensure must shall apply to NCEES and take and pass the FS Fundamentals of Surveying examination prior to being admitted to take and the PS Principals and Practice of Surveying examination.

(B) ~~Applicants applying to take the PS examination prior to obtaining the required number of years' experience for licensure shall submit a Board approved application and required documents verifying their degree program and verifying passage of the FS examination. The Board or its designee shall review the application for compliance with the education and examination requirements prior to admitting the applicant to the PS examination. Once the applicant has passed the PS examination and has obtained the required experience for Professional Land Surveying licensure, the remaining application requirements shall be submitted and verified prior to final consideration.~~

(CB) Once these examinations are successfully completed and requisite qualifying experience is complete, the applicant shall apply to the Board for approval and may be. ~~When the requirements of the Statutes and of this Chapter are met, the applicant shall be admitted to, and must required to pass other Oklahoma state specific examination(s) as required, the Oklahoma Law and Surveying examination and an examination covering the laws, rules, procedures and practices pertaining to surveying in the state of Oklahoma, prior to being licensed as a Professional Land Surveyor.~~

245:15-3-9. License by comity or endorsement for professional engineers or professional land surveyors

(a) ~~Applicant for comity or endorsement license shall provide proof that the applicant is a person holding a Professional Engineer or Land Surveyor license, in good standing, issued by a proper authority.~~

(b) ~~Applicant must have been licensed, based on requirements that do not conflict with the provisions of the Statutes and Rules of the Board. If the applicant was originally licensed by standards lower than those specified in the applicable Statute in effect in Oklahoma at the time such license was issued, the applicant must provide proof that they are qualified. All disciplinary actions by a professional licensing board and all criminal activity shall be taken into consideration by the Board.~~

(ea) ~~Applicant~~ An applicant shall submit a minimum of five (5) references, three (3) of whom shall be Professional Engineers or Professional Land Surveyors, respectively, having personal knowledge of the applicant's required qualifying engineering experience as defined in O.S. Title 59, 475.12a(D)(4) or surveying experience, as defined in O.S. Title 59, 475.12b(D).

(b) ~~References none of whom~~ may not be current members of the Board or immediate relatives.

~~(d-c)~~ An applicant with less than the standards outlined in ~~subsection (b) of this section~~ O.S. Title 59, 475.12a for engineering and 475.12b for surveying may be required to obtain additional education, experience and examination requirements as the Board may determine to establish the applicant's qualifications. However, applicants who have been continually lawfully licensed to practice professional engineering or professional land surveying in a state or jurisdiction for at least twenty (20) years shall be approved for comity licensure upon verification that the applicant obtains a qualifying background check and references verifying the competent and lawful practice of professional engineering or professional land surveying, and has passed all examination(s) required by the Board's statutes and rules to determine competence at the professional level in laws and rules specific to Oklahoma and professional ethics.

(d) Upon satisfactorily complying with minimum requirements of this section and ~~examination~~ requirements as described in the Statutes and Rules of the Board rules, the applicant shall be licensed in the State of Oklahoma.

245:15-3-10. Temporary License

(a) The Executive Director or ~~Principal Assistant~~ the Board's designee shall be authorized to issue a Temporary License to a Professional Engineer, subject to the approval of the Board, under Title 59, 475.22(2) and the following conditions:

- (1) An applicant who is granted a Temporary License, but fails to submit their complete permanent professional engineer application within the prescribed period of time, may be considered to be in violation of the Statutes and Rules of this Board. An application shall be considered complete when all required properly completed forms and fees have been received in the Board's office.
- (2) Information relative to a license in the other state or jurisdiction shall be verified before issuance of a Temporary License.
- (3) The Temporary License fee as prescribed by law shall be remitted with the application and is non-refundable, unless otherwise waived by Statute or Rules of the Board.
- (4) A Temporary License shall be issued for a definite period of time not to exceed 120 days, for a specifically described single work project as set out in the application form and may not be renewed or extended.
- (5) A Temporary License shall expire the earliest of the issuance of the permanent professional engineer license by this Board or the rejection of the application for licensure, but not later than 120 days after issuance.
- (6) The holder of a Temporary License shall seal plans, specifications, or other documents only in accordance with the Statutes and Rules of this Board. The seal used shall be the holder's license seal of the state on which issuance of the Temporary License as based and immediately under the seal the following shall be inserted:

(A) Oklahoma Temporary License number

(B) Date of issue

(C) Date of expiration

(D) Signature of holder

(7) No person may be issued more than one (1) temporary license.

(8) A Temporary License application shall include a statement describing the circumstances which require the issuance of a Temporary License for the project. The applicant shall submit either a contract, work order, or correspondence containing the date the proposal was submitted, the scope of the project, the current status of the project and the expected date of completion of the project.

(b) The Executive Director or Board's designee shall be authorized to issue a Temporary License to active duty military personnel who are licensed as a Professional Engineer and/or Professional Land Surveyor in another state or jurisdiction, upon receiving their notice or orders for military transfer or honorable discharge to Oklahoma, subject to the approval of the Board, pursuant to the provisions of Title 59, Section 4100. Qualifying applicants shall be awarded the opportunity to take any required state specific examination(s) in an expedited manner with fee waivers as described in Board Rules 245:2-1-18(e). All other Temporary License provisions above shall apply to this section as well.

(c) The Executive Director or Board's designee shall be authorized to issue a Temporary License to the spouse of an active duty military personnel, pursuant to the provisions of Title 59, Section 4100, upon the applicant showing reasonable evidence that:

- (1) He or she is the spouse of a member of the Armed Services on active duty within the State of Oklahoma; or
- (2) He or she is the spouse of a member of the Armed Services who was a permanent resident in the State of Oklahoma for at least six (6) months prior to assignment to active duty; or
- (3) He or she is the spouse of a member of the Armed Services who is subject to a military transfer to Oklahoma; and
- (4) He or she is licensed as a Professional Engineer or Professional Land Surveyor in another state or jurisdiction; and
- (5) He or she left employment as a Professional Engineer or Professional Land Surveyor in another state to accompany his or her spouse to the State of Oklahoma.

(d) Qualifying applicants shall be awarded the opportunity to take any required state specific examination(s) in an expedited manner with fee waivers as described in Board Rules 245:2-1-18(e). All other Temporary License provisions above shall apply to this section as well.

SUBCHAPTER 5. EXAMINATIONS

Permanent Final Adoptions

245:15-5-1. Examinations required, scheduling, and postponements

(a) Examination fees paid to NCEES shall only be refunded, and examinations postponed, per NCEES policy and procedures.

(b) Following the Board's published deadline, an applicant may be approved to take an Oklahoma specific examination by the Principal Assistant or Executive Director or the Board's designee if sufficient evidence of hardship exists to warrant such action. ~~In no case shall an applicant be allowed to register for an examination after the NCEES cut-off date for paper and pencil examinations.~~

245:15-5-3. Examination specifications

NCEES Examinations offered by the Board will be in accordance with NCEES specifications, developed by NCEES examinations committees.

(b) Land surveyor applicants may be examined on their knowledge of Oklahoma laws and surveying by examination(s) approved by Board policy. ~~will, in addition, be tested by an examination approved by the Board, upon their knowledge of Oklahoma laws and surveying.~~

(c) ~~All applicants will, in addition, be tested by an open book exam based on Oklahoma laws, approved by the Board and administered by Board policy.~~

245:15-5-4. Taking and order of taking examinations Classification of qualifying examinations

(a) Applicants may ~~be approved to take one or more of the examinations listed in this subsection.~~

(1) NCEES Fundamentals of Engineering (FE) examination- The examination consists of subject matters in the fundamentals of engineering. Passing this examination qualifies the examinee for certification as an Engineer Intern, provided the examinee has met all other requirements for certification required by Statute and these Rules.

(2) NCEES Principles and Practice of Engineering (PE) examination-The examination consists of subject matters in applied engineering. Passing this examination qualifies the examinee for licensure as a Professional Engineer, provided the examinee has met the other requirements for licensure required by Statute and these Rules.

(3) NCEES Structural Engineering (SE) examination-The examination shall be considered a qualifying examination for licensure as a Professional Engineer (P.E.) and/or Professional Structural Engineer (P.E., S.E.). A candidate must receive acceptable results on both components to pass the examination. A candidate may sit for each component in separate exam administrations but must receive acceptable results on both components within a 5-year period. Receiving acceptable results on only one component shall not be sufficient for licensure purposes. The Structural examination shall be considered and referred to as one examination.

(4) NCEES Fundamentals of Surveying (FS) examination- The examination consists of subject matters in

the fundamentals of surveying. Passing this examination qualifies the examinee for certification as a Land Surveyor Intern, provided the examinee has met all other requirements for certification required by Statute and these Rules.

(5) NCEES Principles and Practice of Surveying (PS) examination-The examination consists of subject matters in applied surveying, divided in separate parts as determined by the Board. Passing these parts qualifies the examinee for licensure as a Professional Land Surveyor, provided the examinee has met the other requirements for licensure required by Statute and these Rules.

(6) Oklahoma Law and Surveying (OLS) examination-The examination is required and administered by Board Policy, and is a separate module on Oklahoma law and surveying procedures for the practice of surveying.

(7) Oklahoma Law and Engineering/Surveying (OLE/S) examination-The examination consists of Oklahoma law and is required and administered by Board Policy.

(b) Applicants required to take the Fundamentals of Engineering or Surveying examination, the Principles and Practice of Engineering examination, including the Structural Engineering examination, or the Principles and Practice of Surveying examination, shall have apply directly with NCEES to register and take the examinations. received a passing score on the Fundamentals examination prior to being permitted to take the Principles and Practice examination or the Structural Engineering examination.

(c) ~~The Structural examination shall be considered and referred to as one examination. The Structural examination shall consist of two components: the Vertical Forces (gravity/other) and Incidental Lateral component and the Lateral Forces (wind/earthquake) component. A candidate must receive acceptable results on both components to pass the Structural examination. A candidate may sit for each component in separate exam administrations but must receive acceptable results on both components within a 5 year period. Receiving acceptable results on only one component shall not be sufficient for licensure purposes.~~

(d) ~~c Examination subversion is the use of any means to alter the results of an examination to cause the results to inaccurately represent the competency of an examinee. Examination subversion for paper and pencil examination offerings includes, but is not limited to:~~

(1) Communication between examinees inside of the examination room or testing site.

(2) Giving or receiving any unauthorized assistance on the examination while an examination is in progress.

(3) Having any unauthorized printed or written matter or other devices in his or her possession which might serve to aid the examinee on the examination.

(4) Obtaining, using, buying, selling, distributing, having possession of, or having unauthorized access to secured examination questions or other secured examination material prior to, during or after the administration of the examination.

- (5) Copying another examinee's answers or looking at another examinee's materials while an examination is in progress.
 - (6) Permitting anyone to copy answers to the examination.
 - (7) Removing any secured examination materials from the examination facility.
 - (8) Allowing another person to take the examination in the examinee's place.
 - (9) Placing any identifying mark upon his or her examination papers other than his or her identification number or other identifiers as directed by the examination administrator.
 - (10) Use by an examinee of any written material, audio material, video material, digital material, or any other mechanism not specifically authorized during the examination for the purpose of assisting any examinee in the examination.
 - (11) Writing on anything other than designated examination material.
 - (12) Writing or erasing anything after time is called.
- (e) If there is evidence of examination subversion by an examinee prior to, during, or after the administration of the examination, one or more of the following may occur:
- (1) The examinee may be denied the privilege of taking the examination if examination subversion is detected before the administration of the examination.
 - (2) If the examination subversion detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further examination subversion shall be taken, and the examinee may be permitted to continue with the examination.
 - (3) The examinee may be requested to leave the examination facility if examination subversion is detected during the examination.
 - (4) The examinee may be requested to submit written advisement of his or her intent to comply with and understanding of the law.
 - (5) The examination results may be voided and the application fee forfeited.
 - (6) The examinee may not be allowed to sit for an examination for a time prescribed by the Board following investigation.
- (f) The Executive Director reserves the right not to release the examination results to the examinee pending the outcome of any investigation of examination subversion.
- (g) Removal from or voidance of one part of a multiple-part examination taken during a single examination administration shall constitute removal from or voidance of all other parts of the multiple-part examination.
- (h) Professional engineers or land surveyors shall not attempt to gain access to secured examination questions or other secured examination material or information for personal or professional use. Failure to comply shall result in a full investigation by this Board and may result in disciplinary action for this violation.

SUBCHAPTER 7. LICENSURE

245:15-7-4. Waived renewal fees for professional engineers and professional land surveyors over the age of 70

The biennial renewal fee for engineers or land surveyors who reach the age of 70 prior to the renewal date of their certificate of licensure will be waived. Renewal forms must be ~~completed, filled out and returned to the Board office or completed online~~ prior to the renewal date to qualify. Licensees who are continuing to practice their profession are required to fulfill continuing education requirements, even if the renewal fee is waived. If all requirements of this section are not completed properly, the certificate of licensure will be inactivated and reinstatement fees and penalties will apply to re-licensure. However, beginning January 1, 2021, all licensees shall be required to pay the regular renewal fee as long as the licensee chooses to maintain an active license. An individual may choose to retire their license at no cost and maintain a retired professional engineer or retired professional land surveyor status pursuant to the provisions of OAC 245:15-1-3. However, no privilege to offer or practice engineering or surveying shall exist without an active license.

245:15-7-5. Reinstatement of revoked, inactivated, or retired licenses

(a) Licenses inactivated for nonpayment of fees, ~~failing to complete other administrative requirements for renewal, failing to return the renewal form or completing the online form for licensee over the age of 70,~~ or licenses that were voluntarily retired by the licensee, may be reinstated by making written application for reinstatement within one hundred eighty days after expiration and payment of the prescribed renewal fee and penalty. After one hundred eighty (180) days of license inactivity, a new application and fees will be required, which shall be considered specifically by the Board, both from the standpoint of competency and all other statutory and rule requirements character. If reinstatement is within one hundred eighty (180) days following the date of inactivity, then licensure will be deemed to have been continuous. Licensees who are unable to certify completion of ~~thirty (30)~~ required professional development hours will be held to the requirements of this section. Offering or practicing engineering or surveying with an inactive, revoked or retired license during this reinstatement period is a violation of Title 59, Section 475.1 et seq. and the Rules of this Board.

(b) If a license revoked for non-payment or a retired license remains canceled or suspended for a period exceeding three (3) consecutive years, such former licensee may be required by the Board to take and pass a current examination as prescribed by the Board.

(c) Licenses suspended, ~~refused to renew, penalties, orders issued, inactivated~~ or revoked for cause, may be reinstated only by Board action and only then in the manner determined by such Board action. Request for reinstatement of a license shall show the Board that the public interest will not suffer by reason of the reinstatement ~~and shall be addressed to the Chair at~~

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~~the Board office.~~ The Board, by Statute, has the discretion as to whether or not to reinstate the Certificate of Licensure or Certificate of Authorization.

SUBCHAPTER 9. RULES OF PROFESSIONAL CONDUCT

245:15-9-3. Responsibility to the public

(a) Licensees shall at all times recognize their primary responsibility is to safeguard the health, property, safety, and public welfare when performing services for clients and employers.

(b) Licensees shall sign, date, and seal only those design documents and surveys which conform to accepted engineering or land surveying standards and that safeguard the life, health, property and welfare of the public.

(c) Licensees shall not reveal facts, data or information obtained in a professional capacity without the prior consent of the client, employer, or public body on which they serve except as authorized or required by law or rules.

(d) Licensees shall not partner, practice, or offer to practice, or permit the use of their name or firm name nor associate in business ventures with any person or firm which they know, or have reason to believe, is engaging in fraudulent or dishonest business or professional practices.

~~(e) Licensees should make a reasonable effort to inform another licensee whose work is believed to contain a material discrepancy, error, or omission that may impact the health, safety, property or welfare of the public, unless such reporting is legally prohibited. The licensee shall report this matter to the Board for investigation if it is not resolved.~~

~~(ef)~~ Licensees who have knowledge or reason to believe that any person or firm has violated any of these "Rules of Professional Conduct" or any other ~~violation provision~~ of Title 59 O.S., Sec. 475.1 et seq, Title 65 O.S. Sec 3.116 et seq, or the rules of this Board, ~~shall should~~ report it to the Board, may report it to appropriate legal authorities, and shall cooperate with the Board and those authorities as may be requested.

~~(fg)~~ Licensees shall notify their employer or client and such other authority as may be appropriate when their professional judgment is overruled under circumstances where the life, health, property, or welfare of the public is endangered.

~~(g) Licensees shall make a reasonable effort to inform another licensee whose work is believed to contain a material discrepancy, error, or omission that may impact the health, safety, property or welfare of the public, unless such reporting is legally prohibited.~~

245:15-9-4. Areas of practice

(a) Licensees shall practice only in the areas of their competence and shall undertake assignments only when qualified by education, examination, or experience in the specific technical fields of engineering or land surveying involved. The records of the Board shall indicate a discipline(s) of engineering designated by the license holder and considered by the Board to

be their area(s) of competence. All requests relating to listings for area(s) of competency require the review of the Board or its designee and shall include the following:

(1) Original application for licensure. Upon application for licensure, an applicant shall designate a discipline(s) of engineering by providing:

(A) a transcript showing a Board-approved degree(s) in the discipline(s) of engineering; or

(B) a supplementary experience record documenting at least 4 years of experience obtained under the supervision of a professional engineer or in the discipline(s) of engineering and verified by at least one PE reference provider that has personal knowledge of the applicant's ~~character, reputation, suitability for licensure, and~~ qualifying engineering experience; or

(C) verification of successful passage of the examination (s) on the principles and practice of engineering in the discipline(s) of engineering.

(2) Comity application for licensure or current license holder. A comity applicant or current license holder may request that the Board change the primary area of competence or indicate additional areas of competence by providing one or more of the following items:

(A) a transcript showing an additional degree in the new discipline of engineering other than the degree used for initial licensure; or

(B) a supplemental experience record documenting at least 4 years of experience obtained under the supervision of a professional engineer in the new discipline(s) of engineering verified by at least one PE reference provider that has personal knowledge of the license holder's ~~character, reputation, suitability for licensure, and~~ qualifying engineering experience; or

(C) verification of successful passage of the on the principles and practice of engineering in the new discipline.

(b) Licensees shall not affix their signatures, date of signature, or seals to any plans or documents dealing with subject matter in which they lack competence, or areas of competence designated in the official Board records, nor to any plan or document not prepared under their direct control and personal supervision.

(c) Licensees may accept assignments for coordination of an entire project, provided that each design segment is signed, dated, and sealed by a licensee competent to practice in the discipline(s) of engineering and in direct control and personal supervision of that design segment.

(d) In the event a question arises as to the competence of a licensee in a specific technical field which cannot be otherwise resolved to the Board's satisfaction, the Board, either upon request of the licensee or on its own volition, shall admit the licensee to an appropriate examination.

SUBCHAPTER 11. CONTINUING EDUCATION

245:15-11-5. Requirements for Professional Engineers and Land Surveyors

(a) To demonstrate that a Professional Engineer and/or Professional Land Surveyor maintains an acceptable level of competency, a licensee must obtain thirty (30) professional development hours (PDH's) within a twenty-four month (biennial) renewal period. If a licensee exceeds the requirement in any biennial renewal period, a maximum of fifteen (15) PDH's may be carried forward into the subsequent biennial renewal period.

(b) ~~Beginning January 1, 2019, a~~ licensee may choose either the Board's standard continuing education requirement as detailed above, or comply with the calendar year reporting method, which is equivalent to fifteen (15) PDH's per calendar year, totaling thirty (30) PDH's per renewal period, with no allowable carryover. The Board shall adopt a conversion table allowing for different renewal periods within the calendar year.

(c) A Professional Land Surveyor or a dual licensee must earn at least two (2) PDH's covering the Oklahoma Minimum Standards for the Practice of Land Surveying per biennial renewal period, with no allowable carryover for this requirement. If the licensee is reporting using the calendar year reporting method, they must be able to provide proof of completion of the required two (2) PDH's every two (2) years if audited. This requirement shall commence with the completion of the licensee's first full two-year renewal period following the adoption of these administrative rules, unless exempt under one of the provisions listed in OAC 245:15-11-3(b).

(d) A licensee shall only renew their license when they can truthfully certify that they have met the continuing education requirements of this subchapter and have proper proof of completion of the required PDH's to which they are certifying.

(e) PDH's may be earned by a licensee as follows:

- (1) Successful completion of college courses.
- (2) Successful completion of continuing education courses, short courses, tutorials, webinars and distance-education courses offered for independent study, or group study and through synchronous or asynchronous delivery methods such as live, correspondence, archival or the Internet;
- (3) Attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, conferences, or educational institutions;
- (4) Teaching or instructing in (1) through (3) of this subsection;
- (5) Active participation in professional or technical societies serving the engineering or land surveying profession as defined in OAC 245:15-11-7(b) (2);
- (6) Active participation in standards or code development technical committees, standards or code commissions, or licensing examination development committees;
- (7) Developing professional licensure exams, or writing standards or developing code in an official capacity;
- (8) Authoring published papers, articles, or books in the licensee's area(s) of competence;

(9) Authoring peer reviewed published professional or technical paper or book in the licensee's area(s) of competence; and

(10) Award of patents to the licensee or to licensee's employer when developed by the licensee.

(f) All such PDH's earned in activities as described in (e)(1) through (e)(10) of this section must be relevant to the practice of engineering and/or land surveying as applicable and may include technical, ethical or business content. Qualifying ethical or business courses or activities must contain content areas related to (1) the awareness of ethical concerns and conflicts; (2) an enhanced familiarity with the codes of conduct; (3) an understanding of standards of practice or care; (4) project management and risk-assessment management; or (5) other similar topics aimed at maintaining, improving, or expanding the skills set and knowledge relevant to the licensee's field and methods of practice.

245:15-11-7. Conversion of units and determination of credits

(a) The conversion of other units of credit of continuing education to PDH's is as follows:

- (1) One (1) college semester hour - 15 PDH's One (1) college quarter hour - 10 PDH's
- (2) One (1) hour of technical or professional development in a continuing education course, short course, tutorial, webinar, or distance-education course - 1 PDH
- (3) One (1) hour of attendance at a qualifying seminar, in-house course, workshop, or professional or technical presentation made at a meeting, convention, conference or educational institution - 1 PDH
- (4) For teaching or making presentations in (1) - (3) above - apply multiple of 2. Teaching credit is valid for teaching a course or seminar for the first time only. Teaching credit does not apply to full-time or part-time faculty members unless the activity is outside the scope of the licensee's customary teaching responsibilities.
- (5) Active participation in professional or technical societies serving the engineering or land surveying profession - 2 PDH's
- (6) Active participation serving on standards or code development technical committees, standards or code commissions, or licensing examination development committees - 4 PDH's
- (7) One (1) contact hour for developing professional licensure examinations, or writing standards or developing code in an official capacity - 1 PDH
- (8) Each published paper, article, or book in the licensee's area of professional practice - 5 PDH's
- (9) Each peer-reviewed published, professional or technical paper or book in the licensee's area(s) of competence - 10 PDH's
- (10) Each patent. - 10 PDH's

(b) Determination of Credit - The Board has final authority with respect to approval of courses, credit, PDH value for courses, and other methods of earning credit.

(1) Credit for college or community college approved courses will be based upon course credit established by the college.

(2) Credit for activity in subsection (a)(5), active participation in professional and technical societies (limited to 2 PDH's per organization with a maximum of 4 PDH's per biennial renewal period or 2 PDH's per calendar year), requires that a licensee serve as an officer and/or actively participate in a committee of the organization. PDH's are not earned until the end of each year of service is complete. Active participation in educational outreach activities pertaining to professional licensure or the surveying/engineering professions that involve K-12 or higher education students may count as active participation in a professional and technical society.

(3) Credit for activity in subsection (a)(6), active participation in standards or code development technical committees or standards or code commissions or licensing examination development committees is limited to 4 PDH's per organization with a maximum of 8 PDH's per biennial renewal period or 2 PDH's per calendar year. PDH's are not earned until the end of each year of service is complete.

(4) With the commencement of the licensees first full ~~two-year~~biennial renewal period following the adoption of these administrative rules, credit for approved activities which focus on other jurisdictional professional engineering or professional land surveying licensure laws, regulations, or minimum standards may be approved, but shall be limited to 2 PDH's per ~~two-year~~biennial renewal period or 1 PDH per calendar year.

245:15-11-11. Disallowed credit; failure to comply

(a) If a licensee is unable to certify completion of 30 PDH's per biennial renewal period, or 15 PDH's per calendar year ~~beginning January 1, 2019~~, by their expiration date, the license will not be renewed unless an exemption has been claimed and approved pursuant to OAC 245:15-11-3.

(b) If the Board, or its designee, disallows claimed PDH's completed during the designated renewal period for audit, as activities that do not meet the criteria for continuing education activities, the licensee shall have 90 days after notification to substantiate the original claim or to complete new continuing education activities to meet the minimum requirement. Further, if verification is supplied for the submitted hours, but disallowed as not acceptable verification, the licensee shall have 90 days after notification to substantiate the original claim with acceptable verification, or complete new continuing education activities to meet the minimum requirement. The total number of days a licensee will be allowed to complete new continuing education activities or provide additional verification of claimed hours is 90 days from the date of notification.

(c) Failure to comply with an audit occurs when a licensee is notified of an audit and they fail to supply a completed log form and verifications showing the required PDH's earned during the appropriate audit period, by the stated deadline, or a licensee submits false information to the Board in an attempt to renew a license. These acts are violations of Board Statutes

and Rules and may lead to disciplinary action. Licensees who do not properly respond to the audit by the stated deadline, shall be in non-compliance with the audit and shall not be granted extra time to earn additional continuing education credit. If no verification of claimed PDH's is provided at the stated deadline for the audit, the licensee shall not be allowed 90 additional days to provide verification and they will have failed the audit, unless proof of hardship is provided in writing and approved by the Board or its designee.

(d) If a licensee is audited for their continuing education requirements for their renewal period, the licensee shall not be allowed to retire their license to avoid complying with the audit or avoid disciplinary action if they incorrectly certified at the time of renewal that they had completed their continuing education requirements.

245:15-11-13. Dual Licensees

For an individual licensed both as an engineer and surveyor, the number of PDH's required shall remain 30 per biennial renewal period or 15 per calendar year, at least 1/3 of which shall be obtained in each profession. Dual licensees must comply with the provisions of OAC 245:15-11-5(c) regarding the Oklahoma Minimum Standards for the Practice of Land Surveying.

SUBCHAPTER 13. MINIMUM STANDARDS FOR THE PRACTICE OF LAND SURVEYING

245:15-13-2. Minimum Standards

(a) **Definitions:** as used in these standards, the following terms shall have the following meanings where the context permits as provided in 59 O.S. 475.1 et seq. and Chapter 245:15-1-3 of the Rules of the Board.

(b) **Research and investigation.** Every property boundary survey shall be made in accordance with the boundary description, as provided to or as created by the professional land surveyor, as nearly as is practicable. The professional land surveyor, prior to making a survey, shall acquire available necessary survey data, which may include record descriptions, deeds, maps, Certified Corner Records, government notes, subdivision plats, road records, and other available section and boundary line location data in the vicinity. The professional land surveyor shall analyze the data and make careful determination of the record title boundary of the property to be surveyed. From the information gathered, the professional land surveyor, or those working under his or her direct control and personal supervision, shall search thoroughly for all controlling corners and all other available field evidence of boundary location. In the event of the discovery of a material disagreement with the work of another surveyor, the surveyor ~~shall~~should make reasonable efforts to contact the other surveyor in an attempt to resolve the disagreement.

(c) **Minimum technical standards for land or boundary surveys (field and office).**

(1) In order for a plat, subdivision plat, map, or sketch of a survey to be acceptable in terms of this rule, it must

be complete and shall be certified or otherwise stated as meeting these minimum technical standards.

(2) All measurements made in the field shall be in accordance with the United States Standard, using either US Survey Feet or meters. All measurements shall be referenced to the horizontal or vertical plane, with the exception of geodetic surveys.

(3) All survey documents produced by an individual practicing under his or her own name shall bear the name, address, and telephone number, along with the license number, seal, signature, and date of signature of the professional land surveyor. All survey documents produced by a firm shall bear the name, address, telephone number, and Certificate of Authorization number, along with the name, license number, seal, signature, and date of signature of the surveyor.

(4) All survey documents must bear the date of the last site visit and bear the date of any revisions thereon. If the site visit was performed on multiple dates, the drawing may specify the range of those dates.

(5) A designated north arrow and scale of the map shall be shown prominently upon the drawing.

(6) Any symbols and/or abbreviations representing physical objects used on the drawing will be clearly noted upon the drawing.

(7) The basis of control used in the survey must be shown on the survey and shall be based upon one or both of the following:

(A) Projections (state plane coordinates or other) with specifics to elevation, vertical datum, horizontal datum, zone, ground to grid factor used, state plane or UTM zone including all pertinent metadata, if applicable, measured and published geodetic control values based upon an online position user service (OPUS) solution or geodetic control stations or other control;

(B) A reference to all bearings shown must be clearly stated, i.e., whether to 'True North'; 'Grid North as established by state plane datum'; 'Assumed North based on the bearing of a well-established line'; a 'Deed call for a particular line'; or 'the bearing of a particular line shown upon a plat'; etc. A specific line between two points either found or re-established set points as shown on a filed plat or in an existing deed description. If a solar observation, GNSS observation, or other means for determining True or Geodetic North is used, it shall also include the accompanying latitudinal and longitudinal value of the observation point. 'GPS North' or similar ambiguous notations without explanation are unacceptable.

(8) Referencing surveys.

(A) Surveys based on the United States Public Land Survey System shall be referenced to original or properly restored corners. The appropriate Bureau of Land Management Manual of Surveying Instructions shall be used as a guide for the restoration of lost or obliterated corners and subdivision of sections into aliquot parts.

(B) Lot surveys within platted subdivisions shall be referenced to existing corner monuments within the subdivision as necessary to verify the survey.

(9) Where evidence of inconsistencies is found, such as overlapping descriptions, hiatuses, excess or deficiency, or conflicting boundary line or monuments; the nature and extent of the inconsistencies shall be shown on the drawing.

(10) All survey drawings shall show the change in direction between lines, lines and curves, and between adjacent curves, by angles, bearings or azimuths. Circular curves shall show: 1. The length of radius; 2. The arc distance; and 3. The chord distance and chord bearing. Sufficient information must be shown to mathematically close all lots and/or parcels.

(11) All easements, rights-of-way and building lines drawn or referenced on recorded subdivision plats on or across the land being surveyed and the width of the rights-of-way of all section lines adjoining or within the surveyed property shall be shown upon the survey drawing. Physical evidence of roadways providing access to or through the property being surveyed shall be shown and/or noted. If location of easements or rights-of-way, other than those drawn or referenced on recorded subdivision plats is required, this information must be furnished to the professional land surveyor.

(12) The professional land surveyor shall establish or confirm a monument or confirm the prior placement of monuments at each and every property corner on the boundary line or boundary lines of the parcel or tract of land being surveyed. In such cases where the placement of a required monument at its proper location is impractical, a witness or reference monument shall be placed with the data given to show its location upon the ground in relation to the boundary lines or corner. In any case the type and size of all monuments, either found or set, and the relationship of the monuments to the surveyed lines and corners will be shown on the drawing. Where practical, monuments shall be constructed of material capable of being detected with the conventional instruments for finding ferrous or magnetic objects. All set monuments shall have affixed thereto a durable marker or cap bearing, at a minimum, the license number of the land surveyor in responsible charge, or the Certificate of Authorization number of the firm performing the survey. Monuments for the exterior corners of a subdivision shall be set by the surveyor who certified the plat of the subdivision prior to the recordation of the subdivision plat. It is the responsibility of the surveyor to set the interior corners on all lot and block corners prior to the conveyance of the lot, block or any part thereof within thirty days of completion of the infrastructure improvements, but no later than one year after recordation of the subdivision plat.

(13) Accuracy of measurements. The accuracy of the measurements for the survey shall be based upon the type of survey, and the current or expected use of the land. The accuracy of the measurements thus performed shall be substantiated by the computations of the traverse or the

results of a Global Navigation Satellite System (GNSS) survey; the relative error of closure permissible shall be no greater than the following standards given below:

- (A) Where there is or will be zero lot line construction on small tracts in a high density urban area, the allowable closure error is 1:10,000 or the allowable positional error is plus or minus 0.10 feet.
 - (B) In residential or commercial subdivisions where the length of lines does not exceed 300 feet, the area of tracts does not exceed 2 acres, and there is no plan for zero lot line construction, the allowable closure error is 1:10,000 or the allowable positional error is plus or minus 0.25 feet.
 - (C) In suburban or rural residential or industrial tracts where the length of lines does not exceed 1000 feet and the area of tracts is between 2 and 40 acres, the allowable closure error is 1:10,000 or the allowable positional error is plus or minus 0.50 feet.
 - (D) Rural tracts of 40 acres or more where the corners of the tract may be connected with traverse legs in excess of 1000 feet, the allowable closure error is 1:10,000 or the allowable positional error is plus or minus 1.0 foot.
 - (E) Rural tracts of 40 acres or more in rough or tree covered terrain where the corners of the tract must be connected with short traverse lines because of poor visibility between the corners of the tract, the allowable closure error is 1:7,500 or the allowable positional error is plus or minus 1.5 feet.
 - (F) Field work performed which has a closure error greater than the maximum allowed, or linear error of closure greater than the maximum positional error shown, shall be considered unacceptable and shall be corrected. Adjustment of a traverse must not shift the position of any point more than the maximum positional error listed above.
- (14) When special conditions exist that effectively prevent the survey from meeting these minimum standards, the special conditions and any necessary deviation from the standards shall be noted upon the drawing. It shall be a violation of this rule to use special conditions to circumvent the intent and purpose of these minimum standards.
- (15) A survey plat, sketch or map must be created whenever a land or boundary survey is performed. Every survey plat, sketch or map must contain the legal description of the land being surveyed, either on the face of the survey plat or attached to and referenced to the survey plat. If the professional land surveyor prepares a new description, then both the surveyor's description and the original description must be on the drawing.
- (16) Additions or deletions to survey drawings by other than the signing party or parties are prohibited without written consent of the signing party or parties.
- (d) Specifications for Topographic and Planimetric Mapping, Including Ground, Airborne, and Space borne Surveys: Production procedures for topographic and planimetric mapping surveys shall be prepared in accordance with the Instruction Manual for Topographic and Planimetric Mapping,

as adopted by the Board, and with the standards established by Part 3 of the Federal Geographic Data Committee (FGDC) Geospatial Positioning Accuracy Standard and applicable extensions and revisions. These standards are incorporated by reference including subsequent amendments and editions.

(e) Control Surveying Reporting: Whenever a professional land surveyor undertakes control surveying, where the coordinates and elevations of the control points established by the survey will be relied upon by professionals other than the original surveyor for future phases of the work, the licensee shall prepare a control survey report and shall provide the report to the prime client and to any other person who makes a written submittal. Alternatively, if the entire report is contained on the face of the work product, no other reporting is required. The report will contain the following information as appropriate to work being performed:

- (1) A listing of the final adjusted coordinates and elevations for all points within the control network along with a complete description of all monuments established or recovered,
- (2) A complete description of the horizontal and vertical datum used including the basis of bearings,
- (3) A complete description of the state plane or UTM zone used including all pertinent metadata, if appropriate,
- (4) Units used for coordinates and elevations,
- (5) Description of monument(s) used to constrain the control network including the reference coordinates and elevations used for aid monument(s),
- (6) If the final adjusted coordinates are based on a modified (ground datum) state plane coordinate system or a low-distortion local coordinate system (ground referenced) derived from geospatial positions, a complete description of the method(s) used to generate the modified coordinates shall be included in the report,
- (7) A brief description detailing the field methods and equipment used to conduct the control survey,
- (8) The date when the control monuments were set, the date when the control monuments were positionally observed, and the date of the final network adjustment,
- (9) Nothing in this section dictates the spatial accuracy that will be required by any specific project. It will be the responsibility of the individual licensee to determine the appropriate level of accuracy for each project. However, the licensee shall report the spatial accuracy in both the horizontal and vertical components,
- (10) A certificate followed by the dated signature and seal of the professional land surveyor responsible for the control survey stating that the surveyor conducted an actual survey on the ground and is responsible for the survey. The following model certification is considered to be an example of the minimum that the surveyor should certify to: "I, _____, certify that this horizontal/vertical control survey was completed under my direct and responsible charge from an actual survey made under my supervision and meets the Oklahoma Minimum Standards for the Practice of Land Surveying as adopted by the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors."

(11) Preparation of the control portion of geographic information systems and land information systems means the authoritative and monumented ground survey of a system of marks or objects to establish horizontal or vertical positions.

(f) Minimum Standards for Legal Descriptions: Preparation of a new description that is different from the description furnished to the professional land surveyor should be avoided unless deemed necessary by the professional land surveyor because of errors or ambiguities in the original description. Except in the case of an original survey, if a new description is prepared, a note shall be provided stating (a) that the new description describes the same real estate as the record description or, if it does not, (b) how the new description differs from the record description.

(1) Metes and bounds descriptions prepared shall at a minimum contain the following items:

(A) A preamble containing the Quarter Section, Section, Township, Range, Principal Meridian (Indian or Cimarron) and the County and/ or City of the tract of land being described or a preamble containing the Lot and/or Block number, subdivision name and if available, the recording information of the plat and the City, if applicable, and County in which it is filed of record, and

(B) A beginning point and point of commencement (if applicable) referenced to a known point such as a section corner, quarter-section corner, sixteenth section corner, or a Lot/Block corner of a recorded subdivision a tie to each additional section line or recorded subdivision line it passes through, and all distances and directions identified in the record description of the surveyed property (and in the new description, if one was prepared), and

(C) Distances listed to the nearest hundredth of a foot (if surveyed), and

(D) Bearings or angles listed in degrees, minutes and seconds (if surveyed), and

(E) The basis of control used in the description shall be as stated in (c)(7) of this subsection, and

(F) Curved lines with circular curves shall show: 1. Direction of the curve (right or left); 2. The radius; 3. Arc distance; and 4. Chord distance and chord bearing, and

(G) The name and license number of the professional land surveyor who prepared the description, and

(H) The date of preparation of the legal description, and

(I) Each metes and bounds description must return to the Point of Beginning and close mathematically.

(2) Aliquot descriptions may be used in lieu of a metes and bounds description and shall at a minimum contain the following items: Quarter Section, Section, Township, Range, Principal Meridian (Indian or Cimarron), city (if applicable) and the County of the tract of land being described.

(3) Lot and block description may be used in lieu of a metes and bounds description and shall at a minimum contain the following items: Lot and/or Block number, subdivision name, City (if applicable), the County in which it is filed of record and, if available, the recording information of the plat.

(4) A written legal description of the surveyed tract of land must provide sufficient information to locate the property on the ground and distinctly set it apart from all adjoining properties.

(5) The preparation of legal descriptions by a person who does not monument the land so described is not the practice of land surveying.

SUBCHAPTER 17. LICENSEE'S SEAL

245:15-17-1. Licensee's seal

(a) Every person authorized to practice engineering or land surveying by a certificate of licensure may obtain a seal with which to identify all final engineering and land surveying papers or documents, including drawings, specifications, plans, reports, land surveys, plats, land descriptions, design information, construction documents, calculations, addenda, change orders, field orders and other documents of service involving the practice of engineering or land surveying issued by the licensee for use in the State of Oklahoma whenever presented to a client or any public agency to certify that the work thereon was done by the licensee or under the direct control and personal supervision of the licensee.

(b) The seal required shall be of a type which will make an image on the surface of original documents and duplications of original documents. The use of a rubber stamp or electronic digitization which produces an accurate and legible image of the seal is permissible.

(c) The seal of the licensee shall consist of two (2) concentric circles. The inner circle shall have inscribed the licensee's name and number, which shall correspond to the name and certificate number shown on the Certificate of Licensure. The area between the two (2) circles shall be inscribed with the word "Oklahoma" at the bottom reading counter-clockwise and the words "Licensed Professional Engineer" or "Licensed Professional Land Surveyor" at the top reading clockwise. "Licensed Professional Surveyor" may be substituted for "Licensed Professional Land Surveyor" on the seal. The seals commercially designated as 1 7/8" seal, with an inner circle of 1 1/8" diameter and an outer circle of 1 3/4" diameter, or the 1 5/8" seal, with an inner circle of 1 1/16" diameter and an outer circle of 1 9/16" diameter, are acceptable, as shown in Appendix A of this Chapter. Reproduction of the original documents with the required seal may produce a different seal size provided the seal remains completely legible.

(d) A licensee who practices in other than their full legal name shall register the name customarily used in professional practice with the Board together with a copy of their signature for such customarily used name. The seal may be inscribed with the registered, customarily used name, and the signature affixed across or adjacent to the seal shall be the name inscribed

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on the seal. A seal and signature affixed in a registered, customarily used name shall have the same force and effect as the seal and signature affixed in a licensee's full legal name.

(e) Existing seals containing the words "Registered Professional Engineer", "Registered Professional Land Surveyor", and "Registered Land Surveyor" may continue to be used.

(f) Licensed "Professional Structural Engineers" may obtain an additional seal and use the word "Professional Structural Engineer" in lieu of "Licensed Professional Engineer" to use when sealing structural engineering projects, whether or not the work requires the seal of a Professional Structural Engineer. All other work lawfully performed by the Professional Structural Engineer in other disciplines of engineering shall be signed and sealed using the seal which states "Licensed Professional Engineer". Work defined as a "significant structure" shall be sealed with a "Professional Structural Engineer" seal, and/or signed with the designation "P.E., S.E." following the signature.

245:15-17-2. Use of seal

(a) The application of the licensee's signature and date of signature to a sealed document shall constitute certification that the work thereon was done by the licensee or under the licensee's direct control and personal supervision, as defined by statute, and that the licensee accepts full responsibility and liability for the professional work represented thereon. Authorized use of the prescribed seal is an individual act. The licensee is responsible for its security at all times. The licensee shall permit no other person, firm, or entity to use the prescribed seal. The seal shall be affixed to documents and instruments only during the time the licensee's license is current and in good standing. Whenever the seal is applied, the document must be signed by the licensee thereby certifying that he or she is competent in the subject matter, has declared the designated area(s) of competence in the record of the Board, and was in direct control and personal supervision of the work product.

(b) Licensees must affix their seal, signature and date of signature to documents or drawings which reflect work for which the licensee has responsible charge, as defined, including revisions and addenda thereto. In the case when multiple licensees are involved, each sheet in a set of drawings shall contain the seal, signature and date of the licensee responsible. A licensee not practicing as, or through a firm shall also include contact information to include address and phone number.

(c) Regarding professional engineering, the licensee is responsible for meeting and documenting all of the following requirements to be in direct control and personal supervision of the work, whether the work is performed remotely or locally:

(1) The client requesting preparation of such plans, specifications, drawings, reports, or other documents makes the request directly to the licensee, a managing agent or authorized employee of the licensee's firm; and

(2) The licensee supervises the preparation of the plans, specifications, drawings, reports, or other documents and has input into their preparation prior to their completion and reviews the final plans, specifications,

drawings, reports, or other documents prior to signing and sealing the work; and

(23) The licensee has the authority to, and does, make any necessary and appropriate changes to the final plans, specifications, drawings, reports, or other documents prior to signing and sealing the work; and

~~(3) The intent of the definition of direct control and personal supervision may be met if all provisions of the definition are met using remote electronic or communication means.~~

(4) ~~An~~ A professional engineer who signs and seals work must be capable of answering questions as to the engineering decisions made during the work on the project in sufficient detail as to leave little doubt as to the professional engineer's competence for the work performed.

~~(d) Unlicensed persons, including professional engineers and professional land surveyors not licensed in Oklahoma, shall not independently perform engineering or surveying work in the state of Oklahoma, to subsequently have it reviewed, signed, and sealed by a licensed professional engineer or professional land surveyor in the state of Oklahoma, unless excluded in (e) below. An Oklahoma licensed professional engineer must be engaged at the commencement of the project and meet all the provisions of (c) (1) (4) of this subsection to qualify as being in responsible charge of the work. If the Oklahoma licensed professional engineer is a contractor or consultant to the firm or individual who contracted for the project, the licensee must include his or her firm name, if applicable, and contact information on the work.~~

~~(ed)~~ Regarding land surveying, the licensee in responsible charge and directly controlling and personally supervising the work is responsible for meeting and documenting all of the following requirements to be in direct control and personal supervision of the work:

(1) The client requesting preparation of such plans, specifications, drawings, reports, or other documents makes the request directly to the licensee, a managing agent or authorized employee of the licensee's firm; and

(2) The licensee must work in the office where the land surveying services are offered; and

(3) The licensee must be physically present in the office where the surveying personnel are located in order to directly control and personally supervise the surveying work, including exercising professional judgment in making surveying decisions related to the amount and type of research performed, the field procedures used, and the surveying decisions related to the preparation of plats, land surveying reports, legal descriptions and other land surveying documents furnished in connection with the land surveying services provided; and

(24) The licensee has the authority to, and does, make any necessary and appropriate changes to the work prior to signing and sealing the work; and

~~(3) All surveying offices must have an Oklahoma licensed professional land surveyor physically present at the location to be in responsible charge of, and in direct control and supervision of the work; and~~

(45) A professional land surveyor who signs and seals work must be capable of answering questions as to the surveying decisions made during the project in sufficient detail as to leave little doubt as to the professional land surveyor's involvement with the work performed.

~~(5) The intent of the law shall not be met if an unlicensed surveying crew independently performs surveying work, to then be reviewed, signed, and sealed by a professional land surveyor. An unlicensed surveying crew may only be used if the professional land surveyor in direct control and supervision of the work is personally directing the land surveying crew and the work is performed concurrent with the supervision.~~

(e) Unlicensed persons, including professional engineers and professional land surveyors not licensed in this state, shall not perform engineering or surveying work in this state, to subsequently have it reviewed, signed, and sealed by a licensed professional engineer or professional land surveyor licensed in the state of Oklahoma. An Oklahoma licensed professional engineer must meet all provisions of (c) of this subsection and an Oklahoma licensed professional land surveyor must meet all provisions of (d) of this subsection to qualify as being in responsible charge of the work. If the Oklahoma licensed professional is a contractor or consultant to the firm or individual who contracted for the project, the licensee must include his or her firm name, if applicable, and contact information on the work.

(f) In the case of bound documents, licensees must affix their seal, signature, and date of signature to the cover sheet or index page, which identifies all documents bound together for which the licensee has responsible charge. In the absence of covers and index pages each document must have the seal, and dated signature of the licensee who has responsible charge. For bound documents involving multiple licensees, either each document in the bound set must be sealed, signed, and dated by the licensee in responsible charge for that portion of the work, or the cover sheet or index page must be sealed, signed, and dated by each licensee with a breakdown of the licensee in responsible charge of each document clearly identified.

(g) In the case when the work consists of a letter or report prepared by a single licensee, the licensee need only seal, sign, and date the first page, title page or signature page of the document.

(h) The Statute, 59 O.S., Sections 475.1 et seq. and Rules of the Board in this Chapter describe the use of the seal of the licensee. The seal, signature, and date of signature shall be placed on all final engineering and land surveying documents whenever presented to a client or any public agency to certify that the work thereon was done by the licensee or under the responsible charge of the licensee. In lieu of sealing, signing, and dating each copy of the work, the seal, signature, and date shall be placed on originals, tracings, or other reproducible documents by the licensee in such a manner that when the originals, tracings, or other reproducible documents are reproduced the seal, signature, and date will be legible.

(i) Working drawings or preliminary documents are not required to have a seal and signature if they contain a statement

in large bold letters to the effect **PRELIMINARY, NOT FOR CONSTRUCTION OR IMPLEMENTATION**.

(j) Permit sets or construction drawings, which are not final, may be signed and sealed for the purpose of submitting the work to the Authority Having Jurisdiction (AHJ) for their review, comment and /or approval, but must be clearly marked in large bold letters **NOT FOR CONSTRUCTION**.

(k) An Engineer Intern or Land Surveyor Intern shall not have a seal.

(l) Drawings, reports, or documents that require a signature may be signed using a digital signature. The digital signature must be:

- (1) Unique to the person using it;
- (2) Capable of verification; and
- (3) Under the sole responsibility and control of the licensee affixing it.

(A) A scanned image or other reproduction of an original signature may be used in lieu of an original signature or digital signature if accompanied by an original handwritten date.

(B) A digital signature having an electronic authentication process attached to or logically associated with the electronic document may also be used and does not need to include the handwritten date, but must be dated. In this instance, the digital signature shall be linked to a document in such a manner that the data in the document can be verified as being unaltered since the time that the digital signature was affixed.

(m) Successor licensee - In circumstances where a licensee in responsible charge of the work is unavailable to complete the work, or the work is a site adaptation of a standard design plan, a successor licensee may take responsible charge over, and complete the work, in accordance with the provisions of this Chapter.

(1) A licensee shall perform or have responsible charge over all professional engineering or land surveying services to include development of a complete design file including work or design criteria, calculations, code research, field notes, and any necessary and appropriate changes to the work. The burden is on the successor licensee to demonstrate such compliance.

(2) The non-professional services, such as drafting, need not be redone by the successor licensee but must clearly and accurately reflect the successor licensee's professional work.

(3) The licensee shall have direct control and personal supervision over the engineering or surveying work and the signed, dated, and sealed originals of all documents over which the licensee has taken responsible charge under this provision. A professional engineer or land surveyor who adopts, signs, and seals work previously engineered or surveyed under this provision shall perform sufficient review and calculation to ensure that all standards of practice required of licensees are met, including satisfying the relevant criteria stated in paragraph (c)(iv) and (e)(iv) above and shall take professional and legal responsibility for documents signed and sealed.

(n) Prototypical design plans- A licensee may take responsible charge over a standard, prototypical design plan, including drawings and specifications in printed or electronic form, for the purpose of adapting the plan to a specific site in this state, provided the licensee's work is completed in accordance with the provisions of this Chapter. This provision shall apply to both site adaptation of new structures and site adaptation for construction in an existing structure.

(1) In the case of an existing structure, the engineering for modifications to the existing structure and any of its systems shall be under the responsible charge of persons licensed in this state.

(2) Standard, prototypical designs that may be site adapted under this provision are drawings and specification documents prepared for the purpose of defining the Owner's requirements but not yet completed for construction on a specific site.

(3) Site adaptation shall not include, and this provision does not authorize, a licensee to take responsible charge over work designed for construction on a specific site in this state that was prepared by a person not licensed in this state.

(4) Standard prototypical design plans shall not be released publicly or submitted to a client or user unless the plans are marked with a statement substantially equivalent to 'This document is preliminary in nature and is not a final, signed and sealed document'. The statement shall not be removed until an Oklahoma licensee has taken responsible charge of the work and the work is dated and issued under the seal and signature of an Oklahoma licensee.

(5) A licensee shall perform or have responsible charge over all professional engineering services to include development of a complete design file including work or design criteria, calculations, code research, and any necessary and appropriate changes to the work. The burden is on the successor licensee to demonstrate such compliance.

(6) The non-professional services, such as drafting, need not be redone by the successor licensee but must clearly and accurately reflect the successor licensee's professional work.

(7) The licensee shall have direct control and personal supervision over the engineering work and the signed, dated, and sealed originals of all documents over which the licensee has taken responsible charge under this provision.

(o) Any revision to a document containing the seal and signature of a licensee shall be identified and dated. Revisions not done by the original licensee must be signed and sealed by the licensee in responsible charge of the revision. At no time shall a successor licensee remove the seal and signature of the original licensee in responsible charge of the work.

(p) Record drawings prepared to reflect changes made during construction based on the record of changes made to construction drawings and changes to the construction observed by the licensee or on the licensee's behalf or reported by contractors is deemed a drafting service and shall not require a licensee's seal, signature, and date of signature.

(q) In the case of a firm, each separate document, the first page of a bound document, and, in the case of multiple licensees, the portion of the work for which each firm is responsible, shall also show the name of the firm, the firm's Certificate of Authorization number and contact information for the firm.

(r) Engineering or surveying technical submissions given to an architect for a project must be signed and sealed by the professional engineer or land surveyor in responsible charge of the work prior to the architect taking responsible charge of the work as the prime professional for the project.

(s) Consultants hired to do work on behalf of the firm must sign, seal, and date their work and include their contact information, and Certificate of Authorization information, if applicable, on the work. Consultants may not be the designated managing agent for the firm to which they are consulting.

[OAR Docket #20-697; filed 7-24-20]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 100. AIR POLLUTION CONTROL

[OAR Docket #20-702]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

252:100-1-2 [AMENDED]

252:100-1-3 [AMENDED]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201, and 2-5-106.

Air Quality Advisory Council; 27A O.S. §§ 2-2-201 and 2-5-107.

Oklahoma Clean Air Act; 27A O.S. §§ 2-5-101 through -117.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Approved by Governor's declaration on June 25, 2020

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EFFECTIVE:

September 15, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The Department is proposing to amend 252:100-1-2, Statutory definitions, to correct an incorrect statutory citation and update the latest statutory publication date. The Department is also proposing to amend 252:100-1-3, Definitions, to make a minor clarification to a definition, correct a truncated definition, add a definition for clarification, and alphabetically re-order a definition. The gist of this rulemaking is to correct a statutory citation and clarify and add definitions.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

252:100-1-2. Statutory definitions

The definitions contained in the Oklahoma Environmental Quality Code at 27A O.S. Sections ~~2-01-1022-1-102~~ and ~~2-05-1012-5-104~~ (20022011) under which this Chapter is promulgated, shall apply for the following terms.

- (1) air contaminants,
- (2) air pollution,
- (3) council,
- (4) department,
- (5) director,
- (6) Executive Director, and
- (7) person.

252:100-1-3. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise or unless defined specifically for a Subchapter, section, or subsection in the Subchapter, section, or subsection.

"Act" means the Federal Clean Air Act, as amended, 42 U.S.C. 7401 et seq.

"Administrator" means, unless specifically defined otherwise, the Administrator of the United States Environmental Protection Agency (EPA) or the Administrator's designee.

"Air contaminant source" means any and all sources of emission of air contaminants (pollutants), whether privately or publicly owned or operated, or person contributing to emission of air contaminants. Without limiting the generality of the foregoing, this term includes all types of business, commercial and industrial plants, works, shops and stores, heating and power plants or stations, buildings and other structures of all types.

"Air pollution abatement operation" means any operation which has as its essential purpose a significant reduction in:

- (A) the emission of air contaminants, or
- (B) the effect of such emission.

"Air pollution episode" means high levels of air pollution existing for an extended period (24 hours or more) of time which may cause acute harmful health effects during periods of atmospheric stagnation, without vertical or horizontal ventilation. This occurs when there is a high pressure air mass over an area, a low wind speed and there is a temperature inversion.

Other factors such as humidity may also affect the episode conditions.

"Ambient air standards" or **"Ambient air quality standards"** means levels of air quality as codified in OAC 252:100-3.

"Atmosphere" means the air that envelops or surrounds the earth.

"Best available control technology" or **"BACT"** means the best control technology that is currently available as determined by the ~~Division~~ Director on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs of alternative control systems.

"Building, structure, facility, or installation" means:

(A) all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement.

(B) notwithstanding the provisions of subparagraph (A), for onshore activities under Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within 1/4 mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators, or emissions control devices. Surface site, as used in this definition, has the same meaning as in 40 CFR 63.761.

"Carbon dioxide equivalent emissions" or **"CO₂e"** means an amount of GHG emitted, and shall be computed by multiplying the mass amount of emissions, for each of the six greenhouse gases in the pollutant GHG, by the gas' associated global warming potential (GWP) published in Table A-1 to subpart A of 40 CFR Part 98 - Global Warming Potentials, and summing the resultant value for each to compute a CO₂e.

"Catalytic cracking unit" means a unit composed of a reactor, regenerator and fractionating towers which is used to convert certain petroleum fractions into more valuable products by passing the material through or commingled with a bed of catalyst in the reactor. Coke deposits produced on the catalyst during cracking are removed by burning off in the regenerator.

"Combustible materials" means any substance which will readily burn and shall include those substances which,

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although generally considered incombustible, are or may be included in the mass of the material burned or to be burned.

"Commence" means, unless specifically defined otherwise, that the owner or operator of a facility to which neither a NSPS or NESHAP applies has begun the construction or installation of the emitting units on a pad or in the final location at the facility.

"Commencement of operation" or "commencing operation" means the owner or operator of the stationary source has begun, or caused to begin, emitting a regulated air pollutant from any activity for which the stationary source is designed and/or permitted.

"Complete" means in reference to an application for a permit, the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the Director from requesting or accepting any additional information.

"Construction" means, unless specifically defined otherwise, fabrication, erection, or installation of a source.

"Crude oil" means a naturally occurring hydrocarbon mixture which is a liquid at standard conditions. It may contain sulfur, nitrogen and/or oxygen derivatives of hydrocarbon.

"Direct fired" means that the hot gasses produced by the flame or heat source come into direct contact with the material being processed or heated.

"Division" means Air Quality Division, Oklahoma State Department of Environmental Quality.

"Dust" means solid particulate matter released into or carried in the air by natural forces, by any fuel-burning, combustion, process equipment or device, construction work, mechanical or industrial processes.

"EPA" means the United States Environmental Protection Agency.

"Excess emissions" means the emission of regulated air pollutants in excess of an applicable limitation or requirement as specified in the applicable limiting Subchapter, permit, or order of the DEQ. This term does not include fugitive VOC emissions covered by an existing leak detection and repair program that is required by a federal or state regulation.

"Existing source" means, unless specifically defined otherwise, an air contaminant source which is in being on the effective date of the appropriate Subchapter, section, or paragraph of these rules.

"Facility" means all of the pollutant-emitting activities that meet all the following conditions:

- (A) Are under common control.
- (B) Are located on one or more contiguous or adjacent properties.
- (C) Have the same two-digit primary SIC Code (as described in the Standard Industrial Classification Manual, 1987).

"Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR

Part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

"Fuel-burning equipment" means any one or more of boilers, furnaces, gas turbines or other combustion devices and all appurtenances thereto used to convert fuel or waste to usable heat or power.

"Fugitive dust" means solid airborne particulate matter emitted from any source other than a stack or chimney.

"Fugitive emissions" means, unless specifically defined otherwise, those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Fume" means minute solid particles generated by the condensation of vapors to solid matter after volatilization from the molten state, or generated by sublimation, distillation, calcination, or chemical reaction when these processes create airborne particles.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food.

"Greenhouse gas" or "GHG" means the air pollutant defined in 40 CFR § 86.1818-12(a) as the aggregate group of six greenhouse gases: carbon dioxide (CO₂), nitrous oxide (N₂O), methane (CH₄), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆).

"Gross particulate matter" or "GPM" means particulate matter with an aerodynamic diameter greater than 10 micrometers.

"In being" means as used in the definitions of New Installation and Existing Source that an owner or operator has undertaken a continuous program of construction or modification or the owner or operator has entered into a binding agreement or contractual obligation to undertake and complete within a reasonable time a continuous program of construction or modification prior to the compliance date for installation as specified by the applicable regulation.

"Incinerator" means a combustion device specifically designed for the destruction, by high temperature burning, of solid, semi-solid, liquid, or gaseous combustible wastes and from which the solid residues contain little or no combustible material.

"Indirect fired" means that the hot gasses produced by the flame or heat source do not come into direct contact with the material, excluding air, being processed or heated.

"Installation" means an identifiable piece of process equipment.

"Lowest achievable emissions rate" or "LAER" means, for any source, the more stringent rate of emissions based on paragraphs (A) and (B) of this definition. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of LAER allow a proposed new or modified stationary source to emit any

pollutant in excess of the amount allowable under applicable standard of performance for the new source.

(A) **LAER** means the most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable, or

(B) **LAER** means the most stringent emissions limitation which is achieved in practice by such class or category of stationary sources.

"Major source" means any new or modified stationary source which directly emits or has the capability at maximum design capacity and, if appropriately permitted, authority to emit 100 tons per year or more of a given pollutant. (OAC 252:100-8, Part 3)

"Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

"Mist" means a suspension of any finely divided liquid in any gas or atmosphere excepting uncombined water.

"Modification" means any physical change in, or change in the method of operation of, a source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted, except that:

(A) routine maintenance, repair and replacement shall not be considered physical changes; and,

(B) the following shall not be considered a change in the method of operation:

(i) any increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(ii) an increase in hours of operation;

(iii) use of alternative fuel or raw material if, prior to the date any standard under this part becomes applicable to such source the affected facility is designed to accommodate such alternative use.

"National Emission Standards for Hazardous Air Pollutants" or **"NESHAP"** means those standards found in 40 CFR Parts 61 and 63.

"New installation", "New source", or "New equipment" means an air contaminant source which is not in being on the effective date of these regulations and any existing source which is modified, replaced, or reconstructed after the effective date of the regulations such that the amount of air contaminant emissions is increased.

"New Source Performance Standards" or **"NSPS"** means those standards found in 40 CFR Part 60.

"Nonmethane organic compounds" or **"NMOC"** means nonmethane organic compounds, as defined in 40 CFR 60.754.

"Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

"Open burning" means the burning of combustible materials in such a manner that the products of combustion are emitted directly to the outside atmosphere.

"Organic compound" means any chemical compound containing the element carbon.

"Owner or operator" means any person who owns, leases, operates, controls or supervises a source.

"Part 70 permit" means (unless the context suggests otherwise) any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to this Chapter.

"Part 70 program" means a program approved by the Administrator under 40 CFR Part 70.

"Part 70 source" means any source subject to the permitting requirements of Part 5 of Subchapter 8, as provided in OAC 252:100-8-3(a) and (b).

"PM₁₀ emissions" means particulate matter emitted to the ambient air with an aerodynamic diameter of 10 micrometers or less as measured by applicable reference methods, or an equivalent or alternative method.

"PM₁₀" means particulate matter with an aerodynamic diameter of 10 micrometers or less.

"PM_{2.5}" means particulate matter with an aerodynamic diameter of 2.5 micrometers or less.

"Particulate matter" or **"PM"** means any material that exists in a finely divided form as a liquid or a solid.

"Particulate matter emissions" means particulate matter emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method.

"Potential to emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a source.

"Prevention of significant deterioration" or **"PSD"** means increments for the protection of attainment areas as codified in OAC 252:100-3.

"Process equipment" means any equipment, device or contrivance for changing any materials or for storage or handling of any materials, the use or existence of which may cause any discharge of air contaminants into the open air, but not including that equipment specifically defined as fuel-burning equipment, or refuse-burning equipment.

"Process weight" means the weight of all materials introduced in a source operation, including solid fuels, but excluding liquids and gases used solely as fuels, and excluding air introduced for the purposes of combustion. Process weight rate means a rate established as follows:

(A) for continuous or long-run, steady-state, operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.

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(B) for cyclical or batch source operations, the total process weight for a period which covers a complete or an integral number of cycles, divided by the hours of actual process operation during such period.

(C) where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, that interpretation which results in the minimum value for allowable emission shall apply.

"Reasonably available control technology" or **"RACT"** means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account:

(A) The necessity of imposing such controls in order to attain and maintain a national ambient air quality standard;

(B) The social, environmental, and economic impact of such controls; and

(C) Alternative means of providing for attainment and maintenance of such standard.

"Reconstruction" means

(A) the replacement of components of an existing source to the extent that will be determined by the Executive Director based on:

(i) the fixed capital cost (the capital needed to provide all the depreciable components of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new source);

(ii) the estimated life of the source after the replacements is comparable to the life of an entirely new source; and,

(iii) the extent to which the components being replaced cause or contribute to the emissions from the source.

(B) a reconstructed source will be treated as a new source for purposes of OAC 252:100-8, Part 9.

"Refinery" means any facility engaged in producing gasoline, kerosene, fuel oils or other products through distillation of crude oil or through redistillation, cracking, or reforming of unfinished petroleum derivatives.

"Refuse" means, unless specifically defined otherwise, the inclusive term for solid, liquid or gaseous waste products which are composed wholly or partly of such materials as garbage, sweepings, cleanings, trash, rubbish, litter, industrial, commercial and domestic solid, liquid or gaseous waste; trees or shrubs; tree or shrub trimmings; grass clippings; brick, plaster, lumber or other waste resulting from the demolition, alteration or construction of buildings or structures; accumulated waste material, cans, containers, tires, junk or other such substances.

"Refuse-burning equipment" means any equipment, device, or contrivance, and all appurtenances thereto, used for the destruction of combustible refuse or other combustible wastes by burning.

"Regulated air pollutant" means any substance or group of substances listed in Appendix P of this Chapter, or any substance regulated as an air pollutant under any federal

regulation for which the Department has been given authority, or any other substance for which an air emission limitation or equipment standard is set by an enforceable permit.

"Responsible official" means one of the following:

(A) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the DEQ;

(B) For the partnership or sole proprietorship: a general partner or the proprietor, respectively;

(C) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For purposes of this Chapter, a principal executive officer or installation commander of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(D) For affected sources:

(i) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under this Chapter.

"Shutdown" means the cessation of operation of any process, process equipment, or air pollution control equipment.

"Smoke" means small gas-borne or air-borne particles resulting from combustion operations and consisting of carbon, ash, and other matter any or all of which is present in sufficient quantity to be observable.

"Source operation" means the last operation preceding the emission of an air contaminant, which operation:

(A) results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, as in the case of combustion of fuel; and,

(B) is not an air pollution abatement operation.

"Stack" means, unless specifically defined otherwise, any chimney, flue, duct, conduit, exhaust, pipe, vent or opening, excluding flares, designed or specifically intended to conduct emissions to the atmosphere.

"Standard conditions" means a gas temperature of 68 degrees Fahrenheit (20° Centigrade) and a gas pressure of 14.7 pounds per square inch absolute.

"Startup" means the setting into operation of any process, process equipment, or air pollution control equipment.

"Stationary source" means, unless specifically defined otherwise, any building, structure, facility, or installation either fixed or portable, whose design and intended use is at a fixed location and emits or may emit an air pollutant subject to OAC 252:100.

"Temperature inversion" means a phenomenon in which the temperature in a layer of air increases with height and the cool heavy air below is trapped by the warmer air above and cannot rise.

"Title V permit" means (unless the context suggests otherwise) an operating permit for a Part 70 source.

"Total Suspended Particulates" or **"TSP"** means particulate matter as measured by the high-volume method described in Appendix B of 40 CFR Part 50.

~~**"Temperature inversion"** means a phenomenon in which the temperature in a layer of air increases with height and the cool heavy air below is trapped by the warmer air above and cannot rise.~~

"Visible emission" means any air contaminant, vapor or gas stream which contains or may contain an air contaminant which is passed into the atmosphere and which is perceptible to the human eye.

"Volatile organic compound" or **"VOC"** means any organic compound that participates in atmospheric photochemical reactions resulting in the formation of tropospheric ozone. Carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, ammonium carbonates, tert-butyl acetate and compounds listed in 40 CFR 51.100(s)(1) are presumed to have negligible photochemical reactivity and are not considered to be VOC.

[OAR Docket #20-702; filed 7-27-20]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 100. AIR POLLUTION CONTROL

[OAR Docket #20-703]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 2. Incorporation by Reference
252:100-2-3 [AMENDED]
- Subchapter 13. Open Burning
252:100-13-2 [AMENDED]
252:100-13-5 [AMENDED]
252:100-13-7 [AMENDED]
252:100-13-8 [AMENDED]
252:100-13-8.1 [NEW]
252:100-13-9 [AMENDED]
- Subchapter 39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas
Part 7. Specific Operations
252:100-39-49 [REVOKED]
Appendix Q. Incorporation by Reference [REVOKED]
Appendix Q. Incorporation by Reference [NEW]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201, and 2-5-106.

Air Quality Advisory Council; 27A O.S. §§ 2-2-201 and 2-5-107.

Oklahoma Clean Air Act; 27A O.S. §§ 2-5-101 through -117.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

August 6, 2019

COMMENT PERIOD:

September 3, 2019 through October 16, 2019

PUBLIC HEARING(S):

October 16, 2019, Air Quality Advisory Council

November 8, 2019, Environmental Quality Board

ADOPTION:

November 8, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

November 13, 2019

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 15, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards as they existed on June 30, 2019:

40 CFR

Incorporating rules:

252:100-2-3

Appendix Q. Incorporation By Reference

Availability:

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays.

GIST/ANALYSIS:

The Department is proposing to update OAC 252:100, Appendix Q, Incorporation by Reference, to incorporate the latest changes to U.S. Environmental Protection Agency (EPA) regulations. In addition, the Department is proposing to update language in Subchapter 2, Incorporation by Reference, to reflect the latest date of incorporation of EPA regulations in Appendix Q. The gist of these rules and the underlying reason for the rulemaking is to incorporate the latest changes to EPA regulations, primarily those relating to the National Emission Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS).

The Department is proposing to amend Oklahoma Administrative Code (OAC) 252:100-13, Open Burning, to conform the Department of Environmental Quality (DEQ) rules to statutory changes enacted in the 2019 legislative session. DEQ is also proposing to add a new section, 252:100-13-8.1, for this same purpose. The statutory changes added a provision for open burning of certain medical marijuana plant parts and modified when an air curtain incinerator (ACI) is required. In addition, the Department is proposing to change Section 13-2, Definitions, to reflect an update in terminology from "watch" to "alert" for ozone and particulate matter notifications. The Department is also proposing to amend Section 13-7(1), Fire training, to clarify specific inspection and removal requirements, as provided for in the Oklahoma Clean Air Act. The gist of this rulemaking is to implement the statutory changes made in the 2019 legislative session to add a provision for open burning of certain medical marijuana plant parts, to modify when an ACI is required, and to make other minor clarifications to the rule.

The Department is proposing to revoke OAC 252:100-39-49, Manufacturing of fiberglass reinforced plastic products. The gist of this rulemaking is to reduce the regulatory burden on facilities by eliminating an antiquated rule where a federal regulation now sufficiently limits emissions of air pollutants.

CONTACT PERSON:

Melanie Foster, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

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SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2020.

SUBCHAPTER 2. INCORPORATION BY REFERENCE

252:100-2-3. Incorporation by reference

Except as provided under this section, the provisions of 40 CFR listed in Appendix Q are hereby incorporated by reference as they existed on ~~June 30, 2018~~ June 30, 2019.

(1) **Inclusion of 40 CFR citations and definitions.**

When a provision of 40 CFR is incorporated by reference, all citations contained therein are also incorporated by reference.

(2) **Inconsistencies or duplications of requirements or incorporation dates.**

(A) In the event that there are inconsistencies or duplications between the requirements of this Chapter and the requirements of those provisions incorporated by reference in Appendix Q or elsewhere in this Chapter, the more stringent requirements shall apply.

(B) In the event that a specific date of incorporation is indicated in Appendix Q or a subchapter of this Chapter, the specified date of incorporation shall apply.

(3) **Terminology related to 40 CFR.** For purposes of interfacing with 40 CFR and unless the context clearly indicates otherwise, the following terms apply.

(A) "Administrator" is synonymous with "Executive Director."

(B) "U. S. Environmental Protection Agency" or "EPA" is synonymous with "Department of Environmental Quality" or "DEQ."

SUBCHAPTER 13. OPEN BURNING

252:100-13-2. Definitions

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

"**Air curtain incinerator**," "**air curtain destructor**," or "**open pit incinerator**" means an incineration unit operating by forcefully projecting a curtain of air across an open, integrated combustion chamber (fire box) or open pit or trench (trench burner) in which combustion occurs.

"**Clean lumber**" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote, or manufactured wood products that contain adhesives or resins (e.g., plywood, particle board, flake board, and oriented strand board).

"**Clean wood waste**" or "**wood waste**" means untreated wood and untreated wood products, including tree stumps

(whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

(A) Grass, grass clippings, bushes, shrubs and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

(B) Construction, renovation, or demolition wastes.

(C) Clean lumber.

(D) Treated wood and treated wood products, including wood products that have been painted, pigment-stained, or pressure treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote, or manufactured wood products that contain adhesives or resins (e.g., plywood, particle board, flake board, and oriented strand board).

"**Combustible materials**" means any substance which will readily burn and shall include those substances which, although generally considered incombustible, are or may be included in the mass of the material burned or to be burned.

"**Domestic refuse**" means combustible materials or refuse that normally result from the function of life at a residence, such as kitchen garbage, untreated lumber, cardboard boxes, packaging, clothing, grass, leaves, and branch trimmings. It does not include such things as tires, non-wood construction debris, furniture, carpet, electrical wire, and appliances.

"**Fire training**" means a fire purposely set as part of an organized program of drills for the training of firefighting personnel or for testing firefighting materials or equipment, which is part of a recognized training program.

"**Human-made structure**" means any structure constructed with the intent of providing shelter to persons or property. It does not include structures constructed specifically for live-burn fire training purposes.

"**Land clearing operation**" means the uprooting, cutting, or clearing of vegetation in preparation for the construction of buildings, the development of residential, commercial, agricultural, or industrial properties, and for the construction and maintenance of right-of-ways. It does not include the clearing of vegetation such as trimmings, fallen limbs, branches, or leaves, or other wastes from routine property maintenance activities, or the removal or destruction of human-made structures.

"**Metropolitan Statistical Area**" or "**MSA**" means a core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and social integration with that core, as defined by the federal Office of Management and Budget.

"**Open burning**" means the burning of combustible materials in such a manner that the products of combustion are emitted directly to the outside atmosphere.

"**Ozone WatchAlert**" means an announcement by the DEQ that the ozone concentrations in the watchalert area are

forecasted to exceed the National Ambient Air Quality Standard. The Ozone ~~Watch~~Alert applies to the day following the announcement.

"Particulate Matter ~~Watch~~Alert," or **"PM ~~Watch~~Alert"** means an announcement by the DEQ that the particulate matter concentrations in the ~~watch~~alert area are forecasted to exceed the National Ambient Air Quality Standard. The PM ~~Watch~~Alert applies to the day following the announcement.

"Products of combustion" means all particulate and gaseous air contaminants emitted as a result of the burning of refuse and combustible materials.

"Refuse" means garbage, rubbish, domestic refuse and all other wastes generated by a trade, business, industry, building operation, or household.

~~**"Wood waste"** means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:~~

- ~~(A) Grass, grass clippings, bushes, shrubs and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.~~
- ~~(B) Construction, renovation, or demolition wastes.~~
- ~~(C) Clean lumber.~~
- ~~(D) Treated wood and treated wood products, including wood products that have been painted, pigment stained, or pressure treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote, or manufactured wood products that contain adhesives or resins (e.g., plywood, particle board, flake board, and oriented strand board).~~

"Yard brush" means cut or broken branches, leaves, limbs, shrubbery, or tree trimmings. It does not include refuse, grass clippings, in-ground tree stumps, or any non-vegetative material.

252:100-13-5. Open burning prohibited

The open burning of refuse and combustible materials is prohibited unless conducted in strict accordance with the conditions and requirements contained in OAC 252:100-13-7, 252:100-13-8, 252:100-13-8.1, and 252:100-13-9. ~~Except as allowed in 252:100-13-8 (1), no person shall accept any material owned by other persons nor transport combustible material from where it is generated to another location in order to perform open burning. Under no circumstances shall the open burning of tires be allowed.~~

252:100-13-7. Allowed open burning

When not prohibited by law or ordinance, the following types of burning are allowed, provided the conditions and requirements in OAC 252:100-13-9 have been met:

- (1) **Fire training.** Open burning of human-made structures for the purpose of municipal fire department training

is allowed as provided for in the Oklahoma Clean Air Act, 27A O.S., Section 2-5-106.1. For any human-made structure, the entire structure, including, but not limited to, insulation, roofing, flooring, painted surfaces and plumbing, shall be examined for the presence of asphalt, asbestos, and lead-containing materials. All asphalt, asbestos, and lead-containing materials shall be removed from the structure prior to the fire training. Asbestos inspection and removal shall be conducted according to the requirements of federal law. Federal law requires a certified asbestos inspector, and notification of any activity that would breakup or dislodge asbestos, such as stripping or removal work, at least 10 working days prior to activity commencement, as specified in 40 CFR 61.145. Industrial and commercial facilities and fire training schools may conduct on-site live burn fire training.

- (2) **Elimination of hazards.** Provided prior authorization is obtained from the local fire chief, open burning is allowed for the elimination of:

- (A) A fire hazard that cannot be abated by any other means.
- (B) A dangerous or hazardous material when there is no other practical or lawful method of abatement or disposal, if authorization is also received from the DEQ prior to such burning.

- (3) **Recreational and ceremonial fires.** Open burning is allowed for camp fires and other fires used solely for recreational purposes, ceremonial occasions, or non-commercial preparation of food.

- (4) **Land management and land clearing operations.** Open burning is allowed for the following land management and land clearing operations:

- (A) Fires purposely set to forest, crop or range lands for a specific reason in the management of forests, crops, or game, in accordance with practices recommended by the Oklahoma Department of Wildlife Conservation, the Oklahoma Department of Agriculture, Food, and Forestry, and the United States Forest Service.

- (B) Fires purposely set for land clearing operations if conducted at least 500 feet ~~upwind~~ off from any occupied residence other than those located on the property on which the burning is conducted. Such burning shall be conducted using an air curtain incinerator in counties or areas that are or have been designated nonattainment, or in ~~the two~~ MSAs with a population of greater than nine hundred thousand people according to the latest federal decennial census. ~~The Oklahoma City MSA consists of Canadian, Cleveland, Grady, Lincoln, Logan, McClain, and Oklahoma Counties. The Tulsa MSA consists of Creek, Okmulgee, Osage, Pawnee, Rogers, Tulsa, and Wagoner Counties.~~

- (5) **Burning of domestic refuse.** Where no collection and disposal service is reasonably available, domestic refuse may be burned on the property where the waste is generated.

(6) **Hydrocarbon burning.** Open burning of hydrocarbons is allowed for:

(A) The disposal of spilled hydrocarbons or the waste products of oil exploration, development, refining, or processing operations which cannot be feasibly recovered or otherwise disposed of in a legal manner. Notice must be given to the DEQ prior to such burning.

(B) The disposal of waste hydrocarbons through a flare. The owner or operator shall be required to use a smokeless flare if a condition of air pollution is determined to exist by the DEQ.

(7) **Yard brush.** Yard brush may be burned ~~on the property where the waste is generated.~~

(8) **Certain medical marijuana plant refuse.** Commercial licensees, medical marijuana research facilities, and medical marijuana educational facilities, as those terms are defined in the Oklahoma Statutes at Section 428 of Title 63 titled, the Oklahoma Medical Marijuana Waste Management Act (Act), are allowed to open burn the parts of the marijuana plant grown to produce medical marijuana (as prescribed in Section 429 of Title 63 of the Act) that are exempted from the term "Medical marijuana waste" as defined in the Oklahoma Statutes at Section 428 of Title 63 of the Act.

252:100-13-8. Use of air curtain incinerators

(a) Except for hazardous material, any combustible material or refuse that is allowed to be burned under this Chapter may be burned in an air curtain incinerator that is properly designed and operated for the control of smoke and particulate matter. The owner or operator of an air curtain incinerator located in an MSA with a population of greater than nine hundred thousand people or in counties or areas that are or have been designated nonattainment shall not accept any material owned by other persons and shall not transport any material to the property where the air curtain incinerator is located in order to burn the material, except as provided in OAC 252:100-13-8(a)(1).

(1) The owner or operator of the air curtain incinerator located in an MSA with a population of greater than nine hundred thousand people or in counties or areas that are or have been designated nonattainment may accept and/or transport:

- (A) 100 percent wood waste,
- (B) 100 percent clean lumber, or
- (C) 100 percent mixture of wood waste and clean lumber.

(2) In addition to the requirements in this subchapter, the owner or operator of the air curtain incinerator must comply with the requirements of OAC 252:100-17 and 40 CFR Part 60.

(b) For land clearing operations and disposal of clean wood waste and yard brush, an ACI is not required except in counties or areas that are or have been designated nonattainment or in an MSA with a population of greater than nine hundred thousand according to the latest federal decennial census.

252:100-13-8.1. Transported material

(a) Combustible material obtained from land clearing operations, yard brush, and clean wood waste may be transported from where it is generated to another location in order to perform open burning. Material transported in order to perform open burning must meet the following conditions:

(1) The open burning shall not be conducted in counties or areas that are or have been designated nonattainment, or in MSAs with a population of greater than nine hundred thousand.

(2) The material shall be burned within 90 days of being transported.

(3) The volume of material shall not exceed 10,000 cubic feet.

(b) Except in accordance with OAC 252:100-13-8(a) or 252:100-13-8.1(a) above, no person shall accept any material owned by other persons nor transport combustible material from where it is generated to another location in order to perform open burning.

252:100-13-9. General conditions and requirements for allowed open burning

The open burning of refuse and other combustible material may be conducted only if the following conditions and requirements are met:

(1) No public nuisance is or will be created.

(2) The burning is controlled so that a visibility hazard is not created on any roadway, rail track or air field as a result of the air contaminants being emitted.

(3) The burning is conducted so that the contaminants do not adversely affect the ambient air quality of a city or town.

(4) The initial burning shall begin only between three hours after sunrise and three hours before sunset and additional fuel shall not be intentionally added to the fire at times outside these limits. This requirement does not apply to the open burning allowed under OAC 252:100-13-7(2), (3), (4)(A), (6)(B), and 252:100-13-8.

(5) An Ozone or PM ~~Watch~~ Alert has not been declared for the day of the burn for the MSA or county in which the burn is to be performed. This requirement does not apply to the open burning allowed under 252:100-13-7(2), (3), and (6)(B).

(6) Open burning of waste generated from commercial operations shall be conducted at least 500 feet from any occupied structure other than those located on the property on which the burning is conducted.

SUBCHAPTER 39. EMISSION OF VOLATILE ORGANIC COMPOUNDS (VOCs) IN NONATTAINMENT AREAS AND FORMER NONATTAINMENT AREAS

PART 7. SPECIFIC OPERATIONS

252:100-39-49. Manufacturing of fiberglass reinforced plastic products [REVOKED]

(a) Applicability.

- (1) This Section applies to any process gas stream with actual VOC emissions that exceed six tons per year based on 6,240 hours of operation per year.
- (2) Once the limit in 242:100-39-49(a)(1) is exceeded, the controls required in 252:100-39-49(b) must be put in place and maintained and used at any operating level.

(b) Standards. Affected facilities shall limit emissions of VOC from fiberglass manufacturing by use of control equipment which can demonstrate an 85 percent reduction in the VOC released from each process stream (e.g. 90 percent capture efficiency multiplied by 95 percent destruction efficiency equals 85.5 percent system efficiency).

(c) Compliance. All affected facilities must comply with one of the following:

- (1) Meet the requirements of 252:100-39-49(b) by February 13, 1991.
- (2) Have an approved plan for the reduction of VOC emissions as required by 252:100-39-49(b) by February 13, 1991.
 - (A) The plan shall be submitted by August 13, 1990, and shall:
 - (i) detail those emissions which will be controlled;
 - (ii) detail the means by which control will be achieved; and,
 - (iii) demonstrate that compliance will be achieved by February 13, 1992.
 - (B) The Air Quality Council shall have approval authority for the plans.
 - (C) All approved plans shall be submitted to the EPA as SIP revisions.

(d) Demonstration of compliance.

- (1) The Division Director may require at the expense of the owner or operator a demonstration of compliance with the requirements of 252:100-39-49(b).
- (2) The testing shall be accomplished using the appropriate EPA test method or methods. These include methods 1-4, 18-25, 25A, 25B and 40 CFR 60.444.
- (3) Initial compliance testing shall be accomplished within 180 days of the applicable compliance date.
- (4) Testing for the emissions plan described in 252:100-39-49(e)(2) shall be conducted at the expense of the owner or operator at his expense and shall demonstrate compliance with the emission limits contained in the approved plan.

(e) Recordkeeping.

- (1) The owner or operator of a facility subject to this Section shall submit to the Division Director upon written request, reports that include:
 - (A) details of specific VOC sources;
 - (B) the quantity of VOC used during specific months;
 - (C) a description of the VOC used;
 - (D) control equipment efficiencies;
 - (E) details of maintenance performed on all control equipment;
 - (F) equipment downtime; and,
 - (G) any other information pertinent to the calculation of VOC emissions from the facility.
- (2) The records required in 252:100-39-49(e)(1) shall be maintained by the source for at least two years. [252:100-39-49, Effective February 12, 1990]

APPENDIX Q. INCORPORATION BY REFERENCE [REVOKED]

APPENDIX Q. INCORPORATION BY REFERENCE [NEW]

Except as provided under OAC 252:100-2-3, the following provisions of Title 40 of the Code of Federal Regulations are hereby incorporated by reference as they existed on June 30, 2019, unless otherwise noted.

PART	SUBPART	DESCRIPTION
50	n/a	Appendix B to Part 50 - Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method)
50	n/a	Appendix J to Part 50 - Reference Method for the Determination of Particulate Matter as PM ₁₀ in the Atmosphere
51	A	Table 1 to Appendix A only of Subpart A—Emission Thresholds by Pollutant for Treatment as Point Source Under 40 CFR 51.30
51	F	Paragraph 51.100(s)(1) only of Subpart F, Procedural Requirements
51	n/a	Appendix P to Part 51 - Minimum Emission Monitoring Requirements
51	n/a	Appendix W to Part 51 – Guideline on Air Quality Models
58	n/a	Appendix A to Part 58 - Quality Assurance Requirements for Monitors used in Evaluations of National Ambient Air Quality Standards
58	n/a	Appendix B to Part 58 – Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring
60	A	General Provisions [Except 60.4, 60.9, 60.10 and 60.16]
60	D	Standards of Performance for Fossil-Fuel-Fired Steam Generators
60	Da	Standards of Performance for Electric Utility Steam Generating Units
60	Db	Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

PART	SUBPART	DESCRIPTION
60	De	Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units
60	E	Standards of Performance for Incinerators
60	Ea	Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989 and on or Before September 20, 1994
60	Eb	Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996
60	Ec	Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996
60	F	Standards of Performance for Portland Cement Plants
60	G	Standards of Performance for Nitric Acid Plants
60	Ga	Standards of Performance for Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011
60	H	Standards of Performance for Sulfuric Acid Plants
60	I	Standards of Performance for Hot Mix Asphalt Facilities
60	J	Standards of Performance for Petroleum Refineries
60	Ja	Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007
60	K	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978
60	Ka	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984
60	Kb	Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for

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PART	SUBPART	DESCRIPTION
		Which Construction, Reconstruction, or Modification Commenced After July 23, 1984
60	L	Standards of Performance for Secondary Lead Smelters
60	M	Standards of Performance for Secondary Brass and Bronze Production Plants
60	N	Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973
60	Na	Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983
60	O	Standards of Performance for Sewage Treatment Plants
60	P	Standards of Performance for Primary Copper Smelters
60	Q	Standards of Performance for Primary Zinc Smelters
60	R	Standards of Performance for Primary Lead Smelters
60	S	Standards of Performance for Primary Aluminum Reduction Plants
60	T	Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants
60	U	Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants
60	V	Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants
60	W	Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants
60	X	Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities
60	Y	Standards of Performance for Coal Preparation and Processing Plants
60	Z	Standards of Performance for Ferroalloy Production Facilities
60	AA	Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983

PART	SUBPART	DESCRIPTION
60	AAa	Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983
60	BB	Standards of Performance for Kraft Pulp Mills
60	BBa	Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013
60	CC	Standards of Performance for Glass Manufacturing Plants
60	DD	Standards of Performance for Grain Elevators
60	EE	Standards of Performance for Surface Coating of Metal Furniture
60	GG	Standards of Performance for Stationary Gas Turbines
60	HH	Standards of Performance for Lime Manufacturing Plants
60	KK	Standards of Performance for Lead-Acid Battery Manufacturing Plants
60	LL	Standards of Performance for Metallic Mineral Processing Plants
60	MM	Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations
60	NN	Standards of Performance for Phosphate Rock Plants
60	PP	Standards of Performance for Ammonium Sulfate Manufacture
60	QQ	Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing
60	RR	Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations
60	SS	Standards of Performance for Industrial Surface Coating: Large Appliances
60	TT	Standards of Performance for Metal Coil Surface Coating
60	UU	Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture
60	VV	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which

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PART	SUBPART	DESCRIPTION
		Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or Before November 7, 2006
60	VVa	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006
60	WW	Standards of Performance for the Beverage Can Surface Coating Industry
60	XX	Standards of Performance for Bulk Gasoline Terminals
60	BBB	Standards of Performance for the Rubber Tire Manufacturing Industry
60	DDD	Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry
60	FFF	Standards of Performance for Flexible Vinyl and Urethane Coating and Printing
60	GGG	Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or Before November 7, 2006
60	GGGa	Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006
60	HHH	Standards of Performance for Synthetic Fiber Production Facilities
60	III	Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes
60	JJJ	Standards of Performance for Petroleum Dry Cleaners
60	KKK	Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants
60	LLL	Standards of Performance for SO ₂ Emissions From Onshore Natural Gas Processing: SO ₂ Emissions

PART	SUBPART	DESCRIPTION
60	NNN	Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations
60	OOO	Standards of Performance for Nonmetallic Mineral Processing Plants
60	PPP	Standard of Performance for Wool Fiberglass Insulation Manufacturing Plants
60	QQQ	Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems
60	RRR	Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes
60	SSS	Standards of Performance for Magnetic Tape Coating Facilities
60	TTT	Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines
60	UUU	Standards of Performance for Calciners and Dryers in Mineral Industries
60	VVV	Standards of Performance for Polymeric Coating of Supporting Substrates Facilities
60	WWW	Standards of Performance for Municipal Solid Waste Landfills
60	XXX	Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014
60	AAAA	Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001
60	CCCC	New Source Performance Standards for Commercial/Industrial Solid Waste Incinerators constructed after November 30, 1999
60	DDDD	Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units, Model Rule only, Sections 60.2575 through 60.2875, including Tables 1 through 9
60	EEEE	Standards of Performance for Other Solid Waste Incineration Units for Which Construction Is Commenced After December 9,

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PART	SUBPART	DESCRIPTION
		2004, or for Which Modification or Reconstruction Is Commenced on or After June 16, 2006
60	III	Standards of Performance for Stationary Compression Ignition Internal Combustion Engines
60	JJJJ	Standards of Performance for Stationary Spark Ignition Internal Combustion Engines
60	KKKK	Standards of Performance for Stationary Combustion Turbines
60	LLLL	Standards of Performance for New Sewage Sludge Incineration Units
60	OOOO	Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification or Reconstruction Commenced after August 23, 2011, and on or before September 18, 2015
60	OOOOa	Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification or Reconstruction Commenced after September 18, 2015
60	TTTT	Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units
60	n/a	Appendix A to Part 60 - Test Methods
60	n/a	Appendix B to Part 60 - Performance Specifications
61	A	General Provisions
61	C	National Emission Standard for Beryllium
61	D	National Emission Standard for Beryllium Rocket Motor Firing
61	E	National Emission Standard for Mercury
61	F	National Emission Standard for Vinyl Chloride
61	J	National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene
61	L	National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants
61	M	National Emission Standard for Asbestos
61	N	National Emission Standard for Inorganic Arsenic Emissions From Glass Manufacturing Plants

PART	SUBPART	DESCRIPTION
61	O	National Emission Standard for Inorganic Arsenic Emissions From Primary Copper Smelters
61	P	National Emission Standard for Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities
61	V	National Emission Standard for Equipment Leaks (Fugitive Emission Sources)
61	Y	National Emission Standard for Benzene Emissions From Benzene Storage Vessels
61	BB	National Emission Standard for Benzene Emissions From Benzene Transfer Operations
61	FF	National Emission Standard for Benzene Waste Operations
63	A	General Provisions
63	B	Sections 63.41, 63.43 and 63.44 only of Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)
63	F	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry
63	G	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater
63	H	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks
63	I	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks
63	J	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production
63	L	National Emission Standards for Coke Oven Batteries
63	M	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

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PART	SUBPART	DESCRIPTION
63	N	National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks
63	O	Ethylene Oxide Emissions Standards for Sterilization Facilities
63	Q	National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers
63	R	National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)
63	S	National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry
63	T	National Emission Standards for Halogenated Solvent Cleaning
63	U	National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins
63	W	National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production
63	X	National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting
63	Y	National Emission Standards for Marine Tank Vessel Loading Operations
63	AA	National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants
63	BB	National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants
63	CC	National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries
63	DD	National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations
63	EE	National Emission Standards for Magnetic Tape Manufacturing Operations
63	GG	National Emission Standards for Aerospace Manufacturing and Rework Facilities

PART	SUBPART	DESCRIPTION
63	HH	National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities
63	II	National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)
63	JJ	National Emission Standards for Wood Furniture Manufacturing Operations
63	KK	National Emission Standards for the Printing and Publishing Industry
63	LL	National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants
63	MM	National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills
63	NN	National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing at Area Sources
63	OO	National Emission Standards for Tanks - Level 1
63	PP	National Emission Standards for Containers
63	QQ	National Emission Standards for Surface Impoundments
63	RR	National Emission Standards for Individual Drain Systems
63	SS	National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process
63	TT	National Emission Standards for Equipment Leaks – Control Level 1
63	UU	National Emission Standards for Equipment Leaks - Control Level 2 Standards
63	VV	National Emission Standards for Oil-Water Separators and Organic-Water Separators
63	WW	National Emission Standards for Storage Vessels (Tanks) - Control Level 2
63	XX	National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations

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PART	SUBPART	DESCRIPTION
63	YY	National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards
63	CCC	National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants
63	DDD	National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production
63	EEE	National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors
63	GGG	National Emission Standards for Pharmaceuticals Production
63	HHH	National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities
63	III	National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production
63	JJJ	National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins
63	LLL	National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry
63	MMM	National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production
63	NNN	National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing
63	OOO	National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins
63	PPP	National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production
63	QQQ	National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting
63	RRR	National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production
63	TTT	National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting

PART	SUBPART	DESCRIPTION
63	UUU	National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units
63	VVV	National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works
63	XXX	National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese
63	AAAA	National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills
63	CCCC	National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast
63	DDDD	National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products
63	EEEE	National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)
63	FFFF	National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing
63	GGGG	National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production
63	HHHH	National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production
63	IIII	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks
63	JJJJ	National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating
63	KKKK	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans
63	MMMM	National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products
63	NNNN	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances
63	OOOO	National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles

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PART	SUBPART	DESCRIPTION
63	PPPP	National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products
63	QQQQ	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products
63	RRRR	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture
63	SSSS	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil
63	TTTT	National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations
63	UUUU	National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing
63	VVVV	National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing
63	WWWW	National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production
63	XXXX	National Emissions Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing
63	YYYY	National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines
63	ZZZZ	National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines
63	AAAAA	National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants
63	BBBBB	National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing
63	CCCCC	National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks
63	DDDDD	National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters
63	EEEEEE	National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries

PART	SUBPART	DESCRIPTION
63	FFFFF	National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities
63	GGGGG	National Emission Standards for Hazardous Air Pollutants: Site Remediation
63	HHHHH	National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing
63	IIIII	National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants
63	JJJJJ	National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing
63	KKKKK	National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing
63	LLLLL	National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing
63	MMMMM	National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations
63	NNNNN	National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production
63	PPPPP	National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands
63	QQQQQ	National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities
63	RRRRR	National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing
63	SSSSS	National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing
63	TTTTT	National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining
63	UUUUU	National Emission Standards for Hazardous Air Pollutants: Coal and Oil-fired Electric Utility Steam Generating Units
63	WWWWW	National Emission Standards for Hospital Ethylene Oxide Sterilizers

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PART	SUBPART	DESCRIPTION
63	YYYYY	National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities
63	ZZZZZ	National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources
63	BBBBBB	National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities
63	CCCCCC	National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities
63	DDDDDD	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources
63	EEEEEE	National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources
63	FFFFFF	National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources
63	GGGGGG	National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources - Zinc, Cadmium, and Beryllium
63	HHHHHH	National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources
63	JJJJJJ	National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources
63	LLLLLL	National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources
63	MMMMMM	National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources
63	NNNNNN	National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds
63	OOOOOO	National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources
63	PPPPPP	National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources

PART	SUBPART	DESCRIPTION
63	QQQQQQ	National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources
63	RRRRRR	National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources
63	SSSSSS	National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources
63	TTTTTT	National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources
63	VVVVVV	National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources
63	WWWWWW	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations
63	XXXXXX	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Nine Metal Fabrication and Finishing Source Categories
63	YYYYYY	National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities
63	ZZZZZZ	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries
63	AAAAAAA	National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing
63	BBBBBBB	National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry
63	CCCCCCC	National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing
63	DDDDDDD	National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing
63	EEEEEEE	National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category
63	HHHHHHH	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production
64	n/a (All Sections)	Compliance Assurance Monitoring (CAM)

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PART	SUBPART	DESCRIPTION
72	All Subparts	Permits Regulation (for Acid Rain Sources)
98	A	Table A-1 only to Subpart A of Part 98 – Global Warming Potentials
241	n/a	Solid Wastes Used as Fuels or Ingredients in Combustion Units

[OAR Docket #20-703; filed 7-27-20]

**TITLE 252. DEPARTMENT OF
ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL**

[OAR Docket #20-704]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 17. Incinerators
Part 9. Commercial and Industrial Solid Waste Incineration Units
252:100-17-60 [AMENDED]
252:100-17-62 [AMENDED]
252:100-17-63 [AMENDED]
252:100-17-74 [AMENDED]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201, and 2-5-106.
Air Quality Advisory Council; 27A O.S. §§ 2-2-201 and 2-5-107.
Oklahoma Clean Air Act; 27A O.S. §§ 2-5-101 through -117.

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

November 6, 2019

COMMENT PERIOD:

December 2, 2019 through January 6, 2020

PUBLIC HEARING(S):

January 15, 2020, Air Quality Advisory Council
February 21, 2020, Environmental Quality Board

ADOPTION:

February 21, 2020

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

February 28, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 15, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The Department is proposing to amend Oklahoma Administrative Code (OAC) 252:100-17, Incinerators, to clarify the applicability of Part 9, Commercial and industrial solid waste incineration units (CISWI), to existing air curtain incinerators. The proposed changes to Subchapter 17 will be included as part of the required update to Oklahoma's Section 111(d)/129 plan. The gist of the proposed rulemaking is to update the rule in accordance with recent changes to the federal emission guidelines in 40 CFR Part 60, Subpart DDDD.

CONTACT PERSON:

Melanie Foster, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 15, 2020:**

SUBCHAPTER 17. INCINERATORS

**PART 9. COMMERCIAL AND INDUSTRIAL
SOLID WASTE INCINERATION UNITS**

**252:100-17-60. Effective date; applicability;
requirements**

(a) This Part applies to each individual commercial and industrial solid waste incineration (CISWI) unit that meets the criteria in paragraphs (a)(1) through (3) of this Section.

(1) Any CISWI unit or air curtain incinerator for which construction commenced on or before June 4, 2010, or for which modification or reconstruction commenced after June 4, 2010 but no later than August 7, 2013.

(2) Any incineration unit ~~incineration units~~ that ~~meet~~ meets the definition of a CISWI unit or an air curtain incinerator as both are defined in 40 CFR Section 60.2875.

(3) Incineration units that do not qualify as exempt under OAC 252:100-17-63.

(b) If the owner or operator of a CISWI unit or air curtain incinerator makes changes that meet the definition of modification or reconstruction on or after June 1, 2001, the CISWI unit is no longer subject to this Part and becomes subject to 40 CFR Part 60, Subpart CCCC, that has been incorporated by reference at 252:100-2-3.

(c) If the owner or operator of a CISWI unit or air curtain incinerator makes physical or operational changes to an existing CISWI unit or air curtain incinerator primarily to comply with this Part, such changes do not qualify as a modification or reconstruction.

(d) The owner or operator of a CISWI unit or air curtain incinerator subject to this Part shall comply with applicable portions of 40 CFR Part 60, Subpart DDDD (Sections 60.2575 through 60.2875) incorporated by reference in 252:100-2-3.

(1) CISWI units in the incinerator subcategory and air curtain incinerators that commenced construction on or before November 30, 1999 shall achieve final compliance by the December 1, 2005.

(2) CISWI units and air curtain incinerators that commenced construction after November 30, 1999, but on or before June 4, 2010, and CISWI units in the small remote incinerator, energy recovery unit, and waste-burning kiln subcategories that commenced construction before June 4, 2010 shall achieve final compliance as expeditiously as practicable after approval of the state plan but not later than the earlier of the two dates specified in paragraphs (d)(2)(A) and (B) of this subsection.

(A) February 7, 2018.

(B) Three years after the effective date of State plan approval.

(C) For compliance schedules approved under 40 CFR Section 60.2575 or 60.2815, the owner or operator ~~CISWI unit~~ shall submit a final control plan not more than 1 year following the effective date of State plan approval, and shall achieve final compliance as expeditiously as practicable, but not later than February 7, 2018 or three years after the effective date of State plan approval, whichever is earlier. Within the appropriate context, these dates shall be considered the "date(s) to be specified in state plan" wherever that phrase appears in the model rule and associated tables.

Permanent Final Adoptions

252:100-17-62. Terminology related to 40 CFR

(a) For purposes of interfacing with 40 CFR, the following terms apply:

- (1) **"Affected facility"** is synonymous with "commercial and industrial solid waste incinerator (CISWI)" or "CISWI unit" and "air curtain incinerator" or "ACI."
- (2) **"Administrator"** is synonymous with "Executive Director."

(b) The term "you" in the Model Rule of 40 CFR Sections 60.2575 through 60.2875, means the owner or operator of a CISWI unit or air curtain incinerator.

252:100-17-63. Exemptions

Except for required notifications as specified, the following types of individual combustion~~CISWI~~ units are exempt from the requirements of this Part.

(1) **Pathological waste incineration units.** Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in 40 CFR Section 60.2875, if the owner or operator meets the two requirements specified in subparagraphs (1)(A) and (B) of this Section.

(A) Notifies the DEQ that the unit meets these criteria.

(B) Keeps records on a calendar quarter basis of the weight of pathological waste, low level radioactive waste and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(2) **Municipal waste combustion units.** Incineration units that are subject to Part 5 of this Subchapter or 40 CFR Part 60, Subpart Ea (Standards of Performance for Municipal Waste Combustors); Subpart Eb (Standards of Performance for Large Municipal Waste Combustors); or Subpart AAAA (Standards of Performance for Small Municipal Waste Combustion Units).

(3) **Medical waste incineration units.** Incineration subject to Part 7 of this Subchapter or 40 CFR Part 60, Subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996).

(4) **Small power production facilities.** Units that meet the three requirements specified in subparagraphs (4)(A) through (D) of Section.

(A) The unit qualifies as a small power-production facility under Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(C) The owner or operator notifies the DEQ that the unit meets all of these criteria.

(D) The owner or operator maintains the records specified in 40 CFR Section 60.2740(v).

(5) **Cogeneration facilities.** Units that meet the three requirements specified in subparagraphs (5)(A) through (D) of this Section.

(A) The unit qualifies as a cogeneration facility under Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator notifies the DEQ that the unit meets all of these criteria.

(D) The owner or operator maintains the records specified in 40 CFR Section 60.2740(w).

(6) **Hazardous waste combustion units.** Incineration units for which the owner or operator is required to get a permit under Section 3005 of the Solid Waste Disposal Act.

(7) **Materials recovery units.** Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters.

~~(8) **Air curtain incinerators.** Certain air curtain incinerators are exempt from portions of this Part (see 252:100-17-74).~~

(89) **Sewage treatment plants.** Incineration units regulated under 40 CFR Part 60, Subpart O (Standards of Performance for Sewage Treatment Plants).

~~(94)~~ **Sewage sludge incineration units.** Incineration units that combust sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter and that are subject to 40 CFR Part 60, Subpart LLLL (Standards of Performance for Sewage Sludge Incineration Units).

~~(104)~~ **Other solid waste incineration units.** Incineration units that are subject to Part 11 of this Subchapter or 40 CFR Part 60, Subpart EEEE (Standards of Performance for Other Solid Waste Incineration Units).

252:100-17-74. Air curtain incinerators

Air curtain incinerators that burn only the materials listed in paragraphs (1) through (3) of this subsection are only required to meet the requirements set forth in 40 CFR Sections 60.2805 and 60.2810 through 60.2870.

(1) 100 percent wood waste.

(2) 100 percent clean lumber.

(3) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

[OAR Docket #20-704; filed 7-27-20]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 100. AIR POLLUTION CONTROL

[OAR Docket #20-705]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 37. Control of Emission of Volatile Organic Compounds (VOCs)

Part 5. Control of VOCs in Coating Operations
252:100-37-27 [NEW]
Subchapter 39. Emission of Volatile Organic Compounds (VOCs) in
Nonattainment Areas and Former Nonattainment Areas
Part 7. Specific Operations
252:100-39-47 [AMENDED]
Appendix N. Specialty Coatings VOC Content Limits [REVOKED]
Appendix N. Specialty Coatings VOC Content Limits [NEW]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201, and 2-5-106.
Air Quality Advisory Council; 27A O.S. §§ 2-2-201 and 2-5-107.
Oklahoma Clean Air Act; 27A O.S. §§ 2-5-101 through -117.

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

April 25, 2018
August 8, 2018
November 8, 2018
April 25, 2019

COMMENT PERIOD:

May 15, 2018 through June 20, 2018
September 4, 2018 through October 10, 2018
December 3, 2018 through January 16, 2019
May 15, 2019 through June 19, 2019

PUBLIC HEARING(S):

June 20, 2018, Air Quality Advisory Council
October 10, 2018, Air Quality Advisory Council
January 16, 2019, Air Quality Advisory Council
February 15, 2019, Environmental Quality Board
June 19, 2019, Air Quality Advisory Council
September 10, 2019, Environmental Quality Board

ADOPTION:

September 10, 2019

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

September 20, 2019

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 15, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The Department is proposing to add a new section 252:100-37-27, Control of emission of VOCs from aerospace industries coatings operations, for existing or new aerospace vehicle and component coating operations at aerospace manufacturing, rework, or repair facilities. The new section would allow aerospace coating facilities throughout Oklahoma to be regulated under rules specific to the industry as is presently done in section 252:100-39-47 for Tulsa County. Currently, VOC emissions from coating operations at any type of industry are regulated under 252:100-37-25. The new section would reference certain limits set forth in the aerospace National Emissions Standards for Hazardous Air Pollutants (NESHAP) 40 CFR Part 63, Subpart GG, which are more applicable for this particular industry than the current generic list in 252:100-37-25. Additionally, the Department is proposing to amend 252:100-39-47 to correct minor typographical errors, incorporate the latest changes to the aerospace NESHAP, and clarify regulatory language within the rule. Lastly, the Department is proposing to revoke Appendix N and replace it with a new Appendix N to correct minor typographical errors and specify its intended use for both sections 252:100-39-47 and 252:100-37-27.

The gist of this rulemaking (252:100-37-27, 252:100-39-47, and Appendix N) is to provide the aerospace industry with updated requirements that better reflect current aerospace industry coating formulations and practices, and to make those rules applicable statewide. This rulemaking would ensure the aerospace industry in Oklahoma has the opportunity to operate as necessary with standards specific to the industry and consistent with rules already in place for Tulsa County to reduce the formation of ozone.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 15, 2020:**

**SUBCHAPTER 37. CONTROL OF EMISSION OF
VOLATILE ORGANIC COMPOUNDS (VOCs)**

**PART 5. CONTROL OF VOCs IN COATING
OPERATIONS**

**252:100-37-27. Control of emission of VOCs from
aerospace industries coatings operations**

(a) Applicability.

(1) Except as noted in OAC 252:100-37-27(a)(2) through (4), this Section applies to existing or new aerospace vehicle and component coating operations at aerospace manufacturing, rework, or repair facilities. For purposes of this Section, coating operations include associated cleaning operations as specified in OAC 252:100-37-27(c)(4) and surface preparation. This includes but is not limited to facilities subject to federal standards, primarily the aerospace NESHAP 40 CFR Part 63, Subpart GG, as cited in this Section and incorporated by reference in OAC 252:100-2 and Appendix Q to Chapter 100. Coating operations subject to this Section are exempt from the requirements of OAC 252:100-37-25.

(2) This Section does not apply to manufacturing, rework, or repair operations involving space vehicles or rework or repair operations performed on antique aerospace vehicles or components.

(3) This Section does not apply to the following activities: research and development, quality control, laboratory testing, and electronic parts and assemblies (except for cleaning and coating of completed assemblies).

(4) This Section does not apply to facilities that emit from coating operations less than 100 pounds of VOC per 24-hour day, on a monthly average.

(5) Compliance with 40 CFR Part 63, Subpart GG is deemed to be compliance with all requirements of this Section.

(b) Definitions. Definitions of terms used in this Section are found in Section 63.742 and Appendix A of 40 CFR Part 63, Subpart GG, as incorporated by reference in OAC 252:100-2 and Appendix Q to Chapter 100.

(c) Standards and requirements. Coating operations subject to this section shall comply with the requirements specified in paragraph (1) of this subsection for operations uncontrolled for VOC, and in paragraph (3) of this subsection for operations that are controlled for VOC. All coating operations subject to this section shall comply with paragraphs (2), (4), and (5) of this subsection.

(1) **VOC content of coatings.** Each owner or operator of coating operations that are uncontrolled shall comply with the VOC content limits specified in paragraphs (c)(1)(A) through (C).

(A) **VOC content limits for specialty coatings.**

(i) No specialty coatings that contain VOC in excess of the limits specified in Appendix N of this Chapter shall be applied to aerospace vehicles or components. The VOC content of specialty coatings shall include any VOC-containing materials added to the original coating supplied by the manufacturer.

(ii) The VOC content limits listed in Appendix N of this Chapter do not apply to touch-up, aerosol, and United States Department of Defense (DOD) "classified" coatings.

(B) **VOC content limits for primers and topcoats.** Each coating operation utilizing primers and topcoats (including self-priming topcoats) that are not specialty coatings listed in Appendix N of this Chapter, shall comply with the VOC content limits contained in 40 CFR Sections 63.745(c)(2) and (c)(4).

(C) **VOC content limits for chemical milling maskants.** Each chemical milling maskant operation utilizing chemical milling maskants (Type I/II) that are not specialty coatings listed in Appendix N of this Chapter, shall comply with the VOC content limits contained in 40 CFR Section 63.747(c)(2) and the exemptions in 40 CFR Section 63.747(c)(3).

(D) **Exemption of low volume coating usage.** The requirements of OAC 252:100-37-27(c)(1) do not apply to the use of primers, topcoats, chemical milling maskants, and specialty coatings for which the annual total of each separate formulation used at the facility does not exceed 50 gallons and the combined annual total of all such primers, topcoats, chemical milling maskants, and specialty coatings used at the facility does not exceed 200 gallons. Primers, topcoats, and chemical milling maskants exempt under OAC 252:100-37-27(a) are not included in the 50 and 200 gallon limits.

(E) **Compliance determination.**

(i) Coatings used at facilities subject to this Section shall be deemed in compliance when the VOC content of these coatings as applied comply with the requirements of OAC 252:100-37-27(c)(1).

(ii) For purposes of determining compliance with content limits in OAC 252:100-37-27(c)(1), VOC will be measured by the approved test methods. Where such a method also inadvertently measures compounds that are exempt solvents, an owner or operator may exclude these exempt solvents when determining compliance with an emission standard.

(2) **Application equipment.** Each primer, topcoat, or specialty coating application operation subject to this Section shall comply with the requirements and exemptions specified in 40 CFR Section 63.745(f).

(3) **Control equipment.**

(A) Coating operations that use a control method for compliance with this section shall comply with paragraph (i) or (ii):

(i) **Control equipment efficiency.** Each owner or operator shall control VOC emissions by using approved air pollution control equipment with a combined VOC emissions capture and control equipment efficiency of 81% or greater by weight.

(ii) **Alternative control method.** Each owner or operator shall comply with the control requirements in 40 CFR Section 63.745(d) for any primer, topcoat, or specialty coating operation or 40 CFR Section 63.747(d) for any chemical milling maskant operation.

(B) **Compliance determination.** When control equipment is used to comply with this section, compliance shall be determined in accordance with 40 CFR Section 63.749(d) and (h).

(4) **Housekeeping measures and solvent cleaning operations.** Housekeeping measures and solvent cleaning operations (hand-wipe cleaning, spray gun cleaning, and flush cleaning) subject to this Section shall comply with the requirements and exemptions contained in 40 CFR Section 63.744. Housekeeping measures and solvent cleaning operations shall be considered in compliance when the requirements in 40 CFR Section 63.749(c) are met. Housekeeping measures and solvent cleaning operations subject to this Section are exempt from the requirements of OAC 252:100-39-42.

(5) **General standards.** The handling and transfer of primers, topcoats, specialty coatings, and chemical milling maskants to or from containers, tanks, vats, vessels, and piping systems shall be handled in a manner that minimizes spills.

(d) **Recordkeeping requirements.** The owner or operator of a facility subject to this Section shall submit to the Division Director or personnel of DEQ upon request reports detailing specific VOC sources; the quantity of coatings used for a specific time period; VOC content of each coating; capture and control efficiencies; and any other information pertinent to the calculation of VOC emissions. The data necessary to supply the requested information shall be retained by the owner or operator for a minimum of two years.

SUBCHAPTER 39. EMISSION OF VOLATILE ORGANIC COMPOUNDS (VOCs) IN NONATTAINMENT AREAS AND FORMER NONATTAINMENT AREAS

PART 7. SPECIFIC OPERATIONS

252:100-39-47. Control of VOC emissions from aerospace industries coatings operations

(a) **Applicability.**

(1) Except as noted in OAC 252:100-39-47(a)(2) and (3), this Section applies to existing or new aerospace vehicle and component coating operations at aerospace manufacturing, rework, or repair facilities located in Tulsa County that have the potential to emit 10 TPY or more or actual emissions of 100 pounds or more per 24-hour day, on a monthly average, of VOC from coating operations. For purposes of this Section, coating operations include associated cleaning operations as specified in OAC 252:100-39-47(d)(4) and surface preparation. Coating operations subject to this Section are exempt from the requirements of OAC 252:100-37-25 and 252:100-37-27.

(2) This Section does not apply to manufacturing, rework, or repair operations involving space vehicles or rework or repair operations performed on antique aerospace vehicles or components.

(3) This Section does not apply to the following activities: research and development, quality control, laboratory testing, and electronic parts and assemblies (except for cleaning and coating of completed assemblies).

(4) Compliance with 40 CFR Part 63, Subpart GG is deemed to be compliance with all requirements of this Section.

(b) **References to 40 CFR.** References to the aerospace NESHAP 40 CFR Part 63, ~~subpart~~ Subpart GG refers to that subpart as it existed on ~~July 1, 2001~~ August 3, 2016.

(c) **Definitions.** ~~The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise. Additional definitions for Definitions of terms used in this Section are found in 40 CFR §Section 63.742 and Appendix A of the aerospace NESHAP 40 CFR Part 63, subpart~~ Subpart GG, which is ~~adopted~~ incorporated by reference in OAC 252:100-41-15(b), OAC 252:100-2 and Appendix Q to Chapter 100.

(1) ~~"Alternate reasonably available control technology (ARACT)" means the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility as determined on a case-by-case basis.~~

(2) ~~"Chemical milling maskant" means a coating that is applied directly to aluminum components to protect surface areas when chemical milling the component with a Type I or II etchant. Type I chemical milling maskants are used with a Type I etchant and Type II chemical milling maskants are used with a Type II etchant. This definition does not include bonding maskants, critical use and line sealer maskants, and seal coat maskants. Additionally, maskants that must be used with a combination of Type I or II etchants and any of the above types of maskants (i.e., bonding, critical use and line sealer, and seal coat) are not included. Maskants that are defined as specialty coatings are not included under this definition.~~

(3) ~~"Operating parameter value" means a minimum or maximum value established for a control equipment or process parameter that, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has continued to comply with an applicable emission limitation.~~

(4) ~~"Reasonably available control technology" or "RACT" means control technology that is reasonably available considering technological and economic feasibility and the need to impose such controls to attain and maintain a National Ambient Air Quality Standard.~~

(5) ~~"Specialty coating" means a coating that, even though it meets the definition of a primer, topcoat, or self-priming topcoat, has additional performance criteria beyond those of primers, topcoats, and self-priming topcoats for specific applications. These performance criteria may include, but are not limited to, temperature or fire resistance, substrate compatibility, antireflection, temporary protection or marking, sealing, adhesively joining substrates, or enhanced corrosion protection.~~

(d) **Standards and requirements.** Coating operations subject to this section shall comply with the requirements specified in paragraph (1) of this subsection for operations uncontrolled for VOC, and in paragraph (3) of this subsection for operations that are controlled for VOC. All coating operations subject to this section shall comply with paragraphs (2), (4), and (5) of this subsection.

(1) **VOC content of coatings.** Each owner or operator of coating operations that are uncontrolled shall comply with the VOC content limits specified in paragraphs (d)(1)(A) through (C).

(A) **VOC content limits for specialty coatings.**

(i) No specialty coatings that contain VOC in excess of the limits specified in Appendix N of this Chapter shall be applied to aerospace vehicles or components. The VOC content of specialty coatings shall include any VOC-containing materials added to the original coating supplied by the manufacturer.

(ii) The VOC content limits listed in Appendix N of this Chapter do not apply to touch-up, aerosol, and United States Department of Defense (DOD) ~~DOD~~ "classified" coatings.

(B) **VOC content limits for primers and topcoats.** Each coating operation utilizing primers and topcoats (including self-priming topcoats) that are not specialty coatings listed in Appendix N of this Chapter, shall comply with the VOC content limits contained in §40 CFR Section 63.745(c)(2) and (c)(4) of the aerospace NESHAP 40 CFR 63, subpart GG.

(C) **VOC content limits for chemical milling maskants.** Each chemical milling maskant operation utilizing chemical milling maskants (Type I/II) that are not specialty coatings listed in Appendix N of this Chapter, shall comply with the VOC content limits contained in §40 CFR Section 63.747(c)(2) and the exemptions in §40 CFR Section 63.747(c)(3) of the aerospace NESHAP 40 CFR 63 subpart GG.

(D) **Exemption of low volume coating usage.** The requirements of OAC 252:100-39-47(d)(1) do not apply to the use of primers, topcoats, chemical milling maskants, and specialty coatings for which the annual total of each separate formulation used at the facility does not exceed 50 gal and the combined annual total of all such primers, topcoats, chemical milling maskants, and specialty coatings used at the facility does not exceed 200 gal. Primers, topcoats, and chemical milling maskants exempt under OAC 252:100-39-47(a) are not included in the 50 and 200 gal limits.

(E) **Compliance determination.**

(i) Coatings used at facilities subject to this Section shall be deemed in compliance when the VOC content of these coatings comply with the requirements of OAC 252:100-39-47(d)(1).

(ii) For purposes of determining compliance with ~~emission content~~ limits in OAC 252:100-39-47(d)(1), VOC will be measured by the approved test methods. Where such a method also inadvertently measures compounds that are exempt solvents, an owner or operator may exclude these exempt solvents when determining compliance with an emission standard.

(2) **Application equipment.**

(A) ~~Each primer, or topcoat, or specialty coating application operation subject to this Section shall comply with the requirements and exemptions specified in §40 CFR Section 63.745(f) of the aerospace NESHAP 40 CFR 63 subpart GG.~~

(B) ~~Specialty coatings are not subject to the equipment requirements of OAC 252:100-39-47(d)(2)(A).~~

(3) **Control equipment.**

(A) Coating operations that use a control method for compliance with this section shall comply with paragraph (i) or (ii):

(Ai) **Control equipment efficiency.** Each owner or operator ~~may comply with the provisions of OAC 252:100-39-47(d)(1) shall control VOC emissions~~ by using approved air pollution control equipment ~~provided that the control equipment has~~ with a combined VOC emissions capture and control equipment efficiency of 81% or greater by weight.

(Bii) **Exemption Alternative control method.** ~~Except for specialty coatings, Each owner or operator shall comply with the control requirements in 40 CFR Section 63.745(d) for any primer, or topcoat, or specialty coating operation that complies with the control requirements in § 63.745(d) or 40 CFR Section 63.747(d) for any chemical milling maskant operation that complies with the control requirements of § 63.747(d) of the aerospace NESHAP 40 CFR 63 subpart GG is deemed to be in compliance with the requirements of OAC 252:100-39-47(d)(3).~~

(CB) **Compliance determination.** When control equipment is used to comply with ~~the coating standards in OAC 252:100-39-47(d)(1) this section,~~ compliance shall be determined in accordance with §40 CFR Section 63.749(d) and (h) of the aerospace NESHAP 40 CFR 63 subpart GG.

(4) **Housekeeping measures and solvent cleaning operations.**

(A) Housekeeping measures and solvent cleaning operations (hand-wipe cleaning, spray gun cleaning, and flush cleaning) subject to this Section shall comply with the requirements and exemptions contained in §40 CFR Section 63.744 of the aerospace NESHAP 40 CFR 63 subpart GG.

(B) Housekeeping measures and solvent cleaning operations subject to OAC 252:100-39-47(d)(4)(A) shall be considered in compliance with subparagraph (A) when the requirements in §40 CFR Section 63.749(c) of the aerospace NESHAP 40 CFR 63 subpart GG are met.

(C) Housekeeping measures and solvent cleaning operations subject to this Section are exempt from the requirements of OAC 252:100-39-42.

(5) **General standards.** The handling and transfer of primers, topcoats, and chemical milling maskants to or from containers, tanks, vats, vessels, and piping systems shall be handled in a manner that minimizes spills.

(e) **Monitoring.**

(1) Each owner or operator who chooses to comply with the VOC content limits of OAC 252:100-39-47(d)(1)(A), (B), and /or (C) by using approved air pollution control equipment shall submit a monitoring plan that specifies the applicable operating parameter value, or range of values, to ensure ongoing compliance with OAC 252:100-39-47(d)(3) of this Section. The monitoring device shall be installed, calibrated, operated, and maintained in accordance with the manufacturer's specifications.

(2) Each owner or operator using an enclosed spray gun cleaner shall visually inspect the seals and all other potential sources of leaks at least once per month. Each inspection shall occur while the spray gun cleaner is in operation.

(3) ~~Except for specialty coatings, any~~ Any source that complies with the monitoring requirements of §40 CFR Section 63.751 of the aerospace NESHAP 40 CFR 63 subpart GG is deemed to be in compliance with the requirements of OAC 252:100-39-47(e).

(f) **Recordkeeping requirements.**

(1) **Coating operations.**

(A) Each owner or operator of primer and topcoat application operations or chemical milling maskant application operations shall comply with the recordkeeping requirements of §40 CFR Section 63.752 of the aerospace NESHAP 40 CFR 63 subpart GG as appropriate.

(B) Each owner or operator of coating operations using specialty coatings listed in Appendix N of this

Chapter shall comply with the following recordkeeping requirements.

- (i) They shall maintain a current list of coatings in use showing category and as-applied VOC content of each coating.
- (ii) They shall record coating usage on an annual basis. Methods used may include, but are not limited to, inventory records.
- (2) **Cleaning operations.** Each owner or operator subject to the solvent cleaning operation requirements in OAC 252:100-39-47(d)(4) shall:
 - (A) for hand-wipe cleaning operations, keep the records required by §40 CFR Section 63.752(b)(2), (3), and/or (4) of the aerospace NESHAP 40 CFR 63 subpart GG as appropriate;
 - (B) for enclosed spray gun cleaning operations, keep the records required by §40 CFR Section 63.752(b)(5) of the aerospace NESHAP 40 CFR 63 subpart GG.
- (3) **Control equipment.** Each owner or operator using control equipment under OAC 252:100-39-47(d)(3) shall record monitoring parameters as specified in the monitoring plan required under OAC 252:100-39-47(e)(1).
- (4) **ExemptionsAlternative recordkeeping compliance.** Except for specialty coatings listed in Appendix N of this Chapter, anyAny source that complies with the recordkeeping requirements of §40 CFR Section 63.752 of the aerospace NESHAP, 40 CFR 63 subpart GG is deemed to be in compliance with the requirements of OAC 252:100-39-47(f).
- (g) **Test methods.**
 - (1) **Coatings which are not waterborne (water-reducible).** For coatings which are not waterborne, determine the VOC content of each formulation (less water and less exempt solvents) as applied using manufacturer's supplied data or Method 24 of 40 CFR Part 60, Appendix A. If there is a discrepancy between the manufacturer's formulation data and the results of the Method 24 analysis, compliance shall be based on the results from the Method 24 analysis.
 - (2) **Waterborne (water-reducible) coatings.** For waterborne coatings, manufacturer's supplied data alone can be used to determine the VOC content of each formulation.
 - (3) **Cleaning solvents.** Solvent composition and vapor pressure for cleaning solvents used in hand-wipe cleaning

operations subject to OAC 252:100-39-47(d)(4)(A) shall be determined as specified in §40 CFR Section 63.750(a) and (b) of the aerospace NESHAP 40 CFR 63 subpart GG.

(4) **Control equipment.** Measurements of VOC emissions from control equipment as allowed by OAC 252:100-39-47(d)(3) shall be conducted in accordance with EPA Methods 18, 25, and/or 25A of 40 CFR Part 60, Appendix A.

(5) **ExemptionsAlternative test method compliance.** Except for specialty coatings, anyAny source that complies with the test method requirements of §40 CFR Section 63.750 of the aerospace NESHAP 40 CFR 63 subpart GG is deemed to be in compliance with the requirements of this subsectionOAC 252:100-39-47(g).

(h) **Compliance date.**

(1) The requirements of this Section shall be considered reasonably available control technology (RACT) for control of VOC emissions from vehicle and component coating operations at aerospace manufacturing, rework, or repair facilities in Tulsa County ~~upon the effective date of this revision~~. New or modified sources shall be in compliance upon start-up.

(2) ~~Except for specialty coatings, anyAny source that complies with the compliance dates and determinations of §40 CFR Section 63.749 of the aerospace NESHAP, 40 CFR 63 subpart GG is deemed to be in compliance with the requirements of OAC 252:100-39-47(h).~~

~~(3) Owners or operators of facilities with specialty coatings that are compliant under the ARACT plan, but are not compliant with the VOC content limits contained in Appendix N of this Chapter will have six (6) months from the effective date of this revision to find an alternate coating or install controls. Owners or operators of such facilities shall notify the DEQ in writing of any such noncompliant specialty coatings within 90 days of the effective date of this revision. This notification shall include a list of the noncompliant specialty coatings, the VOC content of each coating, and the quantity of each coating used per month and per year.~~

(i) **Revocation of ARACT plans.** Existing ARACT plans for aerospace facilities located in Tulsa County shall become null and void upon the effective date of this revision.

APPENDIX N. SPECIALTY COATINGS VOC CONTENT LIMITS [REVOKED]

APPENDIX N. SPECIALTY COATINGS VOC CONTENT LIMITS [NEW]

The following table is for use only in OAC 252:100-37-27 and OAC 252:100-39-47.

SPECIALTY COATINGS VOC CONTENT LIMITS

Coating Type	Limit	
	lb/gal	g/l ¹
Ablative Coating	5.0	600
Adhesion Promoter	7.4	890
Adhesive Bonding Primers:		
Cured at 250°F or below	7.1	850
Cured above 250°F	8.6	1,030
Adhesives:		
Commercial Interior Adhesive	6.3	760
Cyanoacrylate Adhesive	8.5	1,020
Fuel Tank Adhesive	5.2	620
Nonstructural Adhesive	3.0	360
Rocket Motor Bonding Adhesive	7.4	890
Rubber-based Adhesive	7.1	850
Structural Autoclavable Adhesive	0.5	60
Structural Nonautoclavable Adhesive	7.1	850
Antichafe Coating	5.5	660
Bearing Coating	5.2	620
Caulking and Smoothing Compounds	7.1	850
Chemical Agent-Resistant Coating	4.6	550
Clear Coating	6.0	720
Commercial Exterior Aerodynamic Structure Primer	5.4	650

Coating Type	Limit	
	lb/gal	g/l ¹
Compatible Substrate Primer	6.5	780
Corrosion Prevention System	5.9	710
Cryogenic Flexible Primer	5.4	645
Cryoprotective Coating	5.0	600
Dry Lubricative Material	7.3	880
Electric or Radiation-Effect Coating	6.7	800
Electrostatic Discharge and Electromagnetic Interference (EMI) Coating	6.7	800
Elevated-Temperature Skydrol-Resistant Commercial Primer	6.2	740
Epoxy Polyamide Topcoat	5.5	660
Fire-Resistant (Interior) Coating	6.7	800
Flexible Primer	5.3	640
Flight-Test Coatings		
Missile or Single Use Aircraft	3.5	420
All Other	7.0	840
Fuel-Tank Coating	6.0	720
High-Temperature Coating	7.1	850
Insulation Covering	6.2	740
Intermediate Release Coating	6.3	750
Lacquer	6.9	830
Maskants:		
Bonding Maskant	10.3	1,230
Critical Use and Line Sealer Maskant	8.5	1,020
Seal Coat Maskant	10.3	1,230
Metallized Epoxy Coating	6.2	740
Mold Release	6.5	780
Optical Anti-Reflective Coating	6.3	750

Coating Type	Limit	
	lb/gal	g/l ¹
Part Marking Coating	7.1	850
Pretreatment Coating	6.5	780
Rain Erosion-Resistant Coating	7.1	850
Rocket Motor Nozzle Coating	5.5	660
Scale Inhibitor	7.3	880
Screen Print Ink	7.0	840
Sealants:		
Extrudable/Rollable/Brushable Sealant	2.3	280
Sprayable Sealant	5.0	600
Silicone Insulation Material	7.1	850
Solid Film Lubricant	7.3	880
Specialized Function Coating	7.4	890
Temporary Protective Coating	2.7	320
Thermal Control Coating	6.7	800
Wet Fastener Installation Coating	5.6	675
Wing Coating	7.1	850

¹Coating limits expressed in terms of mass (grams) of VOC per volume (liters) of coating less water and less exempt solvent using Equation 1 below.

EQUATION 1

Grams of VOC per liter of coating (less water and less exempt solvent) shall be calculated using the following formula:

$$\text{g/l} = (W_s - W_w - W_{es}) / (V_s - V_w - V_{es})$$

Where:

W_s = weight of total volatiles in grams

W_w = weight of water in grams

W_{es} = weight of exempt compounds in grams

V_s = volume of coating in liters

V_w = volume of water in liters

V_{es} = volume of exempt compounds in liters

[OAR Docket #20-705; filed 7-27-20]

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

[OAR Docket #20-706]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Incorporation by Reference
252:205-3-1. Reference to 40 CFR [AMENDED]
252:205-3-2. Incorporation by reference [AMENDED]
252:205-3-4. Terminology related to 40 CFR [AMENDED]
Subchapter 5. Additional Generator Requirements
252:205-5-2. SQG exemption from disposal plan requirements [AMENDED]

AUTHORITY:

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

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

August 6, 2019

COMMENT PERIOD:

September 3, 2019 through October 10, 2019

PUBLIC HEARING(S):

October 10, 2019, Hazardous Waste Management Advisory Council
February 21, 2020, Environmental Quality Board

ADOPTION:

February 21, 2020

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 28, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 15, 2020

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATION BY REFERENCE:

Incorporated standards:

Date of 40 CFR provisions incorporated by reference in these rules is changed to "as amended through July 1, 2019".

Incorporating rules:

252:205-3-1 and 3-2

Availability:

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays.

GIST/ANALYSIS:

The gist of this rulemaking is to make DEQ's hazardous waste rules consistent with the federal regulations by incorporating by reference the regulations found in 40 CFR Parts 124 and 260-279, revised as of July 1, 2019. Changes to federal rules during this time period address the safe management of recalled (vehicle) airbags and revised management standards for hazardous waste pharmaceuticals which include an amendment to the hazardous waste listing for nicotine. Additionally, minor changes to specific subchapters are required in response to comments received from EPA. These changes regard errors identified during a review of RCRA (Authorization) Cluster XXV. This rulemaking will ensure that Oklahoma's hazardous waste rules are at least equivalent to the federal rules.

CONTACT PERSON:

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

FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2020:

SUBCHAPTER 3. INCORPORATION BY REFERENCE

252:205-3-1. Reference to 40 CFR

When reference is made to Title 40 of the Code of Federal Regulations (40 CFR), it shall mean (unless otherwise specified):

- (1) the Hazardous Waste Regulations, Monday, May 19, 1980, as amended through July 1, 2018, and
- (2) the revisions to 40 CFR published at 80 FR 1694-1814 (January 13, 2015), "Definition of Solid Waste: Final Rule," except as identified in 252:205-3-2, and the revisions to 40 CFR published at 83 FR 2464-24671 (May 30, 2018), "Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule."

252:205-3-2. Incorporation by reference

(a) **Part 124.** Procedures For Decision Making, those sections required by 40 CFR 271.14, with the following additions:

- (1) § 124.19(a) through (c) and (e);
- (2) §§ 124.31, 124.32, & 124.33, substituting DEQ for EPA, and deleting the following sentence from paragraph (a) of each section: "For the purposes of this section only, 'hazardous waste management units over which EPA has permit issuance authority' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR Part 271"; and
- (3) Subpart G.

(b) **Part 260.** Hazardous Waste Management System: General, except 260.21.

- (1) In 260.20, "Federal Register" is synonymous with "The Oklahoma Register."
- (2) In 260.20(e), strike the words "or a denial."
- (3) In 260.22, references to the lists in Subpart D of Part 261 and the reference to §261.3(a)(2)(ii) or (c) shall mean the lists in Subpart D of Part 261 and § 261.3(a)(2)(ii) or (c) as adopted by reference and applicable in Oklahoma.
- (4) In the 260.10 definitions of "new tank system" and "existing tank system", the reference to "July 14, 1986" for commencement of tank installation applies only to tank regulations promulgated pursuant to the federal Hazardous and Solid Waste Amendment ("HSWA") requirements. The following categories outline HSWA requirements:

- (A) interim status and permitting requirements applicable to tank systems owned and operated by small quantity generators [3001(d)];
- (B) leak detection requirements for all new underground tank systems [3004(o)(4)]; and
- (C) permitting standards for underground tanks that cannot be entered for inspection [3004(w)]. For tank regulations promulgated pursuant to statutory

- authority other than HSWA, the date relative to the commencement of installation is November 2, 1987.
- (c) **Part 261.** Identification and Listing of Hazardous Waste except ~~261.4(b)(18) and~~ 261.150.
- (1) In 261.4(e)(3)(iii) delete "in the Region where the sample is collected".
 - (2) In 261.31(a), the listing for F019, add at the end: "Zinc phosphate sludges meeting exemption conditions remain subject to regulation as hazardous waste if the waste exhibits a hazardous waste characteristic".
- (d) **Part 262.** Standards Applicable to Generators of Hazardous Waste except ~~Subpart E and~~ Subpart H. In 262.42(a)(2) and 262.42(b) delete "for the Region in which the generator is located". In 262.14(a)(5)(iv) and (v), add "other than Oklahoma" after the word "State".
- (e) **Part 263.** Standards Applicable to Transporters of Hazardous Waste.
- (f) **Part 264.** Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. The following sections and subsections are not adopted by reference: 264.1(f), 264.1(g)(12), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f), and 264.1080(g).
- (1) In 264.191(a), the compliance date of January 12, 1988 applies only for HSWA tanks. For non-HSWA tanks the compliance date is November 2, 1988.
 - (2) In 264.191(c), the reference to July 14, 1986 applies only to HSWA tanks. For non-HSWA tanks the applicable date is November 2, 1987.
 - (3) ~~In 264.193, the Federal effective dates apply to HSWA tanks only. For non HSWA tanks January 12, 1987 is replaced with November 2, 1987.~~
 - (4) In 264.570(a) the dates December 6, 1990 and December 24, 1992 apply only to drip pads where F032 waste is handled. The dates June 22, 1992 and August 15, 1994 respectively, replace the dates December 6, 1990 and December 24, 1992 for drip pads where F034 or F035 wastes are handled.
- (g) **Part 265.** Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except 265.1(c)(4), ~~265.1(g)(12), 265.1(c)(15),~~ 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g).
- (1) In 265.191(a), the compliance date of January 12, 1988 applies only for HSWA tanks. For non-HSWA tanks the compliance date is November 2, 1988.
 - (2) In 265.191(c), the reference to July 14, 1986 applies only to HSWA tanks. For non HSWA tanks the applicable date is November 2, 1987.
 - (3) In 265.193, the Federal effective dates apply to HSWA tanks only. For non-HSWA tanks January 12, 1987 is replaced with November 2, 1987.
 - (4) In 265.440(a) the dates December 6, 1990 and December 24, 1992 apply only to drip pads where F032 waste is handled. The dates June 22, 1992 and August 15, 1994 respectively, replace the dates December 6, 1990 and December 24, 1992 for drip pads where F034 or F035 wastes are handled.

- (h) **Part 266.** Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities. Due to an early incorporation by reference, for purposes of Part 266 only, HSWA and non-HSWA dates are the same. In 266.325, the reference to 10 CFR 1.5 is changed to 10 CFR 71.5.
- (i) **Part 267.** Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit. This permit option shall only be available to:
- (1) those persons who generate hazardous waste on-site through, or as a result of, industrial production processes;
 - (2) wholly owned subsidiaries, owners, or sister companies of those persons specified in paragraph (1); and
 - (3) agencies, departments, or units of the federal government or the State of Oklahoma.
- (j) **Part 268.** Land Disposal Restrictions, except 268.5, 268.6, 268.13, 268.42(b) and 268.44(a) through (g). In 268.7(a)(9)(iii) exclude D009 from the list of alternative treatment standards for lab packs.
- (k) **Part 270.** The Hazardous Waste Permit Program, except 270.1(c)(2)(ix), and 270.14(b)(18).
- (l) **Part 273.** Standards for Universal Waste Management.
- (m) **Part 279.** Standards for the Management of Used Oil, except that 279.82 is revised to read in its entirety, "The use of used oil as a dust suppressant is prohibited."
- (n) **Excepted CFR Regulations.** Authority for carrying out excepted CFR regulations remains with EPA.

252:205-3-4. Terminology related to 40 CFR

- (a) For purposes of interfacing with 40 CFR, the following terms apply:
- (1) **"Administrator"** is synonymous with Executive Director except in §§ 262.18, ~~262.55, 262.56, 262.57, 262.87, 262.83, 262.84,~~ 263.11, 270.5, 270.10(e)(2) and (3) and (f)(2) and (3), and 270.32(b)(2). In 260.10 and 270.2, the definition of "Administrator" is not synonymous with "Director". The terms as used in the excepted sections retain the meanings as defined in the CFR;
 - (2) **"Regional Administrator"** and **"EPA Regional Administrator"** are synonymous with Executive Director except in §§ 124.5(d), 124.10(b), ~~262.55, 262.56, 262.57, Item 19 of the Appendix to Part 262,~~ 270.5, 270.10(f)(2) and (3) and (g)(1)(i) & (iii), 270.11(a)(3) and 270.14(b)(20). See also §§ 264.12(a) and 265.12(a) where "Regional Administrator" should be replaced with "Regional Administrator and Executive Director". In 260.10 and 270.2, the definition of "Regional Administrator" is not synonymous with "Executive Director". The terms as used in the excepted sections retain the meanings as defined in CFR;
 - (3) **"Act"** is synonymous with the Oklahoma Hazardous Waste Management Act;
 - (4) **"State"** is synonymous with the DEQ;
 - (5) **"EPA"** is the United States Environmental Protection Agency, except in § 124.6 where "EPA" should be replaced with "DEQ", and as otherwise indicated in subparagraph 252:205-3-2(a)(2);

- (6) **"Environmental Appeals Board"** is synonymous with Executive Director;
- (7) **§§ 3008, 3013 and 7003** of the federal Resource Conservation and Recovery Act when referenced in the CFR should be read as including the analogous state enforcement authority set forth in the Oklahoma Environmental Quality Code; and
- (8) **"DOT"** and **"Department of Transportation"** is the U.S. Department of Transportation.
- (b) **Financial security mechanisms.** The owner shall word the financial assurance instruments as provided in 40 CFR 264.151, except that:
- (1) the phrase "Department of Environmental Quality" ("DEQ" or "the Department"), an agency of the State of Oklahoma" shall be used instead of "Environmental Protection Agency";
 - (2) "Director" shall be used instead of "Regional Administrator";
 - (3) "DEQ" shall replace "EPA";
 - (4) "Act" shall replace § 3008 of the Resource Conservation and Recovery Act"; and
 - (5) the certification in each instrument that the language is identical to respective provisions of 40 CFR 264.151 shall include the phrase "United States Environmental Protection Agency approved amendment, for the State of Oklahoma."

SUBCHAPTER 5. ADDITIONAL GENERATOR REQUIREMENTS

252:205-5-2. SQG exemption from disposal plan requirements

Small quantity generators and ~~conditionally-exempt~~ every small quantity generators are not required to file disposal plans (252:205-5-1) or quarterly reports (252:205-5-3) with the DEQ.

[OAR Docket #20-706; filed 7-27-20]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 410. RADIATION MANAGEMENT

[OAR Docket #20-707]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
252:410-1-7. Incorporation of federal regulations by reference [AMENDED]
- Subchapter 10. Radioactive Materials Program
Part 1. General Provisions
252:410-10-1. Radioactive Materials Program [AMENDED]
- Part 32. Byproduct Material: Specific Licenses for Manufacturing and Transferring Certain Items
252:410-10-32. 10 CFR 32 incorporations by reference [AMENDED]

- Part 35. Medical Use of Byproduct Material
252:410-10-35. 10 CFR 35 incorporations by reference [AMENDED]
- Part 40. Domestic Licensing of Source Material
252:410-10-40. 10 CFR 40 incorporations by reference [AMENDED]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-104, and 2-2-201.
Radiation Management Advisory Council; 27A O.S. § 2-2-201; and 27A O.S. §§ 2-9-104, and 2-9-105.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

July 23, 2019

COMMENT PERIOD:

August 15, 2019 through September 25, 2019

PUBLIC HEARING(S):

September 26, 2019, Radiation Management Advisory Council
November 8, 2019, Environmental Quality Board

ADOPTION:

November 8, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

November 13, 2019

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 15, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

Title 10 of the code of Federal Regulations, Parts 30, 32, 35, and 40, as amended through January 1, 2019

Incorporating rules:

252:410-1-7, 252:410-10-1, 252:410-10-32, 252:410-10-35, 252:410-10-40

Availability:

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays.

GIST/ANALYSIS:

The proposed rulemaking consists of four main elements. (1) The first element is to amend Chapter 410, Subchapter 1 (General Provisions) [See OAC 252:410-1-7(a)] to change the date for incorporation of federal regulations by reference to January 1, 2019. (2) The second element of this rulemaking is to amend the regulations related to the medical use of byproduct material to conform the Oklahoma rules to the updated federal regulations which includes revisions to 10 CFR Parts 30, 32 and 35. This rule amends the reporting and notification requirements for a medical event for permanent implant brachytherapy. This rule also amends the training and experience (T&E) requirements to remove from multiple sections the requirement to obtain a written attestation for an individual who is certified by a specialty board whose certification process has been recognized by the NRC or an Agreement State; and to exempt certain board-certified individuals from certain T&E requirements (i.e., "grandfather" these individuals). Additionally, this rule amends the requirements for measuring molybdenum contamination; adds a new requirement for the reporting of failed technetium and rubidium generators; and allows licensees to name associate radiation safety officers on a medical license. (3) The third element is a revision to better organize, clarify, and update the regulations in OAC 252:410-10-32 [10 CFR Part 32]. The renaming of subparts C and D and the movement of Sec. 32.72 and 32.74 from subpart B to subpart C. These two sections are being moved because they do not cover generally licensed items. (4) The fourth element is to correct an error made when 10 CFR 40 was adopted. 10 CFR 40 covers source material. An error was made in a section on "unimportant quantities of source material". In a list of five types of unimportant quantities of source material, four of them were intended to be excluded from our rules and reserved to the NRC, but five were excluded. The format was corrected and the fifth category (depleted uranium counterweights) should not have been excluded, as DEQ has jurisdiction. This rulemaking will correct this error.

The gist of this rulemaking is to maintain compatibility with federal regulations.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

252:410-1-7. Incorporation of federal regulations by reference

- (a) **10 CFR.** References in this Chapter to Title 10 of the Code of Federal Regulations (10 CFR) mean the ~~January 1, 2016~~ January 1, 2019 publication of 10 CFR.
- (b) **40 CFR.** References in this Chapter to Title 40 of the Code of Federal Regulations (40 CFR) mean the July 1, 1998 publication of 40 CFR and 64 Fed. Reg. 5574 (February 3, 1999).
- (c) **Citations incorporated.** When a provision of the Code of Federal Regulations is incorporated by reference, all citations contained therein are also incorporated by reference.

SUBCHAPTER 10. RADIOACTIVE MATERIALS PROGRAM

PART 1. GENERAL PROVISIONS

252:410-10-1. Radioactive Materials Program

- (a) **Scope.**
 - (1) The rules in this Subchapter establish license requirements for the following categories of radioactive materials: byproduct material, source material and special nuclear material.
 - (2) License requirements incorporated by reference from 10 CFR are applicable requirements for all categories of radioactive materials within the scope of this Subchapter.
- (b) **Exclusions.** Responsibility for the following regulatory requirements remains with the NRC:
 - (1) **In 10 CFR 20.** Exemptions to labeling requirements, § 20.1905(g); Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the constraints or limits at nuclear power plants, § 20.2203(c); Reports of individual monitoring, § 20.2206(a)(1), (a)(3), (a)(4) and (a)(5);
 - (2) **In 10 CFR 30.** Activities requiring license, § 30.3(b); Definitions, 30.4 "Commencement of construction" paragraph (2), "Construction" paragraph (9)(ii), and "Quantities of concern"; Application for specific licenses, § 30.32(k); Terms and conditions of licenses, § 30.34 (d),

- (e)(1), (e)(3) and (1); Transfer of byproduct material, § 30.41 (b)(6); Tritium reports, § 30.55;
- (3) **In 10 CFR 32.** Purpose and scope, § 32.1(c)(1); Subpart A, Exempt concentrations and items, §§ 32.11, 32.12, 32.14, 32.15, 32.16, 32.18 through 32.23, and 32.25 through 32.29; Subpart D, Specifically licensed items, § 32.210;
- (4) **In 10 CFR 35.** License required, § 35.11(c)(1); License amendments, § 35.13(a)(1);
- (5) **In 10 CFR 36.** Definitions, 36.2 "Commencement of construction" paragraph 2 and "Construction" paragraph 9(ii);
- (6) **In 10 CFR 37.** General security program requirements, 37.43(d)(9);
- (7) **In 10 CFR 40.** General Provisions, §§ 40.2a and 40.3; Definitions, 40.4 "Commencement of construction" paragraph (2) and "Construction" paragraph (9)(ii); Exemptions, §§ 40.11, 40.12 and 40.13 (a), (b), (c)(1) through ~~(54)~~ (c)(5)(iv), (c)(7) through ~~(98)~~ (98), 40.14; General Licenses, §§ 40.20 through 40.24; 40.26 through 40.28; License Applications, §§ 40.31 (f) through (l), §§ 40.32 (d) through (g), §§ 40.33 through 40.35, § 40.37, and § 40.38; Licenses, §§ 40.41 (d), (e)(1) and (3), (f) and (g), § 40.42 and § 40.46; Transfer of Source Material, § 40.51 (b)(6); Records, Reports, and Inspections, § 40.60 (c)(3), §§ 40.64 through 40.67; Appendix A;
- (8) **In 10 CFR 61.** Other information, § 61.16; Standards for issuance of a license, § 61.23 (i) and (j) regarding physical security information and criticality safety procedures for special nuclear material possessed prior to disposal;
- (9) **In 10 CFR 70.** Regulation of special nuclear material for spent fuel, high level radioactive waste and uranium enrichment facilities, §§ 70.1(c), (d) and (e); Definitions, 70.4 "Commencement of construction" paragraph (2) and "Construction" paragraph (9)(ii); Department of Defense, § 70.13; Foreign military aircraft, § 70.14; General license to possess special nuclear material for transport, § 70.20a; General license for carriers of transient shipments of formula quantities of strategic special nuclear material of moderate strategic significance, special nuclear material of low strategic significance, and irradiated reactor fuel regulated under 10 CFR 73, § 70.20b; Subpart D - License Applications, § 70.21(a)(1), (c), (f), (g) and (h); § 70.22 (b), (c) and (f) through (n), § 70.23 (a)(6) through (12) and (b), § 70.23a, and § 70.24; Subpart E - Licenses, § 70.31 (c), (d), and (e), § 70.32 (a)(1), (a)(4) through (7), (b)(1), (b)(3), (b)(4), (c) through (k), and § 70.37; § 70.40; Subpart F - Acquisition, Use and Transfer of Special Nuclear Material, Creditor's Rights, §70.42(b)(6), and § 70.44; Subpart G - Special Nuclear Material Control, Records, Reports and Inspections, § 70.51(c),(d) and (e), § 70.52 through § 70.54, § 70.55(c), § 70.56, and §70.59; Subpart H - Additional Requirements for Certain Licensees Authorized to Possess a Critical Mass of Special Nuclear Material, § 70.60 through 70.76; Subpart I - Modification and Revocation of Licenses, §

70.81 and § 70.82; Subpart J - Enforcement, §§ 70.91, 70.92 and Appendix A to Part 70;

(10) **In 10 CFR 71.** Subpart A - General Provisions, § 71.10; Subpart B - Exemptions, § 71.14(b); Subpart C - General licenses, § 71.19; Subpart D - Application for Package Approval, §§ 71.31 through 71.39; Subpart E - Package Approval Standards, §§ 71.41 through 71.45 and §§ 71.51 through 71.65; Subpart F - Package, Special Form, and LSA-III Tests, §§ 71.70 through 71.77; Subpart G - Operating Controls and Procedures, § 71.85(a), (b) and (c) and § 71.91(b); Subpart H - Quality Assurance, § 71.101(c)(2), (d), and (e) and §§ 71.107 through 71.125;

(11) **In 10 CFR 150.** Persons in offshore waters not exempt, § 150.7; Persons in agreement states exempt, § 150.10; Commission regulatory authority for physical protection in agreement states, § 150.14; Persons not exempt, § 150.15(a)(9); Continued Commission authority pertaining to byproduct material, § 150.15a(b)(6); Persons in agreement states not exempt, Continued Commission authority pertaining to byproduct material in agreement states, § 150.17; Compliance with requirements of US/IAEA safeguards agreement for source material under state agreement license; Submission to Commission of reports for tritium in agreement states, § 150.19; Transportation by aircraft of special nuclear material by agreement state licensee, § 150.21; Violations, § 150.30; Requirements for Agreement State regulation of byproduct material, § 150.31; Funds for reclamation or maintenance of byproduct material, § 150.32; and Criminal penalties, § 150.33.

(c) **Effective date.** The requirements of this Subchapter became effective September 29, 2000, the date upon which jurisdiction over all unrevoked and unexpired NRC licenses and plan approvals was transferred to DEQ.

PART 32. BYPRODUCT MATERIAL: SPECIFIC LICENSES FOR MANUFACTURING AND TRANSFERRING CERTAIN ITEMS

252:410-10-32. 10 CFR 32 incorporations by reference

The following provisions are hereby incorporated by reference from 10 CFR 32, Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material:

- (1) **General provisions.**
 - (A) 32.1(a), (b) and (c)(2) - Purpose and scope, excluding issuance of certificates of registration
 - (B) 32.2 - Definitions
 - (C) 32.3 - Maintenance of records
- (2) **Subpart A - Exempt concentrations and items.**
 - (A) 32.13 - Same: Prohibition of introduction
 - (B) 32.24 - Same: Table of organ doses
- (3) **Subpart B - Generally licensed items.**
 - (A) Byproduct material contained in devices for use under 31.5:
 - (i) 32.51 - Requirements for license to manufacture or initially transfer
 - (ii) 32.51a - Conditions of licenses

- (iii) 32.52 - Material transfer reports and records

(B) Luminous safety devices for use in aircraft:

- (i) 32.53 - Requirements for license to manufacture, assemble, repair or initially transfer
 - (ii) 32.54 - Labeling of devices
 - (iii) 32.55 - Quality assurance; prohibition of transfer
 - (iv) 32.56 - Material transfer reports

(C) Calibration or reference sources containing americium 241:

- (i) 32.57 - Calibration or reference sources containing americium-241 or radium-226: Requirements for license to manufacture or initially transfer
 - (ii) 32.58 - Same: Labeling of devices
 - (iii) 32.59 - Same: Leak testing of each source

(D) Ice detection devices containing strontium-90:

- (i) 32.61 - Requirements for license to manufacture or initially transfer
 - (ii) 32.62 - Quality assurance; prohibition of transfer

(E) 32.71 - Manufacture and distribution of byproduct material for certain *in vitro* clinical or laboratory testing under general license

(4) Subpart C - Specifically licensed items.

~~(FA)~~ 32.72 - Manufacture, preparation or transfer for commercial distribution of radioactive drugs containing byproduct material for medical use under part 35

~~(GB)~~ 32.74 - Manufacture and distribution of sources or devices containing byproduct material for medical use

~~(4) Subpart D - Specifically licensed items.~~

(C) 32.201 - Serialization of nationally tracked sources

PART 35. MEDICAL USE OF BYPRODUCT MATERIAL

252:410-10-35. 10 CFR 35 incorporations by reference

(a) **Incorporations by reference.** The following provisions are hereby incorporated by reference from 10 CFR 35, Medical Use of Byproduct Material:

(1) **Subpart A; General Information.**

- (A) 35.1 - Purpose and scope
- (B) 35.2 - Definitions
- (C) 35.5 - Maintenance of records
- (D) 35.6 - Provisions for the protection of human research subjects
- (E) 35.7 - FDA, other Federal and State requirements
- (F) 35.10 - Implementation
- (G) 35.11(a), (b) and (c)(2) - License required
- (H) 35.12 - Application for license, amendment or renewal

- (I) 35.13(a)(2), and (b) through (g) - License amendments
- (J) 35.14 - Notifications
- (K) 35.15 - Exemptions regarding Type A specific licenses of broad scope
- (L) 35.18 - License issuance
- (M) 35.19 - Specific exemptions
- (2) **Subpart B; General Administrative Requirements.**
 - (A) 35.24 - Authority and responsibilities for the radiation protection program
 - (B) 35.26 - Radiation protection program changes
 - (C) 35.27 - Supervision
 - (D) 35.40 - Written directives
 - (E) 35.41 - Procedures for administrations requiring a written directive
 - (F) 35.49 - Suppliers for sealed sources or devices for medical use
 - (G) 35.50 - Training for Radiation Safety Officer and Associate Radiation Safety Officer
 - (H) 35.51 - Training for an authorized medical physicist
 - (I) 35.55 - Training for an authorized nuclear pharmacist
 - (J) 35.57 - Training for experienced Radiation Safety Officer, teletherapy or medical physicist, authorized user, nuclear pharmacist, and authorized nuclear pharmacist
 - (K) 35.59 - Recency of Training
- (3) **Subpart C; General Technical Requirements.**
 - (A) 35.60 - Possession, use, and calibration of instruments used to measure the activity of unsealed byproduct material
 - (B) 35.61 - Calibration of survey instruments
 - (C) 35.63 - Determination of dosages of unsealed byproduct material for medical use
 - (D) 35.65 - Authorization for calibration, transmission, and reference sources
 - (E) 35.67 - Requirements for possession of sealed sources and brachytherapy sources
 - (F) 35.69 - Labeling of vials and syringes
 - (G) 35.70 - Surveys of ambient radiation exposure rate
 - (H) 35.75 - Release of individuals containing unsealed byproduct material or implants containing byproduct material
 - (I) 35.80 - Provision of mobile medical service
 - (J) 35.92 - Decay-in-storage
- (4) **Subpart D; Unsealed Byproduct Material-Written Directive Not Required.**
 - (A) 35.100 - Use of unsealed byproduct material for uptake, dilution, and excretion studies for which a written directive is not required
 - (B) 35.190 - Training for uptake, dilution, and excretion studies
 - (C) 35.200 - Use of unsealed byproduct material for imaging and localization studies for which a written directive is not required
 - (D) 35.204 - Permissible molybdenum-99, strontium-82, and strontium-85 concentrations
 - (E) 35.290 - Training for imaging and localization studies
- (5) **Subpart E; Unsealed Byproduct Material - Written Directive Required.**
 - (A) 35.300 - Use of unsealed byproduct material for which a written directive is required
 - (B) 35.310 - Safety instruction
 - (C) 35.315 - Safety precautions
 - (D) 35.390 - Training for use of unsealed byproduct material for which a written directive is required
 - (E) 35.392 - Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 gigabecquerels (33 millicuries)
 - (F) 35.394 - Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 gigabecquerels (33 millicuries)
 - (G) 35.396 - Training for the parenteral administration of unsealed byproduct material requiring a written directive
- (6) **Subpart F; Manual Brachytherapy.**
 - (A) 35.400 - Use of sources for manual brachytherapy
 - (B) 35.404 - Surveys after source implant and removal
 - (C) 35.406 - Brachytherapy sources accountability
 - (D) 35.410 - Safety instruction
 - (E) 35.415 - Safety precautions
 - (F) 35.432 - Calibration measurements of brachytherapy sources
 - (G) 35.433 - ~~Decay of strontium-90~~ Strontium-90 sources for ophthalmic treatments
 - (H) 35.457 - Therapy related computer systems
 - (I) 35.490 - Training for use of manual brachytherapy sources
 - (J) 35.491 - Training for ophthalmic use of strontium-90
- (7) **Subpart G; Sealed Sources for diagnosis.**
 - (A) 35.500 - Use of sealed sources and medical devices for diagnosis
 - (B) 35.590 - Training for use of sealed sources and medical devices for diagnosis
- (8) **Subpart H; Photon Emitting Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units.**
 - (A) 35.600 - Use of a sealed source in a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit
 - (B) 35.604 - Surveys of patients and human research subjects treated with a remote afterloader unit
 - (C) 35.605 - Installation, maintenance, adjustment, and repair
 - (D) 35.610 - Safety procedures and instructions for remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units

- (E) 35.615 - Safety precautions for remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units
 - (F) 35.630 - Dosimetry equipment
 - (G) 35.632 - full calibration measurements on teletherapy units
 - (H) 35.633 - Full calibration measurements on remote afterloader units
 - (I) 35.635 - Full calibration measurements on gamma stereotactic radiosurgery units
 - (J) 35.642 - Periodic spot-checks for teletherapy units
 - (K) 35.643 - Periodic spot-checks for remote afterloader units
 - (L) 35.645 - Periodic spot-checks for gamma stereotactic radiosurgery units
 - (M) 35.647 - Additional technical requirements for mobile remote afterloader units
 - (N) 35.652 - Radiation surveys
 - (O) 35.655 - ~~Five-year~~ Full-inspection servicing for teletherapy and gamma stereotactic radiosurgery units
 - (P) 35.657 - Therapy-related computer systems
 - (Q) 35.690 - Training for use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units
- (9) **Subpart I.**
- (10) **Subpart K; Other Medical Uses of Byproduct Material or Radiation From Byproduct Material.**
35.1000 - Other medical uses of byproduct material or radiation from byproduct material
- (11) **Subpart L; Records.**
- (A) 35.2024 - Records of authority and responsibilities for radiation protection programs
 - (B) 35.2026 - Records of radiation protection program changes
 - (C) 35.2040 - Records of written directives
 - (D) 35.2041 - Records for procedures for administration requiring a written directive
 - (E) 35.2060 - Records of calibrations of instruments used to measure the activity of unsealed byproduct materials
 - (F) 35.2061 - Records of radiation survey instrument calibrations
 - (G) 35.2063 - Records of dosages of unsealed byproduct material for medical use
 - (H) 35.2067 - Records of leaks tests and inventory of sealed sources and brachytherapy sources
 - (I) 35.2070 - Records of survey for ambient radiation exposure rate
 - (J) 35.2075 - Records of the release of individuals containing unsealed byproduct material or implants containing byproduct material
 - (K) 35.2080 - Records of mobile medical services
 - (L) 35.2092 - Records of decay-in-storage
 - (M) 35.2204 - Records of molybdenum-99, strontium-82, and strontium 85 concentrations.
 - (N) 35.2310 - Records of safety instruction

- (O) 35.2404 - Records of surveys after source implant and removal
 - (P) 35.2406 - Records of brachytherapy source accountability
 - (Q) 35.2432 - Records of calibration measurements of brachytherapy sources
 - (R) 35.2433 - Records of decay of strontium-90 sources for ophthalmic treatments
 - (S) 35.2605 - Records of installation, maintenance, adjustment, and repair of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units
 - (T) 35.2610 - Records of safety procedures
 - (U) 35.2630 - Records of dosimetry equipment used with remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units
 - (V) 35.2632 - Records of teletherapy, remote afterloader, and gamma stereotactic radiosurgery full calibrations
 - (W) 35.2642 - Records of periodic spot-checks for teletherapy units
 - (X) 35.2643 - Records of periodic spot-checks for remote afterloader units
 - (Y) 35.2645 - Records of periodic spot checks for gamma stereotactic radiosurgery units
 - (Z) 35.2647 - Records of additional technical requirements for mobile remote afterloader units
 - (AA) 35.2652 - Records of surveys of therapeutic treatment units
 - (BB) 35.2655 - Records of ~~5-year~~ full-inspection servicing for teletherapy and gamma stereotactic radiosurgery units
- (12) **Subpart M; Reports.**
- (A) 35.3045 - Report and notification of a medical event
 - (B) 35.3047 - Report and notification of a dose to an embryo/fetus or a nursing child
 - (C) 35.3067 - Report of a leaking source
 - (D) 35.3204 - Report and notification for an eluate exceeding permissible molybdenum-99, strontium-82 and strontium-85 concentrations

(b) **Exceptions.** The provisions for communication with NRC of 10 CFR § 30.6 referenced in §§ 35.12 and 35.14 are not incorporated by reference. All correspondence regarding license requirements, and any notifications or reports required by this Part, shall be directed to DEQ.

PART 40. DOMESTIC LICENSING OF SOURCE MATERIAL

252:410-10-40. 10 CFR 40 incorporations by reference

The following provisions are hereby incorporated by reference from 10 CFR 40, Domestic Licensing of Source Material.

- (1) **General Provisions.**
- (A) 40.1 - Purpose
 - (B) 40.2 - Scope
 - (C) 40.4 - Definitions

- (D) 40.7 - Employee Protection
- (E) 40.9 - Completeness and accuracy of information
- (F) 40.10 - Deliberate misconduct
- (2) **Exemptions.** 40.13(c)(6), (c)(9) and (10) - Unimportant quantities of source material
- (3) **General Licenses.** 40.25 - General license for use of certain industrial products or devices.
- (4) **License Applications.**
 - (A) 40.31 (a) through (e) - Application for specific licenses
 - (B) 40.32 (a) through (c) - General requirements for issuance of licenses.
 - (C) 40.36 - Financial assurance and recordkeeping for decommissioning
- (5) **Licenses.**
 - (A) 40.41 (a) through (c) and (e) - Terms and conditions of licenses
 - (B) 40.43 - Renewal of licenses
 - (C) 40.44 - Amendment of licenses at request of licensee
 - (D) 40.45 - Commission action on applications to renew or amend
- (6) **Transfer of Source Material.**
 - (A) 40.51 (a), (b)(1) through (5), (b)(7), (c) and (d) - Transfer of source or byproduct material
 - (B) 40.54 - Requirements for license to initially transfer source material for use under the "small quantities of source material" general license
 - (C) 40.55 - Conditions of licenses to initially transfer source material for use under the "small quantities of source material" general license. Quality control, labeling, safety instructions, and records and reports
- (7) **Records, Reports and Inspections.**
 - (A) 40.60 (a), (b), (c)(1) and (2) - Reporting requirements
 - (B) 40.61 (a) through (f) - Records
 - (C) 40.62 - Inspections
 - (D) 40.63 - Tests
- (8) **Modification and Revocation of Licenses.** 40.71 - Modification and revocation of licenses

[OAR Docket #20-707; filed 7-27-20]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY

CHAPTER 515. MANAGEMENT OF SOLID WASTE

[OAR Docket #20-708]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 19. Operational Requirements
 Part 3. Operational Requirements for all Disposal Facilities
 252:515-19-36 [AMENDED]
 Subchapter 27. Cost Estimates and Financial Assurance
 Part 3. Cost Estimates

252:515-27-34 [AMENDED]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-10-201, and 2-10-301.2.

Solid Waste Management Advisory Council; 27A O.S. § 2-2-201.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 22, 2019

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January 16, 2020, Solid Waste Management Advisory Council

February 21, 2020, Environmental Quality Board

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February 21, 2020

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Approved by Governor's declaration on June 25, 2020

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The Department is proposing to amend OAC 252:515 to revise potentially confusing regulations and to clarify deadlines. The gist of the rule is to clarify deadlines related to cost estimates, specify deadlines for financial assurance mechanisms, and to make a minor grammatical change related to dust control.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2020:

SUBCHAPTER 19. OPERATIONAL REQUIREMENTS

PART 3. OPERATIONAL REQUIREMENTS FOR ALL DISPOSAL FACILITIES

252:515-19-36. Air criteria

(a) **Comply with Clean Air Act.** All disposal facilities shall be operated in compliance with the Oklahoma Clean Air Act, rules of the Air Quality Division of the DEQ, and any requirements of an approved State Implementation Plan.

(b) **Open burning prohibited.** Open burning of solid waste is prohibited.

(c) **Control dust.** All disposal facilities shall be operated to prevent the discharge of any visible-fugitive dust emissions beyond the property boundaries ~~so as to that~~ damage or interfere with the use of adjacent properties, or ~~to~~ cause air quality standards to be exceeded, or interfere with the maintenance of air quality standards.

Permanent Final Adoptions

(d) **Asbestos at land disposal facilities.** Friable asbestos received at a land disposal facility shall be managed in accordance with the DEQ's asbestos management requirements at OAC 252:100-40- 5.

SUBCHAPTER 27. COST ESTIMATES AND FINANCIAL ASSURANCE

PART 3. COST ESTIMATES

252:515-27-34. Annual adjustments to cost estimates and financial assurance mechanisms

(a) **Adjustment required.** ~~Except as provided in (b) and (c) of this Section, cost~~Cost estimates for closure, post-closure, and/or corrective action shall be adjusted and submitted to DEQ no later than April 1st of each year. The adjustment must be submitted to the DEQ for approval.

(1) **Recalculation of maximum costs.** The maximum costs of closure, post-closure, and/or corrective action may be recalculated in current dollars using the procedure in Part 5 of this Subchapter (relating to determination of cost estimates).

(2) **Use of inflation factor.** If there are no significant changes to the closure or post-closure plan, corrective action plan, or facility conditions, cost estimates may be adjusted by use of an inflation factor derived from the most recent annual "Implicit Price Deflator for Gross National Product" or the "Implicit Price Deflator for Gross Domestic Product" published by the U.S. Department of Commerce in its Survey of Current Business in the year for which the adjustment is being made.

(A) The first adjustment shall be made by multiplying the approved cost estimate by the inflation factor. The result is the adjusted cost estimate.

(B) Subsequent adjustments shall be made by multiplying the latest adjusted cost estimate by the latest inflation factor.

(3) **Place in operating record.** The approved adjusted cost estimates shall be placed in the operating record.

(b) **Annual Adjustment to financial assurance mechanism(s) required.** Except as provided in (c) and (d) of this Section, the financial assurance mechanism(s) shall be adjusted annually to reflect the approved cost estimates. The adjusted financial assurance mechanism(s) must be submitted to DEQ for approval no later than 30 days after approval of adjusted cost estimates.

(~~b~~c) **Corporate test or guarantee as financial assurance mechanism.** When the corporate test (OAC 252:515-27-81) or guarantee (OAC 252:515-27-83) is used as the financial assurance mechanism, ~~the cost estimates for closure, post-closure, and/or corrective action shall be adjusted no later than 90 days after the close of the corporate fiscal year.~~

(1) **Required information.** ~~The~~the financial strength information specified in OAC 252:515-27- 81(c) shall be submitted to the DEQ for approval- no later than 90 days after the close of the corporate fiscal year.

(2) **Extension—allowed.** The DEQ may provide up to an additional 45 days to submit the information upon demonstration that 90 days is insufficient time to acquire audited financial statements.

(3) **Place in operating record.** ~~The approved adjusted cost estimates shall be placed in the operating record.~~

(ed) **Local government test or guarantee as financial assurance mechanism.** When the local government test (OAC 252:515-27-82) or guarantee (OAC 252:515-27-84) is used as the financial assurance mechanism, ~~the cost estimates for closure, post-closure, and/or corrective action shall be adjusted no later than 180 days after the close of the municipal government's fiscal year.~~

(1) **Required information.** ~~The~~the financial strength information specified in OAC 252:515-27- 82(h) shall be submitted to the DEQ for approval-no later than 180 days after the close of the municipal government's fiscal year. The DEQ may provide up to an additional 45 days to submit the information upon demonstration that 180 days is insufficient time to acquire audited financial statements.

(2) **Place in operating record.** ~~The approved adjusted cost estimates shall be placed in the operating record.~~

[OAR Docket #20-708; filed 7-27-20]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 641. INDIVIDUAL AND SMALL PUBLIC ON-SITE SEWAGE TREATMENT SYSTEMS

[OAR Docket #20-709]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

252:641-1-1 [AMENDED]

252:641-1-2 [AMENDED]

252:641-1-3 [AMENDED]

252:641-1-4 [AMENDED]

252:641-1-5 [AMENDED]

Subchapter 3. Soil Tests

252:641-3-1 [AMENDED]

252:641-3-2 [AMENDED]

252:641-3-4 [AMENDED]

Subchapter 5. Building Sewer and Collection Systems

252:641-5-1 [AMENDED]

252:641-5-2 [REVOKED]

Subchapter 7. Septic Tanks

252:641-7-1 [AMENDED]

252:641-7-3 [AMENDED]

Subchapter 9. Pump Tanks

252:641-9-1 [AMENDED]

Subchapter 10. Aerobic Treatment Systems

252:641-10-1 [AMENDED]

252:641-10-2 [AMENDED]

252:641-10-3 [AMENDED]

Subchapter 12. Dispersal Fields

252:641-12-2 [AMENDED]

252:641-12-3 [AMENDED]

252:641-12-5 [AMENDED]

252:641-12-6 [AMENDED]

252:641-12-7 [AMENDED]

Subchapter 15. Lagoons
 252:641-15-1 [AMENDED]
 252:641-15-5 [AMENDED]
 252:641-15-6 [AMENDED]
 Subchapter 21. Certification for On-site Sewage Treatment System Installers
 252:641-21-2.1 [AMENDED]
 252:641-21-3 [AMENDED]
 252:641-21-12 [AMENDED]
 Subchapter 22. Certification for ~~Persons who Perform~~ Soil ~~Profile~~ ~~Profiler~~ ~~Descriptions~~
 252:641-22-2 [AMENDED]
 252:641-22-3 [AMENDED]
 252:641-22-4 [AMENDED]
 252:641-22-5 [AMENDED]
 Subchapter 23. Fees
 252:641-23-2 [AMENDED]
 252:641-23-3 [AMENDED]
 252:641-23-4 [AMENDED]
 252:641-23-5 [NEW]
 Appendix C. Pipe Specifications for On-site Sewage Treatment Systems [REVOKED]
 Appendix C. Pipe Specifications for On-site Sewage Treatment Systems [NEW]
 Appendix E. Horizontal Separation Distance Requirements for On-site Sewage Treatment Systems [REVOKED]
 Appendix E. Horizontal Separation Distance Requirements for On-site Sewage Treatment Systems [NEW]
 Appendix F. Estimated Average Daily Flow for Small Public On-site Sewage Treatment Systems [REVOKED]
 Appendix F. Estimated Average Daily Flow for Small Public On-site Sewage Treatment Systems [NEW]
 Appendix M. Examples of Trench Installation [REVOKED]
 Appendix M. Examples of Trench Installation [NEW]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201, 2-6-402, and 2-6-403; and 59 O.S. § 1158.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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June 25, 2020

EFFECTIVE:

September 15, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The Department is proposing to: (1) clarify the definitions of "Sewage", (2) clarify ownership as it applies to on-site systems, (3) remove the building sewer construction requirements and reference the most current adoption of the Oklahoma Plumbing Code, (4) require the installation of an access manhole over the septic tank inlet baffle, (5) include language to allow the use of aerobic treatment systems for commercial small public facilities, increase the overall installation depth of the systems, and clarify the maintenance requirements, (6) amend the construction requirements for ET/A system to allow for a depth of installation range from 18-24 inches, (7) amend the drip installation requirements to include a daily pumping timeframe and clarify the drip pipe spacing requirements, (8) add closure requirements for lagoons and require signage for all small public lagoons, (9) add language that defines the timeframe a passing test score is valid as it applies to Certified Installers and

Certified Soil Profilers and define the timeframe records are to be retained, (10) include language that references OAC 252:4-7 that addresses the refunding of permit fees, and (11) make other minor clarifications and corrections.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

252:641-1-1. Purpose, authority and applicability

(a) **Purpose.** The purpose of this Chapter is to ensure that sewage is properly treated in order to protect the waters of the State, the public health and the environment. This Chapter establishes requirements for the design, construction, installation and operation of individual and small public on-site sewage treatment systems. This Chapter also establishes requirements for persons seeking certification as installers of on-site sewage treatment systems and for persons seeking certification to perform soil profile descriptions to be used to design on-site sewage treatment systems.

(b) **Authority.** This Chapter is authorized by 27A O.S. §§ Section(s) 2-2-101, 2-2-201, 2-6-402 and 403; and 59 O.S. § Section(s) 1158.

(c) **Applicability.** The rules in this Chapter apply to:

- (1) Any person who owns, designs, constructs, installs, modifies, repairs or operates an on-site sewage treatment system;
- (2) Any person who seeks certification from the DEQ to install, modify or repair on-site sewage treatment systems; and/or
- (3) Any person who seeks certification from the DEQ to perform soil profile descriptions to be used to design on-site sewage treatment systems.

(d) **Disclaimer.** The design standards contained in this Chapter are established as minimum criteria and do not guarantee a system's performance.

(e) **Appendices.** All references to appendices are appendices to this Chapter.

252:641-1-2. Definitions

In addition to the definitions contained in the Environmental Quality Code (27A O.S. § Section(s) 2-1-101 *et seq.*), the following words, terms and acronyms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Aerobic treatment unit**" means a treatment unit that provides digestion of organic matter through oxidation and has been tested and certified by an ANSI accredited certifier

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as meeting the most current ANSI/NSF/ANSI Standard 40, whether or not it includes nitrogen reduction.

"Alternative system" means an on-site sewage treatment system that varies from the requirements of on-site sewage treatment systems described in this Chapter.

"ANSI" means the American National Standards Institute.

"ASTM" means the American Society for Testing and Materials (ASTM International).

"Certified installer" means a person in the business of installing or constructing on-site sewage treatment systems who has been certified by the DEQ to inspect and approve his/her own installations.

"Certified soil profiler" means a person who has been certified by the DEQ to perform soil profile descriptions to be used to design on-site sewage treatment systems.

"Chamber" means a molded rigid plastic, ~~arch-shaped~~, hollow structure with an open bottom area and sidewalls that are designed to allow effluent to flow into the surrounding soil while preventing soil from migrating into the chamber.

"Conventional subsurface absorption field" means a gravity-fed subsurface dispersal field, which may be preceded by a lift station, that provides treatment through soil absorption in media-filled (e.g., gravel, polystyrene, chamber, etc.) trenches. This does not include ET/A or shallow extended dispersal fields.

"CSA" means the Canadian Standards Association (CSA Group).

"DEQ" means the Department of Environmental Quality.

"Designer" means the person who conducts the soil test and/or completes the DEQ Form 641-581P or 641-581SP for submission to the DEQ.

"Dispersal site" means the ten-thousand-square-foot (10,000 ft²) rectangular area that contains the test holes used to design the dispersal field.

"Distribution structure" means a watertight concrete or plastic compartment, box, or solid piping that allows the distribution of sewage at the same elevation throughout the subsurface treatment field.

"Drip irrigation" means the use of pressure to distribute aerobically treated effluent to a subsurface dispersal field using small diameter tubing equipped with pressure compensating emitters.

"Evapotranspiration/absorption (ET/A)" means the subsurface dispersal of sewage for treatment through evaporation, transpiration and absorption.

"Flow equalization tank" means a storage reservoir that contains an automatically controlled pump that is capable of delivering sewage to an on-site sewage treatment system at a specific hourly rate.

"IAPMO" means the International Association of Plumbing and Mechanical Officials.

"Individual on-site sewage treatment system" means an on-site sewage treatment system that treats sewage from one individual residence or a duplex with one owner.

"Installer" means any person who installs an on-site sewage treatment system or who is in the business of contracting to install or furnishing labor to install on-site sewage treatment systems.

"Level" means within a four-inch range of the same elevation.

"Lift station" means a short-term storage reservoir, containing an automatically controlled pump, that pumps sewage to a higher elevation for treatment.

"Low pressure dosing" means the use of pressure to distribute effluent evenly throughout the dispersal field through small diameter perforated piping.

"Major earth fill area" means any area where soil has been added to change the elevation from the original ground level by more than one (1) foot.

"Modification" means the expansion or relocation of any part of an existing on-site sewage treatment system, which does not fall under the definition of new installation.

"New installation" means the installation of a new on-site sewage treatment system. This includes the replacement of an existing lagoon, aerobic treatment unit and/or dispersal field, even when the existing septic tank is not replaced.

"NSF" means the National Sanitation Foundation (NSF International).

"On-site sewage treatment system" means an individual or small public on-site sewage treatment system as defined in this Chapter.

"Redoximorphic soil features" means soil that, due to wetness, contains features that exhibit a color of less than or equal to two (2) chroma and greater than or equal to four (4) value in concentrations greater than five percent (5%) in two (2) consecutive intervals.

"Repair" means the repair of any part of an existing on-site sewage treatment system or the replacement of any part of an existing on-site sewage treatment system as long as the replacement part is placed in the exact same location that the original part had been located. Repair does not include excavation and replacement of a subsurface absorption trench.

"Retention structure" is a sealed concrete or plastic structure that retains sewage until it reaches a depth of ten inches (10") and then allows it to flow to another trench.

"Rock fragments" means unattached pieces of rock two millimeters (2 mm) in diameter or larger that are resistant to rupture (strongly cemented or extremely hard).

"Scenic river corridor" means the two-mile wide area surrounding each scenic river as designated in 82 O.S. § Section(s) 1452, with the center of each scenic river being the center of the corridor.

"Sewage" means wastewater that ~~generally~~ originates as human waste from ~~certain~~ activities including but not limited to using toilet facilities, washing, bathing, preparing foods and washing laundry, excluding industrial wastewater.

"Small public on-site sewage treatment system" means an on-site sewage treatment system, except one that serves an individual residence or duplex, that has an average daily flow of five thousand (5,000) gallons or less.

"Soil profile description" means the identification and characterization of soil at a specific site.

"**Soil texture**" means the percent by weight of sand, silt, and clay for particles smaller than two millimeters (2 mm) in diameter.

"**Storage media**" means a natural or manufactured material that provides void spaces for storage and dispersal of effluent in the trenches of a subsurface treatment system.

"**Water body**" means any reservoir or stream listed in either the most current "Lakes of Oklahoma" or "Water Quality in Oklahoma Integrated Report."

"**Water body protection area**" means the land area around a water body comprised of Zone 1 and Zone 2.

"**Water saturated soil**" means soil characterized by either the presence of groundwater or redoximorphic soil features.

"**Zone 1**" means the land within six hundred sixty feet (660') of the highest normal pool elevation established for a reservoir or within six hundred sixty feet (660') of a stream bed.

"**Zone 2**" means the land within one thousand three hundred twenty feet (1320') of the highest normal pool elevation established for a reservoir or within one thousand three hundred twenty feet (1320') of a stream bed.

252:641-1-3. General requirements for on-site sewage treatment systems

(a) **Inspections.** All new installations of, modifications to and/or repairs to on-site sewage treatment systems shall be inspected and approved by the DEQ, or installed, self-inspected and approved by a certified installer before new installations, modifications or repairs can be backfilled and/or before the system may be placed into operation. The installer shall be responsible for requesting any required DEQ inspections.

(b) **Treatment.** On-site sewage treatment systems shall only be used for treatment of sewage, as defined in 252:641-1-2. All sewage must be treated and dispersed according to the rules in this Chapter.

(c) **Ownership.** An on-site sewage treatment system shall be located only where:

(1) all components of ~~the an individual~~ on-site sewage treatment system, which includes tanks, pumps, dispersal fields and collection line(s), are or will be located on property that is:

(A) owned by the owner of the on-site sewage treatment system; and/or

(B) dedicated in a recorded easement for the installation and operation of the on-site sewage system to the owner of the on-site sewage treatment system; or

(2) all components of ~~a small public~~ on-site sewage treatment system, excluding service lines, are or will be located on property that is:

(A) owned by a municipality, rural water district, rural sewer district or federally recognized tribe; and/or

(B) dedicated to a municipality, rural water district, rural sewer district or federally recognized tribe in a recorded easement for the installation and operation of the on-site sewage system; or-

(C) owned by the owner of the small public on-site sewage treatment system.

(d) **Minimum lot size.** The designer and installer shall comply with the minimum lot size requirements as set forth in Appendix A, Figure 3. Plats recorded before January 1, 1974, are not subject to minimum lot size requirements but systems ~~built~~ installed in those platted areas must meet the construction requirements of this Chapter.

(e) **Requirement for a dispersal field or lagoon.** All on-site sewage treatment systems shall utilize one of the dispersal fields described in Subchapter 12 or a lagoon described in Subchapter 15.

(f) **Average daily flow.**

(1) **Individual on-site sewage treatment systems.** The average daily flow for an individual on-site sewage treatment system shall be based on an average water usage of two hundred (200) gallons per day for a residence of two (2) bedrooms or less, with an additional sixty-six (66) gallons per day for each additional bedroom.

(2) **Small public on-site sewage treatment systems.** The average daily flow for small public on-site sewage treatment systems shall be calculated using the estimated average daily flows listed in Appendix F, unless actual flow data or a more accurate estimation method is available or there is seasonal flow variation. When there is seasonal flow variation, the average daily flow shall be calculated using the highest monthly flow in the previous twelve (12) months divided by the number of days in that month.

(g) **Sizing.** All dispersal fields and lagoons shall be sized based on average daily flow using the charts in Appendix H. The size of on-site sewage treatment systems should be increased if the actual or anticipated water usage exceeds the above-stated average.

(h) **Separation distances.** The designer and the installer shall comply with the required vertical separation distances in Appendix A, Figures 1 and 2, and the horizontal separation distances listed in Appendix E.

(i) **Pipe specifications.** All pipe used in on-site sewage treatment systems shall meet or exceed the minimum specifications listed in Appendix C.

(j) **Water body restrictions.** No dispersal field may be installed within Zone 1 of a water body protection area unless it is preceded by a nitrogen reduction system that has been tested and certified by an ANSI accredited third party certifier as meeting the most current ~~ANSI/NSF/ANSI~~ Standard 245.

252:641-1-4. Operation, repairs and maintenance

(a) **Proper operation.** The owner of an on-site sewage treatment system shall ensure that the system is maintained and operated properly so that:

(1) sewage or effluent from the system is properly treated and does not surface, pool, flow across the ground or discharge to surface waters;

(2) septic tanks, lift stations, low pressure dosing tanks, flow equalization tanks, aerobic treatment units and lagoons shall be maintained so that they do not leak or overflow; and

- (3) the required security measures are intact (e.g., required fences ~~are intact~~, septic tank lids ~~are intact~~, man-hole covers are properly secured).
- (b) **Malfunctioning systems.** If an on-site sewage treatment system malfunctions, the person owning or otherwise responsible for the system shall take prompt action to repair the malfunctioning system, prevent further violations and remediate the site.

252:641-1-5. Enforcement

Violations of this Chapter are subject to enforcement actions and penalties set forth in 27A O.S. §§~~Section(s)~~ 2-3-502, 2-3-504 and 2-6-206.

SUBCHAPTER 3. SOIL TESTS

252:641-3-1. General provisions

- (a) **Requirement for soil test.** A soil test, performed in accordance with this Subchapter, shall be used to identify the dispersal site for all modifications to on-site sewage treatment systems and/or to identify the dispersal site and size the dispersal field for new installations of on-site sewage treatment systems except for:
- (1) lagoons; and
 - (2) aerobic treatment systems that utilize spray irrigation when sized for Group 5 soil in the corresponding net evaporation zone.
- (b) **Required credentials.** Soil tests may only be performed by Professional Engineers, Professional Land Surveyors, Professional Sanitarians or Professional Environmental Specialists registered to practice in Oklahoma or Soil Scientists as defined in 27A O.S. §~~Section(s)~~ 3-1-103(20). Additionally, an individual performing soil profile descriptions must also be either:
- (1) an Environmental Specialist for the DEQ and authorized by DEQ to perform soil profile descriptions; or
 - (2) certified by the DEQ to perform soil profile descriptions.
- (c) **Submission of soil test results to the DEQ.** When a soil test is required, the results shall be submitted to the local DEQ office on DEQ Form 641-581P or 641-581SP or in a format approved by the DEQ.
- (d) **Verification of design.** If there is reason to believe soil test results submitted to DEQ are inaccurate or that there is water saturated soil or soil impervious to boring in any of the test holes at any depth up to thirty-six inches (36"), the system design may be verified by the DEQ. If the results of the verification contradict the proposed design of the system, the DEQ may perform a soil profile description to design the system. Soil tests conducted by DEQ shall supersede the results of any prior soil test completed in the same proposed dispersal site.
- (e) **Fill areas and excavation.** If there has been a fill of more than six inches (6") of soil or any excavation over an identified dispersal site, the local DEQ office must be contacted to determine if an additional soil test is needed. Soil tests shall not be performed in major earth fill areas.

252:641-3-2. Soil Percolation test method

- (a) **Use of percolation tests.** A percolation test may only be used to identify dispersal sites for conventional subsurface absorption fields. Percolation tests, including pre-existing ones, may not be used to identify dispersal sites for on-site sewage systems:
- (1) in scenic river corridors, unless documentation that the site is not located within the scenic river watershed is provided to DEQ; and
 - (2) in Zone 2 of a water body protection area.
- (b) **Test hole requirements.** The following test hole requirements shall be met for percolation tests:
- (1) **Configuration.** Three test holes shall be placed in the proposed dispersal site at the approximate corners of an isosceles triangle having two (2) sides fifty feet (50') long and one side seventy-five feet (75') long. If the dispersal field will cover an area larger than ten thousand square feet (10,000 ft²), then one additional test hole shall be used for each additional five thousand square feet (5,000 ft²). Additional test holes shall not be placed within fifty feet (50') of any other test hole and shall be located between fifty to seventy-five feet (50'-75') from one of the other test holes. The DEQ may approve or require alternative configurations.
 - (2) **Size.** Test holes shall be dug or bored, four to twelve inches (4"-12") in diameter with vertical sides to a depth of at least twenty-four inches (24") and no more than thirty-six inches (36"). All test holes in the proposed dispersal site shall be the same depth. Test holes shallower than twenty-four inches (24") may be used to design conventional subsurface absorption fields under the alternative system approval process.
 - (3) **Soil surfaces.** The bottoms and sides of the test holes shall be scratched with a sharp-pointed instrument to relieve any smeared soil surfaces. Loose material shall be removed from the hole prior to commencing the presoak.
 - (4) **Prohibitions.** Test holes dug through animal burrows, root channels or soil that is cracked due to dry weather conditions shall not be used.
- (c) **Presoak period.** The presoak period shall commence no earlier than twenty-four (24) hours prior to the start of the percolation test procedure. Each test hole shall be presoaked by filling them with water and refilling them as necessary to maintain a water depth of at least twelve inches (12") for at least four (4) hours. When it is impossible to maintain a water depth of at least twelve inches (12") during the entire presoak period due to an excessive percolation rate, then the hole is deemed unacceptable and may not be:
- (1) used to calculate the percolation rate for the dispersal site; and
 - (2) located in the dispersal site for a conventional subsurface absorption field.
- (d) **Calculating the percolation rate for each hole.** At the completion of the presoak, the depth of the water shall be adjusted to ten inches (10") above the bottom of each test hole. A fixed reference point shall be established at or above the initial water level. Using the fixed reference point, the level of the water in each hole shall be measured and recorded. After

seventy-five (75) minutes, the number of inches the water level has dropped in each hole shall be measured and recorded. To calculate the percolation rate for each individual hole, divide seventy-five (75) minutes by the number of inches the water level has dropped. Any hole that exhibits a percolation rate of greater than seventy-five (75) minutes per inch is deemed unacceptable and may not be:

- (1) used to calculate the percolation rate for the dispersal site; and
- (2) located in the dispersal site for a conventional subsurface absorption field.

(e) **Calculating the percolation rate for the dispersal site.** If the rates of any two (2) test holes in the proposed dispersal site vary by more than fifteen (15) minutes, the percolation rate for the dispersal site shall be considered the rate of the slowest test hole. Otherwise, the percolation rate for the dispersal site shall be determined by averaging the percolation rates for the three (3) test holes and then rounding the result to the nearest whole number. If there are more than three (3) test holes in the proposed dispersal site, then the percolation rate must be calculated using the three (3) slowest percolation rates.

(f) **Sizing the dispersal field.** The percolation rate for the dispersal site shall be used in conjunction with the charts in Appendix H, Figures 1 and 4 to size the conventional subsurface absorption field. The chart in Appendix H, Figure 2 may be used to size conventional subsurface absorption fields utilizing chambers when designed using a percolation test.

(g) **Information to be reported.** The following information must be reported to the DEQ on DEQ Form 641-581P, "Report for On-Site Sewage Treatment" or in a format approved by the DEQ:

- (1) Property owner's name(s);
- (2) Address or finding directions for property;
- (3) Legal description of property, including lot and block number when available;
- (4) Lot size in square feet or acres;
- (5) Whether the system will be an individual or small public on-site sewage treatment system;
- (6) The estimated or actual average daily flow for the system as certified on DEQ Form 641-581Cert "Certification Documentation Form";
- (7) Whether the water supply for the property is public or private;
- (8) The location of each test hole (identified from two fixed reference points);
- (9) The depth and percolation rate, along with the depth to groundwater if encountered, for all test holes in the proposed dispersal field;
- (10) The percolation rate for the dispersal site;
- (11) The size of the septic tank, the minimum length of the conventional subsurface absorption field, and the minimum and maximum depth of the trenches;
- (12) The name and signature of the person performing the pre-soak;
- (13) The name, signature and registration number of the person conducting the percolation test; and
- (14) The date the percolation test was conducted.

252:641-3-4. Soil profile description test method

(a) **Test hole requirements.** Test holes may be augered borings, continuous core borings, or excavated pits.

(1) **Borings.** If borings are used, three test holes shall be placed in the proposed dispersal site at the approximate corners of an isosceles triangle having two (2) sides fifty feet (50') long and one side seventy-five feet (75') long. If the dispersal field will cover an area larger than ten thousand square feet (10,000 ft²), then one additional test hole shall be used for each additional five thousand square feet (5,000 ft²). Additional test holes shall not be placed within fifty feet of any other test hole and shall be located between fifty to seventy-five feet (50'-75') from one of the other test holes. The DEQ may approve or require alternative configurations. Borings shall allow for the classification of the soil in six-inch intervals and shall be bored to a minimum depth of forty-eight inches (48") or until one of the following is encountered first:

- (A) a layer that is impervious to boring;
- (B) a six-inch interval classified as a Group 5 soil;
- or
- (C) water saturated soil.

(2) **Pits.** If excavated pits are used, three (3) pits shall be placed in the proposed dispersal site at the approximate corners of an isosceles triangle having two (2) sides fifty feet (50') long and one side seventy-five feet (75') long. If the dispersal field will cover an area larger than ten thousand square feet (10,000 ft²), then one additional test hole shall be used for each additional five thousand square feet (5,000 ft²). Additional test holes shall not be placed within fifty feet of any other test hole and shall be located between fifty to seventy-five feet (50'-75') from one of the other test holes. The DEQ may approve or require alternative configurations. Pits shall:

- (A) have a depth of a minimum of forty-eight inches (48"), unless rock or water saturated soil is encountered at a shallower depth;
- (B) be a minimum of thirty-six inches (36") wide and sixty inches (60") long; and
- (C) have one end sloped or stepped to allow for entry.

(b) **Identification of limiting layers.** The shallowest limiting layer encountered in the test holes shall be the limiting layer for the entire dispersal site. The following are considered limiting layers and shall be identified by depth on DEQ Form 641-581SP, "Report for On-Site Sewage Treatment:"

- (1) a layer that is impervious to boring;
- (2) a six-inch interval classified as a Group 5 soil; and
- (3) water saturated soil.

(c) **Verifying limiting layers using pits.** Limiting layers may be verified using an excavated pit. The results of the pit(s) shall override the results of borings completed in the same proposed dispersal site.

(d) **Classifying soil intervals.** For each test hole, the soil group for each six-inch interval between the surface and the bottom of the test hole shall be identified using the guidelines found in the "DEQ/OSU Soil Classification Manual" and classified as one of the soil groups in Appendix B.

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(e) **Determining the soil group for the separation range.**

The soil group for the separation range establishes the required vertical separation between the dispersed effluent and the limiting layer. The separation range consists of the three (3) six-inch intervals above the interval containing a limiting layer or, if no limiting layer was identified, the separation range shall be the three (3) six-inch intervals above the bottom of the test hole. To determine the soil group for the separation range:

- (1) Select the test hole in the dispersal site with the lowest clay content in the separation range; and
- (2) Identify and record the most prevalent soil group in the separation range for that test hole.

(f) **Identifying dispersal field options.** Based on the soil group identified in (e) of this Section, use Appendix A, Figure 1 to identify suitable dispersal fields along with their minimum separations distances from the limiting layer.

(g) **Sizing the dispersal field(s).** Each suitable dispersal field shall be sized as follows:

- (1) **Determining sizing range.** Select the test hole in the dispersal site with the highest clay content in the sizing range for the chosen dispersal field. The applicable sizing range for each type of dispersal field is as follows:

(A) **Conventional subsurface absorption fields.**

The sizing range for conventional subsurface absorption fields is the three (3) six-inch intervals between twelve inches (12") and thirty inches (30").

(B) **Low pressure dosing fields.** The sizing range for low pressure dosing fields is the three (3) six-inch intervals between twelve inches (12") and thirty inches (30").

(C) **ET/A fields.** The sizing range for ET/A fields is the three (3) six-inch intervals between twelve inches (12") and thirty inches (30").

(D) **Shallow extended subsurface absorption fields.** The sizing range for shallow extended subsurface absorption fields is the three (3) six-inch intervals between six inches (6") and twenty-four inches (24").

(E) **Drip irrigation fields.** The sizing range for drip irrigation fields is the three (3) six-inch intervals between ground level and eighteen inches (18").

(F) **Spray irrigation fields.** The sizing range for spray irrigation fields is the three (3) six-inch intervals between ground level and eighteen inches (18").

- (2) **Identifying soil group in sizing range.** Determine the most prevalent soil group in the sizing range for the test hole selected in (1) of this subsection;

(3) **Sizing dispersal field.** Based on the soil group identified in (2) of this subsection, size the dispersal field using the charts in Appendix H, Figures 3 and 5-22; and

(4) **Sizing additional dispersal field options.** Repeat (1) through (3) of this subsection for each dispersal field option.

(h) **Information to be reported.** After completion of the soil profile, the soil profiler shall submit an accurate, completed DEQ Form 641-581SP to the local DEQ office. The following information must be reported to DEQ on DEQ Form 641-581SP, "Report for On-Site Sewage Treatment":

- (1) Property owner's name(s);
- (2) Address or finding directions for property;
- (3) Legal description of property including block and lot number when available;
- (4) Lot size in square feet or acres;
- (5) Whether the system will be an individual or small public on-site sewage treatment system;
- (6) The estimated or actual average daily flow for the system as certified on DEQ Form 641-581 Cert "Certification Documentation Form";
- (7) Whether the water supply for the property is public or private;
- (8) The location of each test hole (identified from two fixed reference points);
- (9) The soil group for each six inch interval between ground level and the bottom of each test hole in the proposed dispersal field;
- (10) The depth and description of any soil impervious to boring or water-saturated soil layer in each test hole located in the proposed dispersal field;
- (11) Depth of limiting layer for entire dispersal field;
- (12) The test hole number used to identify the separation range and the soil group of the separation range in the proposed dispersal field;
- (13) For each suitable dispersal fields or system(s) identified provide the following:
 - (A) the test hole number used to determine the sizing range;
 - (B) the soil group of the sizing range; and
 - (C) the minimum sizing and installation criteria for the dispersal field or system;
- (14) The name, signature and registration number of the person conducting the soil profile description;
- (15) The date the soil profile description was conducted; and
- (16) Check box indicating whether or not dispersal field will be located in Zone 1 of a water body protection area.

SUBCHAPTER 5. BUILDING SEWER AND COLLECTION SYSTEMS

252:641-5-1. General provisions

All solid pipe used in the conveyance of wastewater from a structure (home or business) shall comply with the following:

- (1) Oklahoma Uniform Building Code Commission Rules- Title 748 Uniform Building Code Commission Adopted Codes (with Amendments);
 - (2) OAC 158:30 Plumbing Industry Regulations; and
 - (3) Oklahoma Statute Title 59 Sections 1001 through 1023
- (a) The pipe used for building sewer and collection lines shall comply with the pipe specifications as set forth in Appendix C.
- (b) The joints of all solid pipe shall be sealed to be water-tight.

252:641-5-2. Installation [REVOKED]

(a) ~~Minimum fall.~~ The following minimum fall requirements shall be met:

- (1) ~~Three-inch and four-inch pipe.~~ Pipe having a diameter of three inches (3") or four inches (4") that delivers sewage to a septic tank or a trash tank shall be installed with a minimum fall of one eighth inch (1/8") per foot.
- (2) ~~Six-inch pipe.~~ Pipe having a diameter of six inches (6") that delivers sewage to a septic tank or a trash tank shall be installed with a minimum fall of one sixteenth inch (1/16") per foot.

(b) ~~Cleanouts.~~ For all pipe located upstream of a septic tank, a two way cleanout or two way cleanout assembly shall be installed:

- (1) ~~Within five feet (5') from where the plumbing stubs out of the building or appurtenance to the building;~~
- (2) ~~Within five feet (5') after each change in direction of more than forty five degrees (45E).~~
- (3) ~~For each one hundred foot interval of straight pipe. Nothing in this paragraph shall require the installation of more than one (1) two way cleanout or two way cleanout assembly per one hundred foot (100') section of straight pipe. For purposes of this paragraph, straight pipe is pipe that does not have any change of direction of more than forty five degrees (45E).~~

SUBCHAPTER 7. SEPTIC TANKS

252:641-7-1. General provisions

(a) Once installed, ~~the tops of~~ septic tanks shall have no more than one inch (1") variation in elevation from side to side and end to end.

(b) Septic tanks shall be constructed to prevent sewage from leaking out of the tank and to prevent the infiltration of water into the tank.

(c) The bottom of the inlet pipe of a septic tank shall be at least one-eighth inch (1/8") per foot below the bottom of the building sewer pipe unless the wastewater is mechanically lifted.

(ed) Appendix I illustrates the requirements for a septic tank.

252:641-7-3. Design

(a) **Compartments.** A septic tank may consist of one (1) or two (2) compartments. All septic tanks shall have a removable lid or a manhole opening of at least twenty inches (20") in diameter or, if rectangular, having no side less than twenty inches (20") in length over each compartment. All lids and manholes shall be sealed to prevent leakage.

(b) **Two-compartment tanks.** The passage in the common wall of two-compartment tanks shall be located ~~below the liquid level and~~ between twenty percent (20%) to forty percent (40%) of the liquid depth. There shall be a vent through the common wall.

(c) **Inlets and outlets.** The outlet of the septic tank shall be two inches (2") lower than the inlet of the septic tank. Baffles

for inlets and outlets shall be constructed and located as follows:

- (1) **Construction.** Baffles shall be used on all inlet and outlet lines. Cleanout openings shall be located directly above the inlet and outlet baffles. Inlets and outlets shall have a watertight seal. The inlet cleanout shall have an opening of sufficient size to allow for maintenance that extends a minimum of two inches (2") above ground elevation. The cover for the opening shall have a lock, locking bolt or some type of tamper-resistant fastener, or require a tool for removal.
- (2) **Location.** All baffles shall extend to within two inches (2") of the top of the septic tank.

(A) **Inlet.** Inlet baffles shall extend at least six inches (6") below the liquid depth of the septic tank.

(B) **Outlet.** Outlet baffles shall extend below the liquid level by twenty percent (20%) to forty percent (40%) of the liquid depth.

(d) **Precast concrete tanks.** Precast concrete tanks shall have a minimum:

- (1) wall thickness of two and one-half inches (2-1/2");
- (2) bottom thickness of three inches (3"); and
- (3) cover thickness of three and one-half inches (3-1/2").

(e) **Poured-in-place concrete tanks.** Poured-in-place concrete tanks shall have a minimum:

- (1) wall thickness of six inches (6");
- (2) bottom thickness of three inches (3"); and
- (3) cover thickness of four inches (4").

SUBCHAPTER 9. PUMP TANKS

252:641-9-1. General provisions

(a) **Primary settling.** All sewage entering a pump tank (i.e., a lift station, a flow equalization tank or a low pressure dosing tank) must first

pass through a septic tank or a trash tank for primary settling.

(b) **Pump tank design and construction.** Pump tanks shall:

- (1) be constructed to prevent sewage from leaking out of the tank and to prevent the infiltration of water into the tank;
- (2) when made of concrete, meet the requirements of 252:641-7-2(a);
- (3) have a manhole opening of at least twenty inches (20") in diameter or, if rectangular, having no side less than twenty inches (20") in length. The manhole cover shall have a lock, locking bolt, or some type of tamper-resistant fastener that or requires require tools for removal. The manhole opening shall extend a minimum of two inches (2") above ground elevation;
- (4) have a threaded union installed in the discharge line located within eighteen inches (18") of the manhole opening so that the pump can be removed without entering the pump tank; and
- (5) have a check valve installed in the discharge line after the threaded union. The check valve shall be the same diameter as the discharge line.

- (c) **Pump design.** Pumps shall be:
- (1) designed to pump sewage or other liquid containing fine particles/suspended solids;
 - (2) rated to pump at least the average daily flow the required distance and elevation; and
 - (3) when used as a low pressure dosing pump, rated to pump at least fifty (50) gallons per minute with no more than eight feet (8') of head pressure.
- (d) **Prevention of back siphoning.** Pump discharges shall flow through a structure or device that prevents the back siphoning of wastewater to the pump tank.
- (e) **Example.** Appendix J illustrates the requirements for a pump tank.

SUBCHAPTER 10. AEROBIC TREATMENT SYSTEMS

252:641-10-1. ~~Residential sewage~~Sewage treatment only

Aerobic treatment systems shall only be used for treatment of sewage ~~from residential units~~ and cannot be used when the average daily flow is less than one hundred (100) gallons per day or greater than one thousand five hundred (1,500) gallons per day or generates wastewater with a total Biochemical Oxygen Demand (BOD) greater than one and one half (1.5) pounds per day. All other system designs must be permitted as alternative systems as described in OAC 252:641-1-2.1(c) (e.g., hospitals, laundromats, restaurants, etc).

252:641-10-2. Design and installation

- (a) **Fluctuating flows.** If the daily flow fluctuates so that the flow on any given day during the week exceeds the aerobic treatment unit's daily capacity, then an aerobic treatment system may not be used unless a flow equalization tank, which meets the requirements of 252:641-9, is installed between the trash tank and the aerobic treatment unit.
- (b) **Components of aerobic treatment systems.** Aerobic treatment systems shall be comprised of the following components:
- (1) **Trash tank.** There shall be a trash tank that meets the requirements of ANSI/NSF/ANSI Standard 40 or 252:641-7-2. The trash tank shall:
 - (A) be constructed to prevent sewage from leaking out of the tank and to prevent the infiltration of water into the tank;
 - (B) have a minimum liquid capacity of three hundred (300) gallons or the average daily flow, whichever is greater, except that the minimum liquid capacity shall not be less than what was used in the ANSI/NSF/ANSI certification process;
 - (C) have a removable lid or a manhole opening of sufficient size to allow for maintenance. The lid or manhole shall be sealed to prevent leakage and extend a minimum of two inches (2") above ground elevation. The cover for the opening shall have a lock,

locking bolt or some type of tamper-resistant fastener, or require a tool for removal; ~~and~~

(D) have baffles installed at its inlet and the outlet. The baffles shall extend to within two inches (2") of the top of the trash tank; and

(i) **Inlet.** Inlet baffles shall extend at least six inches (6") below the liquid depth of the trash tank.

(ii) **Outlet.** Outlet baffles shall extend below the liquid level by twenty percent (20%) to forty percent (40%) of the liquid depth.

(E) meet the requirements of 252:641-7-1(c).

- (2) **Aerobic treatment unit.** There shall be ~~an~~ aerobic treatment unit that:

(A) has been tested and certified by an ANSI accredited third party certifier as meeting the most current ANSI/NSF/ANSI Standard 40 and when required by waterbody restrictions ANSI/NSF/ANSI Standard 245;

(B) is constructed to prevent sewage from leaking out of the tank and to prevent the infiltration of water into the tank

(C) is rated at or above the design daily flow and designed treatment capacity for BOD;

(D) produces effluent clear enough that the bottom of the pump tank is visible when it is full; and

(E) has an opening of sufficient size to allow for maintenance that extends a minimum of two inches (2") above ground elevation. The cover for the opening shall have a lock, locking bolt or some type of fastener, or require a tool for removal.

- (3) **Method of disinfection.** If spray irrigation is used as the type of dispersal, then there shall be a method to disinfect the effluent that has been tested and certified by an ANSI accredited third party certifier as meeting the most current ANSI/NSF/ANSI Standard 46, between the aerobic treatment unit and the pump tank (or in the pump tank). If chlorination is used as the disinfection method, a free chlorine residual of two tenths of a milligram per liter (0.2 mg/l) must be maintained in the pump tank. All other methods of disinfection shall effectively reduce the fecal coliform count to less than two hundred colonies per one hundred milliliters (200/100 ml).

- (4) **Pump tank.** There shall be a pump tank, which shall:

(A) meet the requirements of ANSI/NSF/ANSI Standard 40 or 252:641-7-2;

(B) have a minimum liquid capacity of seven hundred (700) gallons or, for systems with an average flow over three hundred fifty (350) gallons per day, have a liquid capacity of at least twice the average daily flow;

(C) have a sampling port in the pump tank at the discharge outlet or in the treated effluent line following the pump tank;

(D) have a float in the pump tank set so that the pump tank is never more than one-half (1/2) full;

- (E) have a high-water alarm set to activate and alert the owner/operator if the pump tank becomes more than one-half (1/2) full; and
- (F) have an opening of sufficient size to allow for maintenance that extends a minimum of two inches (2") above ground elevation. The cover for the opening shall have a lock, locking bolt or some type of fastener, or require a tool for removal.
- (5) **Dispersal field.** Effluent treated by an aerobic treatment unit shall be dispersed as described in Subchapter 12 of this Chapter.
- (c) **Level.** Once installed, ~~the top of~~ each tank (i.e., trash tank, aerobic treatment unit and pump tank) shall have no more than one inch (1") variation in elevation from side to side and end to end.
- (d) **Depth of aerobic treatment system components.** The top of all components of the aerobic treatment system, excluding the trash tank and dispersal field, shall be covered with no more than ~~twenty-four~~ thirty-six inches (24~~36~~") of soil and have access to all serviceable parts within twenty-four inches (24") of ground level.
- (e) **Solid pipe.** The solid pipe used to connect the components of an aerobic treatment system must meet the minimum specifications listed in Appendix C.
- (f) **Fall.** Unless a lift pump is utilized, there shall be fall between:
 - (1) the trash tank and the aerobic treatment unit; and
 - (2) the aerobic treatment unit and the pump tank.
- (g) **~~Manufacturer's~~ Manufacturer's specification.** All aerobic treatment systems shall be installed in accordance with the manufacturer's specifications and maintained as required by the most current version of NSF Standard 40 and Standard 245.

252:641-10-3. Responsibility for maintenance

- (a) **Mandatory two year maintenance period.** The installer of any aerobic treatment system including those providing nitrogen reduction shall maintain the aerobic treatment system for a period of two years following the date the system was installed at no additional cost to the owner. During the two-year mandatory maintenance period, the installer shall be responsible for the following:
 - (1) repairing, adjusting or replacing any broken or malfunctioning parts;
 - (2) when spray dispersal is used, testing and recording the free chlorine residual of the effluent in the pump tank at least once every six (6) months;
 - (3) measuring and recording the depth of the sludge in the trash tank at least once every six (6) months;
 - (4) measuring and recording the volume of the sludge in forced-air aerobic treatment units at least once every six (6) months;
 - (5) when pump tanks are used, conducting a clarity test and recording the results as passing or failing once every six (6) months. A passing clarity test is one where an eight-inch disk with alternating black and white quadrants is visible when placed on the bottom of the pump tank when the tank is at least one-third (1/3) full;

- (6) notifying the owner of the system in writing of all maintenance provided during each site visit:
 - (A) ~~the type and date of any repairs, adjustments or replacements performed on the system;~~
 - (B) ~~the results of the free chlorine residual test if required and, when applicable, the need to add chlorine and how to do it;~~
 - (C) ~~the depth of the accumulation of sludge in the trash tank and the need to have it pumped so that the depth of the sludge is never more than forty percent (40%) of the overall depth;~~
 - (D) ~~the volume of the sludge in the aerobic treatment unit and the need to have it pumped so that the volume of the sludge in the aerobic treatment unit is never more than forty percent (40%); and~~
 - (E) ~~the results of the clarity test and, if it fails the test, what the installer did or the homeowner has to do to correct it; and~~
- (7) documenting all maintenance and testing performed on the system and maintaining those records at his/her business for a period of three (3) years following the date of service.
- (b) **Exclusions from maintenance.** The installer shall not be responsible for repairing aerobic treatment systems when the owner/operator is the sole cause of the damage to the system or the system's malfunction (e.g., sprinkler heads that properly retract into the ground but are nevertheless damaged by careless actions of the homeowner, excessive water usage, introduction of harmful items into septic system, etc.).
- (c) **Owner responsible after two year period ends.** After the expiration of the initial two-year ~~mandatory~~ maintenance period, the owner of the aerobic treatment system shall be solely responsible for maintaining or hiring someone to maintain the system so that it operates as designed.

SUBCHAPTER 12. DISPERSAL FIELDS

252:641-12-2. Conventional subsurface absorption fields

- (a) **Location.** All conventional subsurface absorption fields shall be:
 - (1) located in the identified dispersal site; and
 - (2) installed more than five feet (5') from the septic tank or aerobic treatment unit.
- (b) **Fall.** Unless a pump is utilized, there shall be a minimum fall of two inches (2") from the bottom of the outlet of the septic tank to the:
 - (1) highest point of the storage media in the conventional subsurface absorption field; or
 - (2) highest point of the sidewall openings of a chamber in the conventional subsurface absorption field.
- (c) **Minimum linear length.** All conventional subsurface absorption fields must meet the minimum length requirements set forth in Appendix H, Figures 1-5. If perforated pipe is used between distribution structures and installed in accordance with the trench requirements of this Section, it may be counted

as part of the overall required length of the conventional subsurface absorption field.

(d) **Trench length limitation.** Conventional subsurface absorption fields shall be constructed so that no sewage flows through more than a total of one hundred fifty linear feet (150') of perforated pipe or chambers in any given path.

(e) **Trench spacing.** The trenches in a conventional subsurface absorption field shall be spaced at least eight feet (8') apart, center to center.

(f) **Trench width.** All trenches in a conventional subsurface absorption field shall be twenty-four inches (24") wide.

(g) **Trench depth.** Each trench in a conventional subsurface absorption field shall have a uniform depth of at least eighteen inches (18"), and no more than thirty inches (30"). The bottom of the trenches shall be level.

(h) **Dispersal and storage.** Each trench in a conventional subsurface absorption field shall contain a zone for the dispersal and storage of effluent comprised of either perforated pipe and storage media, or chambers.

(1) **Perforated pipe with storage media.** When perforated pipe and storage media are used to disperse and store effluent throughout the trenches, the following requirements shall apply:

(A) **Perforated pipe.** The perforated pipe shall:

- (i) meet the minimum specifications listed in Appendix C.
- (ii) extend the entire length of the trenches.

(B) **Storage Media.** The storage media shall:

- (i) be at least ten inches (10") deep and at least twenty-four inches (24") wide the entire length of the trench;
- (ii) be installed with at least two inches (2") of storage media above and two inches (2") of storage media below the perforated pipe;
- (iii) be level:
 - (I) in each trench; and
 - (II) across the dispersal field, unless installed in trenches of different elevations.

(2) **Chambers.** When chambers are used to disperse and store effluent throughout the trenches, the chambers shall:

- (A) have a minimum bottom width of twenty-two inches (22");
- (B) have a minimum sidewall height of ten inches (10") with the sidewalls having evenly distributed open space. If the sidewall height is less than ten inches (10"), then the trench shall be backfilled with storage media to meet the ten-inch height requirement;
- (C) meet the most current IAPMO PS 63-2005 standard;
- (D) extend the entire length of the trenches;
- (E) be level:
 - (i) in each trench; and
 - (ii) across the dispersal field, unless installed in trenches of different elevations.

(i) **Retention structure.** Retention structures must be used between trenches of different elevations in conventional subsurface absorption fields. When a retention structure is used:

- (1) the ~~top~~bottom of the outlet pipe of a retention structure or the ~~top~~bottom of the outlet pipe of a chamber being used as a retention structure shall be ~~fourteen inches (14")~~ten inches (10") above the trench bottom; and
- (2) the line from the outlet of a retention structure to the next distribution point shall be constructed of solid pipe and shall be backfilled with compacted native soil.

(j) **Backfill.** For conventional subsurface absorption fields:

- (1) the depth of the backfill shall be consistent and shall not vary more than four inches (4"); and
- (2) the backfill shall consist of at least eight inches (8") of topsoil.

(k) **Layout examples.** There are examples of conventional subsurface system layouts in Appendix K, Figures 1, 2, and 4; examples of retention and distribution structures in Appendix L; examples of trench installation in Appendix M, Figures 1 and 2; and examples of chambers installed in trenches in Appendix N.

252:641-12-3. Shallow extended subsurface absorption fields

(a) **Location.** All shallow extended subsurface absorption fields shall be:

- (1) located in the identified dispersal site; and
- (2) installed more than five feet (5') from the septic tank or aerobic treatment unit.

(b) **Fall.** Unless a pump is utilized, there shall be a minimum fall of two inches (2") from the bottom of the outlet of the septic tank to the:

- (1) highest point of the storage media in the shallow extended subsurface absorption field; or
- (2) highest point of the sidewall openings of a chamber in the shallow extended subsurface absorption field.

(c) **Minimum linear length.** All shallow extended subsurface absorption fields must meet the minimum length requirements set forth in Appendix H, Figures 6 and 7. If perforated pipe is used between distribution structures and installed in accordance with the trench requirements of this Section, it may be counted as part of the overall required length of the shallow extended subsurface absorption field.

(d) **Trench length limitation.** Shallow extended subsurface absorption fields shall be constructed so that no sewage flows through more than a total of one hundred fifty linear feet (150') of perforated pipe or chambers in any given path.

(e) **Trench spacing.** The trenches in a shallow extended subsurface absorption field shall be spaced at least eight feet (8') apart, center to center.

(f) **Trench width.** All trenches in a shallow extended subsurface absorption field shall be twenty-four inches (24") wide.

(g) **Trench depth.** Each trench in a shallow extended subsurface absorption field shall have a uniform depth of at least fourteen inches (14"), and no more than seventeen inches (17")~~thirty inches (30")~~. The bottom of the trenches shall be level.

(h) **Dispersal and storage.** Each trench in a shallow extended subsurface absorption field shall contain a zone for the dispersal and storage of effluent comprised of either perforated pipe and storage media, or chambers.

(1) **Perforated pipe with storage media.** When perforated pipe and storage media are used to disperse and store effluent throughout the trenches, the following requirements shall apply:

- (A) **Perforated pipe.** The perforated pipe shall:
 - (i) meet the minimum specifications listed in Appendix C.
 - (ii) extend the entire length of the trenches.
- (B) **Storage Media.** The storage media shall:
 - (i) be at least six inches (6") deep and at least twenty-four inches (24") wide the entire length of the trench;
 - (ii) be installed with at least one inch (1") of storage media above and one inch (1") of storage media below the perforated pipe;
 - (iii) be level:
 - (I) in each trench; and
 - (II) across the dispersal field, unless installed in trenches of different elevations.

(2) **Chambers.** When chambers are used to disperse and store effluent throughout the trenches, the chambers shall:

- (A) have a minimum bottom width of twenty-two inches (22");
- (B) have a minimum sidewall height of six inches (6") with the sidewalls having evenly distributed open space;
- (C) meet the most current IAPMO PS 63-2005 standard;
- (D) extend the entire length of the trenches;
- (E) be level:
 - (i) in each trench; and
 - (ii) across the dispersal field, unless installed in trenches of different elevations.

(i) **Retention structure.** Retention structures must be used between trenches of different elevations in shallow extended subsurface absorption fields. When a retention structure is used:

- (1) the ~~top~~bottom of the outlet pipe of a retention structure or the ~~top~~bottom of the outlet pipe of a chamber being used as a retention structure shall be ~~six~~six inches (~~40~~6) above the trench bottom; and
- (2) the line from the outlet of a retention structure to the next distribution point shall be constructed of solid pipe and shall be backfilled with compacted native soil.

(j) **Backfill.** For shallow extended subsurface absorption fields:

- (1) the depth of the backfill shall be consistent and shall not vary more than four inches (4"); and
- (2) the backfill shall consist of at least eight inches (8") of topsoil.

252:641-12-5. Evapotranspiration/absorption (ET/A) fields

(a) **Location.** All ET/A fields shall be:

- (1) located in the identified dispersal site; and
- (2) installed more than five feet (5') from the septic tank or aerobic treatment unit.

(b) **Fall.** Unless a pump is utilized, there shall be a minimum fall of two inches (2") from the bottom of the outlet of the septic tank to the highest point of the storage media in the ET/A field.

(c) **Minimum linear length.** All ET/A fields must meet the minimum length requirements set forth in Appendix H, Figures 10 and 11. If perforated pipe is used between distribution structures and installed in accordance with the trench requirements of this Section, it may be counted as part of the overall required length of the ET/A field.

(d) **Trench length limitation.** ET/A fields shall be constructed so that no sewage flows through more than a total of one hundred fifty linear feet (150') of perforated pipe in any given path.

(e) **Trench spacing.** The trenches in an ET/A field shall be spaced at least eight feet (8') apart, center to center.

(f) **Trench width.** All trenches in an ET/A field shall be twenty-four inches (24") wide.

(g) **Trench depth.** Each trench in an ET/A field shall have a uniform depth of at least eighteen inches (18") and no more than ~~not to exceed~~ twenty-four inches (24"). The bottom of the trenches shall be level.

(h) **Dispersal and storage.** Each trench in an ET/A field shall contain a zone for the dispersal and storage of effluent comprised of perforated pipe and storage media.

(1) **Perforated pipe.** The perforated pipe shall:

- (A) meet the minimum specifications listed in Appendix C; and
- (B) extend the entire length of the trenches.

(2) **Storage media.** The storage media used shall:

- (A) be at least ten inches (10") deep and at least twenty-four inches (24") wide the entire length of the trench;
- (B) be installed with at least two inches (2") of the storage media above and two inches (2") of storage media below the perforated pipe;
- (C) be level:
 - (i) in each trench; and
 - (ii) across the ET/A field, unless installed in trenches of different elevations.

(i) **Retention structure.** Retention structures must be used between trenches of different elevations in ET/A fields. When a retention structure is used:

- (1) the ~~top~~bottom of the outlet pipe of a retention structure shall be ~~fourteen~~six inches (~~44~~10) above the trench bottom; and
- (2) the line from the outlet of a retention structure to the next distribution point shall be constructed of solid pipe and shall be backfilled with compacted native soil.

(j) **Backfill.** For ET/A fields:

- (1) the trenches shall be backfilled with at least six inches (6") of clean sand to within two inches (2") of the ground level;

- (2) the sand used to backfill the trenches shall be separated from the storage media by material that allows the flow of water but prevents the flow of sand; and
 - (3) after a trench is backfilled with sand, two to four inches (2"-4") of sandy loam soil shall be mounded over the trench.
- (k) **Layout examples.** There are layout examples located in Appendix K, Figures 1, 2, and 4, Appendix L, and Appendix M, Figure 2.

252:641-12-6. Drip irrigation fields

- (a) **Location.** All drip irrigation fields shall be:
- (1) preceded by an aerobic treatment unit;
 - (2) preceded by a filter capable of filtering particles larger than one hundred (100) microns; and
 - (3) located in the identified dispersal site.
- (b) **Components.** All components used in the drip irrigation field shall be designed and manufactured specifically for use in wastewater treatment systems.
- (c) **Pump.** The pump shall:
- (1) be set to distribute no more than one fourth (1/4) of the designed daily flow to the drip irrigation pipe during each pumping interval over a twenty-four hour (24) period;
 - (2) when in operation, maintain a minimum pressure of ten (10) psi and a maximum pressure of forty-five (45) psi throughout the drip irrigation pipe; and
 - (3) have a high-water alarm set to activate and alert the owner/operator if the pump tank becomes more than one-half (1/2) full.
- (d) **Minimum linear length.** All drip irrigation fields shall meet the minimum length requirements set forth in Appendix H, Figure 12.
- (e) **Drip irrigation pipe.** The pipe used in drip irrigation fields shall be designed and manufactured for the purpose of distributing wastewater and comply with the minimum specifications in Appendix C.
- (f) **Installation of pipe.** The pipe used in drip irrigation fields shall be:
- (1) installed eight to ten inches (8-10") deep;
 - (2) installed at least two feet (2') apart, center to center;
 - ~~(23)~~ installed according to the ~~manufac-~~ manufacturer's specifications; and
 - ~~(34)~~ equipped with emitters spaced:
 - (A) one foot (1') apart in soil groups 1, 4, and 5; and
 - (B) two feet (2') apart in soil groups 2, 2a, 3, and 3a.
- (g) **Emitters.** The emitters shall ~~be set to wet four square feet (4 ft²) and~~ be pressure compensating to deliver uniform distribution regardless of the pressure entering the drip line.
- (h) **Prevent backflow.** To prevent backflow, at least one (1) vacuum relief valve, located in a valve box lined with gravel, shall be located at the highest point on both the supply manifold and the return manifold.
- (i) **Back flush.** There shall be a method to flush the drip irrigation pipe. The flush water shall be returned to the trash tank, aerobic treatment unit or pump tank.

252:641-12-7. Spray irrigation fields

- (a) **Location.** All spray irrigation fields shall:
- (1) be preceded by an aerobic treatment unit;
 - (2) be located in the identified dispersal site, when a soil profile test is used to ~~sized~~ size the irrigation field;
 - (3) utilize at least two sprinkler heads to disperse the treated effluent; and
 - (4) be vegetated and landscaped, and/or terraced to prevent runoff.
- (b) **Sizing.** The spray irrigation field shall be sized according to Appendix H, Figures 13-22. When calculating the overall area of the spray irrigation field, areas of overlap may only be counted once.
- (c) **Sprinklers.** The sprinklers shall be designed to:
- (1) provide uniform distribution of treated effluent over the entire spray irrigation field without misting; and
 - (2) have a trajectory of no more than fifteen-degrees (15°) to keep the spray stream low to the ground surface.
- (d) **Spray irrigation.** The spray irrigation shall be:
- (1) adjusted and maintained at a rate to prevent runoff; and
 - (2) controlled by a timing device to take place daily between 1:00 a.m. and 6:00 a.m.

SUBCHAPTER 15. LAGOONS

252:641-15-1. General provisions

- (a) **Primary settling.** All sewage entering a lagoon must first pass through a septic tank for primary settling.
- (b) **Total retention.** All lagoons shall be total retention.
- (c) **Location.** Installers shall not locate lagoons where vegetation, timber, or terrain could interfere with prevailing wind action or shade the lagoon during daylight hours.
- (d) **Prohibitions.** The owner/operator shall not dispose or store wastes or contaminants other than sewage in the lagoon. The owner/operator shall not discharge or dispose of sludge from the lagoon prior to obtaining approval from the DEQ.
- (e) **Closure.** ~~The DEQ may, when public health or safety issues arise, require the owner/operator to properly close a lagoon when it is no longer in use. A closure plan shall be submitted for all lagoons being classified as small public on-site sewage treatment systems or when DEQ requires closure of a lagoon when a public health or safety issue arises and will include:~~
- (1) A description of how the wastewater will be disposed.
 - (2) A description of how the sludge will be disposed if more than six (6) inches are present.
 - (3) A description of final grading and erosion controls.
 - (4) A time schedule indicating:
 - (A) a time schedule for completion of each activity.
 - (B) the estimated date of final completion of the closure activity.
- (f) **Examples.** Refer to Appendix O, "Examples of Lagoon Installation" for examples.

252:641-15-5. Lagoon inlet line and septic tank outlet

- (a) **Lagoon inlet line.** The lagoon inlet line shall:
- (1) be made of solid pipe that complies with the minimum specifications listed in Appendix C;
 - (2) terminate in the center of the lagoon;
 - (3) be anchored and supported; and
 - (4) discharge onto a concrete structure that is a minimum of one (1) square foot.
- (b) **Septic tank outlet.** For gravity flow systems, the outlet of the septic tank shall be at least ~~one foot (1')~~ six feet (6') ~~above the designed five foot (5') maximum liquid depth~~ above the bottom of the lagoon.

252:641-15-6. Fence

- (a) **Fence required.** In order to prevent unauthorized access to the lagoon, the lagoon area shall be surrounded with a fence unless the entire property is fenced and access is controlled.
- (b) **Specifications.** The fence shall:
- (1) be, at a minimum, four feet (4') high and provide protection equivalent to the protection afforded by a woven wire or equally-spaced five (5) wire fence. Lagoons that fall within the definition of a small public sewage system and that are located within three hundred fifty feet (350') of existing or platted residential areas or that are in public access areas shall be surrounded by a six-foot (6') woven wire fence or equivalent.
 - (2) have a gate that provides access to the lagoon for mowing equipment and maintenance needs.
 - (3) not interfere with wind action to the lagoon's surface or shade the lagoon.
 - (4) have a sign on each side of the fence of a small public lagoon system that identifies the facility and provides owner contact information.
- (c) **DEQ authority to require more stringent fencing requirements.** In order to protect public health and safety, the DEQ may require more stringent fencing requirements, even when the entire property is fenced.

SUBCHAPTER 21. CERTIFICATION FOR ON-SITE SEWAGE TREATMENT SYSTEM INSTALLERS

252:641-21-2.1. New certification application requirements

An applicant may become certified in any category of certification by doing the following:

- (1) **Application.** The applicant must submit to DEQ a completed and signed DEQ Form 641-002, "Certified Installer Application". If the applicant is not currently certified in at least one category of certification, then the applicant must also pay the annual certification fee and submit documentation that the applicant has done the following:
 - (A) **Installation experience.** The installer must have installed at least five (5) on-site sewage treatment systems in Oklahoma that meet or exceed the

rules in this Chapter as determined by an inspection performed by DEQ. These systems must have been installed within the two-year time period preceding the date of certification and may not include any joint inspections required in (5) of this subsection;

(B) **Approval percentage rate.** The installer must have had at least ninety percent (90%) of the systems he/she installed within the last year approved upon the initial inspection, with any disapproved systems only requiring minor changes; and

(C) **Financial assurance.** The installer must document financial assurance by submitting to DEQ one of the following:

(i) **Surety bond.** The applicant may document financial assurance by submitting to DEQ a surety bond guaranteeing payment or performance in the amount of Ten Thousand Dollars (\$10,000) with the following stipulations:

(I) The applicant must be named as the principal of the bond and DEQ must be named as obligee of the bond;

(II) The bond must be effective before the certification can be granted by DEQ and must remain in effect as long as the installer is certified. Upon notification to DEQ that a bond is no longer in effect, DEQ may immediately begin the process to suspend the installer's certification(s); and

(III) Payments made under the terms of the bond shall be made by the surety directly to DEQ. DEQ shall establish an account with these funds from which DEQ may pay for the repair or replacement of a faulty or improperly installed system along with DEQ's costs associated with its response and oversight.

(ii) **Affidavit for tribal and governmental installers.** The applicant may document financial assurance by submitting to DEQ an affidavit that:

(I) the installer is working solely for a federally recognized tribe or a governmental entity; and

(II) the entity will pay for the repair or replacement of faulty or improperly installed systems.

(2) **Training.** The applicant must complete the required DEQ training for the category of certification sought;

(3) **Examination.** The applicant must pass the examination for the category of certification sought ~~with a score of at least seventy percent (70%).~~ A passing score is valid for one hundred eighty (180) days from the date of the exam. Any applicant found cheating on an examination will not be certified, will be subject to having any current certifications revoked, and shall be prohibited from applying for any certifications for a period of twelve (12) months;

(4) **Examination fee.** The applicant must pay to the DEQ the appropriate examination fee; and

(5) **Joint inspections.** The applicant must complete at least two (2) joint field inspections with the DEQ. The systems inspected must:

- (A) have been installed by the installer seeking certification; and
- (B) be in the category of certification sought.

252:641-21-3. Certification renewal requirements

(a) **Renewal.** A certified installer may renew unexpired certifications by submitting to DEQ the following by January 15:

- ~~(1) a completed renewal application provided by the DEQ;~~
- (21) the required annual certification fee; and
- (32) documentation that the applicant completed approved renewal training for that certificate year. Renewal training credit may be granted for courses or workshops of four (4) hours or more that have been approved in writing by the DEQ in advance.

(b) **Late renewals.** The applicant shall pay a Fifty-Dollar (\$50.00) late fee for renewal applications postmarked or received by the DEQ after January 15.

(c) **Failure to renew.** Any certification that has not been renewed within twelve (12) months of expiring may not be renewed. Such applicants must apply for a new certification.

252:641-21-12. Duties and responsibilities

(a) **Systems installed.** For each new installation, modification or repair self-inspected and approved a certified installer shall comply with the following:

- (1) **Notify DEQ.** The installer must give DEQ an opportunity to inspect a portion of the system to ascertain that the certified installer continues to meet certification requirements. The certified installer shall notify the local DEQ office, before construction begins, of the time, date and location that an on-site sewage treatment system will be installed, modified or repaired. The installer shall pay DEQ a Fifty-Dollar (\$50.00) fee each time the installer fails to notify the DEQ prior to commencing construction.

- (2) **Submittals to DEQ.** Within fifteen (15) working days after the work has been completed, the certified installer shall submit an accurate, completed DEQ Form 641-576AS ~~or 641-576S~~ to the local DEQ office. The installer shall pay DEQ a Thirty Dollar (\$30.00) fee each time the installer fails to submit a completed DEQ Form 641-576AS ~~or 641-576S~~ within fifteen (15) days of completing the work.

(b) **Record keeping.** Certified installers are responsible for maintaining their own records for:

- (1) each system installed; ~~and~~
- (2) all training classes completed; ~~and~~
- (3) a period of three (3) years.

(c) **Identification.** Each certified installer shall present their identification card to DEQ personnel upon request.

SUBCHAPTER 22. CERTIFICATION FOR PERSONS WHO PERFORM SOIL PROFILE PROFILERS DESCRIPTIONS

252:641-22-2. Prerequisites for new certifications and renewals

Before being eligible for certification or renewal, an applicant must:

- (1) be an individual,
- (2) be eighteen (18) years of age or older,
- (3) be a Professional Engineer, Professional Land Surveyor, Professional Sanitarian or Professional Environmental Specialist registered to practice in Oklahoma or Soil Scientist as defined in 27A O.S. §Section(s) 3-1-103(20),
- (4) owe no outstanding fees or fines to the DEQ,
- (5) be in compliance with the income tax and immigration laws of this state, and
- (6) be in compliance with all DEQ rules and final orders.

252:641-22-3. New certification application requirements

An applicant may, at any time, apply to become a certified soil profiler by doing the following:

- (1) **Application.** The applicant must submit to the DEQ a completed and signed DEQ Form 641-011, "Certified Soil Profiler Application";
- (2) **Training.** The applicant must complete the required DEQ training;
- (3) **Examination and fee.** The applicant must pay the examination fee and pass the examination for becoming a soil profiler. Passing scores are valid for one hundred eighty (180) days from the date of the exams. Any applicant found cheating on an examination will not be certified and shall be prohibited from applying for certification for a period of twelve (12) months;
- (4) **Joint profiles.** The applicant must complete at least four (4) joint soil profile descriptions with the DEQ;
- (5) **Annual fee.** The applicant must pay to the DEQ the annual certification fee; and
- (6) **Financial assurance.** The applicant must document financial assurance by providing DEQ with one of the following:

(A) **Surety bond.** The applicant may document financial assurance by submitting to DEQ a copy of a surety bond guaranteeing payment or performance in the amount of Ten Thousand Dollars (\$10,000.00) with the following stipulations:

- (i) The applicant must be named as the principal of the bond and DEQ must be named as obligee of the bond.
- (ii) The bond must be effective before the certification can be granted by DEQ and must remain in effect as long as the soil profiler is certified. Upon notification to DEQ that a bond is no longer

in effect, DEQ may immediately begin the process to suspend the profiler's certification.

(iii) Payments made under the terms of the bond shall be made by the surety directly to DEQ. DEQ shall establish an account with these funds to cover the costs:

- (I) to bring an on-site sewage treatment system into compliance when the system was improperly designed using an inaccurate soil profile description; and
- (II) for DEQ's response and oversight.

(B) **Affidavit for tribal and governmental soil testers.** The applicant may document financial assurance by submitting to DEQ an affidavit that:

- (i) the soil profiler is working solely for a federally recognized tribe or a governmental entity; and
- (ii) the entity will pay for the repair or replacement of improperly designed systems.

252:641-22-4. Certification renewal requirements

(a) **Renewal.** A certified soil profiler may renew an unexpired certification by doing the following by January 15:

~~(1) **Application.** The soil profiler must submit to DEQ a completed renewal application provided by the DEQ;~~

~~(2) **Annual fee.** The soil profiler must pay to DEQ the required annual certification fee;~~

~~(3) **Renewal training.** The soil profiler must submit to DEQ documentation that the applicant completed approved renewal training for that certificate year. Renewal training credit may be granted for courses or workshops of four (4) hours or more that have been approved in writing by the DEQ in advance;~~

~~(4) **Texturing samples.** The soil profiler must complete the analysis of any soil samples issued to them by the DEQ for texturing. All results must be submitted to DEQ on DEQ Form 641-006, "Soil Texturing Worksheet" within fourteen (14) days of receiving the soil samples; and~~

~~(5) **Annual texturing test.** The soil profiler shall pass the annual texturing test.~~

(b) **Late fees.** The soil profiler shall pay a Fifty-Dollar (\$50.00) late fee for renewal applications postmarked or received by the DEQ after January 15.

(c) **Failure to renew.** Any certification that has not been renewed within twelve (12) months of expiring may not be renewed. Such applicants must apply for a new certification.

252:641-22-5. Duties and responsibilities

(a) **Soil profile descriptions.** For each soil profile description performed, the soil profiler shall notify the local DEQ office the day the soil profile description will be performed to allow the DEQ the opportunity to corroborate the results. The soil profiler shall pay DEQ a Fifty-Dollar (\$50.00) fee each time the soil profiler fails to notify the DEQ prior to commencing the soil profile description.

(b) **Record keeping.** Certified soil profilers are responsible for maintaining their own records for:

- (1) each soil profile description performed; ~~and~~
- (2) all training classes completed; ~~and~~
- ~~(3) a period of three (3) years.~~

(c) **Identification.** Each certified soil profiler shall present their identification card to DEQ personnel upon request.

SUBCHAPTER 23. FEES

252:641-23-2. Certified sewage treatment system installer fees

~~(a) **Certification fees.** The following are the fees associated with the installer certification program.~~

- ~~(1) Annual certification fee -~~
 - ~~(A) \$150.00~~
 - ~~(B) \$175.00 (Effective July 1, 2010)~~
 - ~~(C) \$200.00 (Effective July 1, 2012)~~
- ~~(2) Examination fee for each category of certification -~~
 - ~~(A) \$100.00~~
 - ~~(B) \$125.00 (Effective July 1, 2010)~~
 - ~~(C) \$150.00 (Effective July 1, 2012)~~
- ~~(3) Late fee - \$50.00~~
- ~~(4) Reinstatement fee - \$50.00~~
- ~~(5) Failure to notify fee - \$50.00~~
- ~~(6) Failure to submit paperwork timely fee - \$30.00~~

~~(b) **Nonrefundable.** Fees are nonrefundable.~~

252:641-23-3. Certified soil profiler fees

~~(a) **Certification fees.** The following are the fees associated with the soil profiler certification program.~~

- ~~(1) Annual certification fee -~~
 - ~~(A) \$150.00 (Effective July 1, 2008)~~
 - ~~(B) \$175.00 (Effective July 1, 2010)~~
 - ~~(C) \$200.00 (Effective July 1, 2012)~~
- ~~(2) Examination fee -~~
 - ~~(A) \$100.00 (Effective July 1, 2008)~~
 - ~~(B) \$125.00 (Effective July 1, 2010)~~
 - ~~(C) \$150.00 (Effective July 1, 2012)~~
- ~~(3) Late fee - \$50.00~~
- ~~(4) Reinstatement fee - \$50.00~~
- ~~(5) Failure to notify fee - \$50.00~~

~~(b) **Nonrefundable.** Fees are nonrefundable.~~

252:641-23-4. Fee escalator based on consumer price index (CPI)

To assist in meeting rising costs to DEQ associated with the on-site sewage program, the fees set out in Subchapter 23 shall be automatically adjusted on July 1, 2013, and every year thereafter on July 1st, to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. DEQ may round the adjusted fees up to the nearest dollar. DEQ may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the

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funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

(1) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rule-making process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. §Section 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.

(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur

until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(3) For purposes of this subsection, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

252:641-23-5. Refunds

Fees contained within this Chapter are non-refundable and are subject to the requirements set forth in OAC 252:4-7.

APPENDIX C. PIPE SPECIFICATIONS FOR ON-SITE SEWAGE TREATMENT SYSTEMS [REVOKED]

APPENDIX C. PIPE SPECIFICATIONS FOR ON-SITE SEWAGE TREATMENT SYSTEMS [NEW]

USE	PIPE SIZE	ACCEPTABLE MATERIALS
Solid pipe when used for single family residences or small public systems where the flow is 1,500 gpd or less	3" to 4" diameter	<i>Acrylonitrile Butadiene Styrene (ABS):</i> ASTM D2661 ASTM D2751 ASTM F628
Solid pipe when the average flow is greater than 1,500 gpd	Minimum 6" diameter	<i>Polyvinyl Chloride (PVC):</i> ASTM D2665 ASTM D2949 ASTM D3033 ASTM D3034 ASTM F789
Discharge line from lift stations or other pressurized effluent waste water lines [†]	Minimum 1" diameter	<i>Polyvinyl Chloride (PVC):</i> ASTM D2846 ASTM F441 ASTM F442 Schedule 40
Low pressure dosing manifold pipe	3" diameter	
Low pressure dosing perforated pipe	1 ½" diameter	
Perforated pipe when used in a conventional subsurface absorption field or an ET/A field	Minimum 3" diameter	<i>Polyethylene (PE):</i> ASTM F810 ASTM D3350 <i>Polyvinyl Chloride (PVC):</i> ASTM D2729 ASTM D3034 ASTM D3350

[†] All reclaimed, pressurized water piping shall be colored purple (Pantone 522) by the manufacturer.

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APPENDIX E. HORIZONTAL SEPARATION DISTANCE REQUIREMENTS FOR ON-SITE SEWAGE TREATMENT SYSTEMS [REVOKED]

APPENDIX E. HORIZONTAL SEPARATION DISTANCE REQUIREMENTS FOR ON-SITE SEWAGE TREATMENT SYSTEMS [NEW]

Required Horizontal Separation Distances in Feet

	Aerobic Treatment Unit, Flow Equalization Tank, Low Pressure Dosing Tank, Lift Station, Septic Tank & Trash Tank	Perforated Pipe, Chamber, or Drip Irrigation Line	Solid Pipe	Lagoons	Spray Irrigation Heads	Spray Irrigation Effluent
Private Well or Surface Water Supply	50 ¹	50 ¹	50 ³	50 ^{2, 4}	50 ¹	25
Public Water Supply Well	300	300	50	300 ⁴	300	300
Building	5	5	N/A	50 ^{5, 6}	N/A	N/A
Other Structure ⁷	N/A ⁸	5	N/A ⁹	N/A	N/A	N/A
Waterline	5	15	10 ¹⁰	15 ⁴	15	N/A
Property Line	5	5	5	10 ⁵	10	10
Impoundment or Stream ¹¹	15	15	N/A	15 ⁵	25	25

French Drain/ Curtain Drain	15	15	N/A	15 ⁵	15	15
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¹ Distances shall be one hundred feet (100') if the soil percolates one inch (1") in less than five (5) minutes or is classified as a Group 1 soil in the separation range.

² Distances shall be one hundred feet (100') if the ground slopes toward the water supply.

³ Distances may be reduced up to ten feet (10') if, at a minimum, Schedule 40 pipe is used.

⁴ The distance shall be measured horizontally from the center line of the nearest dike.

⁵ The distance shall be measured from the outside base of the nearest dike.

⁶ This only applies to residences that are not located on the owner's property.

⁷ "Other structures" include but are not limited to driveways, parking lots and paved areas.

⁸ If septic tanks are located under paved areas, access to all manhole/cleanout openings shall be provided.

⁹ If solid pipe is installed under a roadway or a driveway, the pipe under the roadway/driveway and the ten feet (10') of pipe extending out from under the roadway/driveway on both sides shall be, at a minimum Schedule 40 pipe or sleeved with Schedule 40 pipe.

¹⁰ Ten feet (10') horizontal or two feet (2') vertical separation shall be maintained between any water line and solid pipe. When proper horizontal and vertical separation cannot be obtained then the solid pipe shall be constructed of, at a minimum, Schedule 40 pipe and shall be installed so the joints of both the water line and the solid pipe are as far apart as possible.

¹¹ This includes the top bank of any stream or the normal pool elevation of an impoundment that is not used for a surface water supply.

APPENDIX F. ESTIMATED AVERAGE DAILY FLOW FOR SMALL PUBLIC ON-SITE SEWAGE TREATMENT SYSTEMS [REVOKED]

APPENDIX F. ESTIMATED AVERAGE DAILY FLOW FOR SMALL PUBLIC ON-SITE SEWAGE TREATMENT SYSTEMS [NEW]

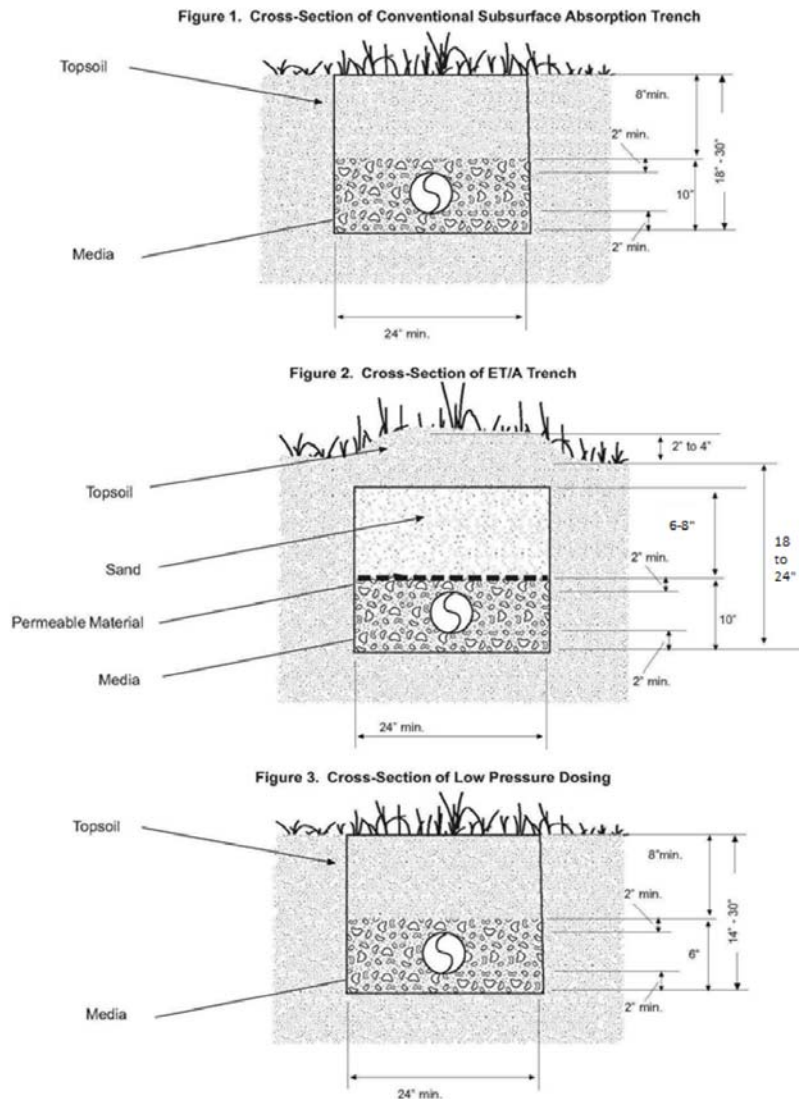
TYPE OF ESTABLISHMENT	FLOW UNIT	ESTIMATED AVERAGE DAILY FLOW In Gallons	BOD ¹ lbs/day per flow unit
Bar or Lounge	Per Seat	10	0.08
Boarding School	Per Room	50	0.20
Church w/o Kitchen	Per Sanctuary Seat	4	0.01
Church w/Kitchen	Per Sanctuary Seat	6	0.02
Condominiums, Apartments, Townhouses, Mobile Home Parks, and Housing Developments	Per Residence w/1 or 2 Bedrooms	200	0.50
	Each additional Bedroom	66	0.17
Construction Site	Per Worker	50	0.17
Country Club	Per Member	25	0.02
Daycare w/o Kitchen	Per Child	15	0.08
Daycare w/Kitchen	Per Child	25	0.10
Factory	Per Person Per Shift	15	0.08
Hospital	Per Bed	200	0.50
Hotel or Motel	Per Bed	75	0.15
Movie Theater	Per Seat	5	0.01
Nursing Home	Per Bed	100	0.26
Office Building w/o Food Service	Per Occupant	5	0.06
Office Building w/Food Service	Per Occupant	10	0.17
Park w/o Bathhouse	Per Person	10	0.01
Park w/Bathhouse	Per Person	15	0.02
Laundry Mat	Per Machine	250	0.30
Restaurant-Fast Food	Per Seat	15	0.10
Restaurant-Full Service	Per Seat	35	0.23
RV Park	Per Space	50	0.20

School w/Food Service	Per Student	25	0.10
School w/o Food Service	Per Student	15	0.04
Service Station	Per Vehicle	10	0.20
Stores	Per Restroom	200	0.05
Youth Camps	Per Camper	30	0.12

¹ BOD numbers provided are based on industry data and represents standard loading rates for the design of aerobic treatment units.

APPENDIX M. EXAMPLES OF TRENCH INSTALLATION [REVOKED]

APPENDIX M. EXAMPLES OF TRENCH INSTALLATION [NEW]



[OAR Docket #20-709; filed 7-27-20]

**TITLE 252. DEPARTMENT OF
ENVIRONMENTAL QUALITY
CHAPTER 710. WATERWORKS AND
WASTEWATER WORKS OPERATOR
CERTIFICATION**

[OAR Docket #20-710]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

252:710-1-1 [AMENDED]

252:710-1-2 [AMENDED]

252:710-1-3 [AMENDED]

252:710-1-4 [AMENDED]

252:710-1-5 [AMENDED]

252:710-1-6 [AMENDED]

252:710-1-7 [AMENDED]

252:710-1-8 [AMENDED]

252:710-1-9 [AMENDED]

252:710-1-10 [AMENDED]

252:710-1-11 [AMENDED]

252:710-1-12 [AMENDED]

Subchapter 3. Certification

252:710-3-31 [AMENDED]

252:710-3-32 [AMENDED]

252:710-3-34 [AMENDED]

252:710-3-35 [AMENDED]

252:710-3-36 [AMENDED]

252:710-3-37 [AMENDED]

252:710-3-38 [NEW]

Subchapter 5. Duties and Responsibilities

252:710-5-53 [AMENDED]

252:710-5-55 [AMENDED]

252:710-5-56 [AMENDED]

252:710-5-57 [AMENDED]

Subchapter 7. Shared Operators for Small Systems

252:710-7-2 [AMENDED]

Appendix B. Certificate Requirements (252:710-3-35) [REVOKED]

Appendix B. Certificate Requirements (252:710-3-35) [NEW]

Appendix C. Number of Professional Development Hours (PDHs) Needed

Per Certificate Level for Operators and Laboratory Operators [NEW]

AUTHORITY:

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

Water Quality Management Advisory Council; 27A O.S. § 2-2-201; and
27A O.S. §§ 2-6-103, 2-6-203, 2-6-402 and 2-6-501

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

November 8, 2019

COMMENT PERIOD:

December 2, 2019 through January 2, 2020

PUBLIC HEARING(S):

January 7, 2020, Water Quality Management Advisory Council

February 21, 2020, Environmental Quality Board

ADOPTION:

February 21, 2020

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

February 27, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 15, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The gist of this rulemaking is to enhance the professional development of operators in Oklahoma by increasing training requirements for certification renewal. This rulemaking will allow DEQ to approve a variety of training opportunities that minimize the financial impact on operators and employers and help rural operators to achieve the required training hours. Furthermore, this rulemaking will allow environmental professionals, such as DEQ staff and consulting engineers, to obtain a special non-operational certification in order to demonstrate a fundamental understanding of operator knowledge. This rulemaking will also modify language to change the time of approval and review for training courses from 30 to 42 days. Furthermore, this rulemaking will incorporate the language of Senate Bill No. 670 that provides for certification reciprocity for military personnel being transferred to Oklahoma. Lastly, this rulemaking will promote consistency with relevant statutory language and clarify existing language by adding definitions and modifying unclear rule text. The Department is also proposing to add Appendix C that clarifies the number of Professional Development Hours need for each certificate level.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 15, 2020:**

SUBCHAPTER 1. GENERAL PROVISIONS

252:710-1-1. Purpose, authority and applicability

(a) **Purpose.** This Chapter establishes procedures for persons seeking certification as waterworks and wastewater works operators and laboratory operators.

(b) **Authority.** This Chapter is authorized by 27A O.S. § 2-1-101, 59 O.S. § 1101 *et seq.* and the *Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems* (Federal Register, Volume 64, No. 24, Friday, February 5, 1999) adopted by the U.S.E.P.A. under the federal Safe Drinking Water Act.

(c) **Applicability.** The rules in this Chapter apply to any person who seeks certification from or is certified by the Department of Environmental Quality ("DEQ") to operate waterworks, wastewater works, distribution and collection systems, and laboratories owned by or associated with waterworks/wastewater works. The rules also apply to any person who seeks certification from or is certified by ~~the~~ DEQ as a technician for distribution and collection systems.

252:710-1-2. Duty to comply

Each person certified under this Chapter shall comply with the Waterworks and Wastewater Works Operator Certification Act ("Act") and this Chapter, the Code and its rules, terms and conditions of the certification, and any final order issued by the Executive Director. Failure to comply may result in administrative, civil or criminal enforcement actions.

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252:710-1-3. **Synonymous terms**

(a) For purposes of this Chapter, the term "waterworks or wastewater works laboratory operator" is synonymous with "laboratory operator".

(b) ~~The words "he" and "his" are synonymous with the words "she" and "hers" when used in this Chapter.~~

252:710-1-4. **Definitions**

In addition to the definitions contained in the Environmental Quality Code (27A O.S. § 2-1-101 ~~et seq~~ et seq.), and the Waterworks and Wastewater Works Operator Certification Act (59 O.S. § 1101 ~~et seq~~ et seq.), the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Act**" means the Waterworks and Wastewater Works Operator Certification Act, 59 O.S. § 1101 *et seq.*

"**Associated laboratory**" means any laboratory, not directly owned by or located on the premises of a waterworks or wastewater works facility, that performs required laboratory tests for the ~~works facility~~.

"**Available**" means ~~on-site~~ on-site or able to be contacted as needed to initiate the appropriate action in a timely manner.

"**Certificate year**" means July 1 through June 30.

"**Certification of competency**" means a certification issued by the ~~Department~~ DEQ pursuant to this Chapter.

"**Class associated examination**" means an operator certification examination which is given at the end of a classroom instruction for the level of certification taught. Only class participants may take a class associated exam. In addition, the applicant shall have submitted an approved examination application.

"**Classroom training**" means DEQ approved professional development training taking place in a classroom or practical learning environment and attended in person by class participants.

"**Code**" means the Oklahoma Environmental Quality Code, 27A O.S. § 2-1-101 *et seq.*

"**Collection system**" ~~shall have the same definition as contained in OAC 252:656, Water Pollution Control Facility Construction Rules.~~ means pipes or conduits, pumping stations, force mains and all other facilities used to collect or conduct wastewater to a treatment works.

"**Community Water System (CWS)**" means a public water system providing water to at least 15 service connections used by year round residents or regularly serving at least 25 year round residents.

"**DEQ**" means the Oklahoma Department of Environmental Quality ~~and, for purposes of certifications issued and enforcement matters arising from certifications issued prior to July 1, 1993, "DEQ" also means the Oklahoma State Department of Health.~~

"**DEQ approved training**" means training that has been evaluated and approved by DEQ in advance of the scheduled training date with DEQ assigning a class identification number upon approval.

"**Direct supervision**" means the on-site supervision or direction provided by a certified operator of a registered helper

during which the certified operator is present at all times. A registered helper must work under direct supervision.

"**Distribution and Collection Technician**" means a person who works solely on distribution and collection lines and is not in responsible charge.

"**Distribution system**" means any combination of pipes, tanks, pumps or other equipment which delivers water from the source(s) and/or treatment facility(ies) to the consumer.

"**Distribution system complexity**" means pressure zones, booster stations, storage tanks, fire protection, chlorination, nonresidential consumers, cross connection potential, and/or demand variations.

"**Environmental professional**" means an individual with an undergraduate degree related to and practicing in the fields of biological sciences, biology, engineering, physical science, hydrology, geology, mathematics, environmental science, chemistry, microbiology, toxicology, or civil, chemical, sanitary or environmental engineering.

"**General course**" means a DEQ approved training class or classes that directly relate to waterworks, wastewater works, waterworks laboratories or wastewater works laboratories and that meet the requirements of OAC 252:710-3-36 for content and clock hours, to be utilized solely for the purpose of professional development and certification renewal.

"**General supervision**" means supervision or direction provided by a certified operator to a temporary certified person and requires that the certified operator be available to help or advise but during which the certified operator need not be present at all times. While under general supervision, a certified person may work alone.

"**Groundwater system**" means a waterworks where all water is obtained from dug, drilled, bored or driven wells or infiltration lines not under the influence of surface water contamination, but not springs which are a surface water supply.

"**Laboratory operator**" means an individual who is in general supervision of a laboratory which performs laboratory analyses for waterworks and wastewater works and who is responsible for the accuracy of the laboratory tests and reports for the facility, but who does not operate the waterworks or wastewater works unless appropriately certified as an operator for that type facility.

"**Lagoon**" ~~shall have the same definition as contained in OAC 252:619, Operation and Maintenance of Non-Industrial Total Retention Lagoon Systems and Land Application or OAC 252:621, Non-Industrial Flow Through and Public Water Supply Impoundments Including Land Application.~~ means a soil or lined basin, either below or above ground level, which is designed, maintained and/or operated to store, recycle and/or treat municipal/domestic wastewater or stormwater.

"**Minor public water supply system**" means a water system that does not meet the definition of a Public Water Supply System. Minor public water supply systems are regulated by OAC 252:624.

"**Nontransient noncommunity (NTNC) water system**" means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over six months per year, including schools, day care centers, factories, restaurants and hospitals.

"OAC" means Oklahoma Administrative Code.

"Open examination" means an operator certification examination which may be taken by an individual whose experience, training, and education exempts the individual from in-class participation for the level of certification being tested. Applications must be submitted and approved by DEQ prior to examination.

"Operator" means any person who is at any time responsible for the operation of a wastewater works or waterworks or associated laboratories. "Operator" shall not ordinarily apply to an official exercising official general administrative supervision, but shall apply to any properly certified person who can, through a direct act or command, affect the quality of the water or wastewater.

"Operating experience" means the time spent at a plant or system in performance of operational duties with the appropriate level of certification.

"Operating shift" means that period of time during which operator decisions that affect public health are necessary for proper operation of the system.

"Operational engineering assistance" means providing regulatory or consulting ~~experience in providing~~ technical assistance to a variety of water/wastewater works systems.

"O.S." means Oklahoma Statutes.

"Owner" means:

- (A) a sole proprietor;
- (B) a homeowners' association;
- (C) the controlling or managing partner of a partnership;
- (D) the major stockholders of a corporation; or
- (E) a government entity including the State of Oklahoma, municipalities, counties, or districts, and all sub-divisions thereof.

"Professional development hours (PDH)" means hours of DEQ approved training that may be used to meet the requirements of OAC 252:710 -1-7 for certification renewal.

"Public Water Supply (PWS) system" means any system providing water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days per year, whether receiving payment for same or not. Multi-family dwellings, manufactured home communities, mobile home parks, recreational vehicle (RV) parks, and correctional facilities, which are constructed, inspected and maintained under a State or locally approved plumbing code, purchase water from a permitted water system, do not provide treatment, and do not resell water, are not classified as a Public Water Supply system. The following are the categories of Public Water Supply systems:

(A) "Community water system" means any PWS system that serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

(B) "Non-community water system" means any PWS system that serves an average of at least twenty-five (25) individuals at least sixty (60) days per year

but is neither a community water system nor a non-transient non-community water system.

(C) "Non-transient non-community (NTNC) water system" means any PWS system that is not a community water system and that regularly serves at least twentyfive (25) of the same persons over six (6) months per year.

"Purchased water system" means a water supply system which buys its water from a waterworks and has a mastermeter.

"Reciprocity" means a recognition by DEQ of the validity of a certification granted by another state, so long as that state recognizes certifications issued by DEQ as well.

"Registered helper" means a person under direct supervision who assists in the performance of work that may affect the quality of either water or wastewater and is properly registered as provided in 252:710-5-55.

"Responsible charge" means making decisions regarding the daily operational activities of

- (A) a public water system, water treatment facility and/or distribution system that will directly impact the quality and/or quantity of drinking water; or
- (B) a wastewater system, wastewater treatment facility and/or collection system.

"Shared operator" means a person contracted and/or hired by one or more municipalities, sewer improvement districts, water or sewer public trusts, rural water or sewer districts, consortium of small publicly owned water supply or wastewater systems, substate planning districts or the Oklahoma Rural Water Association to operate two or more small system(s) pursuant to the requirements set forth in 252:710-7-2.

~~"Small system" as used in 59 O.S. § 1118 means a Waterworks or a Wastewater Works required to be operated by a Class C operator with a population of five hundred (500) or less.~~

"Small drinking water system" means a waterworks with a population of five hundred (500) or less that meets the definition of a PWS.

"Small wastewater system" means a nonindustrial wastewater treatment system which has an average flow of five thousand (5,000) gallons per day or less

~~"Source water" means the type (surface water, groundwater, groundwater under the influence of surface water, purchased water), quality (variability) and/or protection (e.g. wellhead protection).~~

"Standard course" means a DEQ approved training class or classes that directly relate to waterworks, wastewater works, waterworks laboratories or wastewater works laboratories and that meet the requirements of OAC 252:710-3-36 for content and clock hours, completed in preparation for an ~~Operator Certification~~ operator certification examination ~~for initial certification.~~

"Superintendent" means an operator in direct responsible charge of day to day operations of an entire plant, distribution system or collection system.

~~"Supervision" means the act of supervising and or giving direction. "Direct" supervision requires a certified operator to~~

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be present one hundred percent (100%) of the time while supervising an uncertified person. "General" supervision means that the certified operator must be available to help the certified person and give advice, but the person can work alone.

"Supervisor" means an individual who directs and inspects the work of operators, helpers or plumbers/contractors.

"Temporary operator" means a person holding a temporary certification who may perform the duties of a certified operator under the general supervision of an appropriately certified operator.

"Treatment facility complexity" means difficulty in controlling water quality, potential effect to the consumer and/or safety of the operator.

"Validated examination" means an examination that is independently reviewed by subject matter experts to ensure that the examination is based on a job analysis and related to the classification of the system or facility.

"Wastewater treatment works" means wastewater treatment systems and facilities used in the collection, transmission, storage, pumping, treatment or disposal of liquid or waterborne wastes.

"Water treatment facility" means any place(s) where a community water system or nontransient noncommunity water system alters the physical or chemical characteristics of the drinking water. Chlorination may be considered as a function of a distribution system.

"Validated exam" means an examination that is independently reviewed by subject matter experts to ensure that the exam is based on a job analysis and related to the classification of the system or facility.

252:710-1-5. Application requirements

(a) **Generally Application and fee.** The application must be submitted to the DEQ with a nonrefundable \$40.00-\$62.00 fee at least ~~three week~~ twenty-one (21) days before the first day of class for class associated examination or at least twenty-one (21) days before the non-class associated examination date requested. The application must be clearly written and signed by the applicant. Before an applicant may take the ~~exam examination~~, he must fulfill all certification requirements listed in Appendix B.

(b) **Required documentation.** An applicant must submit the following documents with an application for certification:

- (1) Evidence of age;
- (2) Proof of current, valid license or certificate from another state or territory where the requirements for licensure or certification are equivalent to the rules of this Chapter, if applicable; ~~and~~
- (3) Confirmation of experience and required training, including but not limited to official academic transcripts, letters of verification from employers, and/or a record of attendance at seminars; and
- (4) Signed and notarized affidavit regarding citizenship.

(c) **DEQ review.** The DEQ will not approve an application unless the applicant has complied with this section.

(d) **Forfeit.** If an applicant has not taken the ~~exam exam~~ ination within 120 days after submitting an application, he

~~forfeits~~ the applicant forfeits the \$40.00\$62.00 nonrefundable fee and must reapply.

252:710-1-6. Validated exams examinations

(a) An applicant shall take and pass an ~~exam~~ examination that demonstrates that the operator has the necessary skills, knowledge, ability and judgment as appropriate for the classification. The applicant must answer at least seventy percent (70%) of the questions correctly on the ~~exam~~ examination. An applicant who does not ~~do so may not take the exam again for thirty (30) days unless he has taken additional training receive~~ a passing grade on the examination must wait a minimum of thirty (30) days to retake the examination.

(b) Validated ~~exams~~ examinations shall be administered by the DEQ or its designee at such times and places as necessary.

(c) ~~Exams~~ Examinations, answer sheets and test scores are confidential and shall not be disclosed to any person except the applicant. Proper identification may be required.

(d) An applicant ~~found cheating~~ determined to have cheated on an ~~exam~~ examination shall be deemed to have failed the ~~exam~~ examination and shall be prohibited from applying for certification for a period of twelve (12) months.

(e) DEQ may give oral examinations to Distribution and Collection Technicians who are unable to take a written examination.

252:710-1-7. Renewals

(a) ~~Individual responsibility~~ Renewal procedure. Each ~~person is~~ All certificate holders are responsible for renewing or reactivating ~~his~~ their certification by the annual renewal date. Failure to receive a renewal invoice does not extend the renewal deadline. The renewal ~~application~~ notification shall be completed and submitted to the DEQ with the ~~renewal invoice~~ and all applicable fees by 4:30 p.m. on or before June 30. If any date specified in this section falls on a weekend or holiday, the date of the following working day shall be the effective date.

(b) **Failure to renew.** A person who has failed to renew a certification may apply for reactivation in accordance with 59 O.S. § 1107(E) and 252:710-1-8. A person may apply for reactivation of an expired certificate, within two years of expiration, by demonstrating that all professional development training requirements have been met in accordance with 252:710-1-7(f) and paying all applicable renewal fees in accordance with 252:710-1-12. Any person whose certification has expired for a period exceeding two years must re-apply in accordance with 252:710-1-5 and take a validated exam in accordance with 252:710-1-6. Previous experience and training will be taken into consideration under 252:710-1-5.

(c) ~~Continuing education~~ Professional development training. Four (4) hours of approved training per certificate year is required for certification renewal, reactivation or reinstatement. Experience may not be substituted for required training. In order to renew a certification, the certification holder must complete the required amount of approved training hours per certification year, as provided in Appendix C of this Chapter. For holders of multiple certifications, the

number of hours required is based on the highest level of certification held.

(d) **Exception.** A person who submits all documentation required by 252:710-1-5 and passes the exam examination as required by 252:710-1-6 between April 1 and June 30May 31 shall not be required to renew the newly obtained certification until June of the next calendar year.

(e) **Nonresidents.** A nonresident who holds an Oklahoma certification may renew by paying applicable fees and providing evidence of ~~four (4) hours of training per certificate year.~~ completion of the required number of professional development hours per certification year as provided in Appendix C of this Chapter. Experience shall not be substituted for required training.

(f) **Renewal trainingProfessional development course in-structors.** Any person teaching a ~~renewal training~~ professional development course must:

- (1) submit ~~an outline of the training materials~~ a written request, along with a syllabus and agenda to the DEQ for review and approval at least ~~thirty (30)~~forty-two (42) days prior to the class being held;
- (2) provide at least 4 cumulative hours of classroom instructionteaching time in the class room, not including breaks, with ~~renewal students~~ per course; and
- (3) submit ~~an attendance roll sheet~~a record of attendance to the DEQ within ten (10) days after the ~~renewal training session was held.~~training was provided.

(g) **Other Professional Development Courses.** Any person requesting approval of other types of professional development courses, such as online courses, must:

- (1) submit a written request, along with a syllabus and agenda to DEQ for review and approval at least forty-two (42) days prior to the course being held;
- (2) provide at least 4 cumulative hours of instruction per course; and
- (3) submit a record of attendance to DEQ within ten (10) days after the training was provided.

252:710-1-8. **ReinstatementOperator disciplinary actions**

(a) **Suspension.** A suspended certificate may be reinstated by the DEQ upon proper application, payment of all back fees and a satisfactory demonstration that all reinstatement requirements of the DEQ have been met. A person holding a suspended certificate may work as a helper under the supervision of a person certified by the DEQ.

(b) **Revocation.** Any person whose certification has been revoked by the DEQ must wait one year from the date of revocation before filing an application for any new certificate.

(c) **Reactivation.** Any person whose certification has expired for a period exceeding two years must re apply in accordance with 252:710 1-5 and take a validated exam in accordance with 252:710 1-6. Previous experience and training will be taken into consideration under 252:710 1-5.

(d) **Reinstatement requirements.** To satisfy reinstatement requirements, a person must:

- (1) satisfy again the training requirements in accordance with the requirements of this Chapter; and

(2) take again the certification examination at a level not to exceed the prior level and score 70% or higher to pass the examination. An applicant who fails to receive a passing grade on the examination may not repeat the examination for one (1) year.

(a) **Grounds for action.** DEQ may, after notice and opportunity for an individual proceeding, revoke or suspend a certification for good cause including, but not limited to,:

- (1) Gross inefficiency or incompetence,
- (2) Violation of any provisions of the Waterworks and Wastewater Works Operator Certification Act or applicable provisions of the Oklahoma Environmental Quality Code, rules promulgated thereunder or the terms of any certificate or order issued pursuant thereto; or,
- (3) Fraud or misrepresentation in obtaining a certificate

(b) **Suspension.** A suspended certification may be reinstated by DEQ upon application and payment of all fees. In order to be reinstated, the person making application:

- (1) must satisfy all training requirements in accordance with this Chapter;
- (2) may be required by DEQ to retake the certification examination, at a level not to exceed the prior level of certification, and score at least a 70%, and;
- (3) who fails to receive a passing grade on the re-examination may be required to wait one year before taking the examination again. A person holding a suspended certification may work as a helper under the supervision of a person certified by DEQ.

(c) **Revocation.** After the expiration of one year after DEQ revokes a certification pursuant to the Waterworks and Wastewater Works Operator Certification Act, the holder of such certificate may make application to DEQ for reinstatement. Such reinstatement shall be made at the discretion of DEQ. In order to be considered for reinstatement, the person making application must:

- (1) satisfy all training requirements in accordance with this Chapter, and;
- (2) score at least a 70% on the certification examination at a level not to exceed the prior level of certification.

252:710-1-9. **Certificate issuance prohibited**

The DEQ shall not issue a certification if the applicant:

- (1) is not in compliance with the Act, the Code, or rules of the DEQ;
- (2) holds a revoked or suspended certification from a different operator level;
- (3) was found cheatingdetermined to have cheated on an operator certificationexamexamination; or
- (4) misrepresented or omitted material facts on an application within the past year.

252:710-1-10. **Certification documentation**

The DEQ will provide a wall certificate upon initial certification.

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252:710-1-11. Identification credentials

The DEQ will provide identification credentials upon initial certification, classification change and/or renewals.

252:710-1-12. ~~Certification fee~~FeescheduleSchedules

(a) **Operators of waterworks or wastewater works.** Certification, renewal, and registration fees for operators of waterworks or wastewater works are:

- ~~(1) Application fee for certification—beginning July 1, 2008, \$51.00; beginning July 1, 2009, \$62.00.~~
 - ~~(2) Certification renewal fee—beginning July 1, 2008, \$38.00; beginning July 1, 2009, \$46.00.~~
 - ~~(3) Registration fee for helpers (per helper)—beginning July 1, 2008, \$19.00; beginning July 1, 2009, \$23.00.~~
 - ~~(4) Renewal registration fee for helpers (per helper)—beginning July 1, 2008, \$19.00; beginning July 1, 2009, \$23.00.~~
 - ~~(5) Reinstatement penalty—beginning July 1, 2008, \$6.50; beginning July 1, 2009, \$8.00 per month for each month certification is expired.~~
 - ~~(6) Late payment of application fee—beginning July 1, 2008, \$6.50; beginning July 1, 2009, \$8.00 per month for each month the application fee is not received after a 120 day grace period from the date of the examination. After 180 days without payment of the application fee, the applicant must reapply and pass the validated exam. The beginning July 1, 2008, \$6.50; beginning July 1, 2009, \$8.00 per month late fee will apply to all previously delinquent application fees 180 days after the effective date of this subsection.~~
- (1) \$62.00 per certification application;
 - (2) \$46.00 per certification renewal;
 - (3) \$23.00 per registered helper certificate ;
 - (4) \$23.00 per registered helper certificate renewal;
 - (5) \$8.00 reinstatement fee per certification per month expired; and
 - (6) \$8.00 late payment of application fee per month not received after date of certification examination, following a grace period of 30 days after examination.

(b) **Operators of laboratories owned by or associated with waterworks or wastewater works.** Certification fees for operators of laboratories owned by or associated with waterworks or wastewater works are:

- ~~(1) Application fee for certification—beginning July 1, 2008, \$51.00; beginning July 1, 2009, \$62.00.~~
- ~~(2) Certification renewal fee—beginning July 1, 2008, \$38.00; beginning July 1, 2009, \$46.00.~~
- ~~(3) Reinstatement penalty—beginning July 1, 2008, \$6.50; beginning July 1, 2009, \$8.00 per month for each month certification is expired.~~
- ~~(4) Late payment of application fee—beginning July 1, 2008, \$6.50; beginning July 1, 2009, \$8.00 per month for each month the application fee is not received after a 120 day grace period from the date of the examination. After 180 days without payment of the application fee, the applicant must reapply and pass the validated exam. The beginning July 1, 2008, \$6.50; beginning July 1, 2009, \$8.00~~

per month late fee will apply to all previously delinquent fees 180 days after the effective date of this subsection.

- (1) \$62.00 per certification application;
- (2) \$46.00 per certification renewal;
- (3) \$8.00 reinstatement penalty per certification per month expired; and
- (4) \$8.00 late payment of application penalty per month not received after date of certification examination, following a grace period of 30 days after examination.

(c) **Failure to timely pay fees.** If an application fee and/or any late fees as described in (a) and (b) above are not received within 180 days of date of certification examination the results of examination are nullified and the applicant must reapply to sit for a certification examination.

(ed) **Nonrefundable.** Fees charged under this section are not refundable.

(de) **Nontransferable.** Fees may not be transferred from one applicant to another.

(ef) **Automatic fee adjustment.** To assist in meeting rising costs to the Department of the operator certification program associated with licensing and enforcement of certified operators, the fees set out in paragraphs (a) and (b) above shall be automatically adjusted on July 1st every five years to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the calendar year immediately preceding the start of that five-year time period. The Department may round the adjusted fees up to the nearest dollar. The Department may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

(1) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rule-making process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.

(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(3) For purposes of this subsection, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

SUBCHAPTER 3. CERTIFICATION

252:710-3-31. Certificate required

(a) **General requirement.** The following shall hold certifications issued under the Act and this Chapter:

- (1) All persons who make decisions regarding the daily operational activities of:
 - (A) a public water system, water treatment facility and/or distribution system that will directly impact the quality and/or quantity of drinking water, including a nontransient noncommunity water system; or
 - (B) a wastewater system, wastewater treatment facility and/or collection system.
- (2) All persons who program or maintain telemetry/SCADA systems and also make process control/system integrity decisions.
- (3) All laboratory operators who are in general supervision of waterworks/wastewater works laboratory control tests.

(b) **Exceptions.** The following exceptions apply:

- (1) **Plumbers and contractors.** Plumbers licensed by the ~~Oklahoma State Department of Health Construction Industries Board~~ and contractors working under the general supervision of such plumbers are not required to obtain certification for construction, maintenance, or renovation of water/wastewater works systems. Such plumbers may also make connections to public water systems or lines or sewer systems or lines. All work performed shall be supervised and inspected by the responsible entity to ensure compliance with the Safe Drinking Water Act, OAC 252:626; and OAC 252:656 and 27A O.S. § 2-6-101 *et seq.*
- (2) **Noncommunity and minor systems.** Noncommunity or minor systems as defined in Chapter 631 are not required to have certified operators.
- (3) **Small public sewage systems.** ~~Public sewage systems as defined in 27A O.S. § 2-6-101(12)~~ Nonindustrial wastewater treatment works which have an average flow of five thousand (5,000) gallons per day or less are not required to have certified operators.
- (4) **Populations of 1,500 or less.** ~~Certification is not required for~~ For laboratory operators of distribution/collection systems or chlorinated groundwater systems serving populations of 1,500 or less where chlorination is used only for disinfection or total retention lagoons serving populations of less than 1,500-, laboratory operator certification is not required. If the DEQ determines that additional tests which must be performed by a certified laboratory operator are necessary, the laboratory operator must obtain the applicable certification or use the services of an associated laboratory.

252:710-3-32. Types of certifications

(a) **Class A—C** Class A, B, and C operator certifications are available for:

- (1) ~~Waterworks Operator;~~
- (2) ~~Wastewater Works Operator;~~
- (3) ~~Waterworks Laboratory Operator; and~~
- (4) ~~Wastewater Works Laboratory Operator;~~

(b) ~~Class C~~ Class C certification is available for Distribution and Collection Operator;

(c) **Class D** Class D certifications are available for:

- (1) ~~Waterworks Operator;~~
- (2) ~~Wastewater Works Operator; and~~
- (3) ~~Distribution and Collection Technician.~~

(d) ~~Technician.~~ The DEQ may give oral exams to Distribution and Collection Technicians who are unable to take written exams.

(a) Waterworks/Wastewater Works Operator. Class A, B, C, and D available.

(b) Waterworks/Wastewater Works Laboratory Operator. Class A, B, and C available.

(c) Distribution and Collection Operator. Class C available.

(d) Distribution and Collection Technician. Class T available.

(e) **Temporary.** A person age eighteen (18) or older who does not hold a valid certification ~~may~~ shall apply for temporary certification as a waterworks or wastewater works operator within ten (10) days after being hired or appointed. A temporary certification is valid for one year from the date of employment and is not renewable. Certification testing fees may be waived for temporary certification holders who have made application for certification within 180 days of the date of issuance of temporary certification. A testing fee may only be waived one time for each applicant for temporary certification. Temporary certification is available only to operators required to obtain a Class D certificate but who, because of time restrictions, have been unable to meet the training requirements. DEQ may issue a temporary certification where a person, not already having a valid certification, has applied for a certification class and paid the applicable fee. Temporary certification is not available to superintendents, assistant superintendents, supervisors, or managers of superintendents who make decisions regarding the daily operational activities of water/wastewater works.

(f) **Special Non-Operational Certification for Environmental Professionals.** DEQ may allow qualified environmental professionals (as defined in 252:710-1-4) to obtain a special non-operator certification, provided that the applicant completes the required DEQ approved training and passes the applicable examination. The purpose of this certification is to verify an individual's fundamental understanding of operating knowledge. This special non-operator certification would be available for Class A-C certifications but would not certify the individual as being qualified to operate a water or wastewater system. No work experience obtained under this certification will apply towards the hands-on experience needed for any other operator certification. The same annual professional development hours referenced in Appendix B of this Chapter apply to this certification.

252:710-3-34. Classes of certifications

(a) ~~Generally.~~ **Certifications required.** — Owners shall place the direct supervision of their water/wastewater system or laboratory, including each treatment facility and/or distribution/collection system, under the responsible charge

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~~of a manager/superintendent/operator(s) holding a valid certification equal to or greater than the classification of the water/wastewater system or laboratory. Waterworks and wastewater works operator certifications are categorized into classes based on experience and training, as specified in Appendix B. Any facility subject to these rules shall be operated under the direct supervision of an appropriately certified operator in responsible charge.~~

(b) **Operator(s) in responsible charge.** The manager/superintendent/operator(s) in responsible charge ~~or equivalent~~ must hold a valid certification equal to or ~~greater~~ higher than the classification of ~~the~~ the water/wastewater system ~~being operated~~, including each treatment facility and/or distribution/collection system.

(c) **Assistant superintendents or assistant supervisors.** Assistant superintendents, assistant supervisors, shift leaders ~~or~~ and all other supervisors shall be certified at the same class as or one class ~~less~~ lower than the facility for which they are responsible.

(d) **Others.** All other persons who make decisions regarding the daily operational activities of

(1) ~~a public water system, water treatment facility and/or distribution system that will directly impact the quality and/or quantity of drinking water;~~

(2) ~~a wastewater system, wastewater treatment facility and/or collection system; or~~

(3) ~~program or maintain telemetry/SCADA systems and also make process control/system integrity decisions, including assistant superintendents or supervisors, a waterworks or wastewater works facility, including decisions directly impacting the quality and/or quantity of drinking water, programming or maintaining telemetry/SCADA systems, and process control or system integrity decisions, shall be certified at the same class as or one class less~~ lower than the facility for which they are responsible.

252:710-3-35. Requirements for certification

(a) **Education.** Applicants for certification as a Class A - D waterworks/wastewater works operator shall have a high school diploma or a general equivalency diploma. Experience and/or training may be substituted.

(b) **Experience and training.** Applicants shall comply with the experience and training requirements in Appendix B.

(c) **Examinations.** Applicants shall pass the appropriate validated examination in accordance with 252:710-1-6.

252:710-3-36. Approved equivalents for waterworks/wastewater works operators

(a) **Experience.** One year of operational engineering assistance to water or wastewater facilities ~~and in addition to~~ an undergraduate degree in biological sciences, biology, engineering, physical science, hydrology, geology, mathematics, environmental science, chemistry, microbiology, toxicology, or civil, chemical, sanitary or environmental engineering or equivalent sciences may be substituted for 5 years of experience. However, this approved equivalent does not count

towards the hands-on operational experience required to obtain Class A or B certifications.

(b) **Training.** For initial certification of waterworks/wastewater works operators, applicants for any operator certification may substitute the following for the training requirements listed in Appendix B:

(1) **Academic credit.** ~~One Successful completion of one~~ (1) semester hour of higher education courses in biological sciences, biology, engineering, physical science, hydrology, geology, mathematics, environmental science, chemistry, microbiology, toxicology, or civil, chemical, sanitary or environmental engineering or equivalent sciences may substitute the training requirement of for sixteen (16) hours in the classroom;

(2) **Presenter credit.** ~~One hour DEQ-approved training course or workshop for four (4) hours training credit;~~ A presenter of a DEQ-approved training course may substitute four (4) hours training credit per one (1) hour of presentation. Presenters are required to complete a minimum of four hours of DEQ-approved professional development as a class attendee.

(3) **Publication credit.** Publication of one peer-reviewed technical article related to water or wastewater in journals or magazines generally accepted in the field may be substituted for ten (10) hours training credit; and

(4) **Continuing education credit.** One continuing education unit may be substituted for ten (10) hours in the classroom.

252:710-3-37. Approved instructor

~~The~~ DEQ may establish special requirements for instructors of approved training courses.

(1) **Standard course.** To be an instructor of a standard course for certification of any type, a person must have a current operator's license in the State of Oklahoma and at least a C Certification in the subject to be taught and have as well as one of the following:

(A) ~~have made score~~ at least 80% on the ~~exam-examination~~ for the standard course to be taught; or

(B) ~~have made score~~ at least 80% on ~~exams-examinations~~ at a higher type of certification than the course taught. ~~Persons who were approved instructors before the effective date of this Chapter are not required to comply with this subsection for the level of instruction approved.~~ To change approved instructor status to a higher level, compliance with this subsection is required.

(2) **Exemption.** A person who is approved as an instructor before July 1, 2002 pursuant to (1)(B) above, ~~must take the appropriate exam before December 31, 2004 and meet or exceed the scores listed in (1)(A) or (1)(B) of this section.~~

(3) **Fees.** For any certified operator, retaking an ~~exam examination~~ at a class certification level already obtained, for the purposes of becoming an approved instructor, the application fee is waived for the initial time to take the ~~exam-examination~~. For any subsequent ~~exams-examinations~~, the certified operator shall pay the application fee.

(43) ~~Exam~~ **Examination Failure.** An applicant who fails to answer at least 80% of the questions correctly may not take the ~~exam~~ examination again for thirty (30) days.

(54) ~~Exam~~ **Examination Review.** No instructor will be allowed to review the exam during the six-month period prior to taking the ~~exam~~ examination.

(65) **Instruction.** At least four (4) hours of documented instruction must be completed each certificate year to maintain approved instructor status. Each person must retake the ~~exam~~ examination at least once every four (4) years and obtain a score of 80% or above to retain certification as an approved instructor.

(76) **Renewal Professional development training class.** ~~The teaching by an instructor of a renewal training class provided by the instructor shall be deemed as compliance~~ comply with the continuing education requirement ~~located~~ found at 252:710-1-7(c) for the certificate year the class is taught.

252:710-3-38. **Reciprocity**

(a) **Reciprocity permitted.** DEQ may issue an operator's certification, at an equivalent level of certification, without examination, to applicants who hold valid certifications or licenses issued by any state which offers reciprocal certification to Oklahoma operators, so long as the other state's program has equivalent requirements for certification.

(b) **Application required.** To obtain a reciprocal certificate in Oklahoma, a person must complete and submit an application.

(c) **Military Personnel.** Every active duty military personnel and their spouse who holds an equivalent certification in a state other than Oklahoma, upon receiving notice or orders for military transfer or honorable discharge to this state, may in advance of actual transfer or discharge submit a completed application to DEQ for a reciprocal certification. DEQ shall issue the requested certification within thirty (30) days, provided the certification from the other state is found to be in good standing and reasonably equivalent to the requirements of this Chapter.

(d) **Persons obtaining a reciprocal certificate remain responsible for renewal.** Any person granted reciprocity in Oklahoma will be subject to the same requirements for renewal as any other person certified under these rules.

SUBCHAPTER 5. DUTIES AND RESPONSIBILITIES

252:710-5-53. **Laboratory operator**

(a) Except as provided in 252:710-3-31(b)(4), All duties relating to the laboratory analysis of water quality samples from water treatment plants, groundwater systems, storage and distribution systems (including purchased-water systems) must be performed by or under the general supervision of a laboratory operator certified by ~~the~~ DEQ.

(b) Operators of laboratories owned by or associated with waterworks/wastewater works shall record the results of all laboratory analyses in a bound volume for each facility and

shall date and sign each entry. Records shall be kept on file at the laboratory for inspection and review for ten (10) years for waterworks and three (3) years for wastewater works.

(c) Laboratory operator certification is not required for waterworks or wastewater works laboratory operators performing the minimum analyses required by rules of the Department for purchased water systems, groundwater systems using no treatment other than chlorination for disinfection, or for total retention lagoon facilities unless the Department has determined that additional laboratory tests, required to be performed by a certified laboratory operator, are necessary for proper operation.

252:710-5-55. **Registered helpers**

An employer shall submit the name and address of each registered helper on a registration application when each registered helper is employed and thereafter by July 1 of each succeeding year the registered helper is in his or her employment. Registered helpers may only perform duties under direct supervision.

252:710-5-56. **Individual recordkeeping**

Each person is responsible for keeping ~~his~~ their own records of training and experience.

252:710-5-57. **Responsibility of owners**

- (a) Owners of waterworks or wastewater works shall:
- (1) upon request, furnish ~~the~~ DEQ with the names, addresses and positions of all employees;
 - (2) advise ~~the~~ DEQ in writing within ten (10) days when an operator begins or terminates employment;
 - (3) furnish the necessary equipment and materials for adequate maintenance and operation of the treatment plant, laboratory and supporting facilities;
 - (4) give operators a reasonable opportunity to obtain the necessary hours of training for required certification upgrades and renewals; and
 - (5) within ten (10) days after contracting with an associated laboratory for the analysis of its water quality samples, notify ~~the~~ DEQ in writing about whether:
 - (A) the laboratory is currently certified by ~~the~~ DEQ; and
 - (B) the laboratory will only be performing operational testing.

SUBCHAPTER 7. SHARED OPERATORS FOR SMALL SYSTEMS

252:710-7-2. **Requirements**

A municipality, sewer improvement district, water or sewer public trust, rural water or sewer district, consortium of small publicly owned water supply or wastewater systems, substate planning district or the Oklahoma Rural Water Association may hire or contract an operator or operators to provide

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services for one or more small drinking water or wastewater system(s) if the following requirements are met:

- (1) the operator has a minimum of a Class C or greater certification;
- (2) the operator only provides services to a facility located in the county of his or her residence or place of employment and/or any adjacent county;
- (2-3) for a Public Water Supply System using disinfection, the operator must be at the Public Water Supply System a minimum of five (5) days per week to ensure proper operation, and can only operate three (3) systems;
- (3-4) for a Public Water Supply System not using disinfection or a wastewater system, the operator must be at the Public Water Supply or wastewater system a minimum of two (2) days per week to ensure proper operation, and can only operate five (5) systems total;
- (4-5) the operator(s) must operate the small system(s) in compliance with all Federal and State statutory and regulatory requirements; and

(5-6) the operator, municipality, sewer improvement district, water or sewer public trust, rural water or sewer district, consortium of small publicly owned water supply or wastewater systems, substate planning district or the Oklahoma Rural Water Association and the small system must enter into a written agreement, that at a minimum shall:

- (A) explicitly state the duties of the operator;
- (B) explicitly state who is responsible for repairs to the Public Water Supply or wastewater system;
- (C) explicitly state compensation for the operator, including, but not limited to, salary, transportation, insurance and administration costs; and
- (D) consider and approve recommendations of the operator for upgrades and/or improvements to the system.

~~(6) an operator shall only provide services to a facility located in the county of his or her residence or place of employment and any adjacent county.~~

APPENDIX B. CERTIFICATE REQUIREMENTS (252:710-3-35) [REVOKED]

APPENDIX B. CERTIFICATE REQUIREMENTS (252:710-3-35) [NEW]

Table 1. WATERWORKS AND WASTEWATER WORKS CLASSIFICATIONS AND REQUIREMENTS (252:710-3-35)

Classification	Experience ¹	Training ²
Class A Waterworks or Wastewater Works Operator Certification	Five years of waterworks or wastewater works operation including two years of actual hands on operating experience.	200 hours of DEQ approved training, including at least 40 hours of advanced treatment and managerial training or its approved equivalent. ³
Class B Waterworks or Wastewater Works Operator Certification	Three years of waterworks or wastewater works operation including one year actual hands on operating experience.	100 hours of DEQ approved training or its approved equivalent.
Class C Waterworks or Wastewater Works Operator Certification	One year of waterworks or wastewater works operation.	36 hours of DEQ approved training or its equivalent.
Class C Distribution and Collection Operator Certification	One year of distribution/collection operation.	36 hours of DEQ approved training or its approved equivalent.
Class D Waterworks or Wastewater Works Certification	None	16 hours of DEQ approved training.
Class T Distribution and Collection Technician Certification	None	8 hours of DEQ approved training
Temporary Operator Certification	None	None
Registered Helper⁴	None	None

¹ Experience that is used to meet the experience requirement for any class of certification may not be used to meet the education or training requirements.

² Training credit will be granted only for courses or workshops listed as approved by DEQ or for courses, workshops, or alternative activities which have been approved in writing by DEQ in advance.

³ Approved equivalents are listed in 252:710-3-36

⁴ This classification is not considered a Certification and time worked under this classification does not count towards experience for purpose of acquiring certification.

**Table 2. WATERWORKS OR WASTEWATER WORKS LABORATORY OPERATORS
CERTIFICATE REQUIREMENTS (252:710-3-35)**

Classification	Experience ⁵	Training ⁶
Class A Waterworks or Wastewater Works Laboratory Operator Certification	<p>One year of waterworks or wastewater works laboratory operation; or</p> <p>Three years of waterworks or wastewater works laboratory operation; or</p> <p>Five years of waterworks or wastewater works laboratory operation</p>	<p>32 hours of DEQ approved Class B training and a Bachelor of Science Degree in chemistry, microbiology, instrumental analysis or other field of science approved by DEQ; or</p> <p>32 hours of DEQ approved Class B training and an Associate's Degree in chemistry, microbiology, instrumental analysis, or other field of science approved by DEQ; or</p> <p>32 hours of DEQ approved Class B training</p>
Class B Waterworks or Wastewater Works Laboratory Operator Certification	Six months of waterworks or wastewater works laboratory operation	32 hours of DEQ approved Class B training and 32 hours of DEQ approved Class C training. An Associate's Degree or greater in chemistry, biology, engineering, physical science, hydrology, geology, mathematics, environmental science, microbiology, toxicology, or civil, chemical, sanitary or environmental engineering may be substituted for the 32 hours of DEQ approved Class C training
Class C Waterworks or Wastewater Works Laboratory Operator Certification	None	32 hours of DEQ approved Class C training

⁵ Experience that is used to meet the experience requirement for any class of certification may not be used to meet the education or training requirements.

⁶ Training credit will be granted only for courses or workshops listed as approved by DEQ or for courses, workshops, or alternative activities which have been approved in writing by DEQ in advance.

APPENDIX C. NUMBER OF PROFESSIONAL DEVELOPMENT HOURS (PDHS) NEEDED PER CERTIFICATE LEVEL FOR OPERATORS AND LABORATORY OPERATORS [NEW]

Level of Certification	Total number of PDHs ⁷ (hrs/yr)	Classroom PDHs (hrs/yr)	PDHs from any DEQ approved trainings (hrs/yr) ⁸
Class A	16	4 - must be classroom training	12
Class B	12	4 - must be classroom training	8
Class C	8	4 - must be classroom training	4
Class C Distribution and Collection	8	4 - must be classroom training	4
Class D	4	4 - must be classroom training	0
Class T Distribution and Collection Technician	4	4 - must be classroom training	0
Temporary Operator	N/A	N/A	N/A
Registered Helper	N/A	N/A	N/A

⁷ PDH hours are based on the highest level of certification held. See 252:710-1-7(c).

⁸ See 252:710-1-4 for definition of PDH.

[OAR Docket #20-710; filed 7-27-20]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 40. EMPLOYEE BENEFITS DEPARTMENT

[OAR Docket #20-503]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 7. Flexible Benefits Plan

Part 1. General Provisions

260:40-7-2. [AMENDED]

AUTHORITY:

The Director of the Office of Management and Enterprise Services; 74 O.S. Section 1366; 62 O.S. Section 34.6(8).

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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n/a

GIST/ ANALYSIS:

260:40-7-2 changes the definition of EGID from Employees Group Insurance Division to Employees Group Insurance Department. 260:40-7-2 amends the definition of dependent to include a child legally placed with the primary member for adoption and a child for whom the member has been granted legal guardianship. 260:40-7-2 also allows other unmarried children up to age twenty-six [26] to be considered a dependent if the child lives with the member and the member is primarily responsible for the child's support. This rule change is to align with the current practice of allowing such children to be classified as dependents and receive insurance coverage.

CONTACT PERSON:

Tracy Osburn, Deputy General Counsel, (405) 522-3428

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 7. FLEXIBLE BENEFITS PLAN

PART 1. GENERAL PROVISIONS

260:40-7-2. Definitions

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

shall include the plural, the plural shall include the singular, and the use of any gender shall include the other gender.

"**Account**" means a record keeping account established on the books of the Plan Administrator.

"**Act**" means the Oklahoma State Employees Benefits Act, 74 O.S. Supp 1992, Section 1361 et seq.

"**Authorized Submission Procedure**" means an acceptable method of submitting enrollment and/or change documents which may include submission via electronic transmissions to the Plan Administrator.

"**EGID**" means the Employees Group Insurance ~~Department~~
Division

"**Cafeteria plan**" means an employer-maintained benefit plan under which participants are employees and the participants may choose between cash and nontaxable benefits, as defined in Internal Revenue Code Section 125(d) and regulations promulgated thereunder.

"**Change in Status**" means a change that a participant may be allowed to make during a Plan Year provided that the change is based on prevailing IRS guidance, is allowed by the Plan Administrator, and complies with all eligibility rules and consistency requirements.

"**COBRA**" means the Consolidated Omnibus Budget Reconciliation Act of 1985 as it applies to an employee's right to continue certain coverage under the Flexible Benefits Plan.

"**Dependent**" means the primary member's spouse (if not legally separated by court order), including common law. Dependents also include a member's unmarried or married natural born child, a step child, an adopted child, child legally placed with the primary member for adoption, child for whom the member has been granted legal guardianship, or a foster child up to the child's twenty-sixth [26th] birthday, regardless of residence, or a child under legal guardianship. In addition, other unmarried children up to age twenty-six [26] may be considered dependents if the child lives with the member and the member is primarily responsible for the child's support. A child may also be covered regardless of age if the child is incapable of self-support because of mental or physical incapacity that existed prior to reaching age twenty-six [26]. Coverage is not automatic and must be approved with a review of medical information. A disabled dependent deemed disabled by Social Security does not automatically mean that this disabled dependent will meet the Plan requirements. [74 O.S. Supp. 2006, §1303(134)].

"**Effective date of the plan**" means January 1, 1990 or as restated.

"**Employer**" or "**Employing agency**" has the same meaning as "Participating employer" as defined in Section 1363(14) of Title 74.

"**Enrollment period**" means the period of time, as determined and announced by the Plan Administrator each Plan Year during which eligible employees shall make an election of benefits. The period of time shall end no later than thirty (30) days before the beginning of the Plan Year for which the elections are to be effective.

"**Entry date**" means the first day of the Plan Year except for an employee who first satisfies the requirements for eligibility during the Plan Year (including rehired employees), in

which case the entry date shall be the first day of the month next following the satisfaction of the application requirements for eligibility, in accordance with 260:40-7-1.

"FMLA" means the Family and Medical Leave Act of 1993.

"Flexible Benefits Plan" means the Flexible Benefits Plan authorized pursuant to the State Employees Flexible Benefits Act as modified by the provisions under the State Employees Benefits Act.

"Flexible Benefits Plan Rules" means the rules promulgated by the Plan Administrator to implement and administer the State Employees Flexible Benefits Plan.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996.

"Internal Revenue Code" means the Internal Revenue Code of 1986 of the United States, 26 USC, I et seq. as amended from time to time.

"Irrevocability Rule" means the rule that requires an enrollment election in any Plan benefit to remain in force throughout the entire Plan Year.

"Period of coverage" means the Plan Year during which coverage of benefits under the Flexible Benefits Plan is available to a participant. An employee who becomes eligible to participate during a Plan Year may participate for a period lasting until the end of that Plan Year. In this case, the interval commencing on the employee's entry date, and ending as of the last day of eligibility, for that Plan Year.

"Permitted Exception" means an exception allowed to the Irrevocability Rule by the Plan. Any changes based on these exceptions must be on account of and correspond with the underlying event.

"Plan Administrator" means the Oklahoma State Employee Benefits Department.

"QMCSO" means a Qualified Medical Child Support Order.

"Statutory nontaxable benefit" means a benefit provided to a participant under the Flexible Benefits Plan, the value of which is not included in the participant's gross income by a specific provision in the Internal Revenue Code and is permissible under the Flexible Benefits Plan in accordance with Section 125 of the Internal Revenue Code.

"USERRA" refers to the Uniformed Services Employment and Reemployment Rights Act of 1994.

[OAR Docket #20-503; filed 6-30-20]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES

CHAPTER 45. EMPLOYEES GROUP INSURANCE DIVISION - ADMINISTRATIVE AND GENERAL PROVISIONS

[OAR Docket #20-504]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Grievance Panel Procedures
260:45-5-1. Request for hearing [AMENDED]

AUTHORITY:

The Director of the Office of Management and Enterprise Services; 62 O.S. §34.3.1; 62 O.S. §34.6(8).

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Clarify language, eliminate obsolete language, correct omissions and streamline to promote and enhance operations, through removal of inaccurate or redundant verbiage, and to simplify language.

The rules and regulations are necessary to promote and enhance effective operation of the Employees Group Insurance Division. It is proposed that the rules and regulations be amended. The effect of the amended rules is to provide for the continued efficiency, responsiveness, the correction of citations and scrivener's errors, and changes to improve the clarity of the rules.

CONTACT PERSON:

Scott D. Boughton, Deputy General Counsel, (405) 717-8957

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 5. GRIEVANCE PANEL PROCEDURES

260:45-5-1. Request for hearing

(a) **Grievances.** EGID has established procedures by which:

- (1) Independent Review Organizations shall act as an appeals body for complaints by insured members regarding adverse benefit determinations based on medical necessity, appropriateness, health care setting, level of care, or effectiveness of a covered benefit,
- (2) A three [3] member Grievance Panel shall act as an appeals body for complaints by insured members regarding all other issues.

(b) **Court Administrator Appointees.** The Court Administrator shall designate Grievance Panel members as shall be necessary. The members of the Grievance Panel shall consist of two [2] Attorneys licensed to practice law in this state and one [1] state licensed health care professional or health care administrator who has at least three [3] years practical experience, has had or has admitting privileges to a State of

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Oklahoma hospital, has a working knowledge of prescription medication, or has worked in an administrative capacity at some point in their career.

(c) **Governor Appointees.** The state health care professional shall be appointed by the Governor. At the Governor's discretion, one or more qualified individuals may also be appointed as an alternate to serve on the Grievance Panel in the event the Governor's primary appointee becomes unable to serve.

(d) **Right to a Hearing.** Any covered member who has exhausted EGID's internal review procedures and has timely requested in writing a hearing before the Grievance Panel pursuant to 260:45-5-1(a)(2) shall receive a hearing in person or through licensed counsel before the panel.

(e) **Remedy.** Grievance procedures conducted by the three [3] member Grievance Panel shall be subject to the Oklahoma Administrative Procedures Act, including provisions thereof for review of agency decisions by the district court.

(f) **Failure to timely submit hearing request.** All Grievance Panel requests must be filed within sixty [60] days from the date the member is notified that the member's claim, benefit, coverage, or other matter has been denied and that EGID's internal review procedures have been exhausted. After more than sixty [60] days from the date the member was first notified that the member's claim, benefit, coverage, or other matter has been denied and that EGID's internal review procedures have been exhausted, the matter shall be deemed finally resolved.~~All grievance requests must be filed within one [1] year from the date the member is notified of a denial of the claim, benefit or coverage. After more than one [1] year from the date the member was first notified of an allowance, payment, or denial of a claim, benefit, coverage, or other matter, the matter shall be deemed finally resolved.~~

(g) **Aggrieved member covered by an HMO.** Any member covered by an HMO is entitled to a hearing before the Panel in the same manner as all other covered members for those matters not covered by an Independent Review Organization. The member must exhaust the HMO's internal grievance procedure, except for an emergency or if the HMO fails to timely respond, before requesting a Grievance Panel hearing. The member must file, along with his request for hearing, a written certification from the HMO that the member has exhausted said procedure, or a detailed explanation of the emergency or of the HMO's failure to respond.

(h) **Submission of Grievance request.** Any Grievance request shall be in writing on a form provided by EGID for such purpose or in writing by the employee if in substantial compliance with the form and shall contain the following information:

- (1) Name of employee, Social Security Number and address;
- (2) Name of dependent for whom claim was submitted, if not the covered employee;
- (3) Name of employee's employing entity, location, and identifying number;
- (4) Nature of claim: Health, Dental, Life, Eligibility, Disability, HIPAA or HMO;
- (5) Date claim submitted for payment, claim number;

(6) The reason given, if any, by the claims administration contractor for denying the claim in whole or in part; and

(7) A short statement as to the nature of the illness or injury giving rise to the claim.

(i) **Mailing address for submission of Request for Hearing.** The Request for Hearing shall be mailed or delivered to EGID to the attention of Attorney - Grievance Procedures, at 3545 N. W. 58th Street, Suite 600, Oklahoma City, Oklahoma 73112.

[OAR Docket #20-504; filed 6-30-20]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 50. EMPLOYEES GROUP INSURANCE DIVISION - HEALTH, DENTAL, VISION AND LIFE PLANS

[OAR Docket #20-505]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Purpose and Definitions

260:50-1-2. Definitions [AMENDED]

Subchapter 3. Administration of Plans

260:50-3-8. Refunds [AMENDED]

260:50-3-9. Payment of HealthChoice health, dental and life benefits [REVOKED]

260:50-3-10. Timely filing of HealthChoice health and dental claims [REVOKED]

260:50-3-11. HealthChoice Examination [REVOKED]

260:50-3-12. Action to recover [REVOKED]

260:50-3-13. Rights of eligible former employees to continue in the Group Health, Dental, and Vision Insurance Plan [AMENDED]

260:50-3-18. Eligibility criteria for disabled dependent over the age of twenty-six [26] [AMENDED]

260:50-3-26. Termination of benefits [NEW]

260:50-3-27. Procedures and implementation [NEW]

260:50-3-28. COBRA administration [NEW]

Subchapter 5. Coverage and Limitations

Part 3. HealthChoice Plans

260:50-5-2. Schedule of benefits and benefit administration procedures or guidelines as adopted by EGID [AMENDED]

260:50-5-3. HealthChoice approval for emergency treatment by non-Network providers [AMENDED]

260:50-5-12. HealthChoice plan limitations and exclusions [AMENDED]

260:50-5-13. Payment of HealthChoice health, dental and life benefits [NEW]

260:50-5-14. Timely filing of HealthChoice health and dental claims [NEW]

260:50-5-15. HealthChoice examination [NEW]

260:50-5-16. Action to recover [NEW]

Part 5. HealthChoice Life Benefits

260:50-5-20. Term life coverage [AMENDED]

260:50-5-22. Optional supplemental life coverage for eligible employees [AMENDED]

Part 9. HealthChoice Dental Benefits, Limitations, and Exclusions

260:50-5-30. Scope of coverage [AMENDED]

Part 11. HealthChoice Medicare Supplement

260:50-5-43. Enrollment in Medicare Supplement [REVOKED]

Subchapter 7. Termination of Benefits [REVOKED]

260:50-7-1. Termination of benefits [REVOKED]

Subchapter 9. Cobra Health Insurance Continuation [REVOKED]

260:50-9-1. Procedures and implementation [REVOKED]

260:50-9-2. COBRA administration [REVOKED]

AUTHORITY:

The Director of the Office of Management and Enterprise Services; 62 O.S. §34.3.1; 62 O.S. §34.6(8).

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Subchapter 1. Purpose and Definitions
260:50-1-2. Definitions [Amended]

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Clarify language, eliminate obsolete language, correct omissions and streamline to promote and enhance operations, through removal of inaccurate or redundant verbiage, and to simplify language.

This rule is necessary to avoid serious prejudice to the public interest and to avoid violation of federal law or regulation or other state law. It will ensure that rural hospitals within the State that are CMS approved, but not accredited by a nationally recognized accrediting organization, continue to be reimbursed as a HealthChoice provider as required by the federal Affordable Care Act. It will also ensure that acute care facilities that are not CMS approved, but are accredited by a nationally recognized accrediting organization, will be reimbursed as a HealthChoice provider as required by the federal Affordable Care Act. Current rules require that eligible HealthChoice providers be both CMS approved and accredited by a nationally recognized accrediting organization.

CONTACT PERSON:

Scott D. Boughton, Deputy General Counsel, (405) 717-8957

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. PURPOSE AND DEFINITIONS

260:50-1-2. Definitions

The following words and terms as defined by EGID, when used in this chapter, shall have the following meaning, unless the content clearly indicates otherwise:

"Administrative error" occurs when the coverage elections the member makes are not the same as those entered into payroll for deduction from the member's paycheck. This does not include untimely member coverage elections or member

misrepresentation. When such an administrative error results in underpaid premiums, full payment to EGID shall be required before coverage elected by the member can be made effective. If overpayment occurs, EGID shall refund overpaid funds to the appropriate party.

"Administrator" means the Administrator of the Employees Group Insurance Division or a designee.

"Allowable fee" means the maximum allowed amount based on the HealthChoice Network Provider Contracts payable to a provider by EGID and the member for covered services.

"Attorney representing EGID" means any attorney designated by the Administrator to appear on behalf of EGID.

"The Board" means the seven [7] Oklahoma Employees Insurance and Benefits Board members designated by statute [74 O.S. §1303(1)].

"Business Associate" shall have the meaning given to "Business Associate" under the Health Insurance Portability and Accountability Act of 1996, Privacy Rule, including, but not limited to, 45 CFR §160.103.

"Carrier" means the State of Oklahoma.

"Comprehensive benefits" means benefits which reimburse the expense of facility room and board, other hospital services, certain out-patient expenses, maternity benefits, surgical expense, including obstetrical care, in-hospital medical care expense, diagnostic radiological and laboratory benefits, providers' services provided by house and office calls, treatments administered in providers' office, prescription drugs, psychiatric services, Christian Science practitioners' services, Christian Science nurses' services, optometric medical services for injury or illness of the eye, home health care, home nursing service, hospice care and such other benefits as may be determined by EGID. Such benefits shall be provided on a co-payment or coinsurance basis, the insured to pay a proportion of the cost of such benefits, and may be subject to a deductible that applies to all or part of the benefits as determined by EGID. [74 O.S. §1303 (14)]

"Cosmetic procedure" means a procedure that primarily serves to improve appearance.

"Current employee" means an employee in the service of a participating entity who receives compensation for services actually rendered and is listed on the payrolls and personnel records of said employer, as a current and present employee, including employees who are otherwise eligible who are on approved leave without pay, not to exceed twenty-four [24] months. An education employee absent from employment, not to exceed eight [8] years, because of election or appointment as local, state, or national education association officer who is otherwise eligible prior to taking approved leave without pay will be considered an eligible, current employee. A person elected by popular vote will be considered an eligible employee during his tenure of office. Eligible employees are defined by statute. [74 O.S. §1303 and §1315]

"Custodial care" means treatment or services regardless of who recommends them or where they are provided, that could be given safely and reasonably by a person not medically skilled. These services are designed mainly to help the patient with daily living activities. These activities include but are not

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limited to: personal care as in walking, getting in and out of bed, bathing, eating by spoon, tube or gastrostomy, exercising, dressing, using toilet, preparing meals or special diets, moving the patient, acting as companion or sitter, and supervising medication which can usually be self-administered.

"Dependent" means the primary member's spouse (if not legally separated by court order), including common-law. Dependents also include a member's daughter, son, stepdaughter, stepson, eligible foster child, adopted child, child for whom the member has been granted legal guardianship or child legally placed with the primary member for adoption up to the child's twenty-sixth [26th] birthday. In addition other unmarried children up to age twenty-six [26] may be considered dependents if the child lives with the member and the member is primarily responsible for the child's support. A child that meets the definition of a disabled dependent in this section and also all requirements in 260:50-3-18, may also be covered regardless of age if the child is incapable of self-support because of mental or physical incapacity that existed prior to reaching age twenty-six [26]. Coverage is not automatic and must be approved with a review of medical information. A disabled dependent deemed disabled by Social Security does not automatically mean that this disabled dependent will meet the Plan requirements. [74 O.S. §1303(14)]. See additional eligibility criteria for disabled dependents over the age of twenty-six [26] at 260:50-3-18. Participating employer groups may have a more restrictive definition of Dependent.

"Durable medical equipment" means medically necessary equipment, prescribed by a provider, which serves a therapeutic purpose in the treatment of an illness or an injury. Durable medical equipment is for the exclusive use of the afflicted member and is designed for prolonged use. Specific criteria and limitations apply.

"Eligible Provider" means a practitioner who or a facility that is recognized by EGID as eligible for reimbursement. EGID reserves the right to determine provider eligibility for network and non-Network reimbursement.

"Emergency" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) so that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in a condition described in clause (i), (ii), or (iii) of section 1867(e)(1)(A) of the Social Security Act (42 U.S.C. 1395dd (e)(1)(A)). (In that provision of the Social Security Act, clause (i) refers to placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy; clause (ii) refers to serious impairment to bodily functions; and clause (iii) refers to serious dysfunction of any bodily organ or part.)

"Enrollment period" means the time period in which an individual may make an election of coverage or changes to coverage in effect.

"Excepted Benefits" means the four categories of benefits as established in section 2791 of the PHS Act, section 733 of ERISA and section 9832 of the Internal Revenue Code, as summarized in IRS Bulletin 2015-14 and subsequent regulatory guidance. These Excepted Benefits include but are

not limited to vision coverage, dental coverage, long-term care insurance, Medicare supplement coverage, automobile liability insurance, workers compensation, accidental death and dismemberment insurance and specific disease coverage (such as cancer).

"Facility" means any ~~hospital, rehabilitation facility, skilled nursing facility, midwifery center, ambulatory surgical center, home health agency, infusion therapy entity, hospice program, durable medical equipment vendor, radiology facility, dialysis facility, or laboratory~~ organization as defined by EGID which is duly licensed under the laws of the state of operation, and also either Medicare certified as applicable, and/or accredited by a CMS approved Medicare accreditation organization, nationally recognized accreditation organization that is approved by state or federal guidelines, for example, The Joint Commission (formerly JCAHO) or The Commission on Accreditation of Rehabilitation Facilities (CARF).

"Fee schedule" means a listing of one or more allowable fees.

"Former participating employees and dependents" means eligible former employees who have elected benefits within thirty [30] days of termination of service and includes those who have retired, or vested through an eligible State of Oklahoma retirement system, or who have completed the statutory required years of service, or who have other coverage rights through Consolidated Omnibus Budget Reconciliation Act (COBRA) or the Oklahoma Personnel Act. An eligible dependent is covered through the participating former employee or the dependent is eligible as a survivor or has coverage rights through COBRA.

"Health information" means any information, whether oral or recorded in any form or medium: (1) that relates to the past, present or future physical or mental condition of a member; the provision of health care to a member; or the past, present or future payment for the provision of health care to a member; and (2) that identifies the member or with respect to which there is a reasonable basis to believe the information can be used to identify the member.

"Home health care" means a plan of continued care of an insured person who is under the care of a provider who certifies that without the Home health care, confinement in a hospital or skilled nursing facility would be required. Specific criteria and limitations apply.

"Hospice care" means a concept of supportive care for terminally ill patients. Treatment focuses on the relief of pain and suffering associated with a terminal illness. Specific criteria and limitations apply.

"Inaccurate or erroneous information" means materially erroneous, false, inaccurate, or misleading information that was intentionally submitted in order to obtain a specific coverage.

"Initial enrollment period" means the first thirty [30] days following the employee's entry-on-duty date. A group initial enrollment period is defined as the thirty [30] days following the enrollment date of the participating entity.

"Insurance Coordinator" means Insurance/Benefits Coordinator for Education, Local Government, and State Employees.

"Maintenance care" means there is no measurable progress of goals achieved, no skilled care required, no measurable improvement in daily function or self-care, or no change in basic treatment or outcome.

"Medically necessary" means services or supplies which are provided for the diagnosis and treatment of the medical and/or mental health/substance abuse condition and complies with criteria adopted by EGID. Direct care and treatment are within standards of good medical practice within the community, and are appropriate and necessary for the symptoms, diagnosis or treatment of the condition. The services or supplies must be the most appropriate supply or level of service, which can safely be provided. For hospital stays, this means that inpatient acute care is necessary due to the intensity of services the member is receiving or the severity of the member's condition, and that safe and adequate care cannot be received as an outpatient or in a less intensified medical setting. The services or supplies cannot be primarily for the convenience of the member, caregiver, or provider. The fact that services or supplies are medically necessary does not, in itself, assure that the services or supplies are covered by the Plan.

"Members" means all persons covered by one or more of the group insurance plans offered by EGID including eligible current and qualified former employees of participating entities and their eligible covered dependents.

"Mental health and substance abuse" means conditions including a mental or emotional disorder of any kind, organic or inorganic, and/or alcoholism and drug dependency.

"Network provider" means a practitioner who or facility that is duly licensed under the laws of the state in which the "Network provider" operates, ~~and/or is accredited by a nationally recognized accrediting organization such as The Joint Commission (formerly JCAHO) or The Commission on Accreditation of Rehabilitation Facilities (CARF) approved by state or federal guidelines, and has entered into a contract with EGID to accept scheduled reimbursement for covered health care services and supplies provided to members~~ satisfies credentialing criteria as established by EGID, and has entered into a contract with EGID to accept scheduled reimbursement for covered health care services and supplies provided to members.

"Non-Network out-of-pocket" means the member's expenses include the total of the member's deductibles and co-insurance costs plus all amounts that continue to be charged by the non-Network provider after the HealthChoice allowable fees have been paid.

"OEIBB" means Oklahoma Employees Insurance and Benefits Board.

"Open enrollment period" means a limited period of time as approved by either EGID or the Legislature in which a specified group of individuals are permitted to enroll.

"Option period" means the time set aside at least annually by EGID in which enrolled plan members may make changes to their enrollments. Eligible but not enrolled employees may also make application for enrollment during this time. Enrollment is subject to approval by EGID.

"Orthodontic limitation" means an individual who enrolls in the Dental Plan will not be eligible for any orthodontic benefits for services occurring within the first twelve [12] months after the effective date of coverage. Continuing orthodontic services for newly hired employees who had previous group dental coverage will be paid by prorating or according to plan benefits.

"Other hospital services and supplies" means services and supplies rendered by the hospital that are required for treatment, but not including room and board nor the professional services of any provider, nor any private duty, special or intensive nursing services, by whatever name called, regardless of whatever such services are rendered under the direction of the hospital or otherwise.

"Participating entity" means any employer or organization whose employees or members are eligible to be participants in any plan authorized by or through the Oklahoma Employees Insurance and Benefits' Act.

"The Plan or Plans" means the self-insured Plans by the State of Oklahoma for the purpose of providing health benefits to eligible members and may include such other benefits as may be determined by EGID. Such benefits shall be provided on a coinsurance basis and the insured pays a proportion of the cost of such benefits.

"Primary insured" means the member who first became eligible for the insurance coverage creating eligibility rights for dependents.

"Prosthetic appliance" means an artificial appliance that replaces body parts that may be missing or defective as a result of surgical intervention, trauma, disease, or developmental anomaly. Said appliance must be medically necessary.

"Provider" means a physician or other practitioner who is duly licensed or certified under the laws of the state in which the Provider practices and is recognized by this Plan, to render health and dental care services and/or supplies.

"Qualifying Event" means an event that changes a member's family or health insurance situation and qualifies the member and/or dependent for a special enrollment period. The most common qualifying life events are the loss of health care coverage, a change in household (such as marriage or birth of a child), or a change of residence or other federally required mandates. A complete summary of qualifying events are set out in Title 26, Treasury Regulations, Section 125.

"Schedule of benefits" means the EGID plan description of one or more covered services.

"Skilled care" means treatment or services provided by licensed medical personnel as prescribed by a provider. Treatment or services that could not be given safely or reasonably by a person who is not medically skilled and would need continuous supervision of the effectiveness of the treatment and progress of the condition. Specific criteria and limitations are applied.

SUBCHAPTER 3. ADMINISTRATION OF PLANS

Permanent Final Adoptions

260:50-3-8. Refunds

(a) **Refunds.** Any refund of payment for any premium overpayment shall be made only when EGID is notified in writing no later than sixty [60] days after the actual date of the overpayment, unless lack of notification is beyond control as determined by EGID.

(b) **Administrative Error.** Refunds for overpayment due to administrative error, as limited and defined in the rules in this title, of the Insurance/Benefits Coordinator or the payroll clerk for EGID, shall be made at one hundred percent [100%].

(c) **Refunds on behalf of employees.** Refunds on behalf of employees shall be paid to the appropriate party. For an entity to receive a refund, the entity must have a credit balance.

(d) **Inaccurate or erroneous information.** If EGID finds that materially erroneous, false, inaccurate, or misleading information was intentionally submitted in order to obtain a specific coverage, then:

(1) For optional or supplemental life insurance coverage in excess of any guaranteed amounts of coverage, EGID shall extinguish its liability by tendering a refund of premiums paid to the insured or the beneficiary;

(2) Health or dental coverage would be canceled retroactive to the effective date of the coverage obtained by the misrepresentation. Refunded premiums would be reduced by any claims paid by HealthChoice.

(e) **Medicare eligibility.** There shall be no refund of premiums for prior months during which the member was eligible for Medicare, and written notice was not provided to EGID. An exception shall be made for individuals who are retroactively awarded Medicare coverage by the Social Security Administration, when written notice of the retroactive award is provided to EGID within thirty [30] days after the member's notification of the Social Security Administration award. A member's sixty-fifth [65th] birthday is considered automatic notification of Medicare eligibility.

(f) **Deceased member.** All refunds for overpayment resulting from the death of an employee or ~~retired~~former employee will be capped at the overpayment amount received by EGID within twenty four [24] months of notification.

260:50-3-9. Payment of HealthChoice health, dental and life benefits [REVOKED]

~~(a) Life insurance benefits are payable to the beneficiary designated by the employee. Premiums and overpaid disability benefits due and payable to EGID at the time of the insured's death may be withheld from life insurance benefits before payment of the remainder to the beneficiary or estate. Life proceeds are not assignable, except a beneficiary may assign proceeds in an amount equal to the decedent's burial expenses. If no beneficiary form is on file with EGID, benefits will be paid to the decedent's estate.~~

~~(b) Health and dental benefits are payable to the employee or the provider. If any health or dental benefits remain unpaid at the employee's death, EGID, may at its option, pay the benefits to the employee's estate or to any one or more relatives such as follows: spouse, father, mother, children, brothers or~~

~~sisters. Any such payment will constitute complete discharge of EGID's obligation to the extent of the amount paid.~~

~~(c) If a minor or person otherwise legally incapable of giving a valid receipt of discharge of any payment is selected as a beneficiary, a guardian must be appointed by a court of competent jurisdiction before benefits shall be paid.~~

AGENCY NOTE: 260:50-3-9 has moved to 260:50-5-13.

260:50-3-10. Timely filing of HealthChoice health and dental claims [REVOKED]

~~Proof of health and dental claims for services received (bill/receipt) must be furnished no later than three hundred sixty five [365] days after the date of service. If such proof is not furnished within the time allowed, at EGID's discretion the claim will still be considered if the employee shows that it was not reasonably possible to furnish the notice of proof within the specified time and that the notice of proof was furnished as soon as reasonably possible.~~

AGENCY NOTE: 260:50-3-10 has moved to 260:50-5-14.

260:50-3-11. HealthChoice Examination [REVOKED]

~~EGID reserves the right and opportunity to examine the person whose injury or sickness is the basis of a claim as often as may be reasonable during the pending of the claim.~~

AGENCY NOTE: 260:50-3-11 has moved to 260:50-5-15.

260:50-3-12. Action to recover [REVOKED]

~~No action at law or in equity shall be brought to recover on this Plan unless brought pursuant to the Administrative Procedures Act, nor shall such action be brought at all unless brought within three [3] years from the expiration of the time within which proof of loss is required by the policy.~~

AGENCY NOTE: 260:50-3-12 has moved to 260:50-5-16.

260:50-3-13. Rights of eligible former employees to continue in the Group Health, Dental, and Vision Insurance Plan

(a) Health, dental and vision coverage may be elected as determined by State Statute or retained at the time of termination of employment from an employer who participates in that health, dental or vision coverage, if such election to continue in force or begin is made within thirty [30] days from the date of termination of service, and if the following conditions are met:

(1) The former employee either retires or has a vesting right with a State funded retirement plan, or has the requisite years of service with an employer participating in the Plan.

(2) The election must be received by EGID no later than thirty [30] days after the date of termination of service.

(b) If an eligible former employee does not elect coverage at the time of termination of employment, or subsequently drops the coverage that was elected, the coverage may not be reinstated at a later date, except as permitted for former State

employees exercising insurance retention rights available through a reduction in force (RIF) severance agreement.

(c) A participating eligible former employee cannot add dependents to coverage after termination of employment, except as follows:

- (1) During an open enrollment period; or
- (2) Eligible dependent(s) not covered at the time of the former employee's termination from active employment, as long as the dependent election is made within thirty [30] days of the termination date.
- (3) If the dependent is newly acquired. New dependent[s] or additional dependent coverage must be added within thirty [30] days after acquiring the new dependent[s].
- (4) If the dependent has lost other health or group dental insurance coverage and notice has been given to EGID within thirty [30] days after the loss of the other coverage. Excepted Benefits do not qualify as other health coverage for purposes of this rule, and replacement is limited to the corresponding type of coverage lost.

(d) During an option period, covered former employees may make changes to their existing benefits but not add additional benefits with the exception of vision coverage. Vision coverage cannot be dropped mid-year except as allowed at 260:50-3-22(c).

(e) If an eligible former employee has a spouse who is participating in the Plan as an employee of a participating entity, the former employee may defer or transfer his or her health, dental and vision coverage to be dependent coverage under the spouse at any time, so long as the following conditions are met:

- (1) Coverage must remain continuous; and
- (2) All eligible dependents must be insured unless they have other verifiable coverage.
- (3) The eligible former employee, at a later date, may cancel deferment and defer or transfer his or her insurance coverage from dependent status back to former employee status if coverage with the Plan has remained continuous, and the former employer of the eligible former employee continues to participate in the Plan.

(f) An individual who has retained health, dental or vision coverage who is returning to current employment for a participating entity and meets the eligibility criteria for a current employee is entitled to transfer his present coverage to that employer as long as the employer is a participant in the benefit transferred. The employee may retain his present life coverage and may add life coverage so long as the total amount of life coverage does not exceed the guaranteed issue amount. Evidence of insurability must be submitted and approved for any amount exceeding guaranteed issue or the amount previously held in retirement, whichever is greater.

(g) An eligible former employee who has retained any coverage and is returning to work for a participating entity but does not meet the eligibility criteria for a current employee is not entitled to coverage through that employer.

(h) In the event an otherwise eligible former employee returns to current employment who did not retain ~~health~~ coverage upon termination of employment, the eligibility requirements

of a new employee must be met in order to obtain that coverage through the employer. Such individuals must work for three [3] years in order to qualify for retaining any benefits not previously elected upon ceasing current employment when they re-retire. This includes members who terminated from employers not participating in the Group Plans authorized by the Oklahoma State Employees Benefits Act [74 O. S. §1301] when they originally ended employment.

(i) Enrollment in a Medicare Plan:

(1) Medicare Supplement coverage enrollment required regardless of age. All covered individuals who are eligible for Medicare, except current employees and their dependents as addressed in 260:50-5-41, must be enrolled in a Medicare Plan, offered through EGID, regardless of age.

(2) Effective date of Medicare Supplement coverage. Medicare Supplement coverage shall become effective on the first [1st] day of the month following the date EGID receives actual notice of the member's eligibility for Medicare. There shall be no refund of premiums for prior months during which the member was eligible for Medicare, and written notice was not provided to EGID. An exception shall be made for individuals who are retroactively awarded Medicare coverage by the Social Security Administration, when written notice of the retroactive award is provided to EGID within thirty [30] days after the member's notification of the Social Security Administration award. A member's sixty-fifth [65th] birthday is considered automatic notification of Medicare eligibility.

(3) Non-Medicare eligible individuals. Nothing in the rules in this chapter prohibits individuals who are not eligible for Medicare from being enrolled in EGID's regular health plan; however, individuals eligible to purchase Medicare coverage are excluded and are presumed to be enrolled in both Parts A and B of Medicare.

260:50-3-18. Eligibility criteria for disabled dependent over the age of twenty-six [26]

Eligibility criteria for covering a disabled dependent beyond the age of twenty-six [26] pursuant to 74 O. S. §1303(14) are as follows, provided all other eligibility requirements are also satisfied:

(1) It is intended that the following dependents beyond the age of twenty-six [26] are eligible for coverage under this provision:

(A) An individual who has been medically determined to be incapable of self-support because of mental or physical incapacity that currently exists and has continuously existed since before reaching the age of twenty-six [26] years; and

(B) The individual resides in the primary member's home at least six [6] months of the year, and is the primary member's natural child, foster child, adopted child, or a child of the primary member's spouse when the spouse has been ordered by a Court to provide health insurance for the child; and

(C) If the requirements of subsection (A) and (B) are met, eligibility

- (i) ~~Eligibility~~ through court appointed guardianship will be accepted for disabled children, foster children and grandchildren, but only when guardianship existed prior to the dependent reaching age nineteen [19]. The assessment/application for coverage must be submitted within thirty [30] days of obtaining legal guardianship. Power of attorney, including durable power of attorney, does not qualify as guardianship, ~~and~~
- (ii) Coverage ceases at the end of the month in which the primary member's appointment as guardian is terminated.

(D) An approved disabled dependent who has been medically determined to be incapable of self-support because of mental or physical incapacity that currently exists and has continuously existed since before reaching the age of twenty-six [26] years can only be added to coverage within thirty [30] days of a qualifying event. While changes to coverage (benefits or plan options) may be made during the annual Option Period, enrollment of a disabled dependent will not be considered without a qualifying event.

- (2) Other criteria required for disabled dependent status are:

(A) For a primary member who is a new hire or a re-hire, assessment/application for disabled dependent status must be completed and submitted to EGID within thirty [30] days of primary member's initial enrollment. As stated above, the disabled dependent must have been medically determined to be incapable of self-support because of mental or physical incapacity that currently exists and has continuously existed since before reaching the age of twenty-six [26] years.

(B) Primary members must submit a copy of their federal and/or state income tax returns for the prior year reflecting their support of the dependent.

(C) Dependents are eligible only for the coverage in which the primary insured is enrolled. Only dependent life insurance can be carried by both parents if each is a primary member under the plan; and

(D) Primary members must apply for disabled dependent status for an eligible individual who has been medically determined to be incapable of self-support because of mental or physical incapacity that currently exists and has continuously existed since before reaching the age of twenty-six [26] years at least thirty [30] days prior to the dependent's twenty-six [26th] birthday.

- (3) Disabled dependent status must be continued for a minimum of one [1] year. If the dependent having the disabled status is dropped from coverage, the primary member may not reapply for disabled dependent status for the dependent for a period of twelve [12] months. The twelve [12] month requirement does not apply when the dependent has lost other group coverage.

260:50-3-26. Termination of benefits

(a) **Termination of coverage.** The coverage under this plan will terminate at the earliest time stated below:

- (1) On the last day of the calendar month in which employment terminates.
- (2) When the plan is discontinued.
- (3) When any required premiums cease to be paid.
- (4) The individual does not begin or continue coverage as an eligible participating former employee and/or dependent.
- (5) For a dependent when said dependent becomes ineligible for coverage.
- (6) A participating entity ceases to participate in this plan.

(b) **Representation of eligibility.** Individuals who enroll a family member in the plan are representing that the individual is eligible under the terms of the plan and must provide evidence of eligibility upon request. The plan relies upon the member's representation of eligibility in accepting the enrollment of the family member, and the intentional provision of false evidence or the failure to provide required evidence of eligibility is evidence of fraud and material misrepresentation. The intentional provision of false evidence or the failure to provide evidence of eligibility will result in disenrollment of the individual, which may be retroactive to the date as of which the individual became ineligible for plan coverage, as determined by the plan.

(c) **Rescission of coverage obtained through false information.** If material facts are submitted as a result of fraud, substantive error, inaccuracy, omission, misrepresentation, or any illegal or unauthorized activity, on any form or application for insurance coverage by or on behalf of a member or dependent, the coverage will be rescinded retroactively to the effective date. Written notice shall be sent by first class mail by EGID to the member's last known address of record no less than thirty [30] days prior to retroactive rescission of coverage. EGID reserves the right to recover the costs of any and all claims paid through such falsely obtained coverage from the ineligible member and/or dependent through all available means, at the discretion of EGID.

(d) **Dependent termination of coverage.** In addition to (a), (b), (c) and (e) of this section, the coverage terminates with respect to an individual dependent on the last day of the calendar month in which such person ceases to be an eligible dependent.

(e) **Unlimited contestability period.** There shall be no time limitation imposed upon EGID during which coverage based on materially false information submitted to EGID can be rescinded, if it is found that information as listed above in paragraph (c) was provided in order to obtain coverage, and that such information was material to EGID providing such coverage.

260:50-3-27. Procedures and implementation

Notice of right to continue coverage. EGID shall advise each covered employee of his right to continue coverage under Federal COBRA provisions. COBRA coverage applies only to health, dental, and vision benefits. Life and disability coverage are not available through COBRA.

260:50-3-28. COBRA administration

- (a) COBRA coverage is identical to coverage provided at date of the qualifying event. The coverage elected shall be identical to the coverage provided at the date of the qualifying event. Should a beneficiary move out of the service area of their current plan, the beneficiary will be allowed to change to a plan whose service area covers the beneficiary's new location.
- (b) Payment of back premiums. All back premiums from the termination of coverage to the election and approval of continuation must be paid before coverage is effective. Coverage will then be retroactive to provide continuous coverage. All time limits are mandatory and cannot be waived under any circumstances.
- (c) Responsibility of qualified beneficiary to inform EGID of ineligibility. It is the responsibility of the qualified beneficiary to provide timely notice if he is not eligible for any reason. Failure to do so will result in cancellation of COBRA insurance coverage, retroactive to the time of ineligibility.
- (d) Primary member premium. For any benefit continued under COBRA, one person must pay the primary member premium. In cases where a spouse, child, or children are insured for a particular benefit where the primary member did not retain coverage, one person will be billed at the primary member rate.
- (e) Federal regulations. Federal regulations regarding COBRA extension of coverage shall be controlling in all situations where applicable.

SUBCHAPTER 5. COVERAGE AND LIMITATIONS

PART 3. HEALTHCHOICE PLANS

260:50-5-2. Schedule of benefits and benefit administration procedures or guidelines as adopted by EGID

All benefits for HealthChoice plans offered through EGID as described in the rules in this title shall be paid according to the handbooks, schedule of benefits and benefit administration procedures or guidelines as adopted by EGID. The schedule of benefits and benefit administration procedures or guidelines as adopted by EGID shall be available for inspection by the public during regular office hours at 3545 N. W. 58, Suite 600, Oklahoma City, Oklahoma 73112.

AGENCY NOTE: This Section is not being amended, but is being moved from Part 1 to Part 3 of this Subchapter 5.

260:50-5-3. HealthChoice approval for emergency treatment by non-Network providers

Members may have benefits available for medical emergencies when non-Network services occur. Notification to EGID is required.

AGENCY NOTE: This Section is not being amended, but is being moved from Part 1 to Part 3 of this Subchapter 5.

260:50-5-12. HealthChoice plan limitations and exclusions

For the health plans provided by EGID, there is no coverage for expenses incurred for or in connection with conditions, services, procedures, treatments, expenses, items, and supplies excluded by EGID's benefit guidelines. There is no coverage or reimbursement for services or supplies provided by ineligible providers. [260:50-1-2]

260:50-5-13. Payment of HealthChoice health, dental and life benefits

- (a) Life insurance benefits are payable to the beneficiary designated by the employee. Premiums and overpaid disability benefits due and payable to EGID at the time of the insured's death may be withheld from life insurance benefits before payment of the remainder to the beneficiary or estate. Life proceeds are not assignable, except a beneficiary may assign proceeds in an amount equal to the decedent's burial expenses. If no beneficiary form is on file with EGID, benefits will be paid to the decedent's estate.
- (b) Health and dental benefits are payable to the employee or the provider. If any health or dental benefits remain unpaid at the employee's death, EGID, may at its option, pay the benefits to the employee's estate or to any one or more relatives such as follows: spouse, father, mother, children, brothers or sisters. Any such payment will constitute complete discharge of EGID's obligation to the extent of the amount paid.
- (c) If a minor or person otherwise legally incapable of giving a valid receipt of discharge of any payment is selected as a beneficiary, a guardian must be appointed by a court of competent jurisdiction before benefits shall be paid.

260:50-5-14. Timely filing of HealthChoice health and dental claims

Proof of health and dental claims for services received (bill/receipt) must be furnished no later than three hundred sixty-five [365] days after the date of service. If such proof is not furnished within the time allowed, at EGID's discretion the claim will still be considered if the employee shows that it was not reasonably possible to furnish the notice of proof within the specified time and that the notice of proof was furnished as soon as reasonably possible.

260:50-5-15. HealthChoice examination

EGID reserves the right and opportunity to examine the person whose injury or sickness is the basis of a claim as often as may be reasonable during the pending of the claim.

260:50-5-16. Action to recover

No action at law or in equity shall be brought to recover on this Plan unless brought pursuant to the Administrative Procedures Act, nor shall such action be brought at all unless brought within three [3] years from the expiration of the time within which proof of loss is required by the policy.

PART 5. HEALTHCHOICE LIFE BENEFITS

260:50-5-20. Term life coverage

(a) **Group Term Life Benefits.** A former employee who is reemployed by the same participating employer within twenty-four [24] months after the date of termination of previous employment shall not be enrolled for a greater amount of life insurance than the individual had at the time of termination of previous employment with the employer, unless the individual provides satisfactory evidence of insurability. Additionally, the amount of life insurance cannot exceed the amount of the guaranteed issue based on the employee's current salary, unless the individual provides satisfactory evidence of insurability. The amount of coverage provided by the employer is specified in the benefit administration procedures or guidelines as adopted by EGID. However, to elect this benefit, the member must be either a) enrolled in one of the group health plans offered through EGID or b) be enrolled in other groupqualified health coverage. In the event of death, the proceeds of this coverage are payable to the beneficiary listed on the most recently signed beneficiary designation subject to the limitations in Title 15. [15 O.S. § 178] If no beneficiary form is on file at EGID, benefits will be paid to the decedent's estate.

(b) **Unlimited contestability period.** There shall be no time limitation imposed upon EGID, during which coverage based on evidence of insurability submitted to EGID can be contested, if it is found that materially erroneous, false, inaccurate, or misleading information was provided in order to obtain optional or supplemental coverage in excess of any guaranteed amounts of coverage. In the event EGID determines coverage was granted based upon erroneous, false, inaccurate or misleading information, and that such information was material to EGID providing any optional or supplemental coverage, EGID shall extinguish its liability by tendering a refund of premiums paid to the insured or the beneficiary.

260:50-5-22. Optional supplemental life coverage for eligible employees

(a) **Supplemental life coverage.** Supplemental life coverage is available for eligible employees who are covered by the basic term life coverage.

(b) **Enrollment.** At the time of initial enrollment, supplemental life may be requested up to the pre-established level set forth in the benefit administration procedures or guidelines as adopted by EGID, without submitting evidence of insurability. All supplemental life insurance requested which exceeds the pre-established level will require evidence of insurability. Coverage selected in the supplemental life insurance program begins on the first [1st] day of the month following the date of employment. Optional coverages not selected within the member's initial enrollment period may be added only during the next enrollment period. Members who waive or do not select supplemental life insurance coverage shall be required to obtain approval of current evidence of insurability to obtain coverage at a later date. Coverage obtained under this provision will be subject to certain additional restrictions as adopted

by EGID. Individuals who waived this coverage because they were covered by other group life insurance coverage will be allowed to enroll without being subject to these additional restrictions if they request the coverage in writing and supply proof of the loss of other group coverage within thirty [30] days following the loss of the other group life coverage.

(c) **Changes in levels of coverage.** Increases or reductions in coverage limits (except termination of coverage) are only accepted during the option period. Beneficiary changes may be made at any time, but must be communicated to EGID in writing. All changes in coverage levels will be subject to the benefit administration procedures or guidelines as adopted by EGID.

(d) **Waiver of life insurance premiums.** In the event the employee becomes disabled, life insurance premiums may be waived for employee and dependent life insurance coverage. Provider certification shall be required, as specified by EGID, and premium waiver shall start on the first [1st] day of the month after the employee has been disabled for thirty [30] consecutive days, and shall continue for as long as the employee remains disabled. The waiver shall terminate on the earliest of the following events: the employee has been found to be able to return to current duty in any capacity by any provider; the employee returns to any active duty for any period of time; the employee changes in status to former or retired; the employee notifies EGID in writing that life insurance coverage is to be terminated; the employee is terminated for any reason, including, but not limited to resignation or discharge from his or her position; any termination of life insurance coverage occurs as set forth in ~~260:50-7-1260:50-3-26~~.

(e) **Accidental Death and Dismemberment and loss of sight benefit.** The basic term life and the first twenty thousand dollars [\$20,000] of the supplemental life coverage includes the accidental death and dismemberment and loss of sight benefit and will pay a scheduled benefit in the event of accidental death and dismemberment or loss of sight injury within ninety [90] days after the date of accident or accidental injury. Death must be a direct result of the accidental bodily injury independent of all other causes.

PART 9. HEALTHCHOICE DENTAL BENEFITS, LIMITATIONS, AND EXCLUSIONS

260:50-5-30. Scope of coverage

The dental expense benefit applies to eligible covered employees and dependents. This benefit provides payment for dental expenses incurred in excess of any applicable deductible. However, to elect this benefit, the member must either be a) enrolled in one of the group health plans offered through EGID or b) be enrolled in other groupqualified health coverage. It is not necessary for dependents to be covered by health benefits to receive the benefits of this Plan.

PART 11. HEALTHCHOICE MEDICARE SUPPLEMENT

260:50-5-43. Enrollment in Medicare Supplement [REVOKED]

(a) ~~Medicare Supplement coverage enrollment required regardless of age.~~ All covered individuals who are eligible for Medicare, except current employees and their dependents as addressed in 260:50-5-41, must be enrolled in a Medicare Supplement Plan, offered through EGID, regardless of age.

(b) ~~Effective date of Medicare Supplement coverage.~~ Medicare Supplement coverage shall become effective on the first [1st] day of the month following the date EGID receives actual notice of the member's eligibility for Medicare. There shall be no refund of premiums for prior months during which the member was eligible for Medicare, and written notice was not provided to EGID. An exception shall be made for individuals who are retroactively awarded Medicare coverage by the Social Security Administration, when written notice of the retroactive award is provided to EGID within thirty [30] days after the member's notification of the Social Security Administration award. A member's sixty fifth [65th] birthday is considered automatic notification of Medicare eligibility.

(c) ~~Non-Medicare eligible individuals.~~ Nothing in the rules in this chapter prohibits individuals who are not eligible for Medicare from being enrolled in EGID's regular health plan; however, individuals eligible to purchase Medicare coverage are excluded and are presumed to be enrolled in both Parts A and B of Medicare

AGENCY NOTE: 260:50-5-43 has moved to 260:50-3-13(i)(1)(2)(3).

SUBCHAPTER 7. TERMINATION OF BENEFITS [REVOKED]

260:50-7-1. Termination of benefits [REVOKED]

(a) ~~Termination of coverage.~~ The coverage under this plan will terminate at the earliest time stated below:

- (1) On the last day of the calendar month in which employment terminates.
- (2) When the plan is discontinued.
- (3) When any required premiums cease to be paid.
- (4) The individual does not begin or continue coverage as an eligible participating former employee and/or dependent.
- (5) For a dependent when said dependent becomes ineligible for coverage.
- (6) A participating entity ceases to participate in this plan.

(b) ~~Representation of eligibility.~~ Individuals who enroll a family member in the plan are representing that the individual is eligible under the terms of the plan and must provide evidence of eligibility upon request. The plan relies upon the member's representation of eligibility in accepting the enrollment of the family member, and the intentional provision of false evidence or the failure to provide required evidence of eligibility is evidence of fraud and material misrepresentation. The intentional provision of false evidence or the failure to provide evidence of eligibility will result in disenrollment of the individual, which may be retroactive to the date as of which the

individual became ineligible for plan coverage, as determined by the plan.

(c) ~~Rescission of coverage obtained through false information.~~ If material facts are submitted as a result of fraud, substantive error, inaccuracy, omission, misrepresentation, or any illegal or unauthorized activity, on any form or application for insurance coverage by or on behalf of a member or dependent, the coverage will be rescinded retroactively to the effective date. Written notice shall be sent by first class mail by EGID to the member's last known address of record no less than thirty [30] days prior to retroactive rescission of coverage. EGID reserves the right to recover the costs of any and all claims paid through such falsely obtained coverage from the ineligible member and/or dependent through all available means, at the discretion of EGID.

(d) ~~Dependent termination of coverage.~~ In addition to (a), (b), (c) and (e) of this section, the coverage terminates with respect to an individual dependent on the last day of the calendar month in which such person ceases to be an eligible dependent.

(e) ~~Unlimited contestability period.~~ There shall be no time limitation imposed upon EGID during which coverage based on materially false information submitted to EGID can be rescinded, if it is found that information as listed above in paragraph (c) was provided in order to obtain coverage, and that such information was material to EGID providing such coverage.

AGENCY NOTE: 260:50-7-1 has moved to 260:50-3-26.

SUBCHAPTER 9. COBRA HEALTH INSURANCE CONTINUATION [REVOKED]

260:50-9-1. Procedures and implementation [REVOKED]

~~Notice of right to continue coverage.~~ EGID shall advise each covered employee of his right to continue coverage under Federal COBRA provisions. COBRA coverage applies only to health, dental, and vision benefits. Life and disability coverage are not available through COBRA.

AGENCY NOTE: 260:50-9-1 has moved to 260:50-3-27.

260:50-9-2. COBRA administration [REVOKED]

(a) ~~COBRA coverage is identical to coverage provided at date of the qualifying event.~~ The coverage elected shall be identical to the coverage provided at the date of the qualifying event, unless a beneficiary moves outside an HMO's service area. In that event, coverage is continued under HealthChoice, EGID's self insured plan.

(b) ~~Payment of back premiums.~~ All back premiums from the termination of coverage to the election and approval of continuation must be paid before coverage is effective. Coverage will then be retroactive to provide continuous coverage. All time limits are mandatory and cannot be waived under any circumstances.

(c) ~~Responsibility of qualified beneficiary to inform EGID of ineligibility.~~ It is the responsibility of the qualified

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beneficiary to provide timely notice if he is not eligible for any reason. Failure to do so will result in cancellation of COBRA insurance coverage, retroactive to the time of ineligibility.

(d) **Primary member premium.** For any benefit continued under COBRA, one person must pay the primary member premium. In cases where a spouse, child, or children are insured for a particular benefit where the primary member did not retain coverage, one person will be billed at the primary member rate.

(e) **Federal regulations.** Federal regulations regarding COBRA extension of coverage shall be controlling in all situations where applicable.

AGENCY NOTE: 260:50-9-2. has moved to 260:50-3-28.

[OAR Docket #20-505; filed 6-30-20]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 55. EMPLOYEES GROUP INSURANCE DIVISION - HEALTHCHOICE DISABILITY PLAN

[OAR Docket #20-506]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- 260:55-1-1. Purpose [AMENDED]
- 260:55-1-2. Definitions [REVOKED]
- 260:55-1-3. Gender reference [REVOKED]
- 260:55-1-4. Absence on eligibility date [REVOKED]
- 260:55-1-5. Commencement of disability [REVOKED]
- 260:55-1-6. Multiple disability claims [REVOKED]
- 260:55-1-7. Recurrent disability [REVOKED]
- 260:55-1-8. Partial disability [REVOKED]
- 260:55-1-9. Preexisting conditions [REVOKED]
- 260:55-1-10. Proof of claim [REVOKED]
- 260:55-1-11. Duration and amounts of benefits [REVOKED]
- 260:55-1-12. Benefit offsets [REVOKED]
- 260:55-1-13. Payment of benefits [REVOKED]
- 260:55-1-14. Direct deposit and insurance premium deductions [REVOKED]
- 260:55-1-15. Lump sum settlement [REVOKED]
- 260:55-1-16. Examination [REVOKED]
- 260:55-1-17. Rehabilitation [REVOKED]
- 260:55-1-18. Suspension or termination of benefits [REVOKED]
- 260:55-1-19. Termination of benefits [REVOKED]
- 260:55-1-20. Termination of coverage [REVOKED]
- 260:55-1-21. Termination of plan [REVOKED]
- 260:55-1-22. Retention of other insurance [REVOKED]
- 260:55-1-23. Recovery of FICA contributions [REVOKED]
- 260:55-1-24. Insurance/Benefits Coordinator [REVOKED]
- 260:55-1-25. Exclusions [REVOKED]
- 260:55-1-26. Penal institution [REVOKED]
- 260:55-1-27. Rules, cumulative [REVOKED]
- 260:55-1-28. Amending of rules [REVOKED]

AUTHORITY:

74 O.S. Section 1304.1; Office of Management and Enterprise Services Employees Group Insurance Department; The Director of the Office of Management and Enterprise Services; 62 O.S. §34.3.1; 62 O.S. §34.6(8).

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n/a

GIST/ANALYSIS:

Clarify language, eliminate obsolete language, correct omissions and streamline to promote and enhance operations, through removal of inaccurate or redundant verbiage, and to simplify language.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

260:55-1-1. Purpose

~~The rules of this chapter outline the coverage and limitations available under the HealthChoice Disability plan. All terms of the HealthChoice Disability plan shall be set forth in handbooks and administrative procedures. These shall describe program and coverage eligibility, what constitutes disability, maximum length of coverage, maximum and minimum benefits for short-term disability and long-term disability, the calculation of disability income benefits, and the suspension or termination of benefits.~~

260:55-1-2. Definitions [REVOKED]

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

~~"Base compensation" means the rate of earnings in effect on the date disability begins. Base compensation does not include overtime, commissions, bonuses, longevity pay, salary increases, productivity enhancement program payments and all other extra compensation.~~

~~"Benefit period" means the first [1*] day of the benefit period will be the day benefits commence as defined at 260:55-1-4(a) and (b). The end of the benefit period will be the last day of eligibility as defined at 260:55-1-11(d). A recurrent disability as defined at 260:55-1-7 will not alter the beginning date of the benefit period.~~

~~"Disability" means a person is considered to be disabled when he is unable, as a result of injury or illness, to perform the material duties of his own occupation. Disability will be considered to have commenced on the date the employee first receives treatment or advice from a physician after his last date worked and said disability is expected to last thirty one [31] consecutive~~

calendar days or longer. After the first twenty four [24] months of disability, disability will be defined as inability to perform each of the material duties of any gainful occupation for which a person is or may become reasonably qualified by training, education or experience. None of the classes of disability used in other plans or programs such as temporary, permanent, total, or partial, etc., are to be used to limit or define this plan's disability criteria, whether or not the terms are used in medical or legal documents supplied as proof of disability under this plan. Uses of such terms are intended to be disregarded by this plan. Determinations rendered by or for workers compensation or social security are not considered prima facie evidence of disability for this plan. **"EGID"** means the Employees Group Insurance Division of the Office of Management and Enterprise Services.

"Eligibility period" means the first thirty one [31] consecutive calendar days of employment. No benefit is payable for this period. For employees with less than one [1] year of service, proof of continuous presence at the regularly assigned work place and verification by the appointing authority that the employee was performing all of the material duties of the employee's regular occupation continuously during the eligibility period shall be required as conditions of satisfaction of the eligibility period. Employees reinstated to eligibility to participate in the disability plan after having waived disability coverage pursuant to 74 O.S. §1308.3 will be considered to have no prior service and no continuous employment prior to their reinstated eligibility.

"Elimination period" means the first thirty [30] consecutive calendar days of disability. No benefit is payable for this period.

"Employee" means, for purposes of this chapter only, the term employee includes but is not limited to persons who are currently drawing disability benefits under this Disability Plan or who meet each and every requirement of this Disability Plan.

"Furlough" means a nonscheduled working day, in addition to regular nonscheduled working days requested by the employer.

"Illness" means sickness or disease, including pregnancy and complications of pregnancy. Disability resulting from the illness must begin while the employee is participating in the Plan.

"Injury" means bodily injury resulting directly from an accident, independent of all other causes. The resulting disability must occur while the employee is participating in the Plan.

"Participation" means participation in the Disability Plan shall be limited to employees who have been employees for a period of not less than one [1] month prior to the onset of the disability. The employee must have been continuously employed by the employer for a period of not less than one [1] month, and must have satisfied the requirements of the eligibility period as defined herein. For the purposes of this chapter, one [1] month shall mean thirty one [31] consecutive days.

"Physician" means a person licensed to practice medicine and surgery, osteopathy, chiropractic, podiatry, optometry, or dentistry and legally qualified as a medical practitioner under the insurance statutes of the State of Oklahoma, and operating

within the scope of his license. An employee or an employee's spouse, child, father, mother, sister, or brother will not be included in this definition.

"Preexisting condition" means, for the purposes of this chapter only, an illness or injury for which the employee received medical care, diagnosis, consultation, treatment or took prescribed drugs or medicines during the ninety [90] day period immediately preceding his/her entry on duty (EOD) date. The term "preexisting condition" shall also include any condition which is related to such injury or illness.

"Years of service" means time spent as an active employee performing full time duties for remuneration with an entity participating in the Disability Plan. Time on partial disability or leave (with or without pay) after an established disability date will not be counted toward years of service for disability benefit purposes. Time on leave without pay status after an established disability date will also not be counted toward years of service for disability benefit purposes. Under no circumstances will time for which an insured receives disability benefits under this Plan be counted toward years of service.

260:55-1-3. Gender reference [REVOKED]

All references to "he" or "his" are not intended to be gender related, but shall apply equally to both sexes.

260:55-1-4. Absence on eligibility date [REVOKED]

(a) **Eligibility date for disability.** If an employee is absent from work because of a furlough, holiday, vacation or non-scheduled working day and he was on the job or on paid leave other than for injury, illness, or unpaid leave, on a scheduled working day immediately preceding the eligibility date, the eligibility date for disability benefits will not be altered.

(b) **Release from physician for determination of eligibility.** If an employee is absent from work because of injury or illness on the date he would normally become eligible for disability coverage, he shall not become eligible until he obtains an unconditional release from his physician, and returns to the job for five [5] full time consecutive work days, performing all of his normal duties.

(c) **Unpaid leave.** If an employee is absent from work because of other unpaid leave, he is not eligible for coverage until he returns to the job for five [5] consecutive work days.

260:55-1-5. Commencement of disability [REVOKED]

(a) **Short term disability.** Short term disability will be considered to have commenced on the date the employee first receives treatments or advice from a physician followed by a continuous absence from work due to disability, in accordance with the criteria under the definitions of 260:55-1-2. Short term disability ends after the first one hundred eighty [180] days of disability.

(b) **Long term disability.** Long term disability commences after one hundred eighty [180] days of disability and coincides with the end of the short term period.

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260:55-1-6. Multiple disability claims [REVOKED]

In the event of a second eligible disability claim within the period of the first claim:

- (1) the second claim must meet the definition of disability, and
- (2) even though the second claim has no physical relationship to the first claim, the two will be combined so as to form one continuous disability period.

260:55-1-7. Recurrent disability [REVOKED]

(a) **Recurrent disability.** A recurrent disability is a disability related to or due to the same cause of a prior disability for which the employee received a monthly benefit:

- (1) A recurrent disability is treated as part of the prior disability if:
 - (A) the employee returns to his regular occupation full time for less than six [6] months, and
 - (B) performs all the material duties of his occupation.
- (2) If the employee returns to his regular occupation full time for six [6] months or more, a recurrent disability will be treated as a separate disability.

(b) **Lump sum settlement.** The recurrent disability provisions do not apply in the event of a lump sum settlement payment.

260:55-1-8. Partial disability [REVOKED]

(a) **Partial disability.** If a person is performing at least one, but not all, of the material duties of any occupation, and is earning less than eighty percent [80%] of pre-disability base compensation, that person is considered to be partially disabled. The partial disability must result from the same cause as the disability. Proof of partial disability must be received within thirty one [31] days after the end of a period during which disability benefits were paid in order to be eligible for monthly partial disability benefits.

(b) **Payment of benefits for partial disability.** Partial disability benefits are payable, after total disability, for up to twenty four [24] months, or until recovery, or until maximum benefit limits as set out at 260:55-1-11 are met as defined, or until employee's gross rate of compensation reaches eighty percent [80%] of pre-disability base gross rate of compensation, whichever occurs first. Partial disability benefits are also subject to offsets described at 260:55-1-12.

260:55-1-9. Preexisting conditions [REVOKED]

(a) **Unavailability of benefits due to preexisting conditions.** No benefits are payable for any disability caused by a preexisting condition.

(b) **Non-applicability of preexisting conditions.** A condition will no longer be considered preexisting after the disabled person has been actively at work at his usual job for five [5] consecutive days following the expiration of:

- (1) A one hundred eighty [180] day period following the EOD date during which the employee has not received medical care, diagnosis, consultation or treatment, or

taken prescribed drugs or medicines for the preexisting condition, or

- (2) A three hundred sixty [360] day period following the EOD date.

260:55-1-10. Proof of claim [REVOKED]

(a) **Notice.**

(1) Written notice of claim for disability benefits must be given to the disability claims administrator within sixty [60] days after the date disability starts. For good cause shown, EGID's Administrator may waive the sixty [60] day requirement. If that is not possible, EGID must be notified as soon as it is reasonably possible to do so.

(2) No claim may be reopened when request is made more than one [1] year after benefits have ended for any reason.

(b) **Proof.**

(1) Proof of the claim, as specified by EGID, must be given to the third party administrator no later than one [1] year after the start of disability. Proof must cover the severity and extent of the disability and the reasons the employee is unable to perform the duties of his/her position.

(2) The employee must provide proof of continued disability and regular attendance of a physician within thirty [30] days following the request for proof. Regular care of a physician means appointments with the physician at least once per month. Less frequent appointments may be approved by EGID.

260:55-1-11. Duration and amounts of benefits [REVOKED]

(a) **Determination of monthly disability benefits.** To determine monthly disability benefits:

(1) Multiply the employee's base compensation by sixty percent [60%], subject to short term and long term benefit maximums as established by the Board.

(2) Deduct any benefit offsets.

(3) Monthly benefit will be (1) minus (2), subject to any minimum long term disability benefit as established by EGID.

(b) **Prorating of benefit for part of a month.** Any benefit that is payable for part of a month will be prorated using the number of days in that month as the denominator and the number of days of disability during that partial month as the numerator.

(c) **Cooperation required.** Continued benefits shall be contingent upon cooperation and participation in the rehabilitation program herein.

(1) In order to remain eligible for long term benefits, the insured must make application for Social Security benefits by the seventh [7th] month of disability and continue pursuing Social Security benefits until the appeals process is exhausted. Refusal to appeal denial of Social Security benefits through the entire appeals process is grounds for termination of benefits. Exceptions may be granted by EGID in certain cases where application for

Social Security benefits is not practical due to the type of disability.

(2) If, after twenty four [24] months of disability, the Social Security Administration has not deemed the insured eligible for Social Security disability benefits, the insured will no longer be eligible for benefits from this plan.

(3) Exceptions to (c), (1), and (2), above may be granted by EGID on a case-by-case basis.

(d) **Mental health and substance abuse.** Disability claims due to mental health disorders or substance abuse are limited to twenty four [24] months per disability.

(1) Provided, however, if the employee is confined in a hospital, as defined in 260:50-10-2, of these rules, at the end of the twenty four [24] month period, benefits will be paid for the length of that confinement. If the employee continues to be totally disabled upon discharge from the hospital, the monthly benefit will be payable for a period not to exceed ninety [90] days. If the insured employee is reconfined during this recovery period for at least fourteen [14] consecutive days, the monthly benefit will resume during that confinement and one additional recovery period not to exceed ninety [90] days.

(2) Provided, also, that each employee shall have a lifetime maximum of no greater than sixty [60] months of disability benefits for all mental or substance abuse disorders; however, other maximums apply, and in no event shall benefits exceed the maximums listed in 260:55-1-11 of this section.

(e) **Payment of benefits monthly.** Benefits are paid monthly subject to the maximums listed below. These maximums apply to all disabilities, but are subject to (b) and (d) of this section. These maximums are computed from the first [1st] day of disability.

(1) Less than one year of service: 6 month maximum coverage

(2) From one to five years of service:

(A) Under age 66 at disability—24 month maximum coverage

(B) at age 66 at disability—21 month maximum coverage

(C) at age 67 at disability—18 month maximum coverage

(D) at age 68 at disability—15 month maximum coverage

(E) at age 69 or over at disability—12 month maximum coverage

(3) More than five years of service:

(A) Under age 60 at disability—coverage to age 65

(B) at age 60 at disability—60 month maximum coverage

(C) at age 61 at disability—48 month maximum coverage

(D) at age 62 at disability—42 month maximum coverage

(E) at age 63 at disability—36 month maximum coverage

(F) at age 64 at disability—30 month maximum coverage

(G) at age 65 at disability—24 month maximum coverage

(H) at age 66 at disability—21 month maximum coverage

(I) at age 67 at disability—18 month maximum coverage

(J) at age 68 at disability—15 month maximum coverage

(K) at age 69 or over at disability—12 month maximum coverage

260:55-1-12. Benefit offsets [REVOKED]

(a) **Offset by benefits received from other sources.** The disability benefit due from this plan shall be offset by benefits received from other sources. These sources are:

(1) Any sick leave benefits for which the employee is eligible.

(2) Social Security benefits as follows:

(A) Any amount of primary disability benefits provided under the United States Social Security Act for which the employee is eligible because of this disability; and

(B) Any amount of primary and/or family retirement benefits provided under the United States Social Security Act which the employee receives.

(C) The following benefits under the Social Security Act are not to be considered offsets under this program:

(i) Social Security benefits effective prior to the established date of disability, unless awarded as a result of the same disability;

(ii) Social Security widow's/widower's benefits not connected to the claimant's disability; and

(iii) benefits awarded under the Supplemental Security Income Program.

(3) Any benefits received under the provisions of State of Oklahoma or county retirement systems, except those benefits which began prior to onset of disability.

(4) Benefits related to the disability provided by another group plan, including Veteran's Administration (VA) benefits. Such benefit becomes due as a result of the disability and not by a voluntary election to receive the benefit. This does not include:

(A) plans funded entirely by employee contribution;

(B) plans where payment of these benefits reduce the benefit the claimant would be due at a normal retirement age; or

(C) payments for conditions established one [1] year or more, prior to the established date of this disability claim. This does not include a profit sharing plan, a 401K, a thrift plan, an Individual Retirement Account, stock ownership plan, tax sheltered annuity or any benefits from a non-qualified deferred compensation plan.

(5) Benefits related to this disability that are provided under any state's Worker's or Workman's Compensation

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Law, any occupational disease law, or any other similar act or law.

(6) Any salary, wages, holiday pay, commissions or similar earnings the employee receives from any gainful employment, including salary increases as well as shared or annual leave payments. Neither longevity pay nor one-time bonuses are considered offsets.

(7) Subrogation (loss of earnings for employee only).

(8) Fifty percent [50%] of any earnings while partially disabled or during rehabilitative employment prior to final release.

(9) Any overpayment of previous disability payments.

(10) Any unemployment compensation benefits.

(b) **Non-reduction of benefits due to increases in other benefits.** Once a disability benefit begins, monthly benefits will not be further reduced due to any statutory or cost of living increases payable from pension or pension disability programs, Social Security or Workers' Compensation.

(c) **Lump sum payments.** If any benefits from the sources mentioned in (a) of this section are paid in a lump sum, EGID will prorate the benefits on a monthly basis, either over the period for which the benefit is established or over the actuarially expected life time of the employee, if no time period is established.

(d) **Payment of any overpayment or underpayment.** Benefits will be estimated if they have not yet been awarded, have not been denied or have been denied and the denial is being appealed. Any overpayment or underpayment that results from estimating these benefits will be repaid by the responsible party after the actual benefit is determined.

260:55-1-13. Payment of benefits [REVOKED]

(a) **Payment of benefits to employee only.** All benefits due to the employee from the disability plan are payable only to the employee. If the benefit is payable to an employee who is a minor or who is not competent, EGID may only pay the court appointed guardian or conservator. In the event of the employee's death, payment of any benefits still outstanding shall be made to the designated beneficiary or to the employee's estate.

(b) **Payment of benefits to another party other than the employee.** If EGID pays benefits to a party other than the employee as specified in (a) of this section or as required by law, EGID shall be deemed to have discharged its full responsibility with respect to those benefits.

(c) **Rehabilitation services.** Documented expenses payable for rehabilitation services may be paid directly to the providers of such services or reimbursed to third party administrator; these payments shall not reduce the monthly disability benefits mentioned at 260:55-1-12.

(d) **Benefits are not assignable.** These benefits are not assignable.

260:55-1-14. Direct deposit and insurance premium deductions [REVOKED]

(a) All disabled employees receiving disability benefit payments from EGID shall be required to receive monthly disability payments via electronic fund transfers to checking or

savings account in a bank, credit union or savings and loan designated by the employee. The employee and receiving institution must complete the form prescribed for this purpose by EGID. In the event the electronic fund transfer creates an undue hardship on the employee, the employee may make application to EGID to request a waiver of this requirement. The waiver will be granted only upon good cause shown when it is determined to be in the best interest of the employee. EGID may also waive this requirement when it is necessary in the best interest of EGID to do so.

(b) In addition to all other required deductions, premiums for insurance coverage provided to disabled employees and their dependents as authorized at Title 74 Oklahoma Statutes Section 1332(A) and 1332.1(D) shall be deducted from disability benefit payments made pursuant to this Chapter.

260:55-1-15. Lump sum settlement [REVOKED]

EGID may authorize a lump sum settlement of a disability claim if mutually agreed upon by the employee and EGID's Administrator. Such agreement shall preclude the employee from receiving any future benefits for the disability for which the lump sum settlement is made.

260:55-1-16. Examination [REVOKED]

EGID, at its own expense, with travel reimbursement as set out by statute, will have the right and opportunity to have an employee whose injury or sickness is the basis of a disability claim examined by a physician or vocational expert of its choice. This right may be used as often as reasonably required.

260:55-1-17. Rehabilitation [REVOKED]

(a) **Participation by any person in rehabilitation services.** Any person submitting a claim under the Disability Plan shall be required to cooperate fully with all aspects of the rehabilitation services provided herein as a condition of receiving disability benefits.

(b) **Disabled employee receiving long term benefits.** A disabled employee who is receiving long term disability benefits may be able to return to work on a limited basis. To encourage a return to productive employment, EGID will pay the employee his/her regular monthly long term disability benefit, reduced by only fifty percent [50%] of the income from rehabilitation employment, subject to partial disability provisions as set out at 260:55-1-12(8). If the employee becomes totally disabled again, while receiving partial disability benefits, his/her regular long term disability benefit will resume without a new eligibility period, except as limited by 260:55-1-7 and 260:55-1-8.

260:55-1-18. Suspension or termination of benefits [REVOKED]

After notice and opportunity for a hearing according to the Oklahoma Administrative Procedures Act and these rules, disability benefits may be suspended or terminated for failure to:

- (1) Fully cooperate with or implement the rehabilitation plan;
- (2) Submit to examination by a physician selected by EGID;
- (3) Supply recertification by a physician;
- (4) Cooperate in the repayment of overpayments; or
- (5) Otherwise comply with the requirements of this plan.

260:55-1-19. Termination of benefits [REVOKED]

(a) **Termination of benefits.** Disability benefits will cease on the occurrence of the earliest of the following events:

- (1) The date the disability ends;
- (2) The date the employee dies;
- (3) The end of the maximum benefit period;
- (4) As provided at 260:55-1-17 and 260:55-1-18.

(b) **Participation in the Disability Plan ends when employee's current employment ceases.** An employee's participation will end when current employment ceases. Coverage may be continued in case of layoff or leave of absence as described in the section on eligibility date. EGID will operate the plan according to the provisions outlined so as not to discriminate unfairly among employees.

260:55-1-20. Termination of coverage [REVOKED]

Employees cease to be insured under the Disability Plan on the earliest of the following dates:

- (1) The date the Disability Plan terminates;
- (2) The date employment terminates. Cessation of active employment will be deemed termination of employment, except:
 - (A) The insurance will be continued for a disabled employee during the period during which the employee remains disabled.
 - (B) EGID may continue the employee's insurance, subject to the following:
 - (i) Insurance may be continued for the time shown in the policy specifications for an employee on furlough or temporarily laid off; or
 - (ii) EGID shall act so as not to discriminate unfairly among employees in similar situations.
- (3) Waiver of disability coverage pursuant to 74 O.S. §1308.3.

260:55-1-21. Termination of plan [REVOKED]

Termination of the disability plan under any conditions will not prejudice any payable claim which occurs while this plan is in force.

260:55-1-22. Retention of other insurance [REVOKED]

(a) **Authorization for deduction of premiums.** If eligible, the employee may elect to continue participation in the Oklahoma Employees Insurance Plan by authorizing deduction

of premiums due. In the event the premium is more than the benefits being received by the employee, or in the event the benefits are suspended, EGID may accept remittance from the employee for the premium due. All premiums shall be at the rate and under such conditions as established by EGID.

(b) **Disabled employee not receiving disability benefits.** Dependent Health coverage will be continued for disabled employees during any period of time the employee is qualified as disabled but not receiving disability benefits. [74 O.S. §1332.1(D)]

(e) **Deduction of premiums.** All dependent health premiums due and owing shall be deducted by EGID from the first retroactive disability benefit payment and each payment thereafter. [74 O.S. §1332.1(E)]

260:55-1-23. Recovery of FICA contributions [REVOKED]

EGID is hereby authorized to recover FICA contributions from the employer, when appropriate.

260:55-1-24. Insurance/Benefits Coordinator [REVOKED]

Any entity participating in the Disability Plan shall appoint an Insurance/Benefits Coordinator to explain the benefits to the employee and aid the claimant in providing the necessary information for claims to be processed.

260:55-1-25. Exclusions [REVOKED]

Benefits will not be provided for any disability that is caused by:

- (1) war or any act of war, whether such war is declared or undeclared;
- (2) intentionally self inflicted injuries of any kind while sane or insane;
- (3) injuries sustained by or during the commission or attempted commission of an assault or felony; or
- (4) active participation in a riot.

260:55-1-26. Penal institution [REVOKED]

No benefits are payable for that portion of any period of disability when the disabled person is confined in a penal or correctional institution for conviction of a criminal or other public offense.

260:55-1-27. Rules, cumulative [REVOKED]

Nothing in this chapter shall be read, interpreted, understood or applied so as to affect the validity and enforceability of any additional requirements, statutes, rules or regulations of any other governmental entity, public agency or instrumentality which may be otherwise applicable to those transactions, conduct and facilities regulated herein. This chapter shall not be deemed cumulative and supplemental but shall replace all previously promulgated rules of this agency.

Permanent Final Adoptions

260:55-1-28. Amending of rules [REVOKED]

~~This chapter may be amended or repealed from time to time and new rules adopted by EGID pursuant to the Administrative Procedures Act.~~

[OAR Docket #20-506; filed 6-30-20]

TITLE 300. GRAND RIVER DAM AUTHORITY CHAPTER 15. SURPLUS PROPERTY

[OAR Docket #20-620]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

300:15-1-1. [AMENDED]

300:15-1-2. [AMENDED]

300:15-1-3. [AMENDED]

Subchapter 3. Declaration and Approval of Surplus Property

300:15-3-1. [AMENDED]

300:15-3-2. [AMENDED]

Subchapter 5. Sale or Disposal of Surplus Property

300:15-5-1. [AMENDED]

300:15-5-2. [AMENDED]

300:15-5-4. [AMENDED]

AUTHORITY:

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

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INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The proposed amendments modify the general information and provisions relating to the transfer, disposal, and acquisition of surplus property. The Definitions section was modified to eliminate terms that are not used in the Surplus Property chapter. The absolute ban on donating property has been removed. Donations of surplus property to for-profit business entities or to individuals will continue to be prohibited. A streamlined process for the methods of disposal for surplus property has been proposed with the recommendation of the department Vice President, as approved by the CEO or designee, and by a vote of at least five members of the Board of Directors. A statement has been added to specify payments made by the public for purchased property via online auction shall be in accordance with the particular auction website's terms. Other general clarifications were made.

CONTACT PERSON:

Tamara Jahnke, Assistant General Counsel, Grand River Dam Authority, 9933 E. 16th Street, Tulsa, OK 74128.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

300:15-1-1. Purpose

This chapter provides general information and provisions pertaining to the transfer, disposal and acquisition of Grand River Dam Authority surplus property ~~for use by state agencies, authorized entities, individuals and business entities.~~ Pursuant to ~~74 O.S.Supp.2005, § 62.3(D)~~ 82 O.S. § 862.1 (6), the Grand River Dam Authority is exempt from the provisions of the Oklahoma Surplus Property Act. These rules are promulgated to ensure that the Authority's surplus property is disposed of at fair market value, in an independent and ethical manner, and that the property or the value of the property has not been misrepresented.

300:15-1-2. Definitions

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

"**Authority**" or "**GRDA**" means the Grand River Dam Authority.

~~"Authorized signature" means the signature of a state employee duly authorized by the chief administrative officer of a state agency to sign forms on behalf of such agency for submission to the Authority.~~

"**Business entity**" means an individual, partnership, business trust, cooperative, association, corporation or any other firm, group or concern which functions as a separate entity for business purposes.

~~"Cannibalize/Cannibalization" means to take salvageable parts from (as a disabled machine) for use in building or repairing another machine; or to make use of (a part taken from one thing) in building or repairing something else.~~

~~"CEO" means the Chief Executive Officer of the GRDA.~~

~~"Fiscal year" means the period of time from July 1 of a calendar year through June 30 of the succeeding calendar year.~~

~~"Form" means a document prescribed by the Authority's General Manager to be used by state agencies to provide information to the Authority.~~

~~"Inventory" means an itemized list of tangible assets owned by the Authority.~~

~~"OMES" means the Office of Management and Enterprise Services.~~

"**Proceeds**" means funds derived from the sale of surplus property.

"**Public auction**" means either a tangible event at a public location or an electronic event which is advertised and made available to the public via the Internet.

"Salvage or scrap" means property which, because of its worn, damaged, deteriorated, incomplete condition or specialized nature has no reasonable prospect of sale or use as designed, but has some value in excess of its basic material content.

"Supervisor" means the person in the Grand River Dam Authority designated by the Authority's General Manager to oversee the Surplus Property Program.

"Trade-in" means equipment which is exchanged on replacement equipment.

"Vehicle" or **"equipment"** means automobiles, station wagons, vans, pickups, trucks, buses, other modes of transportation and heavy equipment.

300:15-1-3. Prohibitions

(a) **Donations of state property.** ~~Donations of state Surplus property are prohibited.~~ may not be donated to for-profit business entities and individuals.

(b) **Sales to state employees.** The sale of state property to GRDA employees is prohibited unless items are sold at announced public sales or auctions.

SUBCHAPTER 3. DECLARATION AND APPROVAL OF SURPLUS PROPERTY

300:15-3-1. Declaring state property surplus

(a) **Declaration and approval.** The Authority's Board of Directors shall ~~determine when~~ declare the Authority's ~~personal property is~~ surplus and not necessary to the Authority's business ~~shall declare same in Open Meeting.~~ The by an affirmative vote of at least five (5) Directors, shall be required to declare property surplus and that it is not necessary to the business of the District. [82 O.S. § 874]

(b) **Request for approval to sell or transfer surplus property.** The Authority's personal property shall not be destroyed, scrapped, sold, transferred, traded in, traded, discarded, donated or otherwise disposed of without prior written approval from the ~~General Manager~~ CEO, or his/her designee. This rule applies to and includes any residue that may be remaining from cannibalization of property.

(c) **Surplus property transfer form.** To request official approval to dispose of surplus property, ~~Assistant General Managers or a designee of the General Manager~~ Vice President shall submit a surplus property transfer form to the ~~General Manager~~ CEO, which shall include the following information:

- (1) The Division or Department within the Authority where the property is located.
- (2) A desired method of disposal of the surplus property (i.e. public auction or sealed bid).
- (3) The reason the property should be declared as surplus property, which may be stated as:
 - (A) No longer needed to perform the duties intended; or
 - (B) Broken, cost to repair not economical; or

(C) Obsolete. Not compatible with newer equipment; or

(D) Other, which shall be followed by a specific explanation.

(4) The inventory control number, if any, assigned to the surplus property item;

(5) A description of the surplus property item, including serial, model or other identification numbers, whenever available;

(6) A general statement as to the condition of the surplus property item (i.e. excellent, good, fair, poor, damaged, scrap, missing parts, etc.);

(7) Any known defects or enhancements;

(8) An estimate, current value, suggested selling price or minimum acceptable price;

(9) Any other information which may assist the efficient disposal of the property.

(~~10~~) Additional information for surplus vehicles and equipment. When the Authority desires to dispose of vehicles or equipment, the following information, in addition to the information listed in 300:15-3-1(c) above, shall be included on the form:

(~~1~~) Make, model and model year;

(~~2~~) Body style, load rating, seats or passenger capacity, number of cylinders, number of drive wheels;

(~~3~~) Vehicle options (i.e. power steering, power brakes, etc.);

(~~4~~) Mileage or operation hours;

(~~5~~) Vehicle Identification Number (VIN).

(~~d~~) **Approval by the Authority.** The Authority's ~~General Manager~~ CEO, or his designee, shall review the form and decide whether to seek a declaration from the GRDA Board of Directors for a declaration that the property is surplus and shall be disposed.

300:15-3-2. Vehicles, equipment and office inventory for disposal through OMES Surplus Property Division

(a) GRDA surplus vehicles, equipment and office inventory ~~may~~ shall be disposed of by the ~~Department of Central Services~~ OMES' Surplus Property Division at the discretion of the GRDA Board of Directors in accordance with Rules promulgated by the ~~State Department of Central Services~~.

(b) ~~Vehicles, equipment and office inventory to be disposed of by the Department of Central Services includes, but is not limited to, the following:~~

- (1) Passenger vehicles;
- (2) Vans;
- (3) Bucket trucks;
- (4) Trucks;
- (5) Computer equipment;
- (6) Office furniture;
- (7) Scrap metal;
- (8) Tractors;
- (9) Brush hogs;
- (10) Bulldozers;
- (11) Heavy equipment.

Permanent Final Adoptions

SUBCHAPTER 5. SALE OR DISPOSAL OF SURPLUS PROPERTY

300:15-5-1. Methods of disposal of surplus property

(a) The method of disposal of surplus property shall be ~~recommended~~approved by the ~~department Vice President and approved by the CEO or designee and by a vote of at least five (5) members of the Authority's Board of Directors~~ prior to disposal of the property. [82 O.S. § 874]

(b) ~~Methods of disposal of surplus property shall be:~~

- (1) ~~Transfer to a state agency or authorized entity.~~ Property is transferred to another state agency or authorized entity with or without charge as mutually agreed by both parties. A transfer to an authorized entity (i.e. counties, cities, rural fire departments, and rural water districts) shall be made at market value.
- (2) ~~Scaled bid.~~ Property is sold by sealed bid.
- (3) ~~Public auction.~~ Property is sold at a live or online public auction. Such auction shall be open to individuals and business entities. The time, date and location of such auction shall be advertised in a local newspaper and published on the Authority's website.
- (4) ~~Trade-in.~~ Property is exchanged as trade-in for replacement equipment.
- (5) ~~Fly Ash.~~ Fly Ash will be sold at the best available market price.
- (6) ~~Hydro, or Green Credits.~~ Hydro, or green credits will be sold at the best available market price.
- (7) ~~Disposal by other means.~~ Property may be disposed of by other means if deemed to be in the best interest of the Authority by the Board of Directors.

300:15-5-2. Sales to related parties

(a) A related party is defined as someone who may fit into any of the following categories pertaining to the surplus property in question:

- (1) Has purchasing authority.
- (2) Has maintenance authority.
- (3) Has disposition or signature authority.
- (4) Has authority regarding the disposal price.
- (5) Has access to restricted information.

(b) ~~Related parties may not purchase the Authority's surplus property.~~

300:15-5-4. Payment provisions

General requirements for purchases. Payment made by the public shall be at the time of purchase and prior to removal of the property purchased. A private business shall provide a business tax identification number and a tax exempt certificate, if applicable, at the time of payment. Otherwise, local sales tax shall be charged. Payment may be in the form of cash, certified funds, business check (not to exceed \$2,000.00), money order, cashier's check or credit card approved for use by the Authority. Payments made by the public for property purchased through online auction (i.e. OMES Surplus Property and gov-deals.com) shall be in accordance with the applicable auction website's payment methods and conditions for sale and pick

up. All property sold at live auction must be picked-up by the buyer within ten (10) days following the sale.

[OAR Docket #20-620; filed 7-15-20]

TITLE 300. GRAND RIVER DAM AUTHORITY CHAPTER 25. LICENSE TO ENCROACH

[OAR Docket #20-621]

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PERMANENT final adoption

RULES:

Subchapter 1. Purpose and Definitions
300:25-1-2. [AMENDED]
Subchapter 3. Policy, Issuance, Termination and Transfer
300:25-3-1. [AMENDED]
300:25-3-3. [AMENDED]
Subchapter 5. Miscellaneous
300:25-5-3. [AMENDED]
300:25-5-4. [AMENDED]

AUTHORITY:

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

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GIST/ANALYSIS:

The proposed revisions detail the procedures for obtaining a license to encroach on real property owned by Grand River Dam Authority. The fair market value definition has been expanded to include a standardized fair market value. The rules have been revised to state an applicant may choose a standardized fair market value set by the Board of Directors or submit a fair market value appraisal to the Board of Directors in determining the fair market value. The fair market value of the license will be reviewed every 10 years. A License to Encroach may not be issued until such time as the Board has determined the fair market value of the encroachment and all applicable fees have been paid. The license term has been extended.

CONTACT PERSON:

Tamara Jahnke, Assistant General Counsel, Grand River Dam Authority, 9933 E. 16th Street, Tulsa, OK 74128.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. PURPOSE AND DEFINITIONS

300:25-1-2. Definitions

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

"**Adjacent Property**" means that property which is immediately contiguous and appurtenant to the GRDA property upon which the improvement is built.

"**Board**" means the Board of Directors of the Grand River Dam Authority.

"**Fair market value**" means the price in cash a willing but not obligated tenant would pay, and a willing but not obligated landlord would charge for the same or similar lands for the highest and best legal use of the property. The values for separate properties may be used to determine a standardized fair market value.

"**GRDA land(s)**" means that real property owned by the Grand River Dam Authority.

"**Improvements**" means buildings, ~~retaining walls,~~ or other permanent or temporary structures or developments located on or attached to GRDA lands.

SUBCHAPTER 3. POLICY, ISSUANCE, TERMINATION AND TRANSFER

300:25-3-1. License to encroach policy

While reserving the right to refuse any or all applications for a License to encroach upon GRDA lands, the Board may issue licenses to encroach for improvements built prior to the date set forth in 82 O.S. 2005, § 874.2 June 1, 2005 upon GRDA lands to assist landowners with title and marketability issues. No License will be issued for improvements built subsequent to the date set forth in 82 O.S. 2005, § 874.2 June 1, 2005.

300:25-3-3. Issuance and termination of license to encroach

(a) An appraisal from an Oklahoma licensed appraiser may be presented to the Board of Directors for review and approval or an Applicant may agree to a standard cost per square foot set by the Board of Directors. Except as otherwise provided herein, all Licenses to encroach shall be appraised for fair market value.

(b) Applications for a License to Encroach shall state the number of years for which the Applicant is seeking the License. For instance, the Applicant may request that the License is sought for any number of years up to and including ninety-nine (99)30 years.

(c) A License to encroach shall not be issued until such time as the Board has determined the value of the encroachment fair market value as determined by the appraisal provided for herein together with all costs associated with the License, including but not limited to third party survey and appraisal fees, application fees, or appraisal fees shall have been paid by the Applicant.

(d) All Licenses to encroach shall automatically terminate upon destruction or removal of the improvement on GRDA land. An improvement may be maintained, but it may not be rebuilt if destroyed.

(e) All Licenses to encroach shall terminate upon default of a holder of a license to pay any monies due.

(f) The term (number of years) of a License to encroach shall be at the sole discretion of the Board but may not exceed a maximum of ninety-nine (99)thirty (30) years.

(g) At the end of the term, GRDA may require that the property be returned to its original condition.

(h) Current Licenses in effect may be extended without further Board action upon request and payment of application fee to ninety-nine (99) years from the original date the license was issued.

SUBCHAPTER 5. MISCELLANEOUS

300:25-5-3. License violations

Violation of any of the terms and conditions of a License to encroach or failure to pay any amounts due related to the License on GRDA land shall subject the holder of the License to legal or administrative action or both at the option of the Board to collect rent or damages or any other remedy as provided by law.

300:25-5-4. Determination of valueAppraisals

(a) An Applicant may obtain a separate appraisal. An appraisal for purposes of licensing the improvement to encroach upon GRDA land shall be prepared by an Oklahoma licensed land appraiser.

(b) Appraisals will be made in accordance with Uniform Standards of Professional Appraisal Practices.

(c) The appraisers shall determine the "fair market value" of the land without any improvement. For purposes of this section, fair market value is the price in cash a willing but not obligated tenant would pay, and a willing but not obligated landlord would charge for the same or similar lands for the highest and best legal use of the property. In determining fair market value, the appraisers shall consider the following:

- (1) Present land use;
- (2) Amount of GRDA land upon which the improvement sits;
- (3) Cash rental price of comparable land; and
- (4) The term (number of years) of the License

(d) Appraisals are public record under the Open Records Act.

(e) In lieu of appraisals for each property, the Board of Directors may determine a standard value per square foot for all encroachments subject to Title 300, Chapter 25. This standard value may be used for each encroachment or the Applicant may submit their own appraisal for review by the Board.

[OAR Docket #20-621; filed 7-15-20]

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

[OAR Docket #20-683]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 21. Rules of Procedure Governing Individual Proceedings

310:2-21-4 [AMENDED]

Subchapter 29. Criminal History Background Checks

310:2-29-1 [AMENDED]

310:2-29-5 [AMENDED]

Subchapter 37. Initial Determination on Criminal History as a
Disqualification for License or Certification [NEW]

310:2-37-1 [NEW]

310:2-37-2 [NEW]

310:2-37-3 [NEW]

Subchapter 39. Military Reciprocity Licensure [NEW]

310:2-39-1 [NEW]

310:2-39-2 [NEW]

310:2-39-3 [NEW]

310:2-39-4 [NEW]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S., §
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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposal modifies the requirements for legal service of instruments related to administrative proceedings before the Department. This change is necessary because experience in providing legal service of instruments has found that Respondents who are licensed by the Department have avoided legal service and delayed administrative proceedings by refusing or avoiding delivery of the service instrument. The effect of the Rule change will be expedited execution of legal service of instruments. This proposal modifies the purpose to include eligibility appellate procedures for those Chapters under Title 310, which provide for denials of eligibility for a license, certification, or permit based on criminal history. A new rule will implement 59 O.S. § 4000.1 relating to processes to request an initial determination of whether an applicant's criminal history record would potentially disqualify him or her from obtaining an occupational license or certification. This process will apply to all occupational licenses, permits or certifications issued by the Oklahoma State Department of Health. A new rule will implement 59 O.S. § 4100.8 relating to processes for active duty military personnel and their spouses to request an expedited temporary, reciprocal or comity license or certification for a currently held valid license or certification.

CONTACT PERSON:

Audrey C. Talley, Agency Rules Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-9444, ext. 56535. AudreyT@health.ok.gov.

PURSUANT TO THE FINAL ACTIONS DESCRIBED
HEREIN, THE FOLLOWING RULES ARE
CONSIDERED FINALLY ADOPTED AS SET FORTH
IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN
EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 21. RULES OF PROCEDURE GOVERNING INDIVIDUAL PROCEEDINGS

310:2-21-4. Service of instruments initiating an administrative proceeding

Any instruments initiating an administrative proceeding ~~shall must~~ be served ~~upon~~ every named Respondent ~~in accordance with the provisions of 12 O.S. § 2004(C)(1)(c) by~~ either personal service, certified mail, return receipt requested, restricted delivery, or issuing a report by hand-delivery. If service is being sent by certified mail, return receipt requested, and the intended Respondent refuses to sign the return receipt or otherwise does not sign or is unavailable to sign and accept service through the certified mail at the address identified on Department records, then Respondent is deemed to have been served. A person designated by the Commissioner may be used to accomplish service for the Department. Service of the instrument initiating an administrative proceeding may be made by certified mail, return receipt requested, restricted delivery. If service is by personal service, the person serving the instrument initiating an administrative proceeding shall file proof of service with the Hearing Clerk within twenty (20) days of service or before the date of the first hearing, whichever is sooner. If an inspection is performed, the report and/or the notice to correct violations issued by the inspectors/sanitarrians to the license holder or to the person in charge, requesting a signed acknowledgement of receipt of the report or notice, shall constitute service of the report and/or notice. Acknowledgement in writing by the Respondent or appearing at the hearing without objection to service is equivalent to service.

SUBCHAPTER 29. CRIMINAL HISTORY BACKGROUND CHECKS

310:2-29-1. Purpose

These rules implement the Long Term Care Security Act as established at Title 63 O.S. Section 1-1944 et seq., as amended, and eligibility appellate procedures for those Chapters under Title 310, which provide for denials of eligibility for a license, certification, or permit based on criminal history.

310:2-29-5. Appeals

(a) **Notice.** A determination by the Department that finds an applicant not eligible for a license, certification, permit or employment will result in a notice to the applicant to include the reasons why the applicant is not eligible for employment and a statement that the applicant has a right to appeal the decision made by the Department regarding the employment

eligibility. The notice shall also include information regarding where to file and describe the appellate procedures [63 O.S. § 1-1947(K)(2)] include the reasons why the applicant is not eligible for license, certification, permit or employment and a statement that the applicant has a right to appeal the decision made by the Department regarding the eligibility. The notice shall also include information regarding where to file and describe the appellate procedures.

(b) **Days to initiate an appeal.**

(1) Pursuant to Title 63 O.S. 1-1947(T)(1), any individual who has been disqualified from or denied employment by an employer pursuant to Title 63 O.S. Section 1-1947 may file an appeal with the Department within thirty (30) days of the receipt of the notice of disqualification. An applicant under 63 O.S. 1-1947(T)(1) may receive an extension of the thirty (30) days allowed to appeal where good cause is shown.

(2) An individual who has been found not eligible for a license, certification, or permit based on their criminal history may file an appeal with the Department at any time following receipt of the notice of disqualification.

(c) **Types of appeals.** An applicant may appeal the determination by:

(1) Challenging the finding that the applicant is the true subject of the results from a name-based registry background check;

(2) Challenging the criminal history record as inaccurate; ~~or~~

(3) Requesting a waiver which gives the applicant the opportunity to demonstrate that the applicant should be allowed to work because he or she does not pose a risk to patients, facilities or their property; or

(4) Requesting a reconsideration of eligibility, which may be considered no sooner than twelve (12) months from the previous appeal of a determination of ineligibility.

(d) **Inaccuracy of criminal history record.** To demonstrate that the criminal history record is inaccurate, the applicant shall submit to the Department written documents, issued and certified by a governmental entity that demonstrate that the information contained in the criminal history report is inaccurate.

(e) **Criteria for consideration in a waiver review.** ~~Pursuant to Title 63 O.S. Section 1-1947(T)(2), the~~The Department shall consider the following criteria in considering whether the applicant merits a waiver of the applicant's determination of ineligibility:

(1) The time elapsed since the disqualifying criminal conviction, whether the applicant has fulfilled the sentence requirements, and whether there are any subsequent arrests or convictions of any nature;

(2) Any extenuating circumstances such as the offender's age at the time of conviction, substance abuse history and treatment, or mental health issues and treatment;

(3) Rehabilitation as demonstrated by character references and recommendation letters from past employers,

the applicant's record of employment history, education, and training subsequent to conviction; ~~and~~

(4) The relevancy of the particular disqualifying information with respect to the proposed employment of the individual to include the job type and duties, ~~and~~ the extent to which the applicant has unsupervised access to service recipients; ~~and~~

(5) For appeals under the authority of 63 O.S. 1-1947(T)(2), whether the crime was committed against a vulnerable child or adult, and whether the conviction was related to an employer subject to the requirements of the Long Term Care Security Act.

(f) **Where to file.** The applicant's appeal shall be submitted in writing to the Administrative Hearings Clerk for the Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117, and shall address the criteria specified in (d) of this Section and how the applicant merits a waiver of the disqualification from employment.

(g) **Conduct of hearing.** The appeal shall be conducted as an individual proceeding pursuant to this Chapter and the Administrative Procedures Act.

SUBCHAPTER 37. INITIAL DETERMINATION ON CRIMINAL HISTORY AS A DISQUALIFICATION FOR LICENSE OR CERTIFICATION

310:2-37-1. Purpose

These rules implement Section 4000.1 of Title 59 (2019) of the Oklahoma Statutes relating to processes to request an initial determination of whether an applicant's criminal history record would potentially disqualify him or her from obtaining an occupational license or certification. This process shall apply to all occupational licenses, permits or certifications issued by the Oklahoma State Department of Health.

310:2-37-2. Requesting a determination

The process for requesting a determination of whether an applicant's criminal history record would potentially disqualify him or her from obtaining an occupational license, permit or certification is defined in the Oklahoma Statutes at Title 59, Section 4000.1.

310:2-37-3. Fee

The fee for requesting a determination of whether an applicant's criminal history record would potentially disqualify him or her from obtaining an occupational license, permit or certification is forty-five dollars (\$45.00) for each initial determination.

SUBCHAPTER 39. MILITARY RECIPROCITY LICENSURE

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310:2-39-1. Purpose

These rules implement Section 4100.8 of Title 59 (2019) of the Oklahoma Statutes relating to processes to request *an expedited temporary, reciprocal or comity license or certification for their currently held valid license or certification*. This process shall apply to all occupational licenses, permits or certifications issued by the Oklahoma State Department of Health.

310:2-39-2. Requesting a temporary, reciprocal or comity license

Active duty military personnel and their spouses seeking a temporary, reciprocal or comity license shall complete an application as established by the occupational program and shall provide satisfactory evidence of equivalent education, training and experience from another state program. The Department shall evaluate an applicant's *education, training and experience in the manner most favorable toward satisfying the qualifications for issuance of the requested license or certification in this state* [59 O.S. 4100.8(B)].

310:2-39-3. Fee

Pursuant to Title 59 O.S. 4100.8(D), there will be no application fee for a temporary, reciprocal or comity license for active duty military personnel and the license or certification fee for the first period of issuance is waived.

310:2-39-4. Appeals

Pursuant to Title 59 O.S. 4100.8(C), any active duty military applicant, and their spouses, receiving a notice of denial of full licensure or certification shall have the right *to obtain and submit the documentation required to complete full license or certificate requirements in this state* or to appeal the denial *termination pursuant to the Administrative Procedures Act [75 O.S. 250 et seq.] and OAC 310:2-21, relating to Department procedure governing individual proceedings.*

[OAR Docket #20-683; filed 7-24-20]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 9. HEALTH CARE INFORMATION

[OAR Docket #20-671]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
310:9-1-2 [AMENDED]
Subchapter 3. Required Information
310:9-3-1 [AMENDED]
310:9-3-2 [AMENDED]
310:9-3-3 [AMENDED]
Subchapter 5. Collection and Release of Information
310:9-5-2.1 [AMENDED]
310:9-5-3 [REVOKED]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104 and 63 O.S. §§ 1-115 et seq.

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EFFECTIVE:

September 11, 2020

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Superseded rules:

Subchapter 1. General Provisions
310:9-1-2 [AMENDED]
Subchapter 3. Required Information
310:9-3-1 [AMENDED]
310:9-3-2 [AMENDED]
310:9-3-3 [AMENDED]
Subchapter 5. Collection and Release of Information
310:9-5-2.1 [AMENDED]
310:9-5-3 [REVOKED]

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n/a

GIST/ANALYSIS:

The proposed updates to 310:9 will require more rapid reporting of the hospital discharge data to the OSDH, the submission of emergency department (ED) discharge data and modernizes existing rules related to notifications and reporting. Due to the ever-increasing need for timely health care data by public health practitioners, facilities researchers, and policy makers we are proposing that discharge data providers (inpatient, outpatient surgery and ambulatory surgery center discharges) submit the required data within 45 days after the end of each calendar quarter (instead of once annually), beginning in 2020.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

310:9-1-2. Definitions.

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

"Administrator" means the chief executive officer for a facility.

"Ambulatory care data" means data elements required by the Department regarding persons treated by hospitals, free-standing ambulatory surgery centers, or other health care providers, for less than 24 hours.

"Ambulatory surgery center" means a hospital-based or free-standing center providing surgery with patient stays of less than 24 hours, licensed under ~~63 O.S. Supp. 1998 Section 1-704~~ 63 O.S. Section 2657 et seq.

"Board" means Oklahoma State Board of Health.

"Commissioner" means the Commissioner of the Oklahoma State Department of Health.

"Committee" means the Health Care Information Advisory Committee.

"Custom Data Set" means a subset of the Public Use Data File developed by the Department on special request.

"Custom report" means a compilation or study developed by the Department on special request.

"Data element" means the specific information collected and recorded for the purpose of health care and health care service delivery. Data elements include information to identify the individual, the health care provider, the data supplier, the services provided, charges for service, payor source, medical diagnosis, medical treatment and other data as requested.

"Data file" means an electronic file containing data elements.

"Data submission manual" means a manual developed by the Department containing data elements required to be submitted by information providers.

"Data use agreement" means a document that must be submitted in order to obtain the public use data file or any anonymous patient-level data. The document assures the Department that the user will not attempt to identify or contact any person included in the data set.

"Department" means the Oklahoma State Department of Health.

"Direct Patient Identifiers" Data elements that directly identify a patient (e.g. name, SSN, etc).

"Division" means the Health Care Information Division of the Oklahoma State Department of Health.

"Facility" means hospital or ambulatory surgery center.

"Health care information system" means the system for receipt, collection, analysis, evaluation, processing, utilization and dissemination of health care data established and maintained by the Health Care Information Division pursuant to the Oklahoma Health Care Information System Act.

"Health care provider" means hospitals, nursing facilities, ambulatory surgery centers, and any other health care provider licensed or certified by the Department or any other state agency; doctors as defined in Section 725.2 of Title 59 of the Oklahoma Statutes; or physical therapists, physician assistants, pharmacists, nurses and home health care providers licensed pursuant to the laws of this state.

"Health data" means information relating to the health status of individuals, health services delivered, the availability of health manpower and facilities, and the use and costs of resources and services to the consumer.

"Hospital" means a hospital licensed under 63 O.S. ~~Supp. 1998 Section 1-704~~.

"Hospital discharge data" means data elements required by the Department regarding persons admitted to and discharged from a hospital.

"Identifying information" means information that could uniquely identify an individual.

"Information provider" means all health care providers and the third-party payor or public-supported provider as defined in Section 1-116 of Title 63 of the Oklahoma Statutes.

"Oklahoma Cooperative Annual Hospital Survey" means a voluntary annual survey of all Oklahoma hospitals regarding service and financial information.

"Public use data file" means an electronic file for public use containing data elements from the hospital discharge or ambulatory surgery data file that do not directly or indirectly identify an individual or physician.

"Standard information provider report" means a compilation of data submitted by an information provider that is generated by the Division for the information provider.

"Standard report" means a compilation or study developed to display information on selected topics, published periodically.

"Third-party data processor" means any entity that provides data processing services.

"Third-party payor" means any entity, other than a purchaser, which is responsible for payment either to the purchaser or the health care provider for health care services rendered by the health care provider.

SUBCHAPTER 3. REQUIRED INFORMATION

310:9-3-1. Required information to be collected from information providers

(a) The Department is required by law to collect the following types of information from information providers:

- (1) Financial information including, but not limited to, consumption of resources to provide services, reimbursement, costs of operation, revenues, assets, liabilities, fund balances, other income, rates, charges, units of service, wage and salary data;
- (2) Service information including, but not limited to,
 - (A) occupancy, capacity, and special and ancillary services;
 - (B) Physician profiles in the aggregate by clinical specialties and nursing services;
 - (C) Discharge data, including but not limited to, completed discharge data sets or comparable information for each patient discharged from the facility after the effective date of this act; and
 - (D) Ambulatory care data including, but not limited to, provider-specific and encounter data.

(b) The data elements to be submitted by information providers for hospital inpatient discharges include, but are not limited to the data elements defined in the current version of the National Uniform Bill

(c) The data elements to be submitted by information providers for ambulatory surgery and emergency department

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patients include, but are not limited to the data elements defined in the current version of the National Uniform Bill and the CMS-1500

(d) Data file formats that will be accepted include:

- (1) XML format as defined by the Division,
- ~~(2) Standard fixed length ASCII format as defined by the Division,~~
- ~~(3) Other formats agreed upon by OSDH and the data provider prior to submission.~~

(e) Formats containing the appropriate fields without adhering to the appropriate format shall be considered unreadable and will be returned to the provider.

310:9-3-2. Data files

(a) When a data file is received from an information provider, the Department will notify mail the facility administrator a letter acknowledging receipt of the data. ~~A copy of this letter will be sent either to the facility technical contact or the third party data processor who submitted the data file.~~

(b) As hospital discharge or ambulatory care data files are received by the Department, the data will be processed and checked for errors. This process will include error checking for out of range, or invalid data elements as specified in the data submission manual. Upon processing the submitted data file, the Department will send the information provider:

- (1) A standard information provider report developed from the provider's data; and
- (2) A list of errors in that information provider's data file and will request the information provider correct errors associated with their data within 30 days of receipt ~~of said letter~~, electronically ~~or in writing~~, to the Department.

310:9-3-3. Periodic schedule for submission of information

(a) Hospital discharge data files must be submitted to the Department within 60 days after the end of each calendar quarter, beginning calendar year 2020 by May 1 of the following calendar year.

(b) Ambulatory surgery data files must be submitted to the Department within 60 days after the end of each calendar quarter, beginning with calendar year 2020 by March 1 of the following calendar year, beginning March, 2002.

(c) Emergency department data files must be submitted to the Department within 45 days after the end of each month, beginning with calendar year 2020.

(d) The Department may grant an extension on written request from the information provider on a case-by-case basis.

SUBCHAPTER 5. COLLECTION AND RELEASE OF INFORMATION

310:9-5-2.1. Public Use Data File

(a) The Department will annually make available for purchase a Public Use Data File(s) (PUDF) containing a calendar year of record level data with anonymous case files (i.e., direct patient identifiers removed).

(b) The hospital inpatient discharge data PUDF includes the following data elements:

- (1) Record Identifier (Synthetic)
- (2) Patient state of residence
- (3) Patient zip code
- (4) Patient county of residence
- (5) Patient gender
- (6) Patient race
- (7) Patient marital status
- (8) Patient age group
- (9) Hospital ID
- (10) Hospital Type
- (11) Admission year
- (12) Admission month
- (13) Admission day of week
- (14) Discharge year
- (15) Discharge month
- (16) Discharge day of week
- (17) Length of stay in days
- (18) Type and source of admission
- (19) Patient discharge status
- (20) Payer classification
- (21) Total charges
- (22) Diagnosis Related Group (DRG)
- (23) Major Disease Category (MDC)
- (24) Birth weight group
- (25) Admitting diagnosis
- (26) External cause of injury codes (E-code)
- (27) Principal diagnosis
- (28) Other diagnosis codes
- (29) Principal procedure code
- (30) Other procedure codes
- (31) Present upon Admission (POA)

(c) The hospital outpatient surgery data PUDF includes the following data elements:

- (1) Record Identifier (Synthetic)
- (2) Patient state of residence
- (3) Patient zip code
- (4) Patient county of residence
- (5) Patient gender
- (6) Patient race
- (7) Patient marital status
- (8) Patient age group
- (9) Hospital ID
- (10) Admission year
- (11) Admission month
- (12) Admission day of week
- (13) Admission hour
- (14) Discharge year
- (15) Discharge month
- (16) Discharge day of week
- (17) Discharge hour
- (18) Length of stay in days
- (19) Type and source of admission
- (20) Patient discharge status
- (21) Total charges
- (22) External cause of injury codes (E-code)
- (23) Principal diagnosis

- (24) Other diagnosis codes
- (25) Principal procedure CPT code
- (26) Other procedure CPT codes
- (27) Payer classification
- (28) Ambulatory payment classification (APC)
- (d) The ambulatory surgery center data PUDF includes the following data elements:
 - (1) Record Identifier (Synthetic)
 - (2) Patient state of residence
 - (3) Patient zip code
 - (4) Patient county of residence
 - (5) Patient gender
 - (6) Patient race
 - (7) Patient marital status
 - (8) Patient age group
 - (9) Facility ID
 - (10) Admission year
 - (11) Admission month
 - (12) Admission day of week
 - (13) Admission hour
 - (14) Discharge year
 - (15) Discharge month
 - (16) Discharge day of week
 - (17) Discharge hour
 - (18) Length of stay in days
 - (19) Total charges
 - (20) Principal diagnosis
 - (21) Other diagnosis codes
 - (22) Principal procedure CPT code
 - (23) Other procedure CPT codes
 - (24) Payer Classification
 - (25) Ambulatory payment classification (APC)
- (e) The hospital emergency department data PUDF includes the following data elements:
 - (1) Record Identifier (Synthetic)
 - (2) Patient state of residence
 - (3) Patient zip code
 - (4) Patient county of residence
 - (5) Patient gender
 - (6) Patient race
 - (7) Patient marital status
 - (8) Patient age group
 - (9) Hospital ID
 - (10) Admission year
 - (11) Admission month
 - (12) Admission day of week
 - (13) Admission hour
 - (14) Discharge year
 - (15) Discharge month
 - (16) Discharge day of week
 - (17) Discharge hour
 - (18) Length of stay in days
 - (19) Type and source of admission
 - (20) Patient discharge status
 - (21) Total charges
 - (22) External cause of injury codes (E-code)
 - (23) Principal diagnosis
 - (24) Other diagnosis codes

- (25) Principal procedure CPT code
- (26) Other procedure CPT codes
- (27) Payer classification
- (28) Ambulatory payment classification (APC)
- (ef) Entities requesting the PUDF must sign and complete the Data Use Agreement. The completed Data Use Agreement must be included with the request.

310:9-5-3. Standard information provider reports [REVOKED]

~~After the information provider's data is processed, the information provider will receive a standard report that will include summary information regarding the information provider's facility and aggregate comparative information.~~

[OAR Docket #20-671; filed 7-24-20]

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

[OAR Docket #20-672]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions [REVOKED]

Subchapter 3. Federalwide Assurance of Protection for Human Subjects [REVOKED]

Subchapter 5. Compliance with the Registration of the Oklahoma State Department of Health Institutional Review Board [REVOKED]

Subchapter 7. Research Integrity [REVOKED]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S., § 1-104

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GIST/ANALYSIS:

The current rules for human subject protection in research describe the boundaries in scope, actions, and authority for the agency's institutional review board and research integrity officer. The proposal will revoke Chapter 10. A modified Subchapter 31, Human Subjects Protection, will be added under Chapter 2, Procedures of the State Health Department.

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CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

310:10-1-1. General purpose [REVOKED]

The Oklahoma State Department of Health is committed to providing an organizational structure in accordance with Title 45 of the Code of Federal Regulations Part 46 (45 C.F.R. Part 46) in order to establish and maintain an environment dedicated to the ethical principles for safeguarding the rights and welfare of the human beings recruited to participate in research activities. The OSDH Institutional Review Board (IRB) has been established to comply with federal regulations to protect the rights and welfare of human research participants. The OSDH IRB has the responsibility to assure that the risks of proposed research are justified by the potential benefits to the participants and to society, and that risks are minimized to the extent possible consistent with sound research design. The OSDH IRB must assure that the risks of research do not fall disproportionately on one group while the potential benefits accrue to another. The OSDH IRB oversees the consent process to assure voluntary and knowing consent to participate in research. Individuals who are particularly vulnerable or whose capacity to consent may be in doubt require additional protection during the consent process. The OSDH IRB must assure that the research is designed to respect individual privacy and preserve the confidentiality of private information. The OSDH IRB has the on-going oversight responsibility of approved research to monitor the welfare of the participants and to determine that the risks and potential benefits remain unchanged. The OSDH IRB may approve, disapprove, or require modifications to research protocols. It may also suspend or terminate its approval of ongoing (previously approved) research.

310:10-1-2. Scope [REVOKED]

This Chapter applies to all individuals at the OSDH engaged in research involving human subjects. The Commissioner of Health retains final authority to determine whether a particular activity is subject to this policy. This Chapter applies to any person paid by, under the control of, or affiliated with the OSDH, such as scientists, trainees, technicians and other staff members, students, fellows, guest researchers, or collaborators at OSDH. Research activities are exempt from this policy if they are determined by the OSDH IRB to meet criteria established in 45 C.F.R. § 46.101, which is incorporated by reference in this Chapter.

310:10-1-3. Definitions [REVOKED]

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

"Allegation" means any written or oral statement or other indication of possible scientific misconduct made to an institutional official.

"Board" means the Board of Health. **"Commissioner"** means the Commissioner of Health.

"Conflict of interest" means the real or apparent interference of one person's interests with the interests of another person, where potential bias may occur due to prior or existing personal or professional relationships.

"Deciding official" means the institutional official appointed by the Commissioner of Health who makes final determinations on allegations of scientific misconduct and any responsive institutional actions.

"Good faith allegation" means an allegation made with the honest belief that scientific misconduct may have occurred. An allegation is not in good faith if it is made with reckless disregard for or willful ignorance of facts that would disprove the allegation.

"Human subject" means a living individual about whom an investigator (whether professional or student) conducting research obtains data through intervention or interaction with the individual, or through identifiable private information of an individual.

"Inquiry" means gathering information and initial fact finding to determine whether an allegation or apparent instance of scientific misconduct warrants an investigation [42 C.F.R. § 50.102].

"Institution" means the Oklahoma State Department of Health unless the context clearly indicates otherwise.

"Investigation" means the formal examination and evaluation of all relevant facts to determine if misconduct has occurred, and, if so, to determine the responsible person and the seriousness of the misconduct [42 C.F.R. § 50.102].

"IRB" means the OSDH Institutional Review Board established in accord with 45 C.F.R. Part 46 for the purposes expressed in this Chapter.

"IRB approval" means the determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and federal requirements.

"Minimal risk" means that the probability and magnitude of harm or discomfort anticipated in the research are not greater, in and of themselves, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

"OHRP" means the Office of Human Research Protections within the U.S. Department of Health and Human Services (DHHS) that is responsible for compliance and oversight relative to the DHHS regulations for the protection of human subjects.

"ORI" means the Office of Research Integrity within the DHHS that is responsible for the scientific misconduct and research integrity activities of the U.S. Public Health Service.

"OSDH" means the Oklahoma State Department of Health.

"PHS" means the U.S. Public Health Service, an operating component of the DHHS.

"PHS regulation" means the Public Health Service regulation establishing standards for institutional inquiries and investigations into allegations of scientific misconduct, which is set forth at 42 C.F.R. Part 50, Subpart A, entitled "Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science."

"PHS support" means PHS grants, contracts, or cooperative agreements or applications therefore.

"Research" means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this Chapter, whether or not they are conducted or supported under a program that is considered research for other purposes. For example, some demonstration and service programs may include research activities.

"Research Integrity Officer" means the OSDH official appointed by the Commissioner of Health responsible for assessing allegations of scientific misconduct and determining when such allegations warrant inquiries and for overseeing inquiries and investigations.

"Research record" means any data, document, computer file, computer diskette, or any other written or non-written account or object that reasonably may be expected to provide evidence or information regarding the proposed, conducted, or reported research that constitutes the subject of an allegation of scientific misconduct. A research record includes, but is not limited to, grant or contract applications, whether funded or unfunded; grant or contract progress and other reports; laboratory notebooks; notes; correspondence; videos; photographs; X-ray film; slides; biological materials; computer files and printouts; manuscripts and publications; equipment use logs; laboratory procurement records; animal facility records; human and animal subject protocols; consent forms; medical charts; and patient research files.

"Respondent" means the person against whom an allegation of scientific misconduct is directed or the person whose actions are the subject of the inquiry or investigation. There may be more than one respondent in any inquiry or investigation.

"Retaliation" means any action that adversely affects the employment or other institutional status of an individual that is taken by an institution or an employee because the individual has in good faith, made an allegation of scientific misconduct or of inadequate institutional response thereto or has cooperated in good faith with an investigation of such allegation. Action taken may include an intentional act of omission.

"Scientific misconduct or misconduct in science" means fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research. It does not include honest error or honest differences in interpretations or judgments of data [42 C.F.R. § 50.102.]

"Whistleblower" means a person who makes an allegation of scientific misconduct.

310:10-1-4. Incorporations by reference [REVOKED]

(a) This Chapter hereby incorporates by reference Part 46 of Title 45 of the Code of Federal Regulations (45 C.F.R. Part 46) as if fully set forth herein.

(b) This Chapter hereby incorporates by reference Part 50, Subpart A of Title 42 of the Code of Federal Regulations (42 C.F.R. Part 50) as if fully set forth herein.

SUBCHAPTER 3. FEDERALWIDE ASSURANCE OF PROTECTION FOR HUMAN SUBJECTS [REVOKED]

310:10-3-1. Adherence to ethical principles [REVOKED]

All of the Oklahoma State Department of Health's human subject activities, and all human subject activities of the OSDH Institutional Review Boards designated under the OSDH Federalwide Assurance, regardless of funding source, will be guided by the ethical principles in The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research.

310:10-3-2. Conditions of federalwide assurance [REVOKED]

(a) The conditions of the federalwide assurance apply whenever:

- (1) the OSDH IRB provides review and oversight of federally supported human subject research, regardless of where the research takes place or by whom it is conducted; or
- (2) the OSDH becomes engaged in federally supported human subject research.

(b) The OSDH becomes so engaged whenever:

- (1) OSDH employees or agents intervene or interact with living individuals for purposes of federally supported research;
- (2) OSDH employees or agents obtain, release, or access individually identifiable private information for purposes of federally supported research; or
- (3) The OSDH receives a direct federal award to conduct human subject research, directly or where all activities involving human subjects are carried out by a subcontractor or collaborator.

310:10-3-3. Compliance with 45 C.F.R. Part 46 [REVOKED]

Federally supported human subject research for which the OSDH IRB provides review and oversight will comply with 45 C.F.R. Part 45. All human subject research supported by the

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Department of Health and Human Services (HHS) will comply with all Subparts of HHS regulations at Title 45 Code of Federal Regulations Part 46 (45 C.F.R. Part 46.) All federally supported human subject research will also comply with any additional human subject regulations and policies of the supporting federal or state department or agency. All federally supported human subject research will comply with any human subject regulations and policies of any relevant regulatory federal or state department or agency.

310:10-3-4. Authority of IRB [REVOKED]

Except for research exempted or waived under 45 C.F.R. §46.101(b)&(i), all human subject research will be reviewed, prospectively approved, and subject to continuing oversight by the OSDH IRB. The OSDH IRB will have authority to approve, require modifications in, or disapprove the covered human subject research.

310:10-3-5. Informed consent [REVOKED]

Except where specifically waived or altered by the OSDH IRB under 45 C.F.R. §§ 46.101(i), 46.116(c)&(d), or 46.117(c) all human subject research will require written informed consent, in nonexculpatory language understandable to the subject (or subject's legally authorized representative), including the following basic elements per 45 C.F.R. § 46.116(a)&(b):

- (1) Identification as research; purposes, duration, and procedures; procedures which are experimental;
- (2) Reasonable foreseeable risks or discomforts;
- (3) Reasonable expected benefits to the subject or others;
- (4) Alternative procedures or treatments, if any, that might be advantageous to the subject;
- (5) Extent of confidentiality to be maintained;
- (6) Whether compensation or medical treatment are available if injury occurs (if more than minimal risk);
- (7) Whom to contact for answers to questions about the research subjects' rights, and research related injury;
- (8) Participation is voluntary; refusal to participate, or discontinuation of participation, will involve no penalty or loss of benefits to which subject is entitled; and
- (9) When appropriate, additional elements per 45 C.F.R. §45.116.

310:10-3-6. IRB procedures [REVOKED]

The OSDH and the OSDH IRB have established (or will establish within 90 days of the effective date of this Chapter), and will provide to Office of Human Research Protections upon request, written procedures for:

- (1) verifying whether proposed activities qualify for exemption from, or waiver of, IRB review;
- (2) conducting IRB initial and continuing review, approving research, and reporting IRB findings to the investigator and the institution;
- (3) determining which projects require review more often than annually, and which projects need verification from sources other than the investigator that no material changes have occurred;

(4) ensuring that changes in approved research are reported promptly and are not initiated without IRB approval, except when necessary to eliminate apparent immediate hazards to the subject; and

(5) ensuring prompt reporting to the IRB, institutional officials, the relevant department or agency head, any applicable regulatory body, and OHRP of any:

- (A) unanticipated problems involving risks to subjects or others in any covered research;
- (B) serious or continuing noncompliance with federal, institutional, or IRB requirements; and
- (C) suspension or termination of IRB approval for federally supported research.

310:10-3-7. Assurance training [REVOKED]

The OSDH Signatory Official, the OSDH Human Protections Administrator, and the OSDH IRB Chairperson will personally complete the relevant OHRP basic educational modules, or comparable training approved by OHRP, prior to submitting the Assurance. Members and staff of the IRB will complete relevant training before reviewing human subject research. Research investigators must complete appropriate institutional training before conducting human subject research.

310:10-3-8. Investigator training [REVOKED]

The OSDH and the OSDH IRB have established (or will establish within 90 days of the effective date of this Chapter), and will provide to OHRP upon request, education and oversight mechanisms (appropriate to the nature and volume of its research) to verify that research investigators, IRB members and staff, and other relevant personnel maintain continuing knowledge of, and comply with, relevant federal regulations, OHRP guidance, other applicable guidance, state and local law, and institutional policies for the protection of human subjects. The OSDH and the OSDH IRB will require documentation of such training from research investigators as a condition for conducting human subject research.

310:10-3-9. Compliance and knowledge of local context [REVOKED]

The OSDH is responsible for verifying that the OSDH IRB designated under the Federalwide Assurance agree to comply with Sections 310:10-3-1 through Sections 310:10-3-8 and that the OSDH IRB possess appropriate knowledge of the local context in which research for which the OSDH IRB is responsible will be conducted.

310:10-3-10. Assurance of protection for human subjects [REVOKED]

The OSDH is responsible for ensuring that all institutions and investigators collaborating in its federally supported human subject research operate under an appropriate Assurance of Protection for Human Subjects. All institutions engaged in such research, including subcontractors and subgrantees, must hold their own Assurance.

**310:10-3-11. Institutional support of the IRB
[REVOKED]**

~~The institution will provide the OSDH IRB with resources, professional staff, and support staff sufficient to carry out their responsibilities efficiently and effectively.~~

310:10-3-12. Unaffiliated investigation [REVOKED]

~~The activities of individual research investigators who are not employees or agents of the institution may be covered under the Assurance only in accordance with a formal, written agreement of commitment to relevant human subject protection policies and OSDH IRB oversight. Institutions must maintain such commitment agreements on file and provide copies to OHRP upon request.~~

**310:10-3-13. Update of federalwide assurance
[REVOKED]**

~~Information provided under the Federalwide Assurance will be updated every 36 months, even if no changes have occurred, in order to maintain an active Assurance.~~

**SUBCHAPTER 5. COMPLIANCE WITH THE
REGISTRATION OF THE OKLAHOMA STATE
DEPARTMENT OF HEALTH INSTITUTIONAL
REVIEW BOARD [REVOKED]**

310:10-5-1. FDA regulated research [REVOKED]

~~The OSDH IRB will only review FDA Regulated Research that has already been approved by an Institutional Review Board that complies with FDA regulations.~~

310:10-5-2. Ethical principles [REVOKED]

~~All IRB activities related to human subject research should be guided by the ethical principles in The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research.~~

**310:10-5-3. Compliance with 45 C.F.R. Part 46
[REVOKED]**

~~Federally supported human subject research for which the OSDH IRB provides review and oversight will comply with 45 C.F.R. Part 45. All human subject research supported by the Department of Health and Human Services (HHS) will comply with all Subparts of HHS regulations at Title 45 Code of Federal Regulations Part 46 (45 C.F.R. Part 46). All federally supported human subject research will also comply with any additional human subject regulations and policies of the supporting federal or state department or agency. All federally supported human subject research will comply with any human subject regulations and policies of any relevant regulatory federal or state department or agency.~~

**310:10-5-4. Authority of the OSDH IRB
[REVOKED]**

~~Except for research exempted or waived under 45 C.F.R. § 46.101(b)&(i), all research for which the IRB is responsible will be reviewed, prospectively approved, and subject to continuing oversight by the IRB. The IRB has the authority to approve, require modifications in, or disapprove the research for which it is responsible.~~

310:10-5-5. Informed consent [REVOKED]

~~Except where specifically waived or altered by the IRB under 45 C.F.R. § 46.101(i), 46.116(e)&(d), or 46.117(e) of all research for which the IRB is responsible requires written informed consent, in nonexculpatory language understandable to the subject (or the subject's legally authorized representative), including the following basic elements per 45 C.F.R. § 46.116(a)& (b):~~

- ~~(1) Identification as research; purposes, duration, and procedures; procedures which are experimental;~~
- ~~(2) Reasonable foreseeable risks or discomforts;~~
- ~~(3) Reasonably expected benefits to the subject or others;~~
- ~~(4) Alternative procedures or treatments, if any, that might be advantageous to the subject;~~
- ~~(5) Extent of confidentiality to be maintained;~~
- ~~(6) Whether compensation or medical treatment are available if injury occurs (if more than minimal risk);~~
- ~~(7) Whom to contact for answers to questions about the research, subjects' rights, and research related injury;~~
- ~~(8) Participation is voluntary; refusal to participate, or discontinuation of participation, will involve no penalty or loss of benefits to which subject is entitled; and~~
- ~~(9) When appropriate, additional elements per 45 C.F.R. § 46.116(b).~~

310:10-5-6. IRB procedures [REVOKED]

~~The IRB will establish written procedures for:~~

- ~~(1) conducting IRB initial and continuing review, approving research, and reporting IRB findings to the investigator and the institution;~~
- ~~(2) determining which projects require review more often than annually, and which projects need verification from sources other than the investigator that no material changes have occurred;~~
- ~~(3) ensuring that changes in approved research are reported promptly and are not initiated without IRB approval, except when necessary to eliminate apparent immediate hazards to the subject; and~~
- ~~(4) ensuring prompt reporting to the IRB, institutional officials, the relevant department or agency head, any applicable regulatory body, and OHRP of any:~~
 - ~~(A) Unanticipated problems involving risks to subjects or others in any covered research;~~
 - ~~(B) serious or continuing noncompliance with federal, institutional, or IRB requirements; and~~
 - ~~(C) suspension or termination of IRB approval for federally supported research.~~

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310:10-5-7. Compliance and knowledge of local context [REVOKED]

The IRB will ensure that it has appropriate knowledge of the local context in which research for which it is responsible will be conducted.

310:10-5-8. IRB Training [REVOKED]

The IRB Chairperson, IRB members, IRB staff, and human subject research investigators will complete appropriate education related to the protection of human subjects before reviewing or conducting human subject research.

310:10-5-9. Provision of investigator training [REVOKED]

The IRB will ensure the existence of adequate education and oversight mechanisms (appropriate to the nature and volume of the research being conducted) to verify that research investigators, IRB members and staff, and other relevant personnel maintain continuing knowledge of, and comply with, relevant Federal regulations, OHRP guidance, other applicable guidance, state and local law, and IRB determinations and policies for the protection of human subjects. The IRB will require documentation of such training from research investigators as a condition for conducting human subject research.

310:10-5-10. Institutional support of the IRB [REVOKED]

The IRB will endeavor to ensure that it is provided with resources, professional staff, and support staff appropriate to the nature and volume of the research for which it is responsible.

310:10-5-11. Update of IRB Registration [REVOKED]

The OSDH IRB will update the IRB Registration at least every 36 months in order to maintain active registration. Failure to update this information may result in termination of the IRB's registration with HHS.

310:10-5-12. IRB membership requirements [REVOKED]

45 C.F.R. § 46.107 specifies IRB membership requirements as follows:

- (1) The IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the entity. The IRB shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, and backgrounds and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific research activities, the IRB shall be able to ascertain the acceptability of proposed

research in terms of institutional commitments and regulations, applicable law, and standards of professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. If an IRB regularly reviews research that involves a vulnerable category of subjects, such as children, prisoners, pregnant women, or handicapped or mentally disabled persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects.

(2) Every effort will be made to ensure that no IRB consists entirely of men or entirely of women, including the institution's consideration of qualified persons of both sexes, so long as no selection is made to the IRB on the basis of gender. No IRB may consist entirely of members of one profession.

(3) Each IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas.

(4) Each IRB shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.

(5) No IRB may have a member participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB.

(6) An IRB may, in its discretion, invite individuals with competence in special areas to assist in the review of issues, which require expertise beyond or in addition to that available on the IRB. These individuals may not vote with the IRB.

SUBCHAPTER 7. RESEARCH INTEGRITY [REVOKED]

310:10-7-1. Responsibility for research integrity [REVOKED]

The responsibility under 45 C.F.R. Part 46 includes authority to suspend or terminate IRB approval of research that is not being conducted in accordance with the IRB's requirements or that has been associated with unexpected serious harm to subjects. Any suspension or termination of approval shall include a statement of the reasons for the IRB's actions and shall be reported promptly to the investigator, appropriate OSDH officials, and the Commissioner of Health.

310:10-7-2. Usage [REVOKED]

This Chapter establishes procedure that will be followed when an allegation of possible misconduct in science is received by an OSDH official. Particular circumstances in an individual case may dictate variation from this procedure deemed in the best interests of OSDH and PHS. Any change from these procedures also must ensure fair treatment to the subject of the

inquiry or investigation. The Commissioner of Health should approve any significant variation in advance.

310:10-7-3. Research Integrity Officer [REVOKED]

(a) The Commissioner will appoint the Research Integrity Officer (RIO) who will have primary responsibility for implementation of these procedures. The RIO Officer will be an employee of OSDH who is well qualified to handle the procedural requirements involved and is sensitive to the varied demands made on those who conduct research, those who are accused of misconduct, and those who report apparent misconduct in good faith.

(b) The RIO will appoint the inquiry and investigation committees and ensure that necessary and appropriate expertise is secured to carry out a thorough and authoritative evaluation of the relevant evidence in an inquiry or investigation. The RIO will do everything possible to ensure that confidentiality is maintained.

(c) The RIO will assist inquiry and investigation committees and all employees in complying with these procedures and with applicable standards imposed by government or external funding sources. The RIO shall maintain files of all documents and evidence and shall maintain the confidentiality and the security of the files.

(d) The RIO reports to ORI shall keep ORI apprised of any developments during the course of the inquiry or investigation that may affect current or potential DHHS funding for the individual(s) under investigation or that PHS needs to know to ensure appropriate use of federal funds and otherwise protect the public interest.

310:10-7-4. Whistleblower [REVOKED]

(a) The whistleblower will have the opportunity to:

- (1) Testify before the inquiry and investigation committees;
- (2) Review portions of the inquiry and investigation reports pertinent to his/her allegations or testimony;
- (3) Be informed of the results of the inquiry and investigation;
- (4) Be protected from retaliation.

(b) If the RIO has determined that the whistleblower may be able to provide pertinent information on any portions of the draft report, these portions will be given to the whistleblower for comment.

(c) The whistleblower is responsible for making allegations in good faith, maintaining confidentiality, and cooperating with an inquiry or investigation.

310:10-7-5. Respondent [REVOKED]

(a) The respondent will:

- (1) Be informed of the allegations when an inquiry is opened;
- (2) Be notified in writing of the final determinations and resulting actions;
- (3) Be interviewed by and present evidence to the inquiry and investigation committees;

(4) Review the draft inquiry and investigation reports;

(5) Have the right to advice of counsel.

(b) The respondent is responsible for maintaining confidentiality and cooperating with the conduct of an inquiry or investigation. If the respondent is not found to have engaged in scientific misconduct, he or she has the right to receive assistance from OSDH in restoring his or her reputation.

310:10-7-6. Deciding official [REVOKED]

The Deciding Official will be appointed by the Commissioner and will receive the inquiry and/or investigation report and any written comments made by the respondent or the whistleblower on the draft report. The Deciding Official will consult with the RIO or other appropriate officials and will determine whether to conduct an investigation, whether misconduct occurred, whether to impose sanctions, or whether to take other appropriate administrative actions.

310:10-7-7. Responsibility to report misconduct [REVOKED]

All employees or individuals associated with OSDH should report observed, suspected, or apparent misconduct in science to the RIO. If an individual is unsure whether a suspected incident falls within the definition of scientific misconduct, he or she may call the RIO to discuss the suspected misconduct informally. If the circumstances described by the individual do not meet the definition of scientific misconduct, the RIO will refer the individual or allegation to other offices or officials with responsibility for resolving the problem. At any time, an employee may have confidential discussions and consultations about concerns of possible misconduct with the Research Integrity Officer and will be counseled about appropriate procedures for reporting allegations.

310:10-7-8. Protecting the whistleblower [REVOKED]

(a) The RIO will monitor the treatment of individuals who bring allegations of misconduct or of inadequate institutional response thereto, and those who cooperate in inquiries or investigations.

(b) The RIO will ensure that these persons will not be retaliated against in the terms and conditions of their employment or other status at the institution and will review instances of alleged retaliation for appropriate action. A grievance may be filed by the RIO for the whistleblower or the whistleblower may file for him or herself.

(c) Employees should immediately report any alleged or apparent retaliation RIO.

(d) OSDH shall protect the privacy of those who report misconduct in good faith to the maximum extent possible. For example, if The whistleblower requests anonymity, the institution will make an effort to honor the request during the allegation assessment or inquiry within applicable policies and regulations and state and local laws, if any. The whistleblower will be advised that if the matter is referred to an investigation committee and the whistleblower's testimony is required,

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anonymity may no longer be guaranteed. OSDH shall undertake diligent efforts to protect the positions and reputations of those persons who, in good faith, make allegations.

310:10-7-9. Protecting the respondent [REVOKED]

(a) ~~Inquiries and investigations will be conducted in a manner that will ensure fair treatment to the respondent(s) in the inquiry or investigation and confidentiality to the extent possible without compromising public health and safety or thoroughly carrying out the inquiry or investigation.~~

(b) ~~OSDH employees accused of scientific misconduct may consult with legal counsel or a non-lawyer personal adviser (who is not a principal or witness in the case) to seek advice and may bring the counsel or personal adviser to interviews or meetings on the case.~~

310:10-7-10. Cooperation with inquiries and investigations [REVOKED]

~~OSDH employees will cooperate with the RIO and other OSDH officials in the review of allegations and the conduct of inquiries and investigations. Employees have an obligation to provide relevant evidence to the RIO or other OSDH officials on misconduct allegations.~~

310:10-7-11. Preliminary assessment of allegations [REVOKED]

~~Upon receiving an allegation of scientific misconduct, the RIO will immediately assess the allegation to determine whether there is sufficient evidence to warrant an inquiry, whether PHS support or PHS applications for funding are involved, and whether the allegation falls under the PHS definition of scientific misconduct.~~

310:10-7-12. Conducting the inquiry [REVOKED]

(a) ~~**Initiation and purpose of the inquiry.** Following the preliminary assessment, if the RIO determines that the allegation provides sufficient information to allow specific follow-up, involves PHS support, and is within the PHS definition of scientific misconduct, he or she will immediately initiate the inquiry process. In initiating the inquiry, the RIO should identify clearly the original allegation and any related issues that should be evaluated. The purpose of the inquiry is to make a preliminary evaluation of the available evidence and testimony of the respondent, whistleblower, and key witnesses to determine whether there is sufficient evidence of possible scientific misconduct to warrant an investigation. The purpose of the inquiry is not to reach a final conclusion about whether misconduct definitely occurred or who was responsible. The findings of the inquiry must be set forth in an inquiry report.~~

(b) ~~**Sequestration of the research records.** After determining that an allegation falls within the definition of misconduct in science and involves PHS funding, the RIO must ensure that all original research records and materials relevant to the allegation are immediately secured. The RIO may consult with ORI for advice and assistance in this regard.~~

(c) ~~**Appointment of the inquiry committee.**~~

(1) ~~The RIO, in consultation with other OSDH officials as appropriate, will appoint an inquiry committee and committee chair within 10 days of the initiation of the inquiry. The inquiry committee shall consist of individuals who:~~

~~(A) Do not have real or apparent conflicts of interest in the case;~~

~~(B) Are unbiased; and~~

~~(C) Have the necessary expertise to evaluate the evidence and issues related to the allegation.~~

~~(D) May be scientists, subject matter experts, administrators, lawyers, or other qualified persons, and they may be from inside or outside the institution.~~

(2) ~~The Inquiry Committee will interview the principals and key witnesses, and conduct the inquiry.~~

(3) ~~The RIO shall notify the respondent of the proposed committee membership in 10 days.~~

(4) ~~If the respondent submits a written objection to any appointed member of the inquiry committee or expert based on bias or conflict of interest within 5 days, the RIO shall determine whether to replace the challenged member or expert with a qualified substitute.~~

(d) ~~**Charge to the committee and the first meeting.**~~

(1) ~~The RIO will prepare a charge for the inquiry committee that describes the allegations and any related issues identified during the allegation assessment and states that the purpose of the inquiry is to make a preliminary evaluation of the evidence and testimony of the respondent, whistleblower, and key witnesses to determine whether there is sufficient evidence of possible scientific misconduct to warrant an investigation as required by the PHS regulation. The purpose is not to determine whether scientific misconduct definitely occurred or who was responsible.~~

(2) ~~At the committee's first meeting, the RIO will review the charge with the committee, discuss the allegations, any related issues, and the appropriate procedures for conducting the inquiry, assist the committee with organizing plans for the inquiry, and answer any questions raised by the committee. The RIO and institutional counsel will be present or available throughout the inquiry to advise the committee as needed.~~

(e) ~~**Inquiry process.** The inquiry committee will interview the whistleblower, the respondent, and key witnesses as well as examining relevant research records and materials. Then the inquiry committee will evaluate the evidence and testimony obtained during the inquiry. After consultation with the RIO and OSDH counsel, the committee members will decide whether there is sufficient evidence of possible scientific misconduct to recommend further investigation. The scope of the inquiry does not include deciding whether misconduct occurred or conducting exhaustive interviews and analyses.~~

310:10-7-13. The inquiry report [REVOKED]

(a) ~~**Elements of the inquiry report.** A written inquiry report must be prepared that states the name and title of the committee members and experts, if any; the allegations; the PHS support; a summary of the inquiry process used; a list of the~~

research records reviewed; summaries of any interviews; a description of the evidence in sufficient detail to demonstrate whether an investigation is warranted or not; and the committee's determination as to whether an investigation is recommended and whether any other actions should be taken if an investigation is not recommended. OSDH counsel will review the report for legal sufficiency.

~~(b) **Comments on the draft report by the respondent and the whistleblower.** After first redacting the identity of the whistleblower, the RIO will provide the respondent with a copy of the redacted draft inquiry report for comment and rebuttal, and will provide the whistleblower, if he or she is identifiable, with portions of the draft inquiry report that address the whistleblower's role and opinions in the investigation.~~

~~(c) **Confidentiality.** The RIO shall establish reasonable conditions for review to protect the confidentiality of the draft report.~~

~~(d) **Receipt of comments.** Within 14 calendar days of their receipt of the draft report, the whistleblower and respondent will provide their comments, if any, to the inquiry committee. Any comments that the whistleblower or respondent submits on the draft report will become part of the final inquiry report and record. Based on the comments, the inquiry committee may revise the report as appropriate.~~

310:10-7-14. Inquiry decision, notification, and confidentiality [REVOKED]

~~(a) **Decision by deciding official.** The RIO will transmit the final report and any comments to the Deciding Official, who will make the determination of whether findings from the inquiry provide sufficient evidence of possible scientific misconduct to justify conducting an investigation. The inquiry is completed when the Deciding Official makes this determination, which will be made within 60 days of the first meeting of the inquiry committee. Any extension of this period will be based on good cause and recorded in the inquiry file.~~

~~(b) **Notification.** The RIO will notify both the respondent and the whistleblower in writing of the Deciding Official's decision of whether to proceed to an investigation and will remind them of their obligation to cooperate in the event an investigation is opened. The RIO will also notify all appropriate institutional officials of the Deciding Official's decision.~~

~~(c) **Confidentiality.** A decision recommending further investigation pursuant to subsection (a) above shall be deemed to be confidential pursuant to 51 O.S. § 24A.12 and shall not be publicly disseminated beyond the persons identified in subsection (b) above.~~

310:10-7-15. Time limit for completing the inquiry report [REVOKED]

The inquiry committee will normally complete the inquiry and submit its report in writing to the RIO no more than 60 calendar days following its first meeting, unless the RIO approves an extension for good cause. If the RIO approves an extension, the reason for the extension will be entered into the records of

the case and the report. The respondent also will be notified of the extension.

310:10-7-16. Conducting the investigation [REVOKED]

~~(a) **Purpose of the investigation.** The purpose of the investigation is to explore in detail the allegations, to examine the evidence in depth, and to determine specifically whether misconduct has been committed, by whom, and to what extent. The investigation will also determine whether there are additional instances of possible misconduct that would justify broadening the scope beyond the initial allegations. This is particularly important where the alleged misconduct involves clinical trials or potential harm to human subjects or the general public or if it affects research that forms the basis for public policy, clinical practice, or public health practice. The findings of the investigation will be set forth in an investigation report.~~

~~(b) **Sequestration of the research records.** The Research Integrity Officer will immediately sequester any additional pertinent research records that were not previously sequestered during the inquiry. This sequestration should occur before or at the time the respondent is notified that an investigation has begun. The need for additional sequestration of records may occur for any number of reasons, including the institution's decision to investigate additional allegations not considered during the inquiry stage or the identification of records during the inquiry process that had not been previously secured. The procedures to be followed for sequestration during the investigation are the same procedures that apply during the inquiry.~~

~~(c) **Appointment of the Investigation Committee.** The Research Integrity Officer, in consultation with other OSDH officials as appropriate, will appoint an investigation committee and the committee chair within 10 days of the notification to the respondent that an investigation is planned or as soon thereafter as practicable. The investigation committee should consist of at least three individuals who do not have real or apparent conflicts of interest in the case, are unbiased, and have the necessary expertise to evaluate the evidence and issues related to the allegations, interview the principals and key witnesses, and conduct the investigation. These individuals may be scientists, administrators, subject matter experts, lawyers, or other qualified persons, and they may be from inside or outside the institution. Individuals appointed to the investigation committee may also have served on the inquiry committee. The Research Integrity Officer will notify the respondent of the proposed committee membership within 5 days. If the respondent submits a written objection to any appointed member of the investigation committee or expert, the Research Integrity Officer will determine whether to replace the challenged member or expert with a qualified substitute.~~

~~(d) **Charge to the committee and the first meeting.**~~

~~(1) **Charge to the committee.** The Research Integrity Officer will define the subject matter of the investigation in a written charge to the committee that describes the allegations and related issues identified during the inquiry, defines scientific misconduct, and identifies the name of~~

the respondent. The charge will state that the committee is to evaluate the evidence and testimony of the respondent, whistleblower, and key witnesses to determine whether, based on a preponderance of the evidence, scientific misconduct occurred and, if so, to what extent, who was responsible, and its seriousness. During the investigation, if additional information becomes available that substantially changes the subject matter of the investigation or would suggest additional respondents, the committee will notify the Research Integrity Officer, who will determine whether it is necessary to notify the respondent of the new subject matter or to provide notice to additional respondents.

(2) **The first meeting.** The Research Integrity Officer, with the assistance of institutional counsel, will convene the first meeting of the investigation committee to review the charge, the inquiry report, and the prescribed procedures and standards for the conduct of the investigation, including the necessity for confidentiality and for developing a specific investigation plan. The investigation committee will be provided with a copy of these instructions and, where PHS funding is involved, the PHS regulation.

(e) **Investigation process.** The investigation committee will be appointed and the process initiated within 30 days of the completion of the inquiry, if findings from that inquiry provide a sufficient basis for conducting an investigation. The investigation will normally involve examination of all documentation including, but not necessarily limited to, relevant research records, computer files, proposals, manuscripts, publications, correspondence, memoranda, and notes of telephone calls. Whenever possible, the committee should interview the whistleblower(s), the respondents(s), and other individuals who might have information regarding aspects of the allegations. Interviews of the respondent should be tape recorded or transcribed. All other interviews should be transcribed, tape recorded, or summarized. Summaries or transcripts of the interviews should be prepared, provided to the interviewed party for comment or revision, and included as part of the investigatory file.

310:10-7-17. The investigation report [REVOKED]

(a) **Elements of the investigation report.** The final report submitted to ORI must describe the policies and procedures under which the investigation was conducted, describe how and from whom information relevant to the investigation was obtained, state the findings, and explain the basis for the findings. The report will include the actual text or an accurate summary of the views of any individual(s) found to have engaged in misconduct as well as a description of any sanctions imposed and administrative actions taken by the institution.

(b) **Comments on the draft report.**

(1) **Respondent.** After first redacting the identity of the whistleblower, the Research Integrity Officer will provide the respondent with a copy of the redacted draft investigation report for comment and rebuttal. The respondent will be allowed 5 days to review and comment on the draft report. The respondent's comments will be attached to the final report. The findings of the final report should take

into account the respondent's comments in addition to all the other evidence.

(2) **Whistleblower.** The Research Integrity Officer will provide the whistleblower, if he or she is identifiable, with those portions of the draft investigation report that address the whistleblower's role and opinions in the investigation. The report should be modified, as appropriate, based on the whistleblower's comments.

(3) **Institutional counsel.** The draft investigation report will be transmitted to the institutional counsel for a review of its legal sufficiency. Comments should be incorporated into the report as appropriate.

(4) **Confidentiality.** In distributing the draft report, or portions thereof, to the respondent and whistleblower, the Research Integrity Officer will inform the recipient of the confidentiality under which the draft report is made available and may establish reasonable conditions to ensure such confidentiality. For example, the Research Integrity Officer may request the recipient to sign a confidentiality statement or to come to his or her office to review the report. The identity of the whistleblower will be subject to public disclosure only as the RIO may determine is reasonable and appropriate by balancing the needs of the whistleblower to remain confidential with the needs of the institutional review board to comply with federal regulations enacted to protect the rights and welfare of human research participants.

(e) **Institutional review and decision.** Based on a preponderance of the evidence, the Deciding Official will make the final determination whether to accept the investigation report, its findings, and the recommended institutional actions. If this determination varies from that of the investigation committee, the Deciding Official will explain in detail the basis for rendering a decision different from that of the investigation committee in the institution's letter transmitting the report to ORI. The Deciding Official's explanation should be consistent with the PHS definition of scientific misconduct, the institution's policies and procedures, and the evidence reviewed and analyzed by the investigation committee. The Deciding Official may also return the report to the investigation committee with a request for further fact finding or analysis. The Deciding Official's determination, together with the investigation committee's report, constitutes the final investigation report for purposes of ORI review. When a final decision on the case has been reached, the Research Integrity Officer will notify both the respondent and the whistleblower in writing. In addition, the Deciding Official will determine whether law enforcement agencies, professional societies, professional licensing boards, editors of journals in which falsified reports may have been published, collaborators of the respondent in the work, or other relevant parties should be notified of the outcome of the case. The Research Integrity Officer is responsible for ensuring compliance with all notification requirements of funding or sponsoring agencies.

(d) **Transmittal of the final investigation report to ORI.** After comments have been received and the necessary changes have been made to the draft report, the investigation committee should transmit the final report with attachments, including the

respondent's and whistleblower's comments, to the Deciding Official, through the Research Integrity Officer.

(e) **Time limit for completing the investigation report.** An investigation should ordinarily be completed within 120 days of its initiation, with the initiation being defined as the first meeting of the investigation committee. This includes conducting the investigation, preparing the report of findings, making the draft report available to the subject of the investigation for comment, submitting the report to the Deciding Official for approval, and submitting the report to the ORI.

310:10-7-18. Requirements for reporting to ORI [REVOKED]

(a) An institution's decision to initiate an investigation must be reported in writing to the Director, ORI, on or before the date the investigation begins. At a minimum, the notification should include the name of the person(s) against whom the allegations have been made, the general nature of the allegation as it relates to the PHS definition of scientific misconduct, and the PHS applications or grant number(s) involved. ORI must also be notified of the final outcome of the investigation and must be provided with a copy of the investigation report. Any significant variations from the provisions of the institutional policies and procedures should be explained in any reports submitted to ORI.

(b) If an institution plans to terminate an inquiry or investigation for any reason without completing all relevant requirements of the PHS regulation, the Research Integrity Officer will submit a report of the planned termination to ORI, including a description of the reasons for the proposed termination.

(c) If the institution determines that it will not be able to complete the investigation in 120 days, the Research Integrity Officer will submit to ORI a written request for an extension that explains the delay, reports on the progress to date, estimates the date of completion of the report, and describes other necessary steps to be taken. If the request is granted, the Research Integrity Officer will file periodic progress reports as requested by the ORI.

(d) When PHS funding or applications for funding are involved and an admission of scientific misconduct is made, the Research Integrity Officer will contact ORI for consultation and advice. Normally, the individual making the admission will be asked to sign a statement attesting to the occurrence and extent of misconduct. When the case involves PHS funds, the institution cannot accept an admission of scientific misconduct as a basis for closing a case or not undertaking an investigation without prior approval from ORI.

(e) The Research Integrity Officer will notify ORI at any stage of the inquiry or investigation if:

- (1) there is an immediate health hazard involved;
- (2) there is an immediate need to protect Federal funds or equipment;
- (3) there is an immediate need to protect the interests of the person(s) making the allegations as well as his/her co-investigators and associates, if any;
- (4) it is probable that the alleged incident is going to be reported publicly; or

(5) the allegation involves a public health sensitive issue, e.g., a clinical trial; or

(6) there is a reasonable indication of possible criminal violation. In this instance, the institution must inform ORI within 24 hours of obtaining the information.

310:10-7-19. Institutional administrative actions [REVOKED]

(a) OSDH will take appropriate administrative actions against individuals when an allegation of misconduct has been substantiated. If the Deciding Official determines that the alleged misconduct is substantiated by the findings, he or she will decide on the appropriate actions to be taken, after consultation with the Research Integrity Officer. The actions may include:

- (1) withdrawal or correction of all pending or published abstracts and papers emanating from the research where scientific misconduct was found.
- (2) removal of the responsible person from the particular project, letter of reprimand, special monitoring of future work, probation, suspension, salary reduction, or initiation of steps leading to possible rank reduction or termination of employment;
- (3) restitution of funds as appropriate.

(b) **Termination of OSDH employment or resignation prior to completing inquiry or investigation.** The termination of the respondent's institutional employment, by resignation or otherwise, before or after an allegation of possible scientific misconduct has been reported, will not preclude or terminate the misconduct procedures. If the respondent, without admitting to the misconduct, elects to resign his or her position prior to the initiation of an inquiry, but after an allegation has been reported, or during an inquiry or investigation, the inquiry or investigation will proceed. If the respondent refuses to participate in the process after resignation, the committee will use its best efforts to reach a conclusion concerning the allegations, noting in its report the respondent's failure to cooperate and its effect on the committee's review of all the evidence.

(c) **Restoration of the respondent's reputation.** If the institution finds no misconduct and ORI concurs, after consulting with the respondent, the Research Integrity Officer will undertake reasonable efforts to restore the respondent's reputation if necessary. Depending on the particular circumstances, the Research Integrity Officer should consider notifying those individuals aware of or involved in the investigation of the final outcome, publicizing the final outcome in forums in which the allegation of scientific misconduct was previously publicized, or expunging all reference to the scientific misconduct allegation from the respondent's personnel file. Any institutional actions to restore the respondent's reputation must first be approved by the Deciding Official.

(d) **Protection of the whistleblower and others.** Regardless of whether the institution or ORI determines that scientific misconduct occurred, the Research Integrity Officer will undertake reasonable efforts to protect whistleblowers who made allegations of scientific misconduct in good faith and others who cooperate in good faith with inquiries

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and investigations of such allegations. Upon completion of an investigation, the Deciding Official will determine, after consulting with the whistleblower, what steps, if any, are needed to restore the position or reputation of the whistleblower. The Research Integrity Officer is responsible for implementing any steps the Deciding Official approves. The Research Integrity Officer will also take appropriate steps during the inquiry and investigation to prevent any retaliation against the whistleblower.

(e) ~~Allegations not made in good faith.~~ If relevant, the Deciding Official will determine whether the whistleblower's allegations of scientific misconduct were made in good faith. If an allegation was not made in good faith, the Deciding Official will determine whether any administrative action should be taken against the whistleblower.

(f) ~~Interim administrative actions.~~ Institutional officials will take interim administrative actions, as appropriate, to protect Federal funds and ensure that the purposes of the Federal financial assistance are carried out.

310:10-7-20. Record retention [REVOKED]

After completion of a case and all ensuing related actions, the Research Integrity Officer will prepare a complete file, including the records of any inquiry or investigation and copies of all documents and other materials furnished to the Research Integrity Officer or committees. The Research Integrity Officer will maintain and dispose of the records of any inquiry or investigation in compliance with the approved records retention schedule for the office of the Commissioner of Health. The ORI or other authorized DHHS personnel will be given access to the records upon request. These records are subject to public review or copying unless otherwise exempt from disclosure pursuant to the Oklahoma Open Records Act.

[OAR Docket #20-672; filed 7-24-20]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 105. VITAL STATISTICS

[OAR Docket #20-684]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Purpose, Forms and Fees
310:105-1-3 [AMENDED]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The current rule provides a requirement for identification and establishes fees for services. The proposed amendment will require the State Department of Health to provide a list of acceptable identification to include government issued photographic identification, alternative forms of identification, and an alternative electronic process. Additionally, the Department is directed to provide the legal forms that shall be used to delegate personal powers related to birth records and attestation for identity. This is required to meet the requirement in law to maintain record integrity and establish that each applicant meets the requirements set in law for release of a record. There is no change to fees requested.

CONTACT PERSON:

Audrey C. Talley, Agency Rules Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-944, ext. 56535. AudreyT@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 1. PURPOSE, FORMS, AND FEES

310:105-1-3. Fees for Services, Identification requirements and Certified Copies

(a) A valid, legal photographic identification by applicant or individual attesting for applicant Identification prescribed by the Department, shall be required for issuance of birth, death, and stillbirth certificates. Documentation is subject to verification with the issuing authority and shall include:

- (1) Government issued photographic identification; or
- (2) At least two alternative forms of identification; or
- (3) An alternative electronic process.

(b) Alternative forms may include, but are not limited to letters from government or social agencies; pay statement; utility bills; or other items prescribed by the Department.

(c) Delegation of personal legal powers to request or amend a birth certificate by an eligible applicant as established in 63 O.S. § 1-323, shall be on a form prescribed by the Department in order to protect the integrity of the records, ensure their proper use, and to efficiently administer the vital statistics system.

(d) Attestation to the identity of another person who is applying for his/her own record shall be on a form prescribed by the Department.

(e) Except as otherwise provided in law or regulation, the following schedule of fees is adopted for services provided,

certified copies of Vital Records, or for a search of files when no copy is made:

- (1) Search of files or issuance of one (1) certified copy if record is found:
 - (A) Birth Certificates - \$15.00; additional certified copies requested - \$15.00 per copy.
 - (B) Death Certificates - \$15.00; additional certified copies requested - \$15.00 per copy.
- (2) Delayed Registration:
 - (A) Initial search of files - \$15.00
 - (B) Certified copies after establishment of delayed registration - \$40.00 (\$40.00 fee includes a \$25.00 processing fee and credit for initial \$15.00 search fee.)
- (3) Birth record substitution:
 - (A) Adoptions:
 - (i) Search of records - \$15.00
 - (ii) Certified copy after substitution - \$40.00 (\$40.00 fee includes a \$25.00 processing fee and credit for initial \$15.00 search fee.)
 - (B) Legitimations:
 - (i) Search of records - \$15.00
 - (ii) Certified copy after substitution - \$40.00 (\$40.00 fee includes a \$25.00 processing fee and credit for initial \$15.00 search fee.)
 - (C) Certificate of Foreign Born:
 - (i) Search of records - \$15.00
 - (ii) Certified copy after preparation of and/or substitution of record - \$40.00 (\$40.00 fee includes \$25.00 processing fee and credit for initial \$15.00 search fee.)
- (4) Amendments to Vital Records and Paternities:
 - (A) Initial search of birth records - \$15.00
 - (B) Certified copies of birth certificates after amended or paternity completed - \$40.00 (\$40.00 fee includes a \$25.00 processing fee and credit for initial \$15.00 search fee.) Paternities which are submitted at the time of original filing by the hospital and meet all the requirements for filing are not subject to the amendment fee.
 - (C) Search of records and certified copies of amended death certificates - \$15.00.
 - (D) Certified copies of death certificates after amendment or correction completed - \$35.00 (\$35.00 fee includes a \$20.00 processing fee and credit for initial \$15.00 search fee) unless the requested amendment is to change the medical certification data. In this case, there is no amendment fee.

[OAR Docket #20-684; filed 7-24-20]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 250. FEE SCHEDULE FOR CONSUMER HEALTH SERVICE

[OAR Docket #20-674]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. License Classifications and Associated Fees for Consumer Health Services

310:250-3-1 [AMENDED]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S., § 1-104

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The current rule details the fee structure of Food Establishments. The proposed change adds a license available at a Registered Farmers Market or a Free County Fair for \$50 (fifty) dollars which is good for three (three) days.

CONTACT PERSON:

Audrey C. Talley, Agency Rules Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-944, ext. 56535. AudreyT@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 3. LICENSE CLASSIFICATIONS AND ASSOCIATED FEES FOR CONSUMER HEALTH SERVICES

310:250-3-1. Food establishments' fees

(a) The following are license classifications and associated fees for food establishments, manufacturers, or wholesalers regulated by Title 63 O.S. § 1-915, Title 63 O.S. § 1-1118, Title 63 O.S. § 1-1119, or Title 63 O.S. § 1-1120 et seq., and the rules promulgated thereunder.

(1) Food service, manufacturing, or wholesale.

(A) Initial - \$425.00

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- (B) Renewal - \$335.00
- (C) Late Renewal - \$375.00
- (2) State Operated, Non-Profit or Health Facilities not meeting exempt status.
 - (A) Initial - \$175.00
 - (B) Renewal - \$125.00
 - (C) Late Renewal - \$150.00
- (3) Seasonal includes any establishment that meets the definition of "Seasonal food establishment" outlined in OAC 310:257-1-2 where the license is valid for only one hundred eighty (180) consecutive days per year. The license may be reinstated no sooner than one hundred eighty 180 days after the expiration of the previous license.
 - (A) Initial - \$250.00
 - (B) Reinstatement - \$250.00
- (4) The fee for a temporary food establishment, as defined in OAC 310:257-1-2, shall be \$50.00 for the initial day of the temporary event plus \$25.00 for each additional consecutive day. The total fee for a single temporary event license shall not exceed \$250. No temporary event license shall be issued for more than fourteen (14) consecutive days.
 - (A) The total fee for a single temporary event license shall not exceed \$250.
 - (B) No temporary event license shall be issued for more than fourteen (14) consecutive days.
- (5) The fee for a temporary food establishment, as defined in OAC 310:257-1-2, at a county fair as defined in Title 2 O.S. §§ 15-51 et seq., shall be \$50.00 for a maximum of three (3) days.
- (6) The fee for a temporary food establishment, as defined in OAC 310:257-1-2, at a farmers market as defined in OAC 310:257-1-2 shall be \$50.00 for a maximum of three (3) days.
- (b) An establishment qualifies for a fee exempt license if it is a "food establishment - fee exempt" as that term is defined in OAC 310:257-1-2.
- (c) Late renewal fees apply to any renewal application post-marked and/or received thirty (30) days after the expiration date of the license.
- (d) A license not renewed within ninety (90) days of the date shall be ineligible for the renewal. Thereafter, the establishment shall be required to pay an initial fee. The establishment that has not had a valid license for one (1) year is considered a new establishment.

[OAR Docket #20-674; filed 7-24-20]

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

[OAR Docket #20-675]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Purpose and Definitions
310:257-1-4. [AMENDED]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S., § 1-104

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The current rule provides a list of exemptions to the rules. The proposed rule adds to the list of exemptions persons engaged solely in the sale of food products at a Registered Farmers Market as defined by Title 2 O.S., §5-19 and Persons engaged solely in the sale of food products at a County Free fair as defined by Title 2 O.S., §§15-67 et seq.

CONTACT PERSON:

Audrey C. Talley, Agency Rules Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-944, ext. 56535. AudreyT@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. PURPOSE AND DEFINITIONS

310:257-1-4. Exemptions

(a) The food establishment definition does not include a food processing plant; a facility that sells only commercially pre-packaged, non-Time/Temperature Control for Safety Foods which are incidental to the business, and does not have food in storage; a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale; a kitchen in a private home, such as a bed-and-breakfast operation that prepares and offers food to guests if the number of available guest bedrooms does not exceed three (3) and breakfast is the only meal offered; a lodging facility that is serving food according to OAC 310:285-3-14, Lodging Establishments; a private home that receives catered or home-delivered food; or individual farmers' market vendors that are in compliance with the definition of a farmers' market and hold a food processors license from the Oklahoma Department of Health, small egg packer license, licensed by the Oklahoma Department of Agriculture, Food and Forestry

and/or a produce stand that offers only whole, uncut and unprocessed fresh fruits, melons, vegetables and legumes and/or whole uncracked and unprocessed nuts.

(b) Persons engaged solely in the sale of food products at a Registered Farmers Market as defined by Title 2 O.S. § 5-19 are not subject to the provisions of this Chapter.

(1) These persons are not exempted from Title 63 O.S. § 1-1118(B)(3) in regards to licensure.

(2) The consumer shall be informed by a clearly visible placard, at least eight (8) inches by eleven (11) inches, at the sales or service location, which states "This food is prepared in a kitchen that is not inspected by the Oklahoma Department of Health".

(c) Persons engaged solely in the sale of food products at a County Free fair as defined by Title 2 O.S. §§ 15-67 et seq. are not subject to the provisions of this Chapter.

(1) These persons are not exempted from Title 63 O.S. § 1-1118(B)(3) in regards to licensure.

(2) The consumer shall be informed by a clearly visible placard, at least eight (8) inches by eleven (11) inches, at the sales or service location, which states "This food is prepared in a kitchen that is not inspected by the Oklahoma Department of Health".

[OAR Docket #20-675; filed 7-24-20]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 258. UNATTENDED FOOD ESTABLISHMENTS

[OAR Docket #20-676]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. Purpose and Definitions [NEW]
- Subchapter 3. Operations [NEW]
- Subchapter 5. Poisonous or Toxic Materials [NEW]
- Subchapter 7. Food [NEW]
- Subchapter 9. Equipment Construction [NEW]
- Subchapter 11. Facility Construction [NEW]
- Subchapter 13. Administration [NEW]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S., § 1-104

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September 11, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

The following Code of Federal Regulation (CFR) provisions are incorporated by reference as published on July 1, 2019:

- (1) Title 9 CFR, Part 424, Subpart (C) PREPARATION AND PROCESSING OPERATIONS;
- (2) Title 21 CFR, Part 129 PROCESSING AND BOTTLING OF BOTTLED DRINKING WATER;
- (3) Title 21 CFR, Part 170 FOOD ADDITIVES;
- (4) Title 21 CFR, Part 172 FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION;
- (5) Title 21 CFR, Part 173 SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION;
- (6) Title 21 CFR, Part 174 INDIRECT FOOD ADDITIVES: GENERAL;
- (7) Title 21 CFR, Part 175 INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS;
- (8) Title 21 CFR, Part 176 INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS;
- (9) Title 21 CFR, Part 177 INDIRECT FOOD ADDITIVES: POLYMERS;
- (10) Title 21 CFR, Part 178 INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS;
- (11) Title 21 CFR, Part 179 IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD;
- (12) Title 21 CFR, Part 180 FOOD ADDITIVES PERMITTED IN FOOD OR IN CONTACT WITH FOOD ON AN INTERIM BASIS PENDING ADDITIONAL STUDY;
- (13) Title 21 CFR, Part 181 PRIOR-SANCTIONED FOOD INGREDIENTS;
- (14) Title 21 CFR, Part 182 SUBSTANCES GENERALLY RECOGNIZED AS SAFE;
- (15) Title 21 CFR, Part 184 DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE;
- (16) Title 21 CFR, Part 186 INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE;
- (17) Title 21 CFR, Section 1240.60 Subpart (d) SPECIFIC ADMINISTRATIVE DECISIONS REGARDING INTERSTATE SHIPMENTS

Incorporating rules:

310:258-1-3

Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-4200

GIST/ANALYSIS:

The entire chapter is new. It is a modification of OAC 310:257 Food Establishments intended to describe and set the limit of the operation of Unattended Food Establishments.

CONTACT PERSON:

Audrey C. Talley, Agency Rules Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-944, ext. 56535. AudreyT@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. PURPOSE AND DEFINITIONS

310:258-1-1. Purpose

The rules in this Chapter implement 63 O.S. Section 1-1118.1. The purpose is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented. This Chapter establishes definitions; sets standards for food, operations, equipment, and facilities;

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and provides for unattended food establishment plan review, license issuance, inspection, and license suspension.

310:258-1-2. Definitions

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

"Additive" means as used in this Chapter for the following terms:

(A) **"Color additive"** means as stated in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 321(t) and 21 CFR, Part 70.

(B) **"Food additive"** means as stated in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 321(s) and 21 CFR, Part 170.

"Adulterated" means the definition in 63 O.S. Section 1-1109.

"Approved" means acceptable to the Department based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

"Beverage" means a liquid for drinking, including water.

"Bottled drinking water" means water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

"Certified applicator" means any individual who is certified under the Federal Herbicide, Fungicide, and Rodenticide Act, U.S.C., Section 136(e)(1) and/or by the Oklahoma State Department of Agriculture Food and Forestry as authorized to use or supervise the use of any pesticide that is classified for restricted use. Any applicator who holds or applies registered pesticides or uses dilutions of registered pesticides consistent with the product labeling only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served is not deemed to be a seller or distributor of pesticides.

"CFR" means Code of Federal Regulations. Citations in this Chapter to the CFR refer sequentially to the Title, Part, and Section numbers, such as 21 CFR, 178.1010 refers to Title 21, Part 178, Section 1010.

"Code of Federal Regulations" means the compilation of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government which is published annually by the U.S. Government Printing Office; and contains FDA rules in 21 CFR, USDA rules in 7 CFR and 9 CFR, EPA rules in 40 CFR, and Wildlife and Fisheries rules in 50 CFR.

"Community water system" means any public water supply system, which serves at least 15 service connections, used year round or regularly serves 25 customers per day.

"Consumer" means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of an unattended food establishment or food processing plant, and does not offer the food for resale.

"Controlled entry" means selective restriction or limitation of access to a place or location.

"Critical control point" means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

"Customer self-service" means customer selection of a prepackaged food product from a product module.

"Cut leafy greens" means fresh leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. The term "leafy greens" includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leafy lettuce (i.e., immature lettuce or leafy greens), escarole, endive, spring mix, spinach, cabbage, kale, arugula, and chard. The term "leafy greens" does not include herbs such as cilantro or parsley.

"Department" means the Oklahoma State Department of Health and a health department designated in writing by the State Commissioner of Health to perform official duties or other acts authorized under the Oklahoma Public Health Code and this Chapter.

"Disclosure" means a written statement that clearly identifies the animal-derived foods which are, or can be ordered, raw, undercooked, or without otherwise being processed to eliminate pathogens, or items that contain an ingredient that is raw, undercooked, or without otherwise being processed to eliminate pathogens.

"Dispensed beverage" means a beverage or ice that is dispensed in its unpackaged form from a machine.

"Easily movable" means portable; mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and has no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

"EPA" means the U.S. Environmental Protection Agency.

"Equipment" means an article that is used in the operation of an unattended food establishment such as a freezer, reach-in refrigerator, microwave oven, or temperature measuring device for ambient air. It does not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.

"FDA" means the U.S. Food and Drug Administration.

"Fish" means fresh or saltwater finfish, crustaceans, and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption. Fish includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.

"Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

"Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and provides food for sale or distribution to other business entities such as food processing plants, food establishment, or unattended food establishments.

"Grade A standards" means the requirements of the United States Public Health Service/FDA "Grade A Pasteurized Milk Ordinance" with which certain fluid and dry milk and milk products comply.

"HACCP" means Hazard Analysis Critical Control Point.

"HACCP plan" means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

"Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.

"Hermetically sealed container" means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

"Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries, and the nature, severity, and duration of the anticipated injury.

"Impermeable" means incapable of allowing liquids to pass through the covering.

"Juice" means, when used in the context of food safety, the aqueous liquid expressed or extracted from one or more fruits or vegetables, purées of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or purée. Juice does not include, for purposes of HACCP, liquids, purees, or concentrates that are not used as beverages or ingredients of beverages.

"License" means the document issued by the Department that authorizes a person to operate an unattended food establishment.

"License holder" means the entity that is legally responsible for the operation of the unattended food establishment such as the owner, the owner's agent, or other person; and possesses a valid license to operate an unattended food establishment.

"Major food allergen" means milk, egg, fish (such as bass, flounder, cod, and including crustacean such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or a food ingredient that contains protein derived from a food specified above.

(A) Major food allergen does not include: Any highly refined oil derived from a food specified in Major Food Allergen definition and any ingredient derived from such highly refined oil; or

(B) Any ingredient that is exempt under the petition or notification process specified in the Federal Food, Drugs, and Cosmetics Act, 21 U.S.C. Section 343.

"Non-community water system" means any public water supply system, which serves an average of at least 25 individuals at least 60 days per year and is not a community water system.

"OAC" means Oklahoma Administrative Code.

"O.S." means Oklahoma Statute.

"Packaged" means bottled, canned, cartoned, bagged, or wrapped, whether packaged in a food processing plant.

"Person" means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

"Physical facilities" means the structure and interior surfaces of an unattended food establishment including accessories such as light fixtures and heating or air conditioning system vents.

"Plumbing fixture" means a receptacle or device that is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system; or discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

"Plumbing system" means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

"Poisonous or toxic materials" means substances that are not intended for ingestion and are included in 4 categories:

(A) Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

(B) Pesticides, except sanitizers, which include substances such as insecticides and rodenticides;

(C) Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and

(D) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

"Premises" means the physical facility, its contents, and the contiguous land or property under the control of the license holder or the contracted establishment.

"Refuse" means solid waste not carried by water through the sewage system.

"Restricted use pesticide" means a pesticide product that contains the active ingredients specified in 40 CFR, Section 152.175. Pesticides classified for restricted use, and that is limited to use by or under the direct supervision of a certified applicator.

"Risk" means the likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.

"Sealed" means free of cracks or other openings that allow the entry or passage of moisture.

"Service animal" means an animal such as a guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.

"Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

"Single-use articles" means utensils and food containers designed and constructed to be used once and discarded.

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"Temperature measuring device" means a thermometer, thermocouple, thermistor, or other device that indicates the ambient air temperature within a cold holding unit.

"Time/Temperature Control for Safety Food" means a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation. Time/Temperature Control for Safety Food includes: An animal food that is raw or heat-treated; a plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth or toxin formation.

"Unattended food establishment" means an operation that provides packaged foods or whole fruit using an automated payment system and has controlled entry not accessible by the general public.

"USDA" means the U.S. Department of Agriculture.

"Vending machine" means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

"Vending machine location" means the room, enclosure, space, or area where one or more vending machines are installed and operated and includes the storage areas and areas on the premises that are used to service and maintain the vending machines.

310:258-1-3. Incorporated by reference

The following Code of Federal Regulation (CFR) provisions are incorporated by reference as published on July 1, 2019:

- (1) Title 9 CFR, Part 424, Subpart (C) PREPARATION AND PROCESSING OPERATIONS;
- (2) Title 21 CFR, Part 129 PROCESSING AND BOTTLING OF BOTTLED DRINKING WATER;
- (3) Title 21 CFR, Part 170 FOOD ADDITIVES;
- (4) Title 21 CFR, Part 172 FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION;
- (5) Title 21 CFR, Part 173 SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION;
- (6) Title 21 CFR, Part 174 INDIRECT FOOD ADDITIVES: GENERAL;
- (7) Title 21 CFR, Part 175 INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS;
- (8) Title 21 CFR, Part 176 INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS;
- (9) Title 21 CFR, Part 177 INDIRECT FOOD ADDITIVES: POLYMERS;
- (10) Title 21 CFR, Part 178 INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS;

(11) Title 21 CFR, Part 179 IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD;

(12) Title 21 CFR, Part 180 FOOD ADDITIVES PERMITTED IN FOOD OR IN CONTACT WITH FOOD ON AN INTERIM BASIS PENDING ADDITIONAL STUDY;

(13) Title 21 CFR, Part 181 PRIOR-SANCTIONED FOOD INGREDIENTS;

(14) Title 21 CFR, Part 182 SUBSTANCES GENERALLY RECOGNIZED AS SAFE;

(15) Title 21 CFR, Part 184 DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE;

(16) Title 21 CFR, Part 186 INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE;

(17) Title 21 CFR, Section 1240.60 Subpart (d) SPECIFIC ADMINISTRATIVE DECISIONS REGARDING INTERSTATE SHIPMENTS.

SUBCHAPTER 3. OPERATIONS

310:258-3-1. Living quarters, separation

Living or sleeping quarters located on the premises of an establishment shall be separated from rooms and areas used for establishment operations by complete partitioning and solid self-closing doors.

310:258-3-2. Cleaning frequency

The physical facilities shall be cleaned as often as necessary to keep them clean.

310:258-3-3. Premises, repairing

The physical facilities shall be maintained in good repair.

310:258-3-4. Storing maintenance tools

Maintenance tools such as brooms, mops, vacuum cleaners, and similar items shall be: Stored so they do not contaminate food, equipment, utensils, and single-service articles.

310:258-3-5. Maintaining premises, unnecessary items and litter

The premises shall be free of:

- (1) Items that are unnecessary to the operation or maintenance of the establishment such as equipment that is nonfunctional or no longer used; and
- (2) Litter.

310:258-3-6. Controlling pests

The presence of insects, rodents, and other pests shall be controlled to minimize their presence within the facility by:

- (1) Routinely inspecting incoming shipments of food and supplies;

- (2) Routinely inspecting the premises for evidence of pests;
- (3) Using methods, if pests are found, such as trapping devices or other means of pest control/elimination; and
- (4) Eliminating harborage conditions.

310:258-3-7. Removing dead or trapped pests

Dead or trapped birds, insects, rodents, and other pests shall be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, or the attraction of pests.

310:258-3-8. Prohibiting animals

- (a) Except as specified in (b) of this Section, live animals may not be allowed on the premises of an establishment.
- (b) Live animals may be allowed in the following situations unless the contamination of food, clean equipment, and unwrapped single-service and single-use articles may result:
 - (1) Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;
 - (2) Service animals that are controlled by the disabled employee or person, as long as a health or safety hazard will not result from the presence or activities of the service animal.

310:258-3-9. Distressed merchandise, segregation and location

Products that are held by the license holder for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from food, equipment, and single-service and single-use articles.

SUBCHAPTER 5. POISONOUS OR TOXIC MATERIALS

310:258-5-1. Identifying information

- (a) Containers of poisonous or toxic materials and personal care items shall bear a legible manufacturer's label.
- (b) Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies shall be clearly and individually identified with the common name of the material.

310:258-5-2. Storage and separation

Poisonous or toxic materials shall be stored so they cannot contaminate food, equipment, utensils, and single-service and single-use articles by:

- (1) Separating the poisonous or toxic materials by spacing or partitioning; and
- (2) Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, and single-service articles.

310:258-5-3. Presence and use, restriction

Only those poisonous or toxic materials that are required for the operation and maintenance of an unattended food establishment, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in an unattended food establishment.

310:258-5-4. Conditions of use

Poisonous or toxic materials shall be:

- (1) Used according to:
 - (A) Law and this Chapter,
 - (B) Manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in an unattended food establishment.
 - (C) The conditions of certification, if certification is required, for use of the pest control materials, and
 - (D) Additional conditions that may be established by the Department; and
- (2) Applied so that:
 - (A) A hazard to employees or other persons is not constituted, and
 - (B) Contamination including toxic residues due to drip, drain, fog, splash or spray on food, equipment, utensils, linens, and single-service and single-use articles is prevented, and for a restricted use pesticide, this is achieved by:
 - (i) Removing the items,
 - (ii) Covering the items with impermeable covers, or
 - (iii) Taking other appropriate preventive actions, and
 - (iv) Cleaning and sanitizing equipment and utensils after the application.
- (3) A restricted use pesticide shall be applied only by an applicator certified as defined in 7 USC Section 136(e) Certified Applicator, of the Federal Insecticide, Fungicide and Rodenticide Act, or a person under the direct supervision of a certified applicator. Restricted use pesticides specified under OAC 310:285-13-5 (3) shall meet the requirements specified in 40 CFR, Part 152 Subpart I - Classification of Pesticides.

310:258-5-5. Sanitizers, criteria

Chemical sanitizers, including chemical sanitizing solutions generated on-site, and other chemical antimicrobials applied to surfaces shall:

- (1) Meet the requirements specified in 40 CFR, Section 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions), or
- (2) Meet the requirements as specified in 40 CFR, Section 180.2020 Pesticide Chemicals Not Requiring a Tolerance or Exemption from Tolerance-Non-food determinations.

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310:258-5-6. Rodent bait stations

Rodent bait shall be contained in a covered, tamper-resistant bait station.

310:258-5-7. Tracking powders, pest control and monitoring

- (a) Except as specified in (b) of this Section, a tracking powder pesticide may not be used in an unattended establishment.
(b) If used, a nontoxic tracking powder such as talcum or flour may not contaminate food, equipment, utensils, and single-service articles.

310:258-5-8. Medication, restriction

Only medicines that are stored or displayed for retail sale shall be allowed in an unattended food service establishment.

SUBCHAPTER 7. FOOD

310:258-7-1. Prohibited food sales

The following foods shall not be offered for sale in an unattended food establishment:

- (1) Unpackaged foods with the exception of whole uncut fruits or vegetables.
- (2) Dispensed beverage.
- (3) Salvaged food as regulated under OAC 310:260 Subchapter seven (7).
- (4) Raw molluscan shellfish.
- (5) Mushrooms harvested in the wild.

310:258-7-2. Safe, unadulterated, and honestly presented

Food shall be safe, unadulterated, and honestly presented.

- (1) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.
- (2) Food color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a food.
- (3) Manufacturers' dating information on foods may not be concealed or altered.

310:258-7-3. Additives

Food may not contain unapproved food additives or additives that exceed amounts specified in 21 CFR Sections 170-180 relating to food additives, generally recognized as safe or prior sanctioned substances that exceed amounts specified in 21 CFR, Sections 181-186, substances that exceed amounts specified in 9 CFR, Subpart C Section 424.21(b), food ingredients and sources of radiation, or pesticide residues that exceed provisions specified in 40 CFR, Part 180 Tolerances and Exemptions for Pesticides Chemicals Residues in Food.

310:258-7-4. Standards of identity

Packaged food shall comply with standard of identity requirements in 21 CFR, Sections 131-169 and 9 CFR, Section 319, Definitions and Standards of Identity or Composition, and the General requirements in 21 CFR, Part 130 - Food Standards: General, and 9 CFR, Section 319 Subpart A - General.

310:258-7-5. Food labels

(a) Packaged food shall be labeled as specified in law, including 21 CFR, Part 101 - Food Labeling, and 9 CFR, Part 317 Labeling, Marking Devices, and Containers.

(b) Label information shall include:

- (1) The common name of the food, or absent a common name, an adequately descriptive identity statement;
- (2) If made from two or more ingredients, a list of ingredients and sub-ingredients in descending order of predominance by weight, including a declaration of artificial colors, artificial flavors, and chemical preservatives, if contained in the food;
- (3) An accurate declaration of the quantity of contents;
- (4) The name and place of business of the manufacturer, packer, or distributor; and
- (5) The name of the food source for each major food allergen contained in the food unless the food source is already part of the common or usual name of the respective ingredient.
- (6) Except as exempted in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C., Section 343, nutrition labeling as specified in 21 CFR, Part 101 - Food Labeling and 9 CFR, Part 317 Subpart B, Nutrition Labeling.
- (7) For any salmonid fish containing canthaxanthin or astaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin or astaxanthin.

310:258-7-6. Compliance with food law

(a) Food shall be obtained from sources that comply with this Chapter.

An establishment can sell packaged foods prepared by a facility that is in compliance with OAC 310:260 (relating to good manufacturing practices), United States Department of Agriculture, or the Oklahoma Department of Agriculture Food and Forestry.

(b) Food prepared in a private home shall not be used or offered for human consumption in an unattended food establishment.

310:258-7-7. Approved water system

A license holder shall obtain potable water from:

- (1) A community water system; or
- (2) A non-community water system; or
- (3) A non-transient, non-community water system that is constructed, maintained and operated in accordance with the Oklahoma Water Supply Systems Act, codified

at 27A O.S. Section 2-6-301 et seq., and the rules promulgated thereunder.

310:258-7-8. Bottled drinking water

Bottled drinking water used or sold in an unattended food establishment shall be obtained from approved sources in accordance with 21 CFR, Part 129 - Processing and Bottling of Bottled Drinking Water and OAC 310:225.

310:258-7-9. Milk products

As specified in 2 O.S. Section 7-401 et seq., food products listed below shall in the case of:

- (1) Milk products shall be obtained pasteurized and comply with Grade A Standards;
- (2) Frozen milk products, such as ice cream; and
- (3) Cheese.

310:258-7-10. Fish

- (a) Fish that are received for sale or service shall be:
 - (1) Commercially and legally caught or harvested; or
 - (2) Approved for sale or service.
- (b) Raw molluscan shellfish may not be received for sale.

310:258-7-11. Juice

Pre-packaged juice shall:

- (1) Be obtained from a processor with a HACCP system as specified in 21 CFR, Part 120 Hazard Analysis and Critical Control (HACCP) Systems; and
- (2) Be obtained pasteurized or otherwise treated to attain a 5-log reduction of the most resistant microorganism of public health significance as specified in 21 CFR, Part 120.24 Process Controls.

310:258-7-12. Food in a hermetically sealed container

Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.

310:258-7-13. Package integrity

Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

310:258-7-14. Vended time/temperature control for safety food, original container

Time/Temperature Control for Safety Food dispensed through a vending machine, vending unit, or customer self-service unit shall be in the package in which it was placed at the unattended food establishment or food processing plant at which it was prepared.

310:258-7-15. Temperature

- (a) Except as specified in (b) of this Section, refrigerated, Time/Temperature Control for Safety Food shall be at a temperature of 5°C (41°F) or below when received.
- (b) If a temperature other than 5°C (41°F) for a Time/Temperature Control for Safety Food is specified in law governing its distribution, the food may be received at the specified temperature.
- (c) A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen.
- (d) Upon receipt, Time/Temperature Control for Safety Food shall be free of evidence of previous temperature abuse.

310:258-7-16. Frozen food

Stored frozen foods shall be maintained frozen.

310:258-7-17. Thawing

Time/Temperature Control for Safety Food shall be thawed under refrigeration that maintains the food temperature at 5°C (41°F) or less.

310:258-7-18. Time/temperature control for safety food cold holding

Time/Temperature Control for Safety Food for cold holding shall be maintained at a temperature of 5°C (41°F) or less.

310:258-7-19. Discarding unsafe, adulterated, or contaminated food

- (a) A food that is unsafe, adulterated, or not honestly presented shall be discarded.
- (b) Food that is not from an approved source shall be discarded.
- (c) Time/Temperature Control for Safety Food shall be discarded if it:
 - (1) Exceeds the use by date on the package,
 - (2) Exceeds 41°F for 4 hours.
- (d) Food may be examined or sampled by the Department as often as necessary for enforcement of these rules and regulations. The Department may place an embargo on food in accordance with the provisions of Title 63 O.S. Section 1-1105.

310:258-7-20. Storage or display of food in contact with water or ice

Packaged food shall not be stored in direct contact with ice or water.

310:258-7-21. Food and single service article storage

- (a) Except as specified in (b) and (c) of this Section, food and single service articles shall be protected from contamination by storing the food:
 - (1) In a clean, dry location;
 - (2) Where it is not exposed to splash, dust, or other contamination; and
 - (3) At least 15 cm (6 inches) above the floor.

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(b) Food in packages and working containers may be stored less than 15 cm (6 inches) above the floor on case lot handling equipment.

(c) Pressurized beverage containers, cased food in water-proof containers such as bottles or cans, and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture.

310:258-7-22. Food and single service article storage, prohibited areas

Food and single-service articles may not be stored:

- (1) In locker rooms;
- (2) In toilet rooms;
- (3) In dressing rooms;
- (4) In garbage rooms;
- (5) In mechanical rooms;
- (6) Under sewer lines that are not shielded to intercept potential drips;
- (7) Under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed;
- (8) Under open stairwells; or
- (9) Under other sources of contamination.

310:258-7-23. Food display

Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by the consumer before consumption, food on display shall be protected from contamination by the use of packaging.

310:258-7-24. Condiments, protection

Condiments at a vending machine location shall be in individual packages.

310:258-7-25. Returned food and re-use of single service article

- (a) After being sold and in the possession of a consumer, food that is unused or returned by the consumer may not be offered as food for human consumption.
- (b) The permit holder shall take reasonable steps necessary to discourage individuals from returning food or beverages that have not been selected for purchase.
- (c) Single-service articles may not be reused.

310:258-7-26. Miscellaneous sources of contamination

Food shall be protected from contamination not otherwise specified.

SUBCHAPTER 9. EQUIPMENT CONSTRUCTION

310:258-9-1. Single-service article characteristics

Materials that are used to make single-service articles:

- (1) May not:

(A) Allow the migration of deleterious substances, or

(B) Impart colors, odors, or tastes to food; and

(2) Shall be:

(A) Safe, and

(B) Clean.

310:258-9-2. Nonfood-contact surfaces

(a) Nonfood-contact surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning shall be constructed of a corrosion-resistant, nonabsorbent, and smooth material.

(b) Nonfood-contact surfaces shall be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.

(c) Nonfood-contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue, and other debris.

(d) Nonfood-contact surfaces of equipment shall be cleaned at a frequency necessary to preclude accumulation of soil residues.

310:258-9-3. Equipment

Equipment used in an unattended food establishment shall be designated as "commercial" or "commercial grade" by the manufacturer if the equipment is used to meet or maintain temperature for time/temperature control for safety food. Equipment shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

310:258-9-4. Cold holding capacities

Equipment for holding cold food shall be sufficient in number and capacity to maintain food temperatures at 41°F or below.

310:258-9-5. Cold holding equipment, design

Each cold holding unit shall be equipped with:

(1) Self-closing doors that allow food to be viewed without opening the door of the unit.

(2) An automatic self-locking mechanism that prevents the consumer from accessing the food items inside the unit if the ambient temperature rises above 41°F. The locking mechanism shall not prevent the unit from being closed if it has been activated.

310:258-9-6. Frozen holding equipment, design

Each frozen holding unit shall be equipped with:

(1) Self-closing doors that allow food to be viewed without opening the door of the unit.

(2) An automatic self-locking mechanism that prevents the consumer from accessing the food items inside the unit if the ambient temperature rises above 32°F. The locking mechanism shall not prevent the unit from being closed if it has been activated.

310:258-9-7. Temperature measuring devices for ambient air

- (a) Ambient air temperature measuring devices that are scaled in Celsius or dually scaled in Celsius and Fahrenheit shall be designed to be easily readable and accurate to 1.5°C in the intended range of use.
- (b) Ambient air temperature measuring devices that are scaled only in Fahrenheit shall be accurate to 3°F in the intended range of use.

310:258-9-8. Temperature measuring devices

- (a) In a mechanically refrigerated storage unit, the sensor of a temperature measuring device shall be located to measure the air temperature in the warmest part of a mechanically refrigerated unit.
- (b) Cold holding equipment used for potentially hazardous food shall be designed to include and shall be equipped with at least one integral or permanently affixed temperature measuring device that is located to allow easy viewing of the device's temperature display.
- (c) Temperature measuring devices shall be designed to be easily readable.

310:258-9-9. Condenser unit, separation

If a condenser unit is an integral component of equipment, the condenser unit shall be separated from the food and food storage space by a dustproof barrier.

310:258-9-10. Case lot handling equipment

Equipment, such as dollies, pallets, racks, and skids used to store and transport large quantities of packaged foods received from a supplier in a cased or overwrapped lot, shall be designed to be moved by hand or by conveniently available equipment such as hand trucks and forklifts.

310:258-9-11. Fixed equipment, spacing or sealing

- (a) Equipment that is fixed because it is not easily movable shall be installed so that it is:
 - (1) Spaced to allow access for cleaning along the sides, behind, and above the equipment;
 - (2) Spaced from adjoining equipment, walls, and ceilings a distance of not more than 1 millimeter or one thirty-second inch; or
 - (3) Sealed to adjoining equipment or walls, if the equipment is exposed to spillage or seepage.
- (b) Counter-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:
 - (1) Sealed to the counter; or
 - (2) Elevated on legs.

310:258-9-12. Fixed equipment, elevation or sealing

- (a) Floor-mounted equipment that is not easily movable shall be sealed to the floor or elevated on legs that provide at

least a 15 centimeter (6 inch) clearance between the floor and the equipment.

- (b) This Section does not apply to display shelving units, display refrigeration units, and display freezer units located in the consumer shopping areas of a retail food store, if the floor under the units is maintained clean.
- (c) Counter-mounted equipment that is not easily movable shall be elevated on legs that provide at least a 10 centimeter (4 inch) clearance between the table and the equipment.
- (d) The clearance space between the counter and counter-mounted equipment may be:
 - (1) 7.5 centimeters (3 inches) if the horizontal distance of the counter top under the equipment is no more than 50 centimeters (20 inches) from the point of access for cleaning; or
 - (2) 5 centimeters (2 inches) if the horizontal distance of the counter top under the equipment is no more than 7.5 centimeters (3 inches) from the point of access for cleaning.

310:258-9-13. Good repair and proper adjustment

- (a) Equipment shall be maintained in a state of good repair.
- (b) Equipment components such as doors, seals, hinges, fasteners, and kick plates shall be kept intact, tight, and adjusted in accordance with manufacturer's specifications.

310:258-9-14. Microwave ovens

- (a) Microwave ovens shall meet the safety standards specified in 21 CFR, Section 1030.10 Microwave ovens.
- (b) The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.

SUBCHAPTER 11. FACILITY CONSTRUCTION

310:258-11-1. Location limitation

An unattended food establishment shall be located in the interior of a building that is not accessible by the general public. Access to the establishment shall be limited to a defined population, including but not limited to employees or occupants of the building where the establishment is located.

310:258-11-2. Video surveillance

An unattended food establishment shall provide continuous video surveillance of areas where consumers view, select, handle and purchase products that provides sufficient resolution to identify situations that may compromise food safety or food defense.

- (1) Video surveillance recordings shall be maintained and made available for inspection upon request by a representative of the State Department of Health or another applicable regulatory agency within twenty-four (24) hours of such request.

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(2) Video surveillance recordings shall be held by the establishment for a minimum of fourteen (14) calendar days after the date of the surveillance.

310:258-11-3. Floors, walls, and ceiling, characteristics

(a) Materials for floor, wall, and ceiling surfaces under conditions of normal use shall be:

(1) Smooth, durable, and easily cleanable for areas where unattended food establishment operations are conducted.

(2) Light Reflectivity Value (LRV) of walls and ceiling surfaces shall be fifty percent (50%) or greater to aid in thorough cleaning of these areas.

(b) Except for antislip floor coverings or applications that may be used for safety reasons, floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable.

(c) Mats and duckboards used on the floor shall be designed to be removable and easily cleanable.

(d) Floor and wall junctures shall be coved and closed to no larger than one (1) mm (one thirty-second 1/32 inch).

(e) Studs, joists, and rafters may not be exposed.

(f) Wall and ceiling covering materials shall be attached so that they are easily cleanable.

(g) Concrete, porous blocks, or bricks used for indoor wall construction shall be finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface.

(h) Utility service lines and pipes may not be unnecessarily exposed.

(1) Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.

(2) Exposed horizontal utility service lines and pipes may not be installed on the floor.

(i) Attachments to walls and ceilings such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items, and other attachments shall be easily cleanable.

310:258-11-4. Exterior walls and roofs

Perimeter walls and roofs of an establishment shall effectively protect the establishment from the weather and the entry of insects, rodents, and other animals.

310:258-11-5. Lighting, intensity

The light intensity shall be at least 108 lux (10 foot candles) at a distance of 75 cm (30 inches) above the floor, in walk-in refrigeration units and dry food storage areas and in other areas and rooms during periods of cleaning.

310:258-11-6. Approved plumbing system

A plumbing system shall be designed, constructed, installed and maintained according to law.

310:258-11-7. Receptacles

(a) Receptacles and waste handling units for refuse, recyclables, and returnables and for use with materials containing food residue shall be durable, cleanable, insect- and rodent-resistant, leak-proof, and nonabsorbent.

(b) Receptacles and waste handling units for refuse, recyclables, and returnables shall be thoroughly cleaned in a way that does not contaminate food, equipment, or single-service articles, and waste water shall be disposed of as specified by law.

(c) Soiled receptacles and waste handling units for refuse, recyclables, and returnables shall be cleaned at a frequency necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.

(e) Refuse, recyclables, and returnables shall be removed from the premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

310:258-11-8. Storage areas, redeeming machines, receptacles, and waste handling units, location

(a) An area designated for refuse, recyclables, returnables, and, except as specified in (b) of this Section, a redeeming machine for recyclables or returnables shall be located so that it is separate from food, equipment, and single-service articles to prevent the creation of a public health hazard or nuisance.

(b) A redeeming machine may be located in the packaged food storage area or consumer area of an establishment, if food, equipment, and single-service and single-use articles are not subject to contamination from the machines and a public health hazard or nuisance is not created.

(d) Refuse, recyclables, and returnables shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.

(e) Storage areas, enclosures, and receptacles for refuse, recyclables, and returnables shall be maintained in good repair.

(f) A storage area and enclosure for refuse, recyclables, or returnables shall be maintained free of unnecessary items and clean.

SUBCHAPTER 13. ADMINISTRATION

310:258-13-1. Preventing health hazards, provision for conditions not addressed

(a) If necessary to protect against public health hazards or nuisances, the Department may impose specific requirements in addition to the requirements contained in this Chapter that are authorized by law.

(b) The Department shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the license applicant or license holder and a copy shall be maintained in the Department file for the unattended food establishment.

310:258-13-2. When plans are required

A license applicant or license holder shall submit to the Department properly prepared plans and specifications for review and approval before:

- (1) The construction of an unattended food establishment;
- (2) The conversion of an existing structure for use as an unattended food establishment.

310:258-13-3. Contents of the plans and specifications

The plans and specifications for an unattended food establishment shall include the following information to demonstrate conformance with Code provisions:

- (1) Intended menu;
- (2) Anticipated volume of food to be stored and sold;
- (3) Proposed equipment types, manufacturer, and model numbers (if available);
- (4) Proposed floor plan; and
- (5) Other information that may be required by the Department for the proper review of the proposed construction, conversion or modification, and procedures for operating an unattended food establishment.

310:258-13-4. Trade secrets

The Department shall treat as confidential in accordance with law, information that meets the criteria specified in law for a trade secret and is contained on inspection report forms and in the plans and specifications submitted.

310:258-13-5. Preoperational inspections

The Department shall conduct one or more preoperational inspections to verify that the unattended food establishment is constructed and equipped in accordance with the approved plans and is in compliance with law and this Chapter.

310:258-13-6. Prerequisite for operation

A person may not operate an unattended food establishment without a valid license to operate issued by the Commissioner of Health.

310:258-13-7. Unattended food establishment license fee

(a) The following are associated fees for unattended food establishments.

- (1) Initial - \$150.00
- (2) Renewal - \$100.00
- (3) Late Renewal - \$125.00

(b) Late renewal fees apply to any renewal application postmarked and/or received thirty (30) days after the expiration date of the license.

(c) A license not renewed within ninety (90) days of the date shall be ineligible for the renewal fee. Thereafter, the establishment shall be required to pay the initial fee. The establishment that has not had a valid license for one (1) year is considered

a new establishment and a new Plan and the initial license fee shall be required.

310:258-13-8. Form of submission

A person desiring to operate an unattended food establishment shall submit to the Department a written application for a license on a form provided by the Department.

310:258-13-9. Qualifications and responsibilities of applicants

To qualify for a license, an applicant shall:

- (1) Be an owner, or officer of the unattended food establishment;
- (2) Comply with the requirements of this Chapter;
- (3) Allow access to the unattended food establishment;
- (5) Provide any required information;
- (6) Pay the applicable license fees at the time the application is submitted;
- (7) Pay the applicable license renewal fees.

310:258-13-10. Contents of the application

The application shall include:

- (1) The name, mailing address, telephone number, signature of the person applying for the license, and the name, mailing address, and location of the unattended food establishment;
- (2) Information specifying whether the unattended food establishment is owned by an association, corporation, individual, partnership, or other legal entity;
- (3) The Department shall issue a license to the applicant after:
 - (A) A properly completed application is received;
 - (B) The required fees are received;
 - (C) The plans, specifications, and information, if applicable, are reviewed; and
 - (D) A pre-licensing inspection shows that the establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this Chapter and meets the Department's criteria for a license; or any
 - (E) Other information required by the Department.

310:258-13-11. New, converted, or remodeled establishments

For unattended food establishments that are required to submit plans, the Commissioner of Health shall issue a license to the applicant after:

- (1) A properly completed application is submitted;
- (2) The required fee is submitted;
- (3) The required plans, specifications, and information are reviewed and approved; and
- (4) A preoperational inspection shows that the establishment is built or remodeled in accordance with the approved plans; and
- (5) Specifications that the establishment is in compliance with this Chapter.

Permanent Final Adoptions

310:258-13-12. Existing establishments, license renewal, and change of ownership

The Commissioner of Health may renew a license for an existing unattended food establishment or may issue a license to a new owner of an existing unattended food establishment after a properly completed application is submitted, reviewed, and approved, the fees are paid, and an inspection shows that the establishment is in compliance with this Chapter.

310:258-13-13. Denial of application for license, notice

If an application for a license to operate is denied, the Department shall provide the applicant with a notice that includes:

- (1) The specific reasons and Chapter citations for the license denial;
- (2) The actions, if any, that the applicant must take to qualify for a license; and
- (3) Advisement of the applicant's right of appeal.

310:258-13-14. Responsibilities of the license holder

Upon acceptance of the license issued by the Commissioner of Health, the license holder in order to retain the license shall:

- (1) Post the license in a prominent public location inside the unattended food establishment;
- (2) Comply with the provisions of this Chapter;
- (3) Immediately discontinue operations and notify the Department if an imminent health hazard may exist as specified under OAC 310:285-13-26;
- (4) Allow representatives of the Department access to the unattended food establishment;
- (5) Comply with directives of the Department including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the Department in regard to the license holder's unattended food establishment or in response to community emergencies;
- (6) Accept notices issued and served by the Department according to law;
- (7) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this Chapter or a directive of the Department, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives; and
- (8) If applicable, submit the annual renewal application and pay all renewal license and late fees.

310:258-13-15. Public notification

The unattended food establishment shall have a sign readily visible at the automated payment station stating:

- (1) The name and mailing address of the business entity responsible for the establishment and to whom complaints and comments should be addressed; and
- (2) The telephone, email or web information for the responsible business entity, when applicable.

310:258-13-16. Licenses not transferable

A license may not be transferred from one person to another person, from one unattended food establishment to another, from one physical address to another, from one corporation to another, from one limited liability company or corporation to another, from one partnership to another, or from one type of operation to another.

310:258-13-17. Competency of inspectors

An authorized representative of the Department who inspects an establishment or conducts plan review for compliance with this Chapter shall have the knowledge, skills, and ability to adequately perform the required duties, and be licensed pursuant to 59 O.S., Section 1150.1 et seq.

310:258-13-18. Allowed at reasonable times after due notice

After the Department presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the Department to determine if the unattended food establishment is in compliance with this Chapter by allowing access to the establishment, allowing inspection, and providing information and records specified in this Chapter and to which the Department is entitled according to law.

310:258-13-19. Refusal, notification of right to access, and final request for access

If a person denies access to the Department, the Department shall:

- (1) Inform the person that:
 - (A) The license holder is required to allow access to the Department as specified under OAC 310:285-13-18 of this Chapter,
 - (B) The Department's Access is a condition of the acceptance and retention of an unattended food establishment license to operate as specified under OAC 310:285-11-14(4), and
 - (C) If access is denied, an order issued allowing access, hereinafter referred to as an inspection order, may be obtained according to law; and
- (2) Make a final request for access.

310:258-13-20. Refusal, reporting

If after the Department presents credentials and provides notice as specified under OAC 310:285-13-18, explains the authority upon which access is requested, and makes a final request for access as specified in OAC 310:285-13-19, the person in charge continues to refuse access, the Department shall provide details of the denial of access on an inspection report form.

310:258-13-21. Inspection order to gain access

If denied access to an unattended food establishment for an authorized purpose and after complying with OAC

310:285-13-19, the Department may issue, or apply for the issuance of, an inspection order to gain access as provided in law.

310:258-13-22. Documenting information and observations

The Department shall document on an inspection report form:

- (1) Administrative information about the unattended food establishment's legal identity, street and mailing addresses, type of establishment and operation as specified, inspection date, and other information that may be required; and
- (2) Specific factual observations of violative conditions or other deviations from this Chapter that require correction by the license holder.

310:258-13-23. Issuing report and obtaining acknowledgment of receipt

At the conclusion of the inspection, the Department shall provide a copy of the completed inspection report and the notice to correct violations to the license holder or to the person in charge, and request a signed acknowledgment of receipt.

310:258-13-24. Refusal to sign acknowledgment

The Department shall:

- (1) Inform a person who declines to sign an acknowledgment of receipt of inspectional findings as specified under OAC 310:285-13-23:
 - (A) An acknowledgment of receipt is not an agreement with findings,
 - (B) Refusal to sign an acknowledgment of receipt will not affect the license holder's obligation to correct the violations noted in the inspection report within the timeframes specified, and
 - (C) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the Department's historical record for the unattended food establishment; and
- (2) Make a final request that the person in charge sign an acknowledgment receipt of inspectional findings.

310:258-13-25. Public information

Except as specified in OAC 310:285-13-4, the Department shall treat the inspection report as a public document and shall make it available for disclosure to a person who requests it as provided in law.

310:258-13-26. Ceasing operations and reporting

A license holder shall immediately discontinue operations and notify the Department if an imminent health hazard exists because of an emergency such as a fire, flood, sewage backup, insufficient refrigerated food storage facilities available, substantial evidence or presence of a large number of insects or evidence of rodents contaminating food, misuse of poisonous

or toxic materials, onset of an apparent foodborne illness outbreak, interruption of electrical service for more than 4 hours, severe structural damage in the facility, gross unsanitary occurrence or condition, or other circumstance as determined by the Commissioner of Health, or his designee, that shall endanger public health.

310:258-13-27. Resumption of operations

If operations are discontinued as specified under OAC 310:285-13-26 or otherwise according to law, the license holder shall notify the Department before resuming operations.

310:285-13-28. Timely correction

- (a) The license holder shall at the time of inspection correct any violation of this Chapter.
- (b) Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the Department may agree to or specify a longer time frame, not to exceed 10 calendar days after the inspection, for the license holder to correct a violation.
- (c) If corrections are not made according to (a) or (b) of this section, then the facility is subject to enforcement action.

310:258-13-29. Documentation of correction

- (a) After observing at the time of inspection a correction of a violation, the Department shall enter the violation and information about the corrective action on the inspection report.
- (b) After receiving notification that the license holder has corrected a violation, or at the end of the specified period of time, the Department shall document the information and enter the report in the Department's records.
- (c) In determining if a re-inspection is required, the Department shall count a violation number only once regardless of how many separate violations under the violation number are listed on the inspection sheet.

[OAR Docket #20-676; filed 7-24-20]

**TITLE 310. OKLAHOMA STATE
DEPARTMENT OF HEALTH
CHAPTER 260. GOOD MANUFACTURING
PRACTICE REGULATIONS**

[OAR Docket #20-665]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

310:260-1-1 [AMENDED]

310:260-1-2 [AMENDED]

310:260-1-3 [AMENDED]

310:260-1-6 [AMENDED]

Subchapter 3. Manufacturing, Processing, Packing or Holding Human Food

310:260-3-1 [AMENDED]

310:260-3-2 [AMENDED]

310:260-3-3 [AMENDED]

Permanent Final Adoptions

310:260-3-4 [AMENDED]
310:260-3-5 [AMENDED]
310:260-3-6 [AMENDED]
Subchapter 5. ~~Tree Nut~~^{Peanut} Processing
310:260-5-1 [AMENDED]
310:260-5-2 [AMENDED]
Subchapter 7. Salvageable and Salvaged Merchandise
310:260-7-1 [AMENDED]
310:260-7-2 [AMENDED]
310:260-7-3 [AMENDED]
310:260-7-4 [AMENDED]
310:260-7-5 [AMENDED]
310:260-7-6 [AMENDED]
310:260-7-7 [AMENDED]
Subchapter 9. Food Storage Warehouses
310:260-9-1 [AMENDED]
310:260-9-1.1 [NEW]
310:260-9-2 [AMENDED]
310:260-9-3 [AMENDED]
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Subchapter 13. Special Risk Situations [REVOKED]
310:260-13-1 [REVOKED]
310:260-13-2 [REVOKED]
Subchapter 15. Compliance and Enforcement [NEW]
310:260-15-1 [NEW]
310:260-15-2 [NEW]
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310:260-15-5 [NEW]
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310:260-15-8 [NEW]
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310:260-15-27 [NEW]
310:260-15-28 [NEW]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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June 25, 2020

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September 11, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

(a) Title 21, Parts 70 through 73A, 74A, 80 through 82B, 100 through 197, 1210, 1220, and 1250, Code of Federal Regulations (CFR), as of April 1, 1991, issued under the Federal Food, Drug and Cosmetic Act of April 1, 1986 are hereby incorporated by reference into this regulation, except: Parts 104.19, 109.5, 170.15, and 171. The following Code of Federal Regulation (CFR) provisions are incorporated by reference as published on July 1, 2019:

(1) Title 21 CFR, Part 70 COLOR ADDITIVES;

(2) Title 21 CFR, Part 73 LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION, Subpart A-Foods;

(3) Title 21 CFR, Part 82 LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS, Subpart A-General Provisions and Subpart B-Foods, Drugs, and Cosmetics;

(4) Title 21 CFR, Part 100 GENERAL;

(5) Title 21 CFR, Part 101 FOOD LABELING;

(6) Title 21 CFR, Part 102 COMMON OR USUAL NAME FOR NONSTANDARDIZED FOODS;

(7) Title 21 CFR, Part 104 NUTRITIONAL QUALITY GUIDELINES FOR FOODS;

(8) Title 21 CFR, Part 105 FOODS FOR SPECIAL DIETARY USE;

(9) Title 21 CFR, Part 106 INFANT FORMULA REQUIREMENTS PERTAINING TO CURRENT GOOD MANUFACTURING PRACTICE, QUALITY CONTROL PROCEDURES, QUALITY FACTORS, RECORDS AND REPORTS, AND NOTIFICATIONS;

(10) Title 21 CFR, Part 107 INFANT FORMULA;

(11) Title 21 CFR, Part 109 UNAVOIDABLE CONTAMINANTS IN FOOD FOR HUMAN CONSUMPTION AND FOOD-PACKAGING MATERIAL, Subpart A-General Provisions and Subpart B-Tolerances for Unavoidable Poisonous or Deleterious Substances;

(12) Title 21 CFR, Part 110 CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKING, OR HOLDING HUMAN FOOD;

(13) Title 21 CFR, Part 111 CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKAGING, LABELING, OR HOLDING OPERATIONS FOR DIETARY SUPPLEMENTS;

(14) Title 21 CFR, Part 113 THERMALLY PROCESSED LOW-ACID FOODS PACKAGED IN HERMETICALLY SEALED CONTAINERS;

(15) Title 21 CFR, Part 114 ACIDIFIED FOODS;

(16) Title 21 CFR, Part 120 HAZARD ANALYSIS AND CRITICAL CONTROL POINT (HACCP) SYSTEMS;

(17) Title 21 CFR, Part 123 FISH AND FISHERY PRODUCTS;

(18) Title 21 CFR, Part 129 PROCESSING AND BOTTLING OF BOTTLED DRINKING WATER;

(19) Title 21 CFR, Part 136 BAKERY PRODUCTS;

(20) Title 21 CFR, Part 137 CEREAL FLOURS AND RELATED PRODUCTS;

(21) Title 21 CFR, Part 139 MACARONI AND NOODLE PRODUCTS;

(22) Title 21 CFR, Part 145 CANNED FRUITS;

(23) Title 21 CFR, Part 146 CANNED FRUIT JUICES;

(24) Title 21 CFR, Part 150 FRUIT BUTTERS, JELLIES, PRESERVES, AND RELATED PRODUCTS;

(25) Title 21 CFR, Part 152 FRUIT PIES;

(26) Title 21 CFR, Part 155 CANNED VEGETABLES;

(27) Title 21 CFR, Part 156 VEGETABLE JUICES;

(28) Title 21 CFR, Part 158 FROZEN VEGETABLES;

(29) Title 21 CFR, Part 160 EGGS AND EGG PRODUCTS;

(30) Title 21 CFR, Part 161 FISH AND SHELLFISH;

(31) Title 21 CFR, Part 163 CACAO PRODUCTS;

(32) Title 21 CFR, Part 164 TREE NUT AND PEANUT PRODUCTS;

(33) Title 21 CFR, Part 166 MARGARINE;

- (34) Title 21 CFR, Part 168 SWEETENERS AND TABLE SIRUPS;
- (35) Title 21 CFR, Part 169 FOOD DRESSINGS AND FLAVORINGS;
- (36) Title 21 CFR, Part 170 FOOD ADDITIVES;
- (37) Title 21 CFR, Part 172 FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION;
- (38) Title 21 CFR, Part 173 SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION;
- (39) Title 21 CFR, Part 174 INDIRECT FOOD ADDITIVES: GENERAL;
- (40) Title 21 CFR, Part 175 INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS;
- (41) Title 21 CFR, Part 176 INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS;
- (42) Title 21 CFR, Part 177 INDIRECT FOOD ADDITIVES: POLYMERS;
- (43) Title 21 CFR, Part 178 INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS;
- (44) Title 21 CFR, Part 179 IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD;
- (45) Title 21 CFR, Part 180 FOOD ADDITIVES PERMITTED IN FOOD OR IN CONTACT WITH FOOD ON AN INTERIM BASIS PENDING ADDITIONAL STUDY;
- (46) Title 21 CFR, Part 181 PRIOR-SANCTIONED FOOD INGREDIENTS;
- (47) Title 21 CFR, Part 182 SUBSTANCES GENERALLY RECOGNIZED AS SAFE;
- (48) Title 21 CFR, Part 184 DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE;
- (49) Title 21 CFR, Part 186 INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE;
- (50) Title 21 CFR, Part 189 SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD

Incorporating rules:

310:260-1-3

Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-4200

GIST/ANALYSIS:

The current rule declares a need to regulate food manufacturing to provide uniformity of inspections to protect consumers from adulterated or misbranded foods. The proposed rule implements 63 O.S. Section 1-1101 et seq to protect consumers from adulterated or misbranded foods, and establish definitions, set standards, provides for food establishment plan review, license issuance, inspection, employee restriction, and license suspension. The proposed rule states all criteria in the chapter shall apply to all food manufacturing, processing, packing, holding, transporting, or salvage operations conducted within the State of Oklahoma.

CONTACT PERSON:

Audrey C. Talley, Agency Rules Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-944, ext. 56535. AudreyT@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

310:260-1-1. Purpose; citation

(a) The rules in this Chapter implement 63 O.S. Section 1-1101 et seq. The purpose of this Chapter is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented. This Chapter establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and

provides for food establishment plan review, license issuance, inspection, employee restriction, and license suspension. ~~The Oklahoma State Board of Health finds and declares that a uniform statewide code is needed to regulate all food manufacturing, processing, packing, holding, transporting or salvaging operations conducting business within the State of Oklahoma, to provide for uniformity in inspecting of such establishments, and to protect the health of consumers by preventing the sale or distribution of foods which have become adulterated or misbranded.~~

(b) These rules and regulations may be cited as the Human Foods Good Manufacturing Practice Regulations.

310:260-1-2. Scope

The criteria in ~~this chapter~~ subchapter 3 shall apply to all food manufacturing, processing, packing, holding, transporting, or salvage operations conducted within the State of Oklahoma in determining whether the facilities, methods, practices, and controls used in the manufacture, processing, packing, salvaging or holding of food are in conformance with or are operated or administered in conformity with good manufacturing practices to ensure that food for human consumption is safe and has been prepared, packaged, salvaged, or held under sanitary conditions.

310:260-1-3. Incorporation by reference

(a) ~~Title 21, Parts 70 through 73A, 74A, 80 through 82B, 100 through 197, 1210, 1220, and 1250, Code of Federal Regulations (CFR), as of April 1, 1991, issued under the Federal Food, Drug and Cosmetic Act of April 1, 1986 are hereby incorporated by reference into this regulation, except: Parts 104.19, 109.5, 170.15, and 171. The following Code of Federal Regulation (CFR) provisions are incorporated by reference as published on July 1, 2019:~~

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- (2) Title 21 CFR, Part 73 LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION, Subpart A-Foods;
- (3) Title 21 CFR, Part 82 LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS, Subpart A-General Provisions and Subpart B-Foods, Drugs, and Cosmetics;
- (4) Title 21 CFR, Part 100 GENERAL;
- (5) Title 21 CFR, Part 101 FOOD LABELING;
- (6) Title 21 CFR, Part 102 COMMON OR USUAL NAME FOR NONSTANDARDIZED FOODS;
- (7) Title 21 CFR, Part 104 NUTRITIONAL QUALITY GUIDELINES FOR FOODS;
- (8) Title 21 CFR, Part 105 FOODS FOR SPECIAL DIETARY USE;
- (9) Title 21 CFR, Part 106 INFANT FORMULA REQUIREMENTS PERTAINING TO CURRENT GOOD MANUFACTURING PRACTICE, QUALITY CONTROL PROCEDURES, QUALITY FACTORS, RECORDS AND REPORTS, AND NOTIFICATIONS;
- (10) Title 21 CFR, Part 107 INFANT FORMULA;

(11) Title 21 CFR, Part 109 UNAVOIDABLE CONTAMINANTS IN FOOD FOR HUMAN CONSUMPTION AND FOOD-PACKAGING MATERIAL, Subpart A-General Provisions and Subpart B-Tolerances for Unavoidable Poisonous or Deleterious Substances;

(12) Title 21 CFR, Part 110 CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKING, OR HOLDING HUMAN FOOD;

(13) Title 21 CFR, Part 111 CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKAGING, LABELING, OR HOLDING OPERATIONS FOR DIETARY SUPPLEMENTS;

(14) Title 21 CFR, Part 113 THERMALLY PROCESSED LOW-ACID FOODS PACKAGED IN HERMETICALLY SEALED CONTAINERS;

(15) Title 21 CFR, Part 114 ACIDIFIED FOODS;

(16) Title 21 CFR, Part 120 HAZARD ANALYSIS AND CRITICAL CONTROL POINT (HACCP) SYSTEMS;

(17) Title 21 CFR, Part 123 FISH AND FISHERY PRODUCTS;

(18) Title 21 CFR, Part 129 PROCESSING AND BOTTLING OF BOTTLED DRINKING WATER;

(19) Title 21 CFR, Part 136 BAKERY PRODUCTS;

(20) Title 21 CFR, Part 137 CEREAL FLOURS AND RELATED PRODUCTS;

(21) Title 21 CFR, Part 139 MACARONI AND NOODLE PRODUCTS;

(22) Title 21 CFR, Part 145 CANNED FRUITS;

(23) Title 21 CFR, Part 146 CANNED FRUIT JUICES;

(24) Title 21 CFR, Part 150 FRUIT BUTTERS, JELLIES, PRESERVES, AND RELATED PRODUCTS;

(25) Title 21 CFR, Part 152 FRUIT PIES;

(26) Title 21 CFR, Part 155 CANNED VEGETABLES;

(27) Title 21 CFR, Part 156 VEGETABLE JUICES;

(28) Title 21 CFR, Part 158 FROZEN VEGETABLES;

(29) Title 21 CFR, Part 160 EGGS AND EGG PRODUCTS;

(30) Title 21 CFR, Part 161 FISH AND SHELLFISH;

(31) Title 21 CFR, Part 163 CACAO PRODUCTS;

(32) Title 21 CFR, Part 164 TREE NUT AND PEANUT PRODUCTS;

(33) Title 21 CFR, Part 166 MARGARINE;

(34) Title 21 CFR, Part 168 SWEETENERS AND TABLE SIRUPS;

(35) Title 21 CFR, Part 169 FOOD DRESSINGS AND FLAVORINGS;

(36) Title 21 CFR, Part 170 FOOD ADDITIVES;

(37) Title 21 CFR, Part 172 FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION;

(38) Title 21 CFR, Part 173 SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION;

(39) Title 21 CFR, Part 174 INDIRECT FOOD ADDITIVES: GENERAL;

(40) Title 21 CFR, Part 175 INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS;

(41) Title 21 CFR, Part 176 INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS;

(42) Title 21 CFR, Part 177 INDIRECT FOOD ADDITIVES: POLYMERS;

(43) Title 21 CFR, Part 178 INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS;

(44) Title 21 CFR, Part 179 IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD;

(45) Title 21 CFR, Part 180 FOOD ADDITIVES PERMITTED IN FOOD OR IN CONTACT WITH FOOD ON AN INTERIM BASIS PENDING ADDITIONAL STUDY;

(46) Title 21 CFR, Part 181 PRIOR-SANCTIONED FOOD INGREDIENTS;

(47) Title 21 CFR, Part 182 SUBSTANCES GENERALLY RECOGNIZED AS SAFE;

(48) Title 21 CFR, Part 184 DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE;

(49) Title 21 CFR, Part 186 INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE;

(50) Title 21 CFR, Part 189 SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD.

(b) For purposes of the provisions adopted by reference, references to the "Secretary" or "Commissioner" shall be deemed to mean the Commissioner of Health for the State of Oklahoma, and "Department" shall be deemed to mean the Oklahoma State Department of Health.

(c) When a provision of the Code of Federal Regulations is incorporated by reference, all citations contained therein are also incorporated by reference, and the definitions contained therein shall apply.

(d) In the event that there are inconsistencies or duplications in the requirements of those provisions incorporated by reference from the CFR, and the requirements otherwise set forth herein, the provisions incorporated from the CFR shall prevail except where the regulations set forth herein are more stringent.

310:260-1-6. Definitions

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

"**Acid food or acidified food**" means foods that have an equilibrium pH of 4.6 or below.

"**Act**" means ~~Article 11 (Food) of the Oklahoma Public Health Code, Title 63 O.S. 1-1101 et seq., as amended.~~

"**Additive**" means as used in this Chapter the following terms:

(A) "**Color additive**" means as stated in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 321(t) and 21 CFR, Part 70.

(B) **"Food additive"** means as stated in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 321(s) and 21 CFR, Part 170.

"Adequate" means that which is needed to accomplish the intended purpose in keeping with good public health practice.

"Adulterated" means the definition in 63 O.S. Section 1-1109.

"Approved" means acceptable to the Department based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

"Batter" means a semi-fluid substance, usually composed of flour and other ingredients, into which principal components of food are dipped or with which they are coated, or which may be used directly to form bakery foods.

"Beverage" means a liquid for drinking, including water.

"Bin warehouse" means any building where pre-packaged food is stored, the operator or his employee is present no more than two hours daily, and no other operations are conducted.

"Blanching", except for tree nuts and peanuts, means a prepackaging heat treatment of food stuffs for a sufficient time and at a sufficient temperature to partially or completely inactivate the naturally occurring enzymes and to effect other physical or bio-chemical changes in food.

"CFR" means Code of Federal Regulations. Citations in this Chapter to the CFR refer sequentially to the Title, Part, and Section numbers, such as 21 CFR, 178.1010 refers to Title 21, Part 178, Section 1010.

"Code of Federal Regulations" means the compilation of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government which is published annually by the U.S. Government Printing Office; and contains FDA rules in 21 CFR, USDA rules in 7 CFR and 9 CFR, EPA rules in 40 CFR, and Wildlife and Fisheries rules in 50 CFR.

"Control measure" means any action or activity to prevent, reduce to acceptable levels, or eliminate a hazard.

"Corrosion-resistant" means capable of maintaining original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions, and other conditions-of-use.

"Critical control point" means a point or procedure in a specific food process at which a control measure can be applied and at which control is essential to reduce an identified food hazard to an acceptable level in a food process where there is a high probability that improper control may cause, allow, or contribute to a hazard or filth in the final food or decomposition of the final food.

"Custom tree nut/peanut cracking" means the cracking of whole tree nuts/peanuts for individual customers. The tree nuts/peanuts may be brought by the customer from off the premises or may be purchased from the cracker. Tree nuts/peanuts may not be cracked for resale.

"Department" means the Oklahoma State Department of Health and its duly designated representatives, and a health department designated in writing by the State Commissioner of

Health to perform official duties or other acts authorized under the Oklahoma Public Health Code and this Chapter.

"Distressed merchandise" means any food which has been subjected to improper storage; loss of label or identity; smoke, water, fumes, extreme temperatures, pressure or radiation which are due to natural disasters or otherwise; or which may have been rendered unsafe or unsuitable for human or animal consumption or use for any other reason.

"Easily cleanable" means that surfaces are readily accessible and made of such materials and finish and so fabricated that residue may be effectively removed by normal cleaning methods.

"Employee" means the license holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in an establishment any individual having supervisory or management duties and any other person working in a food establishment.

"Equipment" means an article that is used in the operation of an establishment such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine. It does not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids, stoves, ovens, ranges, hoods, slicers, mixers, meat blocks, tables, counters, refrigerators, sinks, dishwashing machines, steam tables, and similar items other than utensils, used in the operation of a food establishment.

"Food" means any raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption.

"Food contact surfaces" means those surfaces of equipment and utensils with which food normally comes in contact, and those surfaces from which food may contact drain, drip, or splash back onto surfaces normally in contact with food.

"Food hazard" means any biological, chemical, or physical agent that is reasonably likely to cause illness or injury in the absence of its control.

"Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and provides food for sale or distribution to other business entities such as food processing plants or food establishments.

"Food storage warehouse" means any building, establishment or place where food is stored as a commercial venture or business, or is stored in connection with or as a part of a business.

"HACCP" means Hazard Analysis Critical Control Point.

"HACCP plan" means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

"Handwashing sink" means a lavatory, a basin or vessel for washing, a wash basin, or a plumbing fixture especially

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placed for use in personal hygiene and designed for washing of the hands.

"Hazardous substance" means any substance or mixture of substances which is toxic, corrosive, an irritant, strong sanitizer, flammable or which generates pressure through decomposition.

"Hermetically sealed container" means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

"Imminent public health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries, and the nature, severity, and duration of the anticipated injury situation wherein the evidence is sufficient to show that a product or practice, posing a significant threat or danger to health, creates a public health situation that should be corrected immediately to prevent injury and that should not be permitted to continue while a hearing or other formal proceeding is pending.

"Impermeable" means incapable of allowing liquids to pass through the covering.

"License" means the document issued by the Department that authorizes a person to operate an establishment.

"License holder" means the entity that is legally responsible for the operation of the establishment such as the owner, the owner's agent, or other person; and possesses a valid license to operate an establishment.

"Lot" means the food produced during a period of time indicated by a specific code.

"Major food allergen" means milk, egg, fish (such as bass, flounder, cod, and including crustacean such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or a food ingredient that contains protein derived from a food specified above.

(A) Major food allergen does not include: Any highly refined oil derived from a food specified in Major Food Allergen definition and any ingredient derived from such highly refined oil; or

(B) Any ingredient that is exempt under the petition or notification process specified in the Federal Food, Drugs, and Cosmetics Act, 21 U.S.C. Section 343.

"Manufacture" means the process of combining or purifying articles of food and packing same for sale to the consumer, either by wholesale or retail. Any firm, person, or corporation who represents itself as responsible for the purity and the proper labeling of any article of food by placing or having placed its name and address on the label of any food shall be deemed a manufacturer and shall be included within the meaning of these rules.

"Microorganism" means yeasts, molds, bacteria and viruses and includes, but is not limited to, species having public health significance. The term "undesirable microorganisms" includes those microorganisms that are of public health

significance, that subject food to decomposition, that indicate that food is contaminated with filth, or that otherwise may cause food to be adulterated.

"Misbranding" means the definition contained in 63 O.S. Section 1-1110.

"Monitor" means to conduct a planned sequence of observations or measurements to assess whether a process, point, or procedure is under control and to produce an accurate record for use in verification.

"Non-food contact surfaces" means surfaces of equipment not intended for contact with food, but which are being exposed to splash or food debris or which otherwise require frequent cleaning. These surfaces shall be designed and fabricated to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall be of such material and in such repair as to be easily maintained in a clean and sanitary condition.

Non-salvageable merchandise means distressed merchandise which cannot be safely or practically reconditioned.

"Operator" means any person, partnership, corporation, association, cooperative or other business unit having the direct and primary responsibility for the construction, maintenance and operation of a food storage or food manufacturing plant or warehouse.

"Packaging" means any covering, wrapper, or container in which a product is placed for retail or wholesale distribution, either before or after sale, to a consumer. Packaging shall not be construed to include the inner wrapper.

"Perishable foods" means any food of such type or in such condition or physical state that it may spoil or otherwise become unfit for human consumption.

"Person" means an individual, corporation, business trust, estate, trust, partnership, association, or any other public or private legal entity.

"Personnel" means all persons employed by a food manufacturer, salvage establishment or salvage broker who do or may in any manner handle or come in contact with the handling, storage, transporting, selling or distributing of food, salvageable or salvaged merchandise.

"Pest" means any objectionable animal or insect including, but not limited to, birds, rodents, flies and larvae.

"pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between 0 and 7 indicate acidity and values between 7 and 14 indicate alkalinity. The value for pure distilled water is 7, which is considered neutral.

Plant means the building or facility or parts thereof, used for or in connection with the manufacturing, packaging, labeling or holding of human food.

"Potentially hazardous food" means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustaceans, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include foods which have a pH level of 4.6 or below a water activity (a) value of 0.85 or less.

"Plumbing fixture" means a receptacle or device that is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system; or discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

"Plumbing system" means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

"Poisonous or toxic materials" means substances that are not intended for ingestion and are included in 4 categories:

- (A) Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;
- (B) Pesticides, except sanitizers, which include substances such as insecticides and rodenticides;
- (C) Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and
- (D) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

"Potable water" means water obtained from an approved source that is:

- (A) A public water system, or
- (B) A nonpublic water system that is constructed, maintained, and operated according to law.

"Processing" means the preparing of a food in a manner which changes the food from its original state.

"Processor" means anyone processing food under the authority of this chapter.

"Quality control operation" means a planned and systematic procedure for taking all actions necessary to prevent food from being adulterated.

"Reconditioning" means any appropriate process or procedure by which distressed merchandise can be brought into compliance with the standards of the Department for consumption or use by the public.

"Refuse" means all garbage, trash, and rubbish not intended for reuse as salvaged merchandise.

"Regulatory authority" means the Oklahoma State Department of Health, a health department designated in writing by the State Commissioner of Health to perform official duties or other acts authorized under the Oklahoma Public Health Code and this Chapter, or a representative thereof.

"Rework" means clean, unadulterated food that has been removed from processing for reasons other than unsanitary conditions or that has been successfully reconditioned by reprocessing and that is suitable for use as food.

"Safe moisture level" is a level of moisture low enough to prevent the growth of undesirable microorganisms in the finished product under the intended conditions of manufacturing, storage and distribution. The maximum safe moisture level for a food is based on its water activity (a_w). An a_w will

be considered safe for a food if adequate data are available that demonstrate that the food at or below the given a_w will not support the growth of undesirable microorganisms.

"Safe temperatures" as applied to Time/Temperature Control for Safety Food ~~potentially hazardous food~~ means food temperature of 45°F or below 140°F or above.

"Sale or distribution" means the act of selling or distributing, whether for compensation or not, and includes delivery, holding or offering for sale, transfer, or other means of handling or trafficking.

"Salvage distributor or broker" means a person who engages in the business of selling, distributing, or otherwise trafficking in any distressed or salvaged merchandise who does not operate a salvage establishment.

"Salvage establishment" means any place of business engaged in reconditioning or by other means the salvaging of distressed merchandise or that sells, buys or distributes for human use any salvaged merchandise.

"Salvage operator" means a person who is engaged in the business of operating a salvage establishment.

"Salvage processing plant" means any establishment primarily engaged in the business of reconditioning or by other means the salvaging of distressed merchandise and which sells or distributes such merchandise for human use.

"Salvage warehouse" means a separate storage facility used by a salvage broker or salvage establishment for the purpose of holding distressed or salvaged merchandise. A salvage warehouse may not be used for the purpose of reconditioning or selling to consumers.

"Salvageable merchandise" means any distressed merchandise, as defined in this section, which can be reconditioned to the satisfaction of the Department.

"Salvaged merchandise" means any distressed merchandise that has been reconditioned to the satisfaction of the Department.

"Sanitize Sanitization" means to adequately treat food-contact ~~adequate treatment of surfaces~~ by a process that is effective in destroying vegetative cells of microorganisms of public health significance and in substantially reducing the number of other microorganisms but ~~without. Such treatments shall not adversely affecting affect the product or its safety and shall be safe~~ to the consumer.

"Shall" is used to state mandatory requirements.

"Shelf-stable product" means a product that is hermetically sealed and, when stored at room temperature, should not demonstrate any microbial growth.

"Should" is used to state recommended or advisory procedures or to identify recommended equipment.

"Single-service articles" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, placemats, napkins, doilies, wrapping materials, toothpicks and similar articles, intended to be discarded after one use.

"Standard operating procedure (SOP)" means a set of step-by-step instructions compiled by the establishment to instruct employees in the proper method to perform complex routine operations. SOPs aim to achieve efficiency and quality control, while reducing miscommunication, and documenting failure to enable better process to be developed.

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"Time/temperature control for safety food" means a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.

"Tree nut/Peanut cracker/sheller" means a commercial establishment in which ~~tree nuts/peanuts~~ are processed and/or packaged for human consumption, other than custom ~~tree nut/peanut~~ cracking.

"Tree nut grower/Grower" means a person who sells only whole ~~tree nuts/peanuts~~ grown on his property.

"Utensil" means any implement used in the storage, preparation, transportation, or service of food.

"Variance" means a written document issued by the Department that authorizes a modification or waiver of one or more requirements of this Chapter, if, in the opinion of the Department, a health hazard or nuisance will not result from the modification or waiver.

"Vehicle" means any car, truck, bus or other means by which food or distressed, salvageable or salvaged merchandise is transported from one location to another.

"Water activity" (a_w) is a measure of the free moisture in a food and is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

"Wholesome" means in sound condition, clean, free from adulteration and otherwise suitable for human consumption.

SUBCHAPTER 3. MANUFACTURING, PROCESSING, PACKING OR HOLDING HUMAN FOOD

310:260-3-1. Personnel

(a) **Disease control.** Any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination by which there is a reasonable possibility of food, food-contact surfaces, or food-packing materials becoming contaminated, shall be excluded from any operations which may be expected to result in such contamination until the condition is corrected, unless conditions such as open lesions, boils, and infected wounds are adequately covered (e.g., by an impermeable cover). Personnel shall be instructed to report such health conditions to their supervisors.

(b) **Cleanliness.** All persons working in direct contact with food, food-contact surfaces, and food-packaging materials shall conform to hygienic practices while on duty to the extent necessary to protect against allergen cross-contact and against contamination of food. The methods for maintaining cleanliness include, but are not limited to:

- (1) Wearing outer garments suitable to the operation in a manner that protects against allergen cross-contact and against the contamination of food, food-contact surfaces, or food-packaging materials.
- (2) Maintaining adequate personal cleanliness.
- (3) Washing hands thoroughly (and sanitizing if necessary to protect against contamination with undesirable microorganisms) in an adequate handwashing facility

before starting work, after each absence from the work station, and at any other time when hands may have become soiled or contaminated.

(4) Removing all ~~insecure/unsecured~~ jewelry and other objects that might fall into food, equipment, or containers, and removing hand jewelry that cannot be adequately sanitized during periods in which food is manipulated by hand. If such hand jewelry cannot be removed, it may be covered by material which can be maintained in an intact, clean and sanitary condition and which effectively protects against the contamination by these objects of the food, food-contact surfaces, or food-packaging materials.

(5) Maintaining gloves, if they are used in food handling, in an intact, clean, and sanitary condition. ~~The gloves should be of an impermeable material, and intended for use in handling food.~~

(6) Wearing, where appropriate, in an effective manner, hair nets, headbands, caps, beard covers, or other effective hair restraints.

(7) Storing clothing or other personal belongings in areas other than where food is exposed or where equipment or utensils are washed.

(8) Confining the following to areas other than where food may be exposed or where equipment or utensils are washed: eating food, chewing gum, drinking beverages, or using tobacco.

(9) Taking any other necessary precautions to protect against allergen cross-contact and against contamination of food, food-contact surfaces, or food-packing materials with microorganisms or foreign substances including, but not limited to, perspiration, hair, cosmetics, tobacco, chemicals, and medicines applied to the skin.

(c) **Education and training.** Personnel responsible for identifying sanitation failures or food contamination should have a background of education or experience, or a combination thereof, to provide a level of competency necessary for production of clean and safe food. Food handlers and supervisors should receive appropriate training in proper food handling techniques and food protection principles and should be informed of the danger of poor personal hygiene and ~~unsanitary/insanitary~~ practices.

(d) **Supervision.** Responsibility for assuring compliance by all personnel with all requirements of this Chapter shall be clearly assigned to competent supervisory personnel.

(e) **Implementation.** The plant management shall take all reasonable measures and precautions to ensure that the provisions of the above subsections are achieved.

310:260-3-2. Grounds and plants

(a) **Grounds.** The grounds about a food plant under the control of the operator shall be kept in a condition that will protect against the contamination of food. The methods for adequate maintenance of grounds include, but are not limited to:

- (1) Properly storing equipment, removing litter and waste, and cutting weeds or grass within the immediate vicinity of the plant buildings or structures that may constitute an attractant, breeding place, or harborage for pests.

- (2) Maintaining roads, yards, and parking lots, including dust and flying debris, so that they do not constitute a source of contamination in areas where food is exposed.
 - (3) Adequately draining areas that may contribute contamination to food by seepage, food-borne filth, or providing a breeding place for pests.
 - (4) Operating systems for waste treatment and disposal in an adequate manner so that they do not constitute a source of contamination in areas where food is exposed.
 - (5) If the plant grounds are bordered by grounds not under the operator's control and not maintained in the manner described in paragraph (a) (1) through (3) of this section, care shall be exercised in the plant by inspection, extermination, or other means to exclude pests, dirt, and filth that may be a source of food contamination.
- (b) **Plant construction and design.** Plant buildings and structures shall be suitable in size, construction, and design to facilitate maintenance and sanitary operations for food-manufacturing purposes (i.e., manufacturing, processing, packing, and holding). The plant and facilities shall:
- (1) Provide sufficient space for such placement of equipment and storage of materials as is necessary for the maintenance of sanitary operations and the production of safe food.
 - (2) Permit the taking of ~~adequate proper~~ precautions to reduce the potential for allergen cross-contact and for contamination of food, food-contact surfaces, or food-packing materials with microorganisms, chemicals, filth, or other extraneous material. The potential for allergen cross-contact and for contamination may be reduced by adequate food safety controls and operating practices or effective design, including the separation of operations in which for allergen cross-contact and contamination ~~are~~ is likely to occur, by one or more of the following means: location, time, partition, air flow systems, dust control systems, enclosed systems, or other effective means.
 - (3) Permit the taking of proper precautions to protect food in installed outdoor bulk ~~fermentation~~ vessels by any effective means, including:
 - (A) Using protective coverings.
 - (B) Controlling areas over and around the vessels to eliminate harborage for pests.
 - (C) Checking on a regular basis for pests and pest infestation.
 - (D) Skimming the fermentation vessels, as necessary.
 - (4) Be constructed in such a manner that floors, walls, and ceilings may be adequately cleaned and kept in good repair; that drip or condensate from fixtures, ducts and pipes does not contaminate food, food-contact surfaces, or food packing materials; and that aisles or working spaces are provided between equipment and walls and are adequately unobstructed and of adequate width to permit employees to perform their duties and to protect against contaminating food or food-contact surfaces with clothing or personal contact.
 - (5) Provide adequate lighting in hand washing areas, dressing and locker rooms, and toilet rooms and in all areas where food is examined, processed, ~~packed or held or stored~~ and where equipment or utensils are cleaned.
 - (6) Provide ~~shatter-resistant light bulbs, fixtures, skylights, or other glass suspended over exposed food in any step of preparation or otherwise protect against food contamination in case of glass breakagesafety-type light bulbs or protective shielding of artificial lighting fixtures located over, by, or within food storage or preparation areas and facilities where utensils and equipment are cleaned or stored, or otherwise protect against food contamination by broken glass.~~
 - (7) Provide adequate ventilation or control equipment to minimize odors and vapors (including steam and noxious fumes) in areas where they may cause allergen cross-contact or contaminate food; and locate and operate fans and other air-blowing equipment in a manner that minimizes the potential for allergen cross-contact and for contaminating food, food-packaging materials, and food-contact surfaces.
 - (8) Provide, where necessary, adequate screening or other protection against pests.
 - (9) Provide adequate protection, from contamination, of food products, while being transported by vehicles.
- 310:260-3-3. Sanitary operations**
- (a) **General maintenance.** Buildings, fixtures, and other physical facilities of the plant shall be maintained in a sanitary condition and shall be kept in repair sufficient to prevent food from becoming adulterated ~~within the meaning of the Act.~~ Cleaning and sanitizing of utensils and equipment operations shall be conducted in a manner that protects against allergen cross-contact and against contamination of food, food-contact surfaces, or food-packaging materials.
- (b) **Cleaning and sanitizing substances.** ~~Cleaning~~ Approved cleaning compounds and sanitizing agents used in cleaning and sanitizing procedures shall be free from undesirable microorganisms and shall be safe and adequate under the conditions of use. Compliance with this requirement may be verified by any effective means including purchase of these substances under a letter of supplier's guarantee or certification, or examination of these substances for contamination. Only the following toxic materials ~~that are required to maintain sanitary conditions~~ may be used or stored in a plant where food is processed or exposed:
- (1) Those required to maintain clean and sanitary conditions;
 - (2) Those necessary for use in laboratory testing procedures;
 - (3) Those necessary for plant and equipment maintenance and operation; and
 - (4) Those necessary for use in the plant's operations.
- (c) **Storage of toxic materials.** Toxic cleaning compounds, ~~approved~~ sanitizing agents, and pesticide chemicals shall be identified, held, and stored in a manner that protects against contamination of food, food-contact surfaces, or food-packing

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materials. ~~All relevant regulations promulgated by other Federal, State, and local government agencies for the application, use, or holding of these products shall be followed.~~

(d) **Pest control.** No pests or animals shall be allowed in any area of a food plant. Guard or guide dogs may be allowed in some areas of a plant if the presence of the dogs is unlikely to result in contamination of food, food-contact surfaces, or food-packaging materials. Effective measures shall be taken to exclude pests from the manufacturing, processing, packing, and holding areas and to protect against the contamination of food on the premises by pests. The use of pesticides to control pests in the plant ~~insecticides or rodenticides~~ is permitted only under precautions and restrictions that will protect against the contamination of food, food-contact surfaces, and food-packaging materials.

(e) **Sanitation of food-contact surfaces.** All food-contact surfaces, including utensils and food-contact surfaces of equipment, shall be cleaned as frequently as necessary to protect against contamination of food.

(1) Food-contact surfaces used for manufacturing/processing, packing, or holding low-moisture food shall be in a dry, sanitary condition before ~~at the time of~~ use. When the surfaces are wet-cleaned, they shall, when necessary, be sanitized and thoroughly dried before subsequent use.

(2) In wet processing, when cleaning is necessary to protect against allergen cross-contact ~~or~~ the introduction of microorganisms into food, all food-contact surfaces shall be cleaned and sanitized before use and after any interruption during which the food-contact surfaces may have become contaminated. Where equipment and utensils are used in a continuous production operation, the utensils and food-contact surfaces of the equipment shall be cleaned and sanitized as necessary.

~~(3) Non-food contact surfaces of equipment used in the operation of food plants should be cleaned as frequently as necessary to protect against contamination of food.~~

(34) Single-service articles (such as utensils for one-time use, paper cups, and paper towels) should be stored in appropriate containers and shall be handled, dispensed, used, and disposed of in a manner that protects against allergen cross-contact and against contamination of food or food-contact surfaces, or food-packaging materials.

~~(45)~~ Where necessary to prevent the introduction of undesirable microbiological organisms into food products, all utensils and product-contact surfaces of equipment used in the plant shall be cleaned and sanitized prior to such use and following any interruption during which such utensils and contact surfaces may have become contaminated. Where such equipment and utensils are used in a continuous production operation, the contact surfaces of such equipment and utensils shall be cleaned and sanitized on a predetermined schedule using adequate methods for cleaning and sanitizing. Sanitizing agents shall be approved, effective and safe under conditions of use. The wash solution for multi-use beverage containers must contain at least 3% caustic and must be maintained to at

least 140 ~~degrees~~[°]F. temperature. Any facility, procedure, machine, or device may be acceptable for cleaning and sanitizing equipment and utensils if it is established that such facility, procedure, machine, or device will routinely render equipment and utensils clean and provide adequate sanitizing treatment.

(f) **Sanitation of non-food-contact surfaces.** Non-food-contact surfaces of equipment used in the operation of a food plant must be cleaned in a manner and as frequently as necessary to protect against allergen cross-contact and against contamination of food, food-contact surfaces, and food-packaging materials.

(gf) **Storage and handling of cleaned portable equipment and utensils.** Cleaned and sanitized portable equipment with food-contact surfaces and utensils should be stored in a location and manner that protects food-contact surfaces from contamination.

310:260-3-4. Sanitary facilities and controls

Each plant must be equipped with adequate sanitary facilities and accommodations including:

(1a) **Water supply.** The water supply shall be sufficient for the operations intended and shall be derived from an adequate, approved ~~source in compliance with applicable water supply regulations adopted by the State Board of Health.~~ Any water that contacts food, ~~or~~ food-contact surfaces, or food-packaging materials shall be safe and of adequate sanitary quality. Running ~~Hot and cold running~~ water at a suitable temperature, and under pressure as needed shall be provided in all areas where required for the processing of food, for the cleaning of equipment, utensils, and food-packaging materials, or for employee sanitary facilities.

(2b) **Plumbing.** Plumbing shall be permanently attached, of adequate size and design and adequately installed and maintained to:

(A4) Carry adequate sufficient quantities of water to required locations throughout the plant.

(B2) Properly convey sewage and liquid disposable waste from the plant.

(C3) Avoid constituting a source of contamination to food, water supplies, equipment, or utensils or creating an unsanitary condition.

(D4) Provide adequate floor drainage in all areas where floors are subject to flooding-type cleaning or where normal operations release or discharge water or other liquid waste on the floor.

(E5) Provide that there is no backflow from, or cross-connection between, piping systems that discharge-waste water or sewage and piping systems that carry potable water for food or food manufacturing or for equipment and utensil cleaning.

(3e) **Sewage disposal.** Sewage shall be disposed of disposal shall be made into an adequate and approved sewerage system or disposed of through other adequate means through permanently attached plumbing which is in compliance with applicable wastewater disposal regulations adopted by the State Board of Health.

~~(4d) **Toilet facilities.** Each plant must provide employees with adequate, readily accessible toilet facilities. Toilet facilities must be kept clean and must not be a potential source of contamination of food, food-contact surfaces, or food-packaging materials. The plant shall be provided with conveniently located toilets which shall be kept clean and in good repair. The toilet room shall be completely enclosed, well lighted, vented to the outside, and equipped with a tight self-closing door. Any window opening shall be screened to prevent entrance of insects.~~

~~(5e) **Hand-washing facilities.** Each plant must provide hand-washing facilities designed to ensure that an employee's hands are not a source of contamination of food, food-contact surfaces, or food-packaging materials, by providing facilities that are adequate, convenient, and furnish running water at a suitable temperature. Hand-washing facilities shall be adequate and convenient and shall be furnished with hot and cold running water at a suitable temperature. Compliance with this requirement includes:~~

~~(A4) Hand-washing and, where appropriate, hand-sanitizing facilities at each location in the plant where good sanitary practices require employees to wash and/or sanitize their hands.~~

~~(2) **Effective hand-cleaning and sanitizing preparations.**~~

~~(B3) Sanitary towel service or suitable drying devices.~~

~~(C4) Devices or fixtures, such as water control valves, so designed and constructed to protect against recontamination of clean, sanitized hands.~~

~~(D5) Readily understandable signs directing employees handling unprotected food, unprotected food-packaging materials, or food-contact surfaces to wash and, where appropriate, sanitize their hands before they start work, after each absence from post of duty, and when their hands may have become soiled or contaminated. These signs should be posted in the processing room(s) and in all other areas where employees may handle such food, materials, or surfaces and toilet facilities.~~

~~(E6) Refuse receptacles that are constructed and maintained in a manner that protects against contamination of food, equipment or hands.~~

~~(6f) **Rubbish and offal disposal.** Rubbish and any offal shall be so conveyed, stored, and disposed of as to minimize the development of odor, minimize the potential for the waste becoming an attractant and harborage or breeding place for pests, and protect against contamination of food, food-contact surfaces, water supplies, and ground surfaces.~~

~~(g) **Adequacy of facilities.** Each plant shall be equipped with adequate sanitary facilities and accommodations including, but not limited to, (a) through (f) of this section.~~

310:260-3-5. Equipment and utensils

(a) **Design, fabrication, installation and maintenance.**

(1) All plant equipment and utensils used in manufacturing, processing, packing, or holding food must be so

designed and of such material and workmanship as to be adequately cleanable, and must be adequately maintained to protect against allergen cross-contact and contamination.

(2) Equipment and utensils must be designed, constructed, and used appropriately to avoid the adulteration of food with lubricants, fuel, metal fragments, contaminated water, or any other contaminants.

(3) Equipment must be installed so as to facilitate the cleaning and maintenance of the equipment and of adjacent spaces.

(4) Food-contact surfaces must be corrosion-resistant when in contact with food.

(5) Food-contact surfaces must be made of nontoxic materials and designed to withstand the environment of their intended use and the action of food, and, if applicable, cleaning compounds, sanitizing agents, and cleaning procedures.

(6) Food-contact surfaces must be maintained to protect food from allergen cross-contact and from being contaminated by any source, including unlawful indirect food additives. All plant equipment and utensils shall be so designed and of such material and workmanship as to be adequately cleanable, shall meet NSF Standards, or equivalent, and shall be properly maintained. The design, construction, and use of equipment and utensils shall preclude the adulteration of food with lubricants, fuel, metal fragments, contaminated water, or any other contaminants. All equipment should be so installed and maintained as to facilitate the cleaning of the equipment and of all adjacent spaces. Food contact surfaces shall be corrosion-resistant and shall be made of nontoxic materials and designed to withstand the environment of their intended use and the action of food, and, if applicable, cleaning compounds and sanitizing agents. Food contact surfaces shall be maintained to protect food from being contaminated by any source, including unlawful indirect food additives.

(b) **Seams.** Seams on food-contact surfaces shall be smoothly bonded or maintained so as to minimize accumulation of food particles, dirt, and organic matter and thus minimize the opportunity for growth of microorganisms and allergen cross-contact.

(c) **Non-food contact equipment.** Equipment that is in the areas where food is manufactured, processed, packed, or held ~~manufacturing or food handling area~~ and that does not come into contact with food shall be so constructed that it can be kept in a clean condition.

(d) **Holding, conveying and manufacturing systems.** Holding conveying, and manufacturing systems, including gravimetric, pneumatic, closed, and automated systems, shall be of a design and construction that enables them to be maintained in an appropriate sanitary condition.

(e) **Thermometers.** Each freezer and cold storage compartment used to store and hold food capable of supporting growth of microorganisms shall be fitted with an indicating thermometer, temperature measuring device, or temperature recording device so installed as to show the temperature accurately to within $\pm 3^{\circ}\text{F}$ inside the compartment, and should be fitted

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with an automatic control for regulating temperature or with an automatic alarm system to indicate a significant temperature change during manual operation.

(f) **Instruments and controls.** Instruments and controls used for measuring, regulating, or recording temperatures, pH, acidity, water activity, or other conditions that control or prevent the growth of undesirable microorganisms in food shall be accurate, precise, and adequately maintained, and adequate in number for their designated uses.

(g) **Compressed air.** Compressed air or other gases mechanically introduced into food or used to clean food-contact surfaces or equipment shall be treated in such a way that food is not contaminated with unlawful indirect food additives.

310:260-3-6. Processes and controls

(a) **General sanitation requirements.**

(1) All operations in the manufacturing, processing, packing, and holding of food (including operations directed to receiving, inspecting, transporting, and segregating) must be conducted in accordance with adequate sanitation principles.

(2) Appropriate quality control operations must be employed to ensure that food is suitable for human consumption and that food-packaging materials are safe and suitable.

(3) Overall sanitation of the plant must be under the supervision of one or more competent individuals assigned responsibility for this function.

(4) Adequate precautions must be taken to ensure that production procedures do not contribute to allergen cross-contact and to contamination from any source.

(5) Chemical, microbial, or extraneous-material testing procedures must be used where necessary to identify sanitation failures or possible allergen cross-contact and food contamination.

(6) All food that has become contaminated to the extent that it is adulterated must be rejected, or if appropriate, treated or processed to eliminate the contamination. All operations in the receiving, inspecting, transporting, segregating, preparing, manufacturing, packaging, processing and storing of food shall be conducted in accordance with adequate sanitation principles. Appropriate quality control operations shall be employed to ensure that food is suitable for human consumption and that food-packaging materials are safe and suitable. Overall sanitation of the plant shall be under the supervision of one or more competent individuals assigned responsibility for this function. All reasonable precautions shall be taken to ensure that production procedures do not contribute contamination from any source. Chemical, microbial, or extraneous material testing procedures shall be used where necessary to identify sanitation failures or possible food contamination. All food that has become contaminated to the extent that it is adulterated within the meaning of the Act shall be rejected, or if permissible, treated or processed to eliminate the contamination.

(b) **Raw materials and other ingredients.**

(1) Raw materials and other ingredients shall be inspected and segregated or otherwise handled as necessary to ascertain that they are clean and suitable for processing into food and shall be stored under conditions that will protect against allergen cross-contact and against contamination and minimize deterioration. Raw materials shall be washed or cleaned as necessary to remove soil or other contamination. Water used for washing, rinsing, or conveying food shall be safe and of adequate sanitary ~~potable~~ quality. Water may ~~shall not~~ be reused for washing, rinsing, or conveying food if it does not cause allergen cross-contact or if it increases the level of contamination of the food. Containers and carriers of raw materials should be inspected on receipt to ensure that their condition has not contributed to the contamination or deterioration of food.

(2) Raw materials and other ingredients shall either not contain levels of microorganisms that may render the food injurious to the health of ~~produce food poisoning or other disease~~ in humans, or they shall be pasteurized or otherwise be treated during manufacturing operations so that they no longer contain levels that would cause the product to be adulterated ~~within the meaning of the Act.~~

(3) Raw materials and other ingredients susceptible to contamination with aflatoxin or other natural toxins, ~~pesticides or herbicides,~~ shall comply with current FDA Food and Drug Administration regulations, ~~guidelines, and action levels~~ for poisonous or deleterious substances before these materials or ingredients are incorporated into finished food.

(4) Raw materials, other ingredients, and rework susceptible to contamination with pests, undesirable microorganisms, or extraneous material shall comply with applicable FDA Food and Drug Administration regulations, ~~guidelines, and defect action levels~~ for natural or unavoidable defects if a manufacturer wishes to use the materials in manufacturing food.

(5) Raw materials, other ingredients, and rework shall be held in bulk, or in containers designed and constructed so as to protect against allergen cross-contact and against contamination and shall be held at such temperature and relative humidity and in such a manner as to prevent the food from becoming adulterated ~~within the meaning of the Act.~~ Material scheduled for rework shall be identified as such and separated from other foods.

(6) Frozen raw materials and other ingredients shall be kept frozen. If thawing is required prior to use, it shall be done in a manner that prevents the raw materials and other ingredients from becoming adulterated ~~within the meaning of the Act.~~

(7) Liquid or dry raw materials and other ingredients received and stored in bulk form shall be held in a manner that protects against allergen cross-contact and against contamination.

(8) Raw materials and other ingredients that are food allergens, and rework that contains food allergens, must be identified and held in a manner that prevents allergen cross-contact.

(c) **Manufacturing operations.**

(1) Equipment and utensils and finished food containers shall be maintained in an adequate acceptable condition through appropriate cleaning and sanitizing, as necessary. Insofar as necessary, equipment shall be taken apart for thorough cleaning.

(2) All food manufacturing, ~~processing, packing, and hold-including packaging and storage~~, shall be conducted under such conditions and controls as are necessary to minimize the potential for the growth of microorganisms and allergen cross-contact, or for the contamination of food. This may include careful monitoring of physical factors such as time, temperature, humidity, aw, pH, pressure, flow rate, and manufacturing operations such as freezing, dehydration, heat processing, acidification, and refrigeration to ensure that mechanical breakdowns, time delays, temperature fluctuations, and other factors do not contribute to the decomposition or contamination of food.

(3) Food that can support the rapid growth of undesirable microorganisms, ~~particularly those of public health significance~~, shall be held at temperatures in a manner that will prevent ~~prevents~~ the food from becoming adulterated during manufacturing, processing, packing, and holding. Compliance with this requirement may be accomplished by any effective means, including:

- (A) Maintaining refrigerated foods at 45°F (7.2°C) or below as appropriate for the particular food involved.
- (B) Maintaining frozen foods in a frozen state.
- (C) Maintaining hot foods at 140°F (60°C) or above.
- (D) Heat treating acid or acidified foods to destroy mesophilic microorganisms when those foods are to be held in hermetically sealed containers at ambient temperatures.

(4) Measures such as sterilizing, irradiating, pasteurizing, freezing, refrigerating, controlling pH or controlling aw that are taken to destroy or prevent the growth of undesirable microorganisms, ~~particularly those of public health significance~~, shall be adequate under the conditions of manufacture, handling, and distribution to prevent food from being adulterated ~~within the meaning of the Act~~.

(5) Work-in-process and rework shall be handled in a manner that protects against allergen cross-contact, contamination, and growth of undesirable microorganisms.

(6) Effective measures shall be taken to protect finished food from allergen cross-contact and from contamination by raw materials, other ingredients, or refuse. When raw materials, other ingredients, or refuse are unprotected, they shall not be handled simultaneously in a receiving, loading, or shipping area if that handling could result in allergen cross-contact or contaminated food. Food transported by conveyor ~~conveyer~~ shall be protected against allergen cross-contact and against contamination as necessary.

(7) Equipment, containers, and utensils used to convey, hold, or store raw materials and other ingredients,

work-in-process, rework or other food shall be constructed, handled, and maintained during manufacturing processing, packing, and holding or storage in a manner that protects against allergen cross-contact and against contamination.

(8) Adequate ~~Effective~~ measures shall be taken to protect against the inclusion of metal or other extraneous material in food. ~~Compliance with this requirement may be accomplished by using sieves, traps, magnets, electronic metal detectors, or other suitable effective means.~~

(9) Food, raw materials, and other ingredients that are adulterated:

(A) ~~Shall~~ shall be disposed in a manner that protects against the contamination of other food; or

(B) If the adulterated food is capable of being reconditioned, it shall be:

(i) Reconditioned (if appropriate) ~~reconditioned~~ using a method that has been proven to be effective; or

(ii) Reconditioned (if appropriate) and it shall be reexamined and subsequently found not to be adulterated before being incorporated into other food.

(10) ~~Steps~~ Mechanical manufacturing steps such as washing, peeling, trimming, cutting, sorting and inspecting, mashing, dewatering, cooling, shredding, extruding, drying, whipping, defatting, and forming shall be performed so as to protect food against allergen cross-contact and against contamination. ~~Compliance with this requirement may be accomplished by providing adequate physical protection of food from contaminants that may drip, drain, or be drawn into the food. Protection may be provided by adequate cleaning and sanitizing of all food contact surfaces, and by using time and temperature controls at and between each manufacturing step.~~

(11) Heat blanching, when required in the preparation of food capable of supporting microbial growth, should be effected by heating the food to the required temperature, holding it at this temperature for the required time, and then either rapidly cooling the food or passing it to subsequent manufacturing without delay. ~~Growth~~ Thermophilic growth and contamination by thermophilic microorganisms in blanchers ~~blanchers~~ should be minimized by the use of adequate operating temperatures and by periodic cleaning and sanitizing as necessary. ~~Where the blanched food is washed prior to filling, water used shall be safe and of adequate sanitary quality.~~

(12) Batters, breading, sauces, gravies, dressings, dipping solutions, and other similar preparations that are held and used repeatedly over time shall be treated or maintained in such a manner that they are protected against allergen cross-contact and against contamination, and minimizing the potential for the growth of undesirable microorganisms. ~~Compliance with this requirement may be accomplished by any effective means, including the following:~~

(A) ~~Using ingredients free of contamination.~~

- (B) ~~Employing adequate heat processes where applicable.~~
 - (C) ~~Using adequate time and temperature controls.~~
 - (D) ~~Providing adequate physical protection of components from contaminants that may drip, drain, or be drawn into them.~~
 - (E) ~~Cooling to an adequate temperature during manufacturing.~~
 - (F) ~~Disposing of batters at appropriate intervals to protect against the growth of microorganisms.~~
- (13) Filling, assembling, packaging, and other operations shall be performed in such a way that the food is protected against allergen cross-contact, contamination, and growth of undesirable microorganisms. Compliance with this requirement may be accomplished by any effective means, including:
- (A) ~~Use of a quality control operation in which the critical control points are identified and controlled during manufacturing.~~
 - (B) ~~Adequate cleaning and sanitizing of all food-contact surfaces and food containers.~~
 - (C) ~~Using materials for food containers and food packaging materials that are safe and suitable.~~
 - (D) ~~Providing physical protection from contamination, particularly airborne contamination.~~
 - (E) ~~Using sanitary handling procedures.~~
- (14) Food such as, but not limited to, dry mixes, nuts, immediate moisture food, and dehydrated food, that relies on the control of aw for preventing the growth of undesirable microorganisms shall be processed to and maintained at a safe moisture level. Compliance with this requirement may be accomplished by an effective means, including employment of one or more of the following practices as appropriate:
- (A) ~~Monitoring the pH of raw materials, food in process, and finished food.~~
 - (B) ~~Controlling the soluble solids water ratio in finished food.~~
 - (C) ~~Protecting finished food from moisture pickup, by use of a moisture barrier or by other means, so that the aw of the food does not increase to an unsafe level.~~
- (15) Food such as, but not limited to, acid and acidified food, that relies principally on the control of pH for preventing the growth of undesirable microorganisms shall be monitored and maintained at a pH of 4.6 or below. Compliance with this requirement may be accomplished by an effective means, including employment of one or more of the following practices as appropriate:
- (A) ~~Monitoring the pH of raw materials, food in process, and finished food.~~
 - (B) ~~Controlling the amount of acid or acidified food added to low acid food.~~
- (16) When ice is used in contact with food, it shall be made from water that is safe and of adequate sanitary quality in accordance with 310:260-3-4(a), from a source in compliance with applicable water supply regulations adopted by the State Board of Health and shall be used only if it has been manufactured in accordance with

current good manufacturing practice as outlined in these regulations, ~~and provisions shall be made for drainage of water produced by melting ice.~~

(17) Food-manufacturing areas and equipment used for manufacturing human food shall not be used to manufacture nonhuman food grade animal feed or inedible products, unless there is no reasonable possibility for the contamination of the human food.

(18) Food manufacturing shall not be performed in places of human residence nor shall manufacturing areas open directly into rooms occupied as residence or sleeping quarters.

(19) ~~(14)~~ Meaningful coding of products sold or otherwise distributed from a manufacturing, processing, packing, or repacking activity should be utilized to enable positive lot identification to facilitate, where necessary, the segregation of specific food lots that may have become contaminated or otherwise unfit for their intended use. Records should be retained for a period of time that exceeds the shelf life of the product, except that they need not be retained more than two (2) years.

SUBCHAPTER 5. TREE NUT/PECAN PROCESSING

310:260-5-1. Tree Nut/Pecan crackers/shellers

(a) ~~Physical facilities.~~ ~~The physical facilities of a pecan cracker/sheller shall comply with Sections 310:260-3-2 through 310:260-3-5.~~

(a) ~~(a)~~ Cleaning and sanitizing. All tree nuts/pecans shall be thoroughly cleaned to remove all foreign matter before sanitizing. After cleaning, tree nuts/pecans shall be subjected to a bactericidal process with:

- (1) ~~Immersion~~ immersion in hot water at 170° degrees F; or more for at least two (2) minutes or exposed to a flow of hot water at 170° degrees F; or more for at least five (5) minutes, or exposed to hot air at a temperature of 180° degrees F; for at least twenty (20) minutes in a properly constructed oven or hot air cabinet equipped with an indicating thermometer located in the coldest zone, or
- (2) ~~A~~ 1000 PPM chlorine equivalent and a flotation process solution of 200 PPM chlorine equivalent, or
- (3) ~~Exposure~~ exposure to steam in a properly designed cabinet for at least fifteen (15) minutes at 170° degrees F; or for at least five (5) minutes at 200° degrees F; or
- (4) ~~Exposure~~ exposure of a jet of live steam for at least One (1) minute, or
- (5) ~~Any~~ any other bactericidal treatment which has been proven by laboratory tests to effectively sanitize tree nuts/pecans and which has been approved by the Department.

(b) ~~(b)~~ Holding and drying. Folding, soaking, or tempering, tree nuts/pecans must not be subjected to contamination. Drying of tree nuts/pecans must be done in such a manner as to prevent recontamination of moist tree nuts/pecans.

(c) ~~(c)~~ Sanitizing of equipment. All equipment used for handling, storing, and transporting sanitized tree nuts/pecans

and/or tree nuts~~pecans~~ meats shall be subjected to a bactericidal process approved by the Department. Approved processes shall include:

- (1) ~~Exposure~~~~exposure~~ to steam in a properly constructed cabinet for at least fifteen (15) minutes at 170°~~degrees~~ F., or for at least five (5) minutes to at least 200°~~degrees~~ F., or
- (2) ~~Exposure~~~~exposure~~ to a jet of live steam for at least one (1) minute, or
- (3) ~~Immersion~~~~immersion~~ in or exposure to a flow of chlorine solution of not less than 200 PPM strength for at least two (2) minutes, or
- (4) ~~Immersion~~~~immersion~~ in hot water at 170°~~degrees~~ F. or more for at least two (2) minutes or exposure to a flow of hot water at 170°~~degrees~~ F. or more (at the outlet) for at least five (5) minutes, or
- (5) ~~Exposure~~~~exposure~~ to hot air at a temperature of 180°~~degrees~~ F., for at least twenty (20) minutes in a properly constructed oven or hot air cabinet equipped with an indicating thermometer located in the coldest zone, or
- (6) ~~Any~~ other bactericidal treatment which has been proven by laboratory tests to effectively sanitize equipment and which has been approved by the Department.

(d) **Other requirements.** ~~Additionally, all~~~~All commercial tree nut pecan~~ crackers/shellers shall be subject to all applicable portions of this code~~Sections 310:260-3-1 and 310:260-3-6.~~

310:260-5-2. Custom Tree Nut~~pecan~~ crackers

(a) Signage.

- (1) The custom tree nut~~pecan~~ cracking facility must publicly display an easily readable sign which states: "Custom Tree Nut~~Pecan~~ Operations are Exempt from ~~Board of Health Department~~ Regulations Pertaining to Cleaning and Sanitizing of tree nuts~~pecans~~ /Processing Equipment. Tree nuts~~Pecans~~ Cannot be Cracked for Resale" or words to that effect.
- (2) A customer's own Tree Nuts~~pecans~~ left on the premises for custom Tree Nut~~pecan~~ cracking must be separately labeled before and after custom cracking with the customer's name and contact information~~address~~.
- (3) Custom Tree Nut ~~pecan~~ crackers shall affix the a statement "Custom Tree Nut Operations are Exempt from Health Department Regulations Pertaining to Cleaning and Sanitizing of Tree Nuts /Processing Equipment. Tree Nuts Cannot be Cracked for Resale" or words to that effect on the label, bill of sale, receipt, etc., presented to the customer upon payment to all custom cracked pecans which states: "Custom Pecan Cracking Operations are Exempt from Health regulations on Cleaning and Sanitizing of Pecans/Processing Equipment. Pecans Cannot Be Cracked for Resale" or words to that effect.

(b) **Other requirements.** Custom tree nut~~pecan~~ crackers shall not be subject to licensure~~Sections 310:260-3-3 and 310:260-3-6.~~

SUBCHAPTER 7. SALVAGEABLE AND SALVAGED MERCHANDISE

310:260-7-1. Merchandise protection

(a) Protection from contamination.

- (1) All salvageable and salvaged merchandise, while being stored or processed at a salvage processing plant, or during transportation, shall be protected from contamination.
- (2) All perishable foods shall be kept at such temperature as will protect against spoilage.
- (3) Time/Temperature Control for Safety ~~All potentially hazardous~~ food shall be maintained at safe temperature (45 ~~degrees~~°F. or below; 140 ~~degrees~~°F. or above).
- (4) Poisonous and toxic materials shall be identified, and handled under such conditions as will not contaminate other salvageable or salvaged merchandise or constitute a hazard to personnel.

(b) **Segregation of non-salvageable materials.** All salvageable articles shall be promptly sorted and segregated from non-salvageable materials to prevent further contamination of goods to be salvaged or offered for sale or distribution.

310:260-7-2. Movement of distressed merchandise

(a) Notice to department.

- (1) When merchandise becomes distressed as the result of ~~atrain, automotive, airline, marine, or other~~ conveyance accident; flood, wind, fire, sewer backup, or such other unforeseen catastrophe, ~~it shall be the duty of the owner or claimant of such distressed merchandise shall to make~~ personal contact ~~with the Department within twenty-four~~ (24) hours after the merchandise becomes distressed and prior to removal from the place at which it was located when it became distressed merchandise.
- (2) If emergency removal of such distressed merchandise is required, such notice to the Department shall be made as soon thereafter as possible.
- (3) It shall be the duty of the owner or manager of the salvage processing plant to make contact with the Department within forty-eight (48) hours whenever distressed merchandise subject to the provisions of this regulation is obtained.

(b) Movement of distressed merchandise.

- (1) Distressed merchandise shall be moved from the site where ~~it became distressed of a fire, flood, sewer backup, wreck or other cause~~ as expeditiously as possible after compliance with (a) of this section so as ~~not to become putrid, to protect against spoilage, prevent rodent or insect harborage, or otherwise a menace to the public health.~~
- (2) All distressed and salvageable merchandise of a perishable nature shall, prior to reconditioning, be transported only in vehicles provided with adequate refrigeration for product maintenance.
- (3) No interstate movement of distressed or salvageable merchandise from or into Oklahoma shall be made

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without prior approval of the Department. Concurrence shall also be obtained from the U.S. Food and Drug Administration or U.S. Department of Agriculture, Animal and Plant Health Inspection Service (meat and poultry products), and as required by State law of the State to or from which such merchandise is being shipped, prior to such anticipated interstate movement.

310:260-7-3. Reconditioning

(a) **Salvageable merchandise.** All salvageable merchandise shall be reconditioned prior to sale or distribution.

(b) **Distressed or nonsalvageable merchandise.** The following items shall be deemed unfit for sale or distribution:

- (1) ~~Metal~~All metal cans of food ~~offered for sale or distribution shall be~~which are essentially free from rust (pitting) and dents (especially at rim, end double seams and/or side seams).
 - (2) Leakers, springers, flippers, and swellers~~shall be deemed unfit for sale or distribution.~~
 - (3) Containers, including metal and glass containers with press caps, screw caps, pull rings or other types of openings which have been in contact with non-potable water, liquid foam, or other deleterious substances, as a result of fire fighting efforts, flood, sewer backups or similar mishaps shall be deemed unfit for sale or distribution, i.e., nonsalvageable merchandise.
- (c) **Metal containers of food.** All metal containers of food, other than those mentioned in (b) of this section whose integrity has not been compromised and whose integrity would not be compromised by the reconditioning, and which have been partially or totally submerged in water, liquid foam, or other deleterious substance as the result of flood, sewer backup or other reasons shall, after thorough cleaning, be subjected to sanitizing rinse of a concentration of 200 ppm available chlorine for a minimum period of one minute, or shall be sanitized by another method approved by the Department. They shall subsequently be treated to inhibit rust formation. All other types of containers so damaged shall be deemed unfit for use or sale.

310:260-7-4. Labeling

(a) **Label removal.**

- (1) ~~Any cans or tins showing surface rust shall have labels removed, the outer surface cleaned by buffing, a protective coating applied where necessary, and shall be relabeled.~~
- (2) ~~Relabeling of other salvageable nonmetal (glass, plastic, etc.) containers shall be required when original labels are missing or illegible.~~

(b) **Relabeling.**

(a) Relabeling of other salvageable nonmetal (glass, plastic, etc.) containers shall be required when original labels are missing or illegible.

(4b) All salvaged merchandise shall be labeled to indicate that the merchandise has been salvaged. ~~All salvaged merchandise in containers is to be provided with labels meeting the requirement of Oklahoma statutes.~~

(2c) Where original labels are removed from containers which are to be resold or redistributed, the replacement labels must show the name and address of the salvage establishment.

310:260-7-5. Handling of nonsalvageable merchandise

(a) **Nonsalvageable merchandise.** Food deemed to be nonsalvageable merchandise are:

- (1) Foods contaminated and/or adulterated by pesticides or other chemicals;
- (2) Potentially hazardous foods (frozen or those requiring refrigeration) which have been exposed to a temperature above 45° F (7.2° C) for a period exceeding 4 hours;
- (3) Foods packaged in paper or other porous materials which have been subjected to contamination.
- (4) Those described in Section 310:260-7-3 as nonsalvageable.

(b) **Distribution of nonsalvageable merchandise.** Nonsalvageable merchandise shall not be sold or distributed as food, but shall be disposed of in a manner approved by ~~and under the supervision of~~ the Department.

310:260-7-6. Record keeping

(a) **Inspection by the Department.** A written record of receipt of distressed, salvageable and salvaged merchandise shall be kept by the salvage establishment or salvage broker for inspection by the Department during business hours.

(b) **Content of records.** The records shall include a general description of distressed merchandise received, source of the distressed merchandise, the date received and the type of damage (fire, flood, etc.)

(c) **Retention of records.** These records shall be kept on the premises of the salvage establishment or salvage broker for a period of two (2) years following the receipt of completion of ~~transactions involving~~ a lot of merchandise.

310:260-7-7. Salvage processors and distributors out-of-state

Salvaged merchandise from salvage processing plants and distributors located outside the jurisdiction of the State of Oklahoma may be sold or distributed within the State, if such plants and distributors conform to the provisions of this regulation or to substantially equivalent provisions ~~and have a valid permit, for such sale or distribution, from the Department.~~ To determine the extent of compliance with such provisions, the Department may accept reports from responsible authorities in other jurisdictions where such plants and distributors are located.

SUBCHAPTER 9. FOOD STORAGE WAREHOUSES

310:260-9-1. Lighting and ventilation

(a) **Lighting.**

(1) All parts of the food storage warehouse shall be lighted so as to permit the activity for which the premises are used to be carried on safely and to permit effective cleaning and inspection of the premises.

(2) Safety shields on lights or safety type lights shall be used where needed for the protection of food storage.

(b) **Ventilation.** Where needed, rooms shall have sufficient ventilation to prevent any undue condensation or water vapor or objectionable odors, or temperature extremes.

310:260-9-1.1. Warehousing and distribution

Storage and transportation of food shall be under conditions that will protect against allergen cross-contact and against biological, chemical (including radiological), and physical contamination of food, as well as against deterioration of the food and the container.

310:260-9-2. Dry storage

(a) **Floors.**

(1) Floors shall be constructed of easily cleanable and reasonably smooth material.

(2) Floors ~~They~~ shall be kept clean and in good repair.

(b) **Walls and ceiling.** Walls and ceiling shall be of sound construction, easily cleanable and kept reasonably free of dirt, dust and cobwebs and in good repair.

310:260-9-3. Cold and frozen storage

(a) **Thermometers.** Each cold storage unit shall be equipped with an accurate and easily visible thermometer with the sensing element at least five feet above the floor.

(b) **Storage temperatures.** Perishable and Time/Temperature Control for Safety~~potentially hazardous~~ foods shall be stored at 45° F or below.

(c) **Frozen foods.** All frozen food shall be stored at a temperature of 0° F or below except for defrost cycles, loading or unloading, or for other temporary conditions beyond the immediate control of the person or company under whose care or supervision the frozen food is stored. However, the internal temperature of all frozen food shall be maintained at 0° F or below except when the product is subjected to the above-mentioned conditions; at such times the internal product temperature shall not exceed 10° F and such product shall be returned to 0° F as quickly as possible.

(d) **Floors, walls, and ceilings.**

(1) Floors shall be constructed of material that can be easily kept clean, sanitary and in good repair.

(2) Walls and ceiling shall be reasonably smooth, and kept clean and in good repair.

~~(e) Walls and ceilings. Walls and ceiling shall be reasonably smooth, and kept clean and in good repair.~~

~~(ef) Defrosting.~~ During defrosting of overhead coils in cold storage rooms, stored food shall be effectively protected from contamination by condensation, drip or leakage.

310:260-9-4. Protection of stored food

(a) **Pests.** The operator shall take all reasonable measures to protect the area where food is kept or stored in a food storage warehouse against the entrance into the establishment, and the breeding or presence on the premises of rodents, birds, flies, roaches, weevils and other vermin.

(b) **Animals.** No dogs, cats, fowl, birds or any other type animal shall be permitted in a food storage warehouse, except that patrol dogs accompanying blind or deaf persons shall not be excluded.

(c) **Use of rodenticides.** When in use, rodenticides shall be placed in covered bait boxes where necessary to prevent spillage or possible contamination of stored food and danger to employees. All rodenticide baits shall be applied in such a manner as to prevent contamination of stored food products.

~~(d) Approval and application of pesticides and rodenticides. All pesticides and rodenticides used for control of vermin shall be in compliance with the Federal Insecticide, Fungicide and Rodenticide Act, and shall be applied in such a manner as to protect stored foods from contamination and in accordance with labeled instructions.~~

~~(de) Storage and Labeling~~**labeling of toxics.**

(1) Cleaning materials, pesticides, rodenticides, and any other such hazardous substances used in the operation of the warehouse shall be stored;

(A) ~~In—~~in properly labeled containers in a closed closet or cabinet in a separate area from food products.

(B) An adequate distance from stored food and single service articles to prevent contamination caused by leakage or spillage.

(2) Where multiple level storage methods are used, all such substances shall be stored below food or single service articles.

~~(ef) Pest control services.~~

(1) When a licensed pest control service is employed, it shall file at the warehouse a diagram of the bait station locations and the rodenticide in use.

(2) The operator should designate an employee to be responsible for the pest control program being used.

~~(g) Storage of toxics. Storage methods shall be used to minimize deterioration and prevent contamination of stored food products. Cleaning materials, pesticides, rodenticides, and any other hazardous substances shall be stored an adequate distance from stored food and single service articles to prevent contamination caused by leakage or spillage. Where multiple level storage methods are used, all such substances shall be stored below food or single service articles. Shelves, cabinets, dunnage and pallets shall be used where necessary to protect stored food products.~~

~~(fh) Product storage on floors.~~

(1) Skids or pallets shall provide a minimum of 6" clearance above the floor to facilitate cleaning, protection of the product, and for movement of air in refrigerated storage areas.

(2i) ~~Space around walls.~~ Merchandise stored on skids or pallets shall be at least 18" away from any wall.

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(3j) ~~Access for cleaning.~~ Construction of shelving, cabinets, and storage methods used shall be such as to permit ready access for cleaning and sanitary inspection.

(4k) ~~Overhead piping.~~ No overhead waste drain pipes or other overhead piping shall be used which presents a risk of contamination to foods stored below due to excess condensation or leakage. Protective shields may be used to eliminate this risk.

(5l) ~~Animal feeds.~~ Bagged animal feeds shall be stored so as not to be intermingled with the storage of human food products. Storage on separate pallets is acceptable.

310:260-9-5. Morgue

(a) ~~Holding of damaged foods.~~ The operator of a food storage warehouse shall provide an area for the accumulation and holding of all damaged foods or foods which may be unwholesome.

(b) ~~Disposal of unwholesome foods.~~ The operator shall maintain a program of timely and proper disposal of unwholesome food to prevent development of unsanitary conditions or vermin breeding places and rodent harborage.

310:260-9-6. Restroom Toilet and handwashing facilities

(a) **Toilets.**

(1) The warehouse shall be provided with conveniently located toilets and shall be kept clean and in good repair.

(2) The toilet room shall be completely enclosed, well lighted, vented, and equipped with a tight, self-closing door.

(3) Any window opening shall be screened to prevent entrance of insects.

(b) **Handwashing facilities.**

(1) Handwashing facilities shall be adequate and conveniently located in relation to toilet areas.

(2) Handwashing facilities shall be equipped with hot and cold water, under pressure.

(3) Soap or detergent and paper towels or other single use drying devices shall be provided at all times.

(4) Handwashing facilities shall be kept clean and in good repair.

(5e) ~~Sign.~~ Signage. A sign directing employees to wash their hands before returning to work shall be posted in all toilet rooms.

310:260-9-7. Waste storage and disposal

(a) ~~Liquid waste.~~ All liquid waste resulting from cleaning floors, equipment, flushing toilets, handwashing facilities, refrigeration equipment and air conditioners shall be disposed of in a sanitary manner per standards established and regulated by the Oklahoma Department of Environmental Quality (ODEQ). Where wastes cannot be discharged into a sanitary sewer, all wastes shall be discharged into a system which meets or exceeds the minimum standards for waste disposal, as approved by the Department.

(b) Waste containers. ~~Containers~~ shall be provided for trash or rubbish.

(c) ~~Maintenance.~~ The warehouse shall be free of unnecessary litter and rubbish, such as paper, empty containers, or other material that might serve as a place for harborage of rodents or other vermin.

(d) ~~Storage.~~ All garbage and waste shall be stored in covered containers.

(1) Reusable containers shall be non-absorbent, easily washable receptacles which are covered with close-fitting lids, pending removal.

(2) Disposable containers or liners may be used.

(3) Removal of garbage and waste shall be frequent and the holding area shall be kept clean.

(e) ~~Disposal.~~ All garbage and rubbish shall be disposed of at regular intervals of sufficient frequency and in such manner as to prevent the creation of unsanitary conditions.

310:260-9-8. Exterior construction

(a) ~~Outer openings.~~ The exterior of a food storage warehouse shall be so designed, fabricated and finished to minimize the entrance of insects, birds and rodents.

(b) ~~Screening.~~ All necessary ventilation louvers or openings into food storage warehouses shall be effectively screened against insects, birds and rodents.

(c) ~~Service connections.~~ All service connections through the exterior wall of the establishment, including water, gas, electrical and refrigeration connections shall be ~~grommets or~~ sealed to prevent the entrance of insects, birds and rodents.

310:260-9-10. Transportation and storage

(a) ~~Sanitation.~~ All ~~cars, trucks or other~~ vehicles used in the transportation of processed food products shall be kept in a clean condition at all times. Refuse, dirt and waste products subject to decomposition shall be removed daily. Storage and transportation of finished food shall be under conditions that will protect food against physical, chemical, and microbial contamination as well as against deterioration of the food and the container.

(b) ~~Food protection.~~ Food products shall be handled in such a manner so as to protect all food from deterioration while in transit. Foods, while in transit, shall be protected in such a manner as to preclude being contaminated by hazardous substances, microbial contamination, and against the deterioration of the food and the container.

(c) Vehicles transporting Time/Temperature Control for Safety ~~potentially hazardous~~ food shall be equipped to maintain safe temperatures at all times. An accurate and easily visible thermometer shall be provided for monitoring the temperature of frozen and refrigerated storage areas while food is being held or transported.

310:260-9-11. Exemptions

Bin warehouses, as defined, shall be exempt from the regulations pertaining to providing toilet and handwashing restroom facilities, and water under pressure provisions. ~~However, this exemption applies only to these provisions and all other regulations are applicable.~~

SUBCHAPTER 11. LICENSING, INSPECTIONS AND PLAN REVIEW [REVOKED]

310:260-11-1. Licensing [REVOKED]

(a) **General.** No person shall operate a food manufacturing establishment, food storage warehouse, or a salvage establishment, who does not have a valid license issued to such person by the Oklahoma State Department of Health pursuant to Title 63 O.S. 1981, Section 1-1101 and following. Only a person who is in virtual compliance with the requirements of these rules and regulations shall be entitled to receive or retain such a license.

(b) **Applications.** Any person desiring to operate a food manufacturing establishment, food storage warehouse or salvage establishment, shall make written application for a license on forms provided by the Oklahoma State Department of Health. The applicant shall be the legal owner of the business. Such application shall include the name and address of each applicant, the location and type of proposed establishment, and the signature of each applicant or his authorized agent.

(c) **Expiration of license.** A license shall expire one year from the date of its issuance unless canceled or revoked prior to its expiration. For purposes in determining the expiration date of all licenses under this section, the date of issuance shall be deemed to be the date that an approved application for licensure is first issued by a duly authorized representative of the Health Department.

(d) **License revocation and suspension.** Procedures for revocation and suspension of licenses are stated in the Oklahoma Administrative Procedures Act. These procedures provide for the licensee to be notified of his alleged violations of the Public Health Code and any of these rules. The procedures also provide for the licensee to have the opportunity to be present at a hearing and to present evidence in his defense. The Commissioner of Health's representative makes a recommendation or proposed order to the Commissioner of Health or Deputy Commissioner of Health in his or her stead. The Commissioner of Health or Deputy Commissioner of Health promulgates a final order revoking or suspending the license, dismissing the matter, or providing for other relief as allowed by statute. This final order is appealable to District Court if it is contrary to law or evidence. At any time after the action is filed against the licensee, the State Department of Health and the licensee may dispose of the matter by consent order or stipulation.

310:260-11-2. Inspections [REVOKED]

Representatives of the regulatory authority, after proper identification, shall be permitted to enter any food manufacturing establishment, food storage warehouse or salvage establishment at any reasonable time for the purpose of making inspections to determine compliance with these regulations. The representative shall be permitted to examine records maintained in the food manufacturing establishment, food storage warehouse or salvage establishment (or other location) to obtain information pertaining to the source of food and supplies

in the establishment when deemed necessary for the enforcement of these regulations

310:260-11-3. Examination and condemnation of food [REVOKED]

Food may be examined or sampled by the Oklahoma State Department of Health as often as necessary for enforcement of these rules and regulations. The Oklahoma State Department of Health may place an embargo on food in accordance with the provisions of Title 63 O.S. 1981, Section 1-1105.

310:260-11-4. Plan review [REVOKED]

(a) **Submission.** Prior to commencing construction of a facility not previously licensed, or extensive remodeling of an existing structure, or hereafter substantial alteration of an existing facility for use as a manufacturing, processing, packing or holding plant, food storage or food salvage establishment, adequately prepared plans and specifications should be submitted to the Oklahoma State Department of Health, Food Protection Service, P.O. Box 53551, Oklahoma City, Oklahoma 73152.

(b) **Deficiencies.** If the Department deems such plans and specifications to not conform to the requirements or additional material information is required, the Department shall, within ten (10) days after the receipt thereof, notify by certified mail, the person who submitted them of its objections or its need for additional information.

(c) **Criteria.** The decision to submit a formal plan when extensive remodeling or substantial alteration is contemplated, shall be determined as follows:

- (1) if change prompts the preparation of a plan by an architect, or
- (2) if change prompts the preparation of a plan by food processing or food equipment consultants.

(d) **Content.** Plans for new construction shall include:

- (1) installation layout of processing equipment to be installed on the food processing floor.
- (2) location of handwashing facilities, toilets, and employees locker rooms.
- (3) construction material to be used on floors, walls, and ceiling.
- (4) location of removable filters.
- (5) ventilation system design.
- (6) type of waste disposal systems to be used.
- (7) any air quality equipment to be used.

SUBCHAPTER 13. SPECIAL RISK SITUATIONS [REVOKED]

310:260-13-1. Emergency occurrences [REVOKED]

The person in charge of a food establishment that is affected by a fire, flood, extended power outage, or a similar significant occurrence that creates a reasonable probability that food in the food establishment may have been contaminated or that the temperature level of the food which is in a potentially hazardous form may have caused that food to have become hazardous to health, shall take such action as is necessary

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to protect the public health and shall promptly notify the Oklahoma State Department of Health of the emergency. Upon receiving such notice of this occurrence, the regulatory agency shall take action deemed necessary to protect the public health.

310:260-13-2. Infection [REVOKED]

~~When the Oklahoma State Department of Health has reasonable cause to suspect possible disease transmission by an employee of a food establishment, the Department may secure a morbidity history of the employee or make any other investigation as indicated and shall take appropriate action. The Oklahoma State Department of Health may require at a minimum any or all of the following measures:~~

- ~~(1) The immediate exclusion of the employee from employment in food establishments;~~
- ~~(2) The immediate closing of the food establishment concerned until no further danger of disease outbreak exists;~~
- ~~(3) Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease;~~
- ~~(4) Adequate medical laboratory examination of the employee and other employees and of his and their body discharges.~~

SUBCHAPTER 15. COMPLIANCE AND ENFORCEMENT

310:260-15-1. License required

(a) No person shall operate a food manufacturing establishment, food storage warehouse, or a salvage establishment, who does not have a valid license issued to such person by the Department pursuant to O.S. §63-1-1119. Only a person who is in virtual compliance with the requirements of these rules and regulations shall be entitled to receive or retain such a license.

(b) A license shall expire one year from the date of its issuance unless canceled or revoked prior to its expiration. For purposes in determining the expiration date of all licenses under this section, the date of issuance shall be deemed to be the date that an approved application for licensure is first issued by a duly authorized representative of the Health Department.

310:260-15-2. Examination and condemnation of food

Food may be examined or sampled by the Department as often as necessary for enforcement of these rules and regulations. The Department may place an embargo on food in accordance with the provisions of Title 63 O.S. 1-1105.

310:260-15-3. Variance

(a) Whenever the Department adopts new rules or amends existing language in this Chapter, the owner of a food establishment may request that a variance be granted on any nonconforming use that may then exist, on or before the effective date of the rule change, at the license holder's place of operation.

(b) Variances requested pursuant to this Subchapter are subject to approval by the Department. In order to have the variance approved, a license holder must submit a written application on a form provided by the Department. Any variance request shall be deemed denied unless the license holder subsequently receives notice of approval from the Department.

(c) If the license holder replaces the equipment or reconstructs the portion of the facility that is the subject of the variance, the new equipment or construction must conform to the rules of this Chapter.

(d) Variances are not considered to be part of the license and may be revoked at any time, for any reason, by the Department.

310:260-15-4. Documentation of proposed variance and justification

Variance requests are subject to review by the Department. During this process, the inspector must confirm the following:

- (1) The nature and extent of the nonconforming use;
- (2) That the equipment or portion of the facility in question is in an operable and sanitary condition, and can be maintained in satisfactory condition during the term of the variance;
- (3) That no public health threats or food-related illness will result if the variance is granted.

310:260-15-5. When plans are required

(a) A license applicant or license holder shall submit to the Department properly prepared plans and specifications for review and approval before:

- (1) The construction of an establishment;
- (2) The conversion of an existing structure for use as an establishment; or
- (3) The extensive remodeling of an establishment or a change of operation.

(b) If the Department deems such plans and specifications to not conform to the requirements or additional material information is required, the Department shall notify the person who submitted them of its objections or its need for additional information.

310:260-15-6. Contents of the plans and specifications

The plans and specifications for an establishment shall include the following information to demonstrate conformance with Code provisions:

- (1) Food items intended to be produced;
- (2) Anticipated volume of food to be prepared, held, and transported;
- (3) Proposed equipment types, manufacturer and model numbers (if available);
- (4) Proposed floor plan;
- (5) Installation layout of processing equipment to be installed on the food processing floor;
- (6) Location of handwashing facilities, restrooms, and employees locker rooms;
- (7) Other information as required by the Department.

310:260-15-7. Preoperational inspections

The Department may conduct one or more preoperational inspections to verify that the establishment is constructed and equipped in accordance with the approved plans and approved modifications of those plans, and is in compliance with law and this Chapter.

310:260-15-8. Form of submission

A person desiring to operate an establishment shall submit to the regulatory authority a written application for a license on a form provided by the regulatory authority.

310:260-15-9. Qualifications and responsibilities of applicants

To qualify for a license, an applicant shall:

- (1) Be an owner of the food establishment or an officer of the legal ownership;
- (2) Comply with the requirements of this Chapter;
- (3) As specified under OAC 310:260-15-17, agree to allow access to the food establishment and to provide required information; and
- (4) Pay the applicable license fees at the time the application is submitted.

310:260-15-10. Contents of the application

The application shall include:

- (1) The name, mailing address, telephone number, and signature of the person applying for the license and the name, mailing address, and location, of the establishment;
- (2) Information specifying whether the establishment is owned by an association, corporation, individual, partnership, or other legal entity.

310:260-15-11. New, converted, or remodeled establishments

For establishments that are required to submit plans as specified under OAC 310:260-15-5 the Commissioner of Health shall issue a license to the applicant after:

- (1) A properly completed application is submitted;
- (2) The required fee is submitted;
- (3) The required plans, specifications, and information are reviewed and approved; and
- (4) An inspection shows that the establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this Chapter.

310:260-15-12. Issuance of license

The Department may issue a license to a new owner of an existing food establishment after a properly completed application is submitted, reviewed, and approved, the fees are paid, and an inspection shows that the establishment is in compliance with this Chapter.

310:260-15-13. Denial of application for license, notice

If an application for a license to operate is denied, the regulatory authority shall provide the applicant with a notice that includes:

- (1) The specific reasons and Chapter citations for the license denial;
- (2) The actions, if any, that the applicant must take to qualify for a license; and
- (3) Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in law.

310:260-15-14. Responsibilities of the license holder

Upon acceptance of the license issued by the Commissioner of Health, the license holder in order to retain the license shall:

- (1) Post the license in a location in the establishment that is conspicuous to visitors;
- (2) Comply with the provisions of this Chapter;
- (3) Immediately discontinue operations and notify the Department if an imminent health hazard may exist as specified under OAC 310:260-15-25;
- (4) Allow representatives of the Department access to the establishment as specified under OAC 310:260-15-17;
- (5) Replace existing facilities and equipment with facilities and equipment that comply with this Chapter if:
 - (A) The Department directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted.
 - (B) The Department directs the replacement of the facilities and equipment because of a change of ownership, or
 - (C) The facilities and equipment are replaced in the normal course of operation;
- (6) Comply with directives of the Department including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the Department in regard to the license holder's establishment or in response to community emergencies;
- (7) Accept notices issued and served by the Department according to law;
- (8) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this Chapter or a directive of the Department, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives; and
- (9) If applicable, submit the annual renewal application and pay all renewal license and late fees.

310:260-15-15. Licenses not transferable

A license may not be transferred from one person to another person, from one establishment to another, from one physical address to another, from one corporation to another, from one limited liability company or corporation to

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another, from one partnership to another, or from one type of operation to another if the food operation changes from the type of operation specified in the application under OAC 310:260-15-6 and the change in operation is not approved.

310:260-15-16. Competency of inspectors

An authorized representative of the Department who inspects an establishment or conducts plan review for compliance with this Chapter shall have the knowledge, skills, and ability to adequately perform the required duties, and be licensed pursuant to Title 59 O.S. §, 59-1150.1 et seq.

310:260-15-17. Allowed at reasonable times after due notice

After the Department presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the Department to determine if the establishment is in compliance with this Chapter by allowing access to the establishment, allowing inspection, and providing information and records specified in this Chapter and to which the Department is entitled according to law, during the establishment's hours of operation and other reasonable times.

310:260-15-18. Refusal, notification of right to access, and final request for access

If a person denies access to the Department, the Department shall:

- (1) Inform the person that:
 - (A) The license holder is required to allow access to the Department as specified under OAC 310:260-15-17 of this Chapter,
 - (B) Access is a condition of the acceptance and retention of an establishment license to operate as specified under OAC 310:260-15-14(4), and
 - (C) If access is denied, an order issued by the appropriate authority allowing access, hereinafter referred to as an inspection order, may be obtained according to law; and
- (2) Make a final request for access.

310:260-15-19. Refusal, reporting

If after the regulatory authority presents credentials and provides notice as specified under OAC 310:260-15-17, explains the authority upon which access is requested, and makes a final request for access as specified in OAC 310:260-15-18, the person in charge continues to refuse access, the regulatory authority shall provide details of the denial of access on an inspection report form.

310:260-15-20. Inspection order to gain access

If denied access to a food establishment for an authorized purpose and after complying with OAC 310:260-15-18, the Department may issue, or apply for the issuance of an order to gain access as provided in law.

310:260-15-21. Documenting information and observations

The Department shall document on an inspection report form:

- (1) Administrative information about the establishment's legal identity, street and mailing addresses, type of establishment and operation as specified, inspection date, and other information such as type of water supply and sewage disposal, status of the license, and personnel certificates that may be required; and
- (2) Specific factual observations of violative conditions or other deviations from this Chapter that require correction by the license holder.

310:260-15-22. Specifying time frame for corrections

The regulatory authority may specify on the inspection report form the time frame for correction of the violations.

310:260-15-23. Issuing report and obtaining acknowledgment of receipt

At the conclusion of the inspection the regulatory authority shall provide a copy of the completed inspection report and the notice to correct violations to the license holder or to the person in charge, and request a signed acknowledgment of receipt.

310:260-15-24. Refusal to sign acknowledgment

The Department shall:

- (1) Inform a person who declines to sign an acknowledgment of receipt of inspectional findings as specified under OAC 310:260-15-23:
 - (A) An acknowledgment of receipt is not an agreement with findings,
 - (B) Refusal to sign an acknowledgment of receipt will not affect the license holder's obligation to correct the violations noted in the inspection report within the timeframes specified, and
 - (C) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the Department's historical record for the food establishment; and
- (2) Make a final request that the person in charge sign an acknowledgment receipt of inspectional findings.

310:260-15-25. Ceasing operations and reporting

(a) Except as specified in (b) of this Section, a license holder shall immediately discontinue operations and notify the regulatory authority if an imminent health hazard exists because of an emergency such as a fire, flood, sewage backup, no water in the facility, insufficient refrigeration and/or hot food storage facilities available, substantial evidence or presence of a large number of insects or evidence of rodents in food or on food preparation surfaces, interruption of safe potable water supply to the facility, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, interruption of electrical service for more than 4 hours, severe structural damage in

the facility, an employee working with a Salmonella, Shigella, E. coli 0157:H7 or Hepatitis A infection, gross unsanitary occurrence or condition, or other circumstance as determined by the Commissioner of Health, or his designee, that shall endanger public health.

(b) A license holder need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.

310:260-15-26. Resumption of operations

If operations are discontinued as specified under OAC 310:260-15-32 or otherwise according to law, the license holder shall notify the regulatory authority before resuming operations.

310:260-15-27. Obtaining information: personal history of illness, medical examination, and specimen analysis

The regulatory authority shall act when it has reasonable cause to believe that a food employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:

- (1) Securing a confidential medical history of the employee suspected of transmitting disease or making other investigations as deemed appropriate; and
- (2) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected employee and other employees.

310:260-15-28. Restriction or exclusion of employee with infection

When the Department has reasonable cause to suspect possible disease transmission by an employee of a food establishment, the Department may secure a morbidity history of the employee or make any other investigation as indicated and shall take appropriate action. The Department may require at a minimum any or all of the following measures:

- (1) The immediate exclusion of the employee from employment in food establishments;
- (2) The immediate closing of the food establishment concerned until no further danger of disease outbreak exists.
- (3) Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease;
- (4) Adequate medical laboratory examination of the employee and other employees and of his and their body discharges.

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**TITLE 310. OKLAHOMA STATE
DEPARTMENT OF HEALTH
CHAPTER 260. GOOD MANUFACTURING
PRACTICE REGULATIONS**

[OAR Docket #20-664]

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n/a

GIST/ANALYSIS:

The current rule excludes persons engaged solely in the harvesting, storage, and distribution of one or more raw, unprocessed agricultural commodities from the regulations. The proposed rule adds to the exclusion list Persons engaged solely in the sale of honey produced under the Oklahoma Honey Sales Act pursuant to Title 63 O.S., §§1-1330 et seq., persons engaged solely in the sale of food products produced under the Home Bakery Act of 2013 pursuant to Title 2 O.S., §§5-4.1 et seq., and persons engaged solely in the sale of food products at a County Free fair as defined by Title 2 O.S., §§15-67 et seq.

CONTACT PERSON:

Audrey C. Talley, Agency Rules Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-944, ext. 56535. AudreyT@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

310:260-1-5. Exclusion

(a) Persons engaged solely in the harvesting, storage, and distribution of ~~one or more~~ raw, unprocessed agricultural commodities are not subject to the provisions of this Chapter.

(b) Persons engaged solely in the sale of honey products produced under the Oklahoma Honey Sales Act pursuant to Title

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63 O.S. 1-1330 et seq. are not subject to the provisions of this Chapter.

(c) Persons engaged solely in the sale of food products produced under the Home Bakery Act of 2013 pursuant to Title 2 O.S. 5-4.1 et seq. are not subject to the provisions of this Chapter.

(d) Persons engaged solely in the sale of food products at a Registered Farmers Market as defined by Title 2 O.S. 5-19 are not subject to the provisions of this Chapter.

(1) These persons are not exempted from Title 63 O.S. 1-1118(B)(3) in regards to licensure.

(2) Food products shall be labeled with the common food product name, net weight, current ten (10) digit phone number, an address where the product was produced, and shall include the statement, "Packaged in a facility not inspected by the Oklahoma Department of Health." The statement shall be in 10-point type or greater, in a color that provides clear contrast to the background label.

(e) Persons engaged solely in the sale of food products at a County Free fair as defined by Title 2 O.S. 15-67 et seq. are not subject to the provisions of this Chapter.

(1) These persons are not exempted from Title 63 O.S. 1-1118(B)(3) in regards to licensure.

(2) Food products shall be labeled with the common food product name, net weight, current ten (10) digit phone number, an address where the product was produced, and shall include the statement, "Packaged in a facility not inspected by the Oklahoma Department of Health." The statement shall be in 10-point type or greater, in a color that provides clear contrast to the background label.

[OAR Docket #20-664; filed 7-24-20]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 515. COMMUNICABLE DISEASE AND INJURY REPORTING

[OAR Docket #20-685]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Disease and Injury Reporting

310:515-1-1.1 [AMENDED]

310:515-1-4 [AMENDED]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposal updates the existing rules in accordance with recommendations from the Council of State and Territorial Epidemiologists (CSTE), the Centers for Disease Control and Prevention, and local health care partners pertaining to reportable diseases and injuries. The proposal amends the lists of reportable diseases and injuries, in order to clarify those conditions and diseases that are required to be reported to the Department. The proposal revises the list of conditions of public health importance that require investigation and implementation of prevention activities and time frames for required reporting and requiring all laboratories and providers to report lymphogranuloma venereum (LGV) which is a type of chlamydia' bacteria that attacks the lymphatic system. The additional specification of LGV will ensure that Oklahoma can better describe the type of infections or outbreaks that are occurring within the state and monitor the trends.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 1. DISEASE AND INJURY REPORTING

310:515-1-1.1. Definitions

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

"**AFB**" means Acid Fast Bacillus.

"**AIDS**" means Acquired Immunodeficiency Syndrome.

"**ALT**" means alanine aminotransferase.

"**Anti-HAV-IgM+**" means a positive test result for the hepatitis A virus immunoglobulin M antibody.

"**Anti-HBc-IgM+**" means a positive test result for the hepatitis B core immunoglobulin M antibody.

"**CD4**" means cluster of differentiation 4 glycoprotein that serves as a receptor for HIV on T helper cells.

"**CIDT**" means culture independent diagnostic test system/panel used to detect multiple pathogens.

"**Department**" or "**OSDH**" means the Oklahoma State Department of Health.

"**E. coli**" means *Escherichia coli*.

"**EDTA**" means Ethylenediaminetetraacetic acid.

"**EIA**" means enzyme immunoassay.

"**HbeAg+**" means a positive test result for the hepatitis B "e" antigen.

"**HbsAg+**" means a positive test result for the hepatitis B surface antigen.

"**HBV DNA+**" means a positive test result for deoxyribonucleic acid of the hepatitis B virus.

"**HIV**" means Human Immunodeficiency Virus.

"**LGV**" means lymphogranuloma venereum.

"**PHIDDO**" or "**PHIDDO system**" means Public Health Investigation and Disease Detection of Oklahoma system.

"**NAT for HCV RNA+**" means a positive nucleic acid amplification test result for hepatitis C virus ribonucleic acid.

"**Novel Influenza A**" means an influenza A virus not endemic, not routinely circulating, or for which there is little to no pre-existing immunity, e.g., influenza A H3N2 variant, H5N1, H5N2, H7N3, or H7N9.

"**Outbreak of disease**" means two or more cases residing in different households that have a similar clinical syndrome of a potentially infectious disease, toxin, or agent of known or unknown etiology.

"**RIBA**" means recombinant immunoblot assay.

"**S/co**" means the signal-to-cut-off-ratio.

"**Spp.**" is an abbreviation referring to the term "species," and is used to broaden the antecedent term in order to include all organisms that may be found or described within a given genus.

"**Unusual disease or syndrome**" means a case of an uncommon, possibly infectious disease of known or unknown etiology, even if laboratory testing may be pending or inconclusive, or if testing for common etiologies is negative. Such cases of disease may not normally be endemic to Oklahoma, may represent emerging or re-emerging disease, and/or disease for which a public health intervention may be needed. Examples of such unusual diseases or syndromes include but are not limited to, unexplained adult respiratory distress syndrome, rash illness with atypical presentation, or an illness occurring along with an unusual pattern of illness or death among animals.

310:515-1-4. Additional diseases, conditions, and injuries to be reported

The following diseases, conditions and injuries must be reported by physicians, laboratories, and hospitals (by infection control practitioners, medical records personnel, and other designees) to the OSDH as dictated in the following subsections:

(1) **Infectious diseases.** Reports of infectious diseases and conditions listed in this subsection must be submitted electronically via the PHIDDO system, telephoned or submitted via secure electronic data transmission to the OSDH within one (1) working day (Monday through Friday, state holidays excepted) of diagnosis or positive test.

(A) Acid Fast Bacillus (AFB) positive smear. Report only if no additional testing is performed or subsequent testing is indicative of *Mycobacterium tuberculosis* Complex.

(B) AIDS.

(C) *Anaplasma phagocytophilum* infection.

(D) Arboviral infections (West Nile virus, St. Louis encephalitis virus, Eastern equine encephalitis virus, Western equine encephalitis virus, Powassan

virus, California serogroup virus, chikungunya virus, Zika virus).

(E) Brucellosis (*Brucella* spp.).

(F) Campylobacteriosis (*Campylobacter* spp.).

(G) Congenital rubella syndrome.

(H) Cryptosporidiosis (*Cryptosporidium* spp.).

(I) Cyclosporiasis (*Cyclospora cayetanensis*).

(J) Dengue Fever.

(K) *E. coli* O157, O157:H7, or a Shiga toxin producing *E. coli*. (STEC)

(L) Ehrlichiosis (*Ehrlichia* spp.).

(M) *Haemophilus influenzae* invasive disease.

(N) Hantavirus infection, without pulmonary syndrome.

(O) Hantavirus pulmonary syndrome.

(P) Hemolytic uremic syndrome, postdiarrheal.

(Q) Hepatitis A infection (Anti-HAV-IgM+).

(R) Hepatitis B infection. If any of the following are positive, then all test results on the hepatitis panel must be reported: HBsAg+, anti-HBc-IgM+, HBeAg+, or HBV DNA+.

(S) Hepatitis C infection in persons having jaundice or ALT > or = 200 with laboratory confirmation. If hepatitis C EIA is confirmed by NAT for HCV RNA, or s/co ratio or index is predictive of a true positive then report results of the entire hepatitis panel.

(T) HIV.

(U) Influenza-associated hospitalization or death.

(V) Legionellosis (*Legionella* spp.).

(W) Leptospirosis (*Leptospira interrogans*).

(X) Listeriosis (*Listeria monocytogenes*).

(Y) Lyme disease (*Borrelia burgdorferi*).

(Z) Malaria (*Plasmodium* spp.).

(AA) Mumps.

(BB) Pertussis (*Bordetella pertussis*).

(CC) Psittacosis (*Chlamydia psittaci*).

(DD) Q fever (*Coxiella burnetii*).

(EE) Rubella.

(FF) Salmonellosis (*Salmonella* spp.).

(GG) Shigellosis (*Shigella* spp.).

(HH) Spotted Fever Rickettsiosis (*Rickettsia* spp.) hospitalization or death.

(II) Streptococcal disease, invasive, Group A (GAS) (*Streptococcus pyogenes*).

(JJ) *Streptococcus pneumoniae* invasive disease, in persons less than 5 years of age.

(KK) Syphilis (*Treponema pallidum*). Nontreponemal and treponemal tests are reportable. If any syphilis test is positive, then all syphilis test results on the panel must be reported. For infants < or = 18 months, all syphilis tests ordered, regardless of test result, must be reported.

(LL) Tetanus (*Clostridium tetani*).

(MM) Trichinellosis (*Trichinella spiralis*).

(NN) Tuberculosis (*Mycobacterium tuberculosis*).

(OO) Tularemia (*Francisella tularensis*).

(PP) Unusual disease or syndrome.

(QQ) Vibriosis (*Vibrionaceae* family: *Vibrio* spp. (including cholera), *Grimontia* spp., *Photobacterium* spp., and other genera in the family).
(RR) Yellow Fever.

(2) **Infectious diseases.** Reports of infectious diseases and conditions listed in this subsection must be reported to the OSDH within one (1) month of diagnosis or test result.

(A) CD4 cell count with corresponding CD4 cell count percentage of total (by laboratories only).

(B) Chlamydia (*Chlamydia trachomatis*).

(C) Creutzfeldt-Jakob disease.

(D) Gonorrhea (*Neisseria gonorrhoeae*).

(E) HIV viral load (by laboratories only).

(F) LGV.

(3) **Occupational or environmental diseases.** Laboratories and healthcare providers must report blood lead level results pursuant to the requirements established in Title 310, Chapter 512, childhood Lead Poisoning Prevention Rules.

(4) **Injuries.**

(A) Burns.

(B) Drownings and near drownings.

(C) Traumatic brain injuries.

(D) Traumatic spinal cord injuries.

(E) Poisonings, including toxic and adverse effects.

[OAR Docket #20-685; filed 7-24-20]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 528. CHILDREN FIRST ELIGIBILITY REQUIREMENTS

[OAR Docket #20-686]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

310:528-1-3 [AMENDED]

310:528-1-4 [AMENDED]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

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INCORPORATIONS BY REFERENCE:

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GIST/ANALYSIS:

The amendment adds a description of the scope of services that explains services will be prioritized to Children First Mothers whose household income is no greater than 185% of the federal poverty level. No more than 15% of a nurse home visitor's caseload should be above 185% of the federal poverty level.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

310:528-1-3. Services

(a) Services will be provided by a public health nurse in the home of the Children First Mother unless the Children First Mother requests that the services be provided in a different location.

(b) Services include limited maternal and child health assessments; child development assessments; parenting education; health, safety and nutrition education; appropriate referrals to services such as primary health care, family planning, mental health services, job training, literacy services, employment opportunities, housing, and substance abuse treatment.

(c) Services will be made available without requirement for legal residence, age, sex, race, religion, nationality, marital status or pregnancy history.

(d) Acceptance of services must be voluntary, and individuals must not be subjected to any coercion to receive services.

(e) Acceptance of services shall not be a prerequisite to eligibility for, or receipt of, any other services provided by the Oklahoma State Department of Health (OSDH).

(f) All information obtained as to personal facts and circumstances of individuals will be held confidential, and shall not be divulged without the individual's written consent, court order, or by request of staff from a District Attorney's Office, a law enforcement official, or the Department of Human Services when conducting a child abuse investigation.

(g) Services will be prioritized to Children First Mothers whose household income is no greater than 185% of the federal poverty level. No more than 15% of a nurse home visitor's caseload should be above 185% of the federal poverty level.

310:528-1-4. Eligibility requirements

The Children First Mother must be at or less than 28 weeks gestation when the initial Children First visit occurs, ~~have a household income no greater than 185% above the Federal Poverty Level~~ be within the prioritized services as set forth in 310:528-1-3(g), and

(1) be expecting her first live birth, never parented and plans on parenting this child; or

- (2) be expecting her first live birth, never parented and is contemplating placing the child for adoption; or
- (3) be expecting her first live birth and has parented stepchildren or younger siblings; or
- (4) be expecting her first live birth, been pregnant before, but the pregnancy did not result in a live birth; or
- (5) be expecting a live birth, been pregnant and delivered a child in the past, but the child died within the first six months of life; or
- (6) be expecting a live birth, been pregnant and delivered a child in the past, but the mother placed the child for adoption immediately following delivery of the child.

[OAR Docket #20-686; filed 7-24-20]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 531. VISION SCREENING

[OAR Docket #20-687]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

310:531-1-2 [AMENDED]

310:531-1-3 [AMENDED]

Subchapter 5. Vision Screening Standards for Children

310:531-5-2 [AMENDED]

310:531-5-5 [AMENDED]

310:531-5-6 [AMENDED]

310:531-5-7 [AMENDED]

310:531-5-8 [REVOKED]

310:531-5-9 [REVOKED]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Revisions to this chapter are necessary to assure compliance with the latest recommended guidelines and national standards, and include removal of tools that are no longer recommended. Changes include allowing the use of photo screeners for children under 72 months of age. These rule changes also permit the Oklahoma State Department of Health (Department) to determine "any vision screening tool determined by the Department to be a comparably effective and efficient screening tool" enabling the Department to approve use

of future evidence-based screening technology or tool as new peer-reviewed research becomes available and tools are recommended by experts in the field.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

310:531-1-2. Authority

Commissioner of the Oklahoma State Board~~Department~~ of Health; 70 O.S. § 1210.284; 63 O.S. §§~~1-103~~, 1-103a.1, ~~1-105~~, ~~1-104~~ and 1-106 et seq.

310:531-1-3. Definitions

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

"**Board**" means the State Board of Health.

"**Commissioner**" means the State Commissioner of Health of the Oklahoma State Department of Health.

"**Comprehensive Eye Exam**" means a clinical assessment and tests administered by a licensed optometrist or ophthalmologist to assess a person's level of vision as well as detect any abnormality or diseases.

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

~~"HOTV Chart" means a vision screening test that determines relative visual acuity for distance vision using a chart with the four (4) letters: H, O, T and V. Chart is recommended for children under 72 months of age.~~

"**Infant and Children's Health Advisory Council**" means the advisory council to the Board and Department in the area of infant and child health including vision screening.

"LEA Numbers Chart" means a vision screening test that determines relative visual acuity for distance vision using a chart with numbers. Chart is recommended for school age children and can be used with children who use English as a second language.

~~"Lea Symbols Chart" means a vision screening test that determines relative visual acuity for distance vision using a chart with the four (4) symbols: circle, square, house, and apple. Chart is recommended for children under 72 months of age.~~

"**Ophthalmologist**" means a person licensed by the state of Oklahoma to practice medicine who has a specialty in ophthalmology.

"**Optometrist**" means a person licensed by the state of Oklahoma to practice optometry.

~~"Random Dot E Stereo Test" means a vision screening test that determines relative stereo acuity or depth perception.~~

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"Referral" means parent/guardian notification that the student's screening results indicate a need for a comprehensive eye exam by an ophthalmologist or optometrist.

"Sloan Letters Chart" means a vision screening test that determines relative visual acuity for distance vision using a chart with letters. Chart is recommended for school age children.

~~"Snellen Letter Chart" means a vision screening test that determines relative visual acuity for distance vision using a chart consisting of eight (8) or more rows of progressively smaller block type letters.~~

"Vision screening provider(s)" means a person(s) who has successfully completed vision screening training using curricula approved by the Department, submitted an application to the Department, and has been approved by the Department as being a vision screening provider.

"Vision screening" means the process or system used to identify children in grades K, 1 and 3 who may be at risk of having or developing visual problems that may adversely affect their ability to acquire knowledge, skill or learning, for the purpose of recommending further evaluation by an optometrist or ophthalmologist.

"Vision screening trainer(s)" is a person(s) who has been approved as a vision screening provider and completed additional training approved by the Department to provide training to potential vision screening providers.

~~"Vision screening trainer(s) of trainers" is a person(s) who has been approved as a vision screening provider and vision screening trainer and completed additional education and practicum approved by the Department to become a vision screening trainer of trainers.~~

"Vision Screening Registry" is a system for collecting and maintaining in a structured manner the names of individuals that have been approved by the Department as vision screening providers.

SUBCHAPTER 5. VISION SCREENING STANDARDS FOR CHILDREN

310:531-5-2. Oklahoma Vision Screening Standards

(a) Parents or guardians of any child subject to the Oklahoma School Code shall provide certification of vision screening for any child who is:

- (1) in kindergarten, and the vision screening shall be completed within the previous twelve (12) months or during the school year;
- (2) in the first grade, and the vision screening shall be completed within the previous (12) months, with certification provided to school personnel within thirty (30) days of the beginning of the school year; and
- (3) in the third grade, and the vision screening shall be completed within the previous twelve (12) months, with certification provided to school personnel within thirty (30) days of the beginning of the school year.

(b) Vision screening must, at a minimum, utilize one of the following vision screening tests using standard screening procedures for relative visual acuity:

(1) ~~For school age children, For relative distance acuity, the Snellen Sloan Letter Chart, HOTV Chart, or LEA Symbol Numbers Chart, at a distance of ten (10) feet or any new vision screening tool determined by the Department to be a comparably effective and efficient screening tool; or~~

(2) ~~For children under 72 months of age, a photo-screener or any new vision screening tool determined by the Department to be a comparably effective and efficient screening tool. For stereo acuity, the Random Dot E Stereo Test, at a distance according to the calibration of the manufacturer, or any new vision screening tool determined by the Department as being a comparably effective and efficient screening tool.~~

(c) The following distance visual acuity criteria shall be used as a basis for referring a child for further evaluation by an optometrist or ophthalmologist: Refer for a two-line difference in either eye, even in the passing range, or acuity 20/40 or worse in either eye.

~~(1) For relative distance acuity, worse than 20/40 in either or both eyes for children below the first grade or for new tools the equivalent, or worse than 20/30 in either or both eyes for children in the first grade or above or, for new screening tools the equivalent, and for all children, a two or more line difference between either eye or, for new screening tools the equivalent; and,~~

~~(2) For relative stereo acuity, a child identifies the E correctly in less than four (4) consecutive responses out of ten (10) attempts or, for new vision screening tools the equivalent.~~

310:531-5-5. Re-approval of vision screening providers

A vision screening provider ~~currently approved by the Department~~ may renew his or her application status by submitting documentation of ~~successful~~ completion of training, conducted by an approved trainer, using an approved curricula, prior to the end of his or her third year.

310:531-5-6. Approval of vision screening trainers

(a) In order to become an approved vision screening trainer an individual must be an approved vision screening provider and make application to the Department and include documentation of successful completion of training conducted by an approved trainer using an approved training curriculum that includes the following:

- (1) common eye problems;
- (2) the screening process;
- (3) required screening tools;
- (4) screening special populations;
- (5) basic anatomy and physiology of the eye; and,
- (6) techniques for effective training of vision screening providers.

(b) The applicant must provide to the Department documentation of successful completion of training, which is administered by a ~~vision screening trainer of trainers~~ approved by the Department using a training curriculum ~~curricula~~ for trainers approved by the Department.

(c) The Department will review and approve vision screening trainers and the approved curricula used for training vision screening providers.

(d) The approval of a vision screening trainer ends three years from the most ~~recently~~ recent approval ~~approved~~ training.

310:531-5-7. Re-approval of vision screening trainers

A vision screening trainer ~~currently approved by the Department~~ may renew his or her ~~application status~~ by submitting documentation of ~~successful~~ completion of an approved training, conducted by an approved ~~vision screening~~ trainer of ~~trainers~~, using an approved curricula, prior to the end of his or her third year.

310:531-5-8. Approval of vision screening trainers of trainers [REVOKED]

(a) ~~In order to become an approved vision screening trainer of trainers, an individual must be an approved vision screening provider, an approved vision screening trainer, and make application to the Department and include documentation of successful completion of training conducted by an approved trainer using an approved training curriculum that includes the following:~~

- (1) ~~common eye problems;~~
- (2) ~~the screening process;~~
- (3) ~~required screening tools;~~
- (4) ~~screening special populations;~~
- (5) ~~basic anatomy and physiology of the eye;~~
- (6) ~~techniques for effective training of vision screening providers; and,~~
- (7) ~~techniques for effective training of vision screening trainers of trainers.~~

(b) ~~The applicant must provide to the Department documentation of successful completion of training, which is administered by a vision screening trainer of trainers approved by the Department using training curricula for trainers approved by the Department.~~

(c) ~~The Department will review and approve vision screening trainers of trainers and the approved curricula used for training vision screening trainers.~~

(d) ~~The approval of a vision screening trainers of trainers ends three years from most recently approved training.~~

310:531-5-9. Re-approval of vision screening trainers of trainers [REVOKED]

A vision screening trainer of trainers ~~currently approved by the Department~~ may renew his or her application by submitting documentation of ~~successful~~ completion of training conducted by an approved trainer and use of an approved curriculum prior to the end of his or her third year.

[OAR Docket #20-687; filed 7-24-20]

**TITLE 310. OKLAHOMA STATE
DEPARTMENT OF HEALTH
CHAPTER 535. IMMUNIZATION
REGULATIONS**

[OAR Docket #20-688]

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RULES:

Subchapter 1. Childhood Immunizations

310:535-1-2 [AMENDED]

310:535-1-3 [AMENDED]

AUTHORITY:

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GIST/ANALYSIS:

The proposed changes modify the process for obtaining and submitting religious and personal vaccine exemptions for children enrolled in Oklahoma schools or childcare centers. Religious and personal exemptions may be obtained after receiving an approved brief educational presentation provided by any local county health department regarding the risks associated with not being vaccinated and the benefits vaccinations provide to the individual and the community. To be approved, the completed exemption form along with evidence of completed instruction is required. The proposed rule creates an expiration date to exemptions before entry to seventh grade and a new exemption form should be submitted to the department.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

**SUBCHAPTER 1. CHILDHOOD
IMMUNIZATIONS**

310:535-1-2. Criteria for immunizations required

(a) Each child shall present certification that he or she has received or is receiving the immunizations as specified below

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before he or she is admitted to any public, private, or parochial school.

(b) Certification shall include the following:

(1) Diphtheria, Tetanus and Pertussis (DTP/DTaP) vaccine in five doses unless the fourth dose is received on or after the fourth birthday in which case only four doses are required. If the doses are not completed by the seventh birthday, the series must be completed with Adult Td vaccine and/or Tdap vaccine based on the individual's age at the time the first dose was received and age at the time the series is completed and beginning with the fall 2011-12 school year one dose of Tdap vaccine for students entering the seventh grade. Each year following the 2011-12 school year, the Tdap requirement shall be extended one grade level so that in the 2016-17 school year and all subsequent school years, students in grades seven through twelve shall be required to have received one dose of Tdap vaccine.

(2) Poliomyelitis vaccine in four doses unless the last dose is on or after the fourth birthday in which case only three doses are required. If the doses are not started or completed by the eighteenth birthday, no additional doses are required.

(3) Measles, Mumps and Rubella (MMR) vaccine with the first dose on or after the first birthday and the second dose at least twenty-eight days thereafter for children in grades kindergarten through eighth grade in the school year beginning in 1998. In the school year beginning in 1999, this requirement shall apply to the children through the ninth grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2002, children in all grades shall be required to have the second dose of vaccine.

(4) Hepatitis B vaccine in three doses for students of any age or two doses for students eleven through fifteen years of age who complete the alternative dosage schedule providing that the alternative schedule is fully documented. Such documentation must include the name of the vaccine and the dosage received for each dose of that vaccine:

(A) before entering seventh and eighth grades in 1998. In the school year beginning in 1999, this requirement shall apply to the children entering the seventh through ninth grades. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2002, children in grades seven through twelve shall be required to have the three doses of the vaccine.

(B) before entering kindergarten in 1998. In the school year beginning in 1999, this requirement shall apply to the children entering kindergarten and first grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2004, all children entering school shall be required to have the three doses of the vaccine.

(5) Hepatitis A vaccine in two doses with the first dose on or after the first birthday and the second dose six to eighteen calendar months later:

(A) before entering kindergarten in 1998. In the school year beginning in 1999, this requirement shall apply to the children entering kindergarten and first grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2004, all children entering school shall be required to have the two doses of the vaccine.

(B) before entering grade seven in 1998. In the school year beginning in 1999, this requirement shall apply to the children entering the seventh and eighth grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2003, children in grades seven through twelve shall be required to have the two doses of the vaccine.

(6) Varicella (chickenpox) vaccine in one dose on or after the first birthday: before entering kindergarten in 1998. In lieu of vaccination, a parent's statement of a history of the disease chickenpox will be accepted. In the school year beginning in 1999, this requirement shall apply to the children entering kindergarten and first grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2010, all children entering school shall be required to have the vaccine or a parent's statement of a history of the disease chickenpox.

(c) The minimum intervals between doses and minimum ages for doses shall be as follows:

(1) DTP/DTaP:

(A) First and second dose - 4 weeks

(B) Second and third dose - 4 weeks

(C) Third and fourth dose - 4 months

(D) Fourth and fifth dose - 6 months

(E) For all fifth doses given after January 1, 2003 the minimum age for the fifth dose is 4 years of age

(2) Polio:

(A) First and second dose - 4 weeks

(B) Second and third dose - 4 weeks

(C) Third and fourth dose - 4 weeks

(3) MMR: First and second dose - 4 weeks

(4) Hepatitis B 3-dose series:

(A) First and second dose - 1 month (4 weeks)

(B) Second and third dose - 2 months (8 weeks), and the third dose at least 4 months (16 weeks) after first dose, and the third dose not before 24 weeks of age

(5) Hepatitis B 2-dose series: First and second dose - 4 months

(6) Hepatitis A: First and second dose -- 6 months and for all doses given on or after January 1, 2003, 6 months will be defined as 6 calendar months

(7) Four day grace period: Vaccine doses administered 4 days or less before the minimum intervals or ages listed in the preceding sections will be counted as valid.

(d) A child, through his parent or guardian, may apply for an exemption from this requirement by submitting a form to the school Department. The school shall maintain a copy of the approved application in the child's records ~~and send a copy~~

~~to the Department for approval. All exemptions submitted prior to a student entering 7th grade shall expire at the end of the student's 6th grade year. A new exemption is required to be completed and submitted to the Oklahoma State Department of Health by the parent or guardian prior to enrolling the child in 7th grade.~~

(1) A request for exemption for medical reasons shall contain a certificate signed by a physician stating that the physical condition of the child is such that the immunization would endanger the life or health of the child and that the child should be exempt for immunization.

~~(2) A request for exemption for religious or other personal reasons shall contain a signed written statement from the parent or guardian stating a summary of the objections. Lost or unobtainable immunization records are not a ground for personal exemption. Religious and personal exemptions may be obtained after receiving an approved brief instructional presentation provided by any local county health department regarding the risks associated with not being vaccinated and the benefits vaccinations provide to the individual and the community. To be approved, the completed exemption form along with evidence of completed instruction is required.~~

(e) A child participating in a pre-kindergarten school program shall have received or be in the process of receiving the appropriate immunization for the listed diseases based on the child's age.

(f) The Department may grant exemptions or substitutions in the immunization schedule based on a medical history of a physical condition such that the immunization would endanger the life or health of the child or a medical history stating the child is likely to be immune as a result of having had a vaccine-preventable disease if the following are met:

(1) A history of having had diphtheria and/or tetanus is not acceptable as proof of immunity since infection with diphtheria or tetanus may not render an individual immune to either of these diseases,

(2) A history of having had polio, pertussis, rubella, mumps, hepatitis B, or hepatitis A must be supported by laboratory evidence to be acceptable as proof of immunity to these diseases,

(3) A history of having had measles must be accompanied by a statement from a physician, public health authority, or laboratory evidence to be acceptable as proof of immunity to measles,

(4) A parental history of having had varicella is acceptable evidence of immunity to varicella.

(g) Haemophilus influenzae type B (Hib) vaccine is not a requirement for children attending pre-kindergarten, kindergarten, or school.

(h) In some circumstances, the United States Food and Drug Administration may approve the use of an alternative dosage schedule for an existing vaccine. These alternative schedules may be used to meet the requirements only when the alternative schedule is fully documented. Such documentation must include the name of the vaccine and dosage received for each dose of that vaccine.

310:535-1-3. Criteria for immunizations required for daychild care

(a) Each child two months of age or older shall present certification that he or she has received or is receiving the immunizations as specified below before he or she is admitted to, and while enrolled in, a daychild care center or daychild care home.

(b) Certification shall include the following:

(1) 5 DTaP/DTP doses at 2, 4, 6, and 12 to 18 months and 4 to 6 years or beginning at 6 weeks of age with minimum intervals of 4 weeks between doses 1 and 2 and doses 2 and 3 and 4 months between doses 3 and 4 and 6 months between doses 4 and 5, with all fifth doses given on or after January 1, 2003 given on or after the fourth birthday; The fifth DTaP/DTP is not required if the fourth DTaP/DTP is administered on or after the fourth birthday;

(2) 4 Polio doses at 2, 4 and 6 to 18 months and 4 to 6 years or beginning at 6 weeks of age with minimum intervals of 4 weeks between all doses; The fourth Polio is not required if the third dose is given on or after the fourth birthday;

(3) 1 to 4 Haemophilus influenzae type B (Hib) doses at 2, 4, 6, and 12 to 15 months of age or older depending upon age at first Hib immunization and type of vaccine used or beginning at 6 weeks of age with minimum intervals of 4 weeks between doses 1, 2, and 3, if a third dose is part of the primary series, and the booster dose no earlier than 12 months of age and at least 8 weeks after the previous dose;

(4) 2 Measles, Mumps, Rubella doses with the first dose on or after the first birthday and the second dose at 4 to 6 years or at anytime after the first dose provided at least 4 weeks have elapsed since the receipt of the first dose;

(5) 1 Varicella dose on or after the first birthday;

(6) 2 Hepatitis A doses with the first dose on or after the first birthday and the second dose six to eighteen months later and for all doses given on or after January 1, 2003, 6 months will be defined as 6 calendar months;

(7) 3 Hepatitis B doses with minimum intervals as follows: 1 month (4 weeks) between doses 1 and 2, two months (8 weeks) between doses 2 and 3, four months (16 weeks) between doses 1 and 3, and dose 3 no earlier than 24 weeks of age;

(8) 1 to 4 doses of pneumococcal conjugate vaccine (PCV) for children 2 months through 59 months of age at 2, 4, 6, and 12 to 15 months of age or older depending upon age at first PCV immunization with minimum intervals between doses as follows: 4 weeks between doses 1, 2, and 3 and 8 weeks between doses 3 and 4 or any dose given as the final dose at age >12 months.

(9) Vaccine doses administered 4 days or less before the minimum intervals or ages listed in the preceding sections will be counted as valid.

(c) In the event that the parent, guardian, or responsible adult presenting a child for admission to a child care facility certifies in writing that a family emergency exists, the immunization requirements shall be waived for a period not to exceed thirty days. No such waiver shall be knowingly permitted more than once for any child.

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(d) Immunization records for children attending school-age programs are not required if those records are maintained by the school and are readily available.

(e) A child, through his parent or guardian, may apply for an exemption from this requirement by submitting a form to the ~~day care center or day care home~~ Department. The ~~day child~~ care center or ~~daychild~~ care home shall maintain a copy of the approved application in the child's records and send a copy to the Department for approval.

(1) A request for exemption for medical reasons shall contain a certificate signed by a physician stating that the physical condition of the child is such that the immunization would endanger the life or health of the child and that the child should be exempt for immunization.

(2) ~~A request for exemption for religious or other personal reasons shall contain a signed written statement from the parent or guardian stating a summary of the objections. Lost or unobtainable immunization records are not a ground for personal exemption.~~ Religious and personal exemptions may be obtained after receiving an approved brief instructional presentation provided by any local county health department regarding the risks associated with not being vaccinated and the benefits vaccinations provide to the individual and the community. To be approved, the completed exemption form along with evidence of completed instruction is required.

(f) The Department may grant exemptions or substitutions in the immunization schedule based on a medical history of a physical condition such that the immunization would endanger the life or health of the child or a medical history stating the child is likely to be immune as a result of having had a vaccine-preventable disease if the following are met:

(1) A history of having had diphtheria and/or tetanus is not acceptable as proof of immunity since infection with diphtheria or tetanus may not render an individual immune to either of these diseases;

(2) A history of having had polio, pertussis, rubella, mumps, or hepatitis A must be supported by laboratory evidence to be acceptable as proof of immunity to these diseases;

(3) A history of having had measles must be accompanied by a statement from a physician, public health authority, or laboratory evidence to be acceptable as proof of immunity to measles;

(4) A parental history of having had varicella is acceptable evidence of immunity to varicella.

(5) A history of having had Hib before age two years is not acceptable as proof of immunity since infection with Hib prior to age two years may not render an individual immune.

[OAR Docket #20-688; filed 7-24-20]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 540. INFANT HEARING SCREENING

[OAR Docket #20-689]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

310:540-1-2 [AMENDED]

310:540-1-3 [AMENDED]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S., § 1-104

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n/a

INCORPORATIONS BY REFERENCE

n/a

GIST/ANALYSIS:

A few terms and definitions were added/revised for clarity and references. This includes "newborn screening filter paper", "other health care provider", "other qualified individual" and "subsequent hearing screening". The current rule references "regional sites" for follow-up screenings. However, regional sites no longer exist due to the expansion of screening capabilities at local county health departments and other health care provider locations. This proposal expands screening options for Oklahoma families to assist infants in receiving recommended follow-up. This proposal sets forth parameters to ensure national guidelines are met for screening by one month of life and hearing loss diagnosis by three months of life. The proposal establishes the manner and timeframe deemed appropriate by the Oklahoma State Department of Health to report hearing screening and diagnostic results as reporting results can guide individualized case management needs of infants through the early hearing detection and early intervention process. The proposal updates the current rule regarding when a newborn can be referred to audiologist for diagnostic hearing evaluation so that language reflects recommendations by the national Joint Committee on Infant Hearing.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

310:540-1-2. Definitions

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

"Audiologist" means an individual holding ~~certification~~ a state licensure in the field of Audiology by the American Speech Language Hearing Association or its equivalent.

"Discharge" means the release of the newborn from care and custody of a perinatal licensed health facility to the parents or into the community.

"Hearing Screening Procedure" means the combination of physiologic hearing screening and risk factor tracking used to determine, from the total population of infants born, the infants at risk for hearing loss.

"Newborn screening filter paper" means a newborn screening blood spot collection kit approved by the Oklahoma State Department of Health.

"Other health care provider" means the health care provider who will be providing health care for the infant after birth including midwives, physician assistants, nurse practitioners, and hospital hearing screening vendors.

"Other qualified individual" means an individual working under the guidelines developed by the responsible physician or audiologist health care facility, physician, audiologist or other health care provider.

"Parent" means a natural parent, stepparent, adoptive parent, legal guardian, or other legal custodian of a child.

"Physician" means an M.D. or D.O. licensed in the State of Oklahoma to practice medicine.

"Physiologic Screening" means the use of a bilateral physiologic screening technique to determine, from the total population of infants born, the infants at risk for hearing loss.

"Risk Factors" mean conditions identified by the Joint Committee on Infant Hearing (JCHIH 2000 Position Statement or later) which place a newborn at risk for hearing loss.

"Subsequent hearing screening" means a hearing screening completed at minimum 72 hours after the initial hearing screening.

"Transfer" means release of the newborn from care and custody of one perinatal licensed health facility to another.

310:540-1-3. Guidelines

(a) All newborns in Oklahoma ~~will~~shall have a Hearing Screening Procedure completed unless the parent or guardian refuses because of religious or personal objections.

(b) Requirements for the Hearing Screening Procedure are as follows:

(1) For facilities with a two-year average annual birth census of 15 or greater:

(A) All infants will receive a physiologic and risk factor screening prior to discharge.

(B) Infants transferred to another facility will be screened by that institution prior to discharge.

(2) For facilities with a two-year average annual birth census of fewer than 15:

(A) All infants will receive a physiologic and risk factor screening prior to discharge if physiologic screening equipment is available.

(B) Infants transferred to another facility will be screened by that institution prior to discharge.

(C) If physiologic screening equipment is not available, the infant will be screened for risk factors and,

(D) ~~the~~The parents will be directed to a regional site providing referred for physiologic screening and encouraged to have the infant screened within the first month of life.

(3) Out-of-Hospital Births:

(A) All infants who are not born in a hospital will have their hearing screened within the first month of life. The infant's physician or ~~licensed or certified birth attendant~~other health care provider is responsible for completing the risk factor screening and for referring the infant to a ~~regional hearing screening site~~health care facility with trained personnel and appropriate equipment for a physiologic screen or an audiologist.

(B) ~~Physicians, other health care providers, or local county health department staff who examine a child within the first three months of life who was not born in a hospital, or who was born out of state, will verify that the infant's hearing has been screened. Infants not screened will be referred to a regional hearing screening site.~~

(c) Hospital universal newborn hearing screening programs will be administered by an audiologist and/or ~~physician~~health care facility.

(d) The physiologic screening will include the use of at least one of the following:

(1) Auditory Brainstem Response Testing (ABR);

(2) Otoacoustic Emissions Testing (OAE);

(3) ~~any~~Any new or improved techniques deemed appropriate for use in hearing screening procedures by the Commissioner of Health.

(e) The Hearing Screening Procedure will be performed by a qualified and properly trained individual, and the results provided to the ~~primary care~~physician or other health care provider. Notification of the screening results to parents will be given prior to discharge or immediately following the Hearing Screening Procedure~~if conducted through a regional site~~.

(f) Newborns ~~will~~may be referred to an audiologist for a diagnostic hearing evaluation for these reasons:

(1) They did not pass the hearing screening~~prior to discharge~~;

(2) ~~they~~They passed the initial or subsequent hearing screening but were at risk for progressive or late onset hearing loss ~~because of a risk factor~~ identified by the Joint Committee on Infant Hearing or did not pass the recommended six month follow up hearing screening.

(g) The hospital personnel, audiologist, or ~~primary care physician~~other health care provider involved in the screening of a newborn will provide the parents with appropriate resource information to allow ~~them~~the newborn to receive the medical, audiologic, and other follow-up services as necessary.

(h) The hospital personnel, audiologist, or ~~primary care physician~~other health care provider involved in the initial Hearing Screening Procedure of a newborn will forward results

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to the Oklahoma State Department of Health ~~in a manner and time frame deemed appropriate by the Oklahoma State Department of Health~~ via newborn screening filter paper, fax, or secure email within one week of performing the hearing screen.

(i) ~~Physicians, other health care providers, or local county health department staff who examine a child within the first three months of life will verify that the infant's hearing has been screened. Infants not screened will be referred to a health care facility with trained personnel and appropriate equipment for a physiologic screen or an audiologist.~~

(ij) ~~Audiologists or physicians Health care facilities, physicians, audiologists or other health care providers involved in completing follow-up hearing screens or diagnostic evaluations will forward test results and recommendations to the Oklahoma State Department of Health in a manner and time frame deemed appropriate by the Oklahoma State Department of Health via fax or secure email within one week of performing the hearing screen or diagnostic evaluation.~~

(jk) To facilitate the reporting of newborns and infants who have or are at risk for hearing loss, the reporting requirements will be designed to be as simple as possible and easily completed by nonprofessional and professional individuals involved in the program.

(kl) The Oklahoma State Department of Health will utilize a tracking system to track infants identified at risk for hearing loss for a period up to one year in order to assure appropriate follow-up care.

(lm) The Oklahoma State Department of Health will compile and report data collected from hearing screening procedures at least annually and will share such information as directed by the Commissioner of Health.

[OAR Docket #20-689; filed 7-24-20]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 555. NOTIFICATION OF COMMUNICABLE DISEASE RISK EXPOSURE

[OAR Docket #20-677]

RULEMAKING ACTION:

PERMANENT final adoption

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310:555-1-2 [AMENDED]

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Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The amendments include the Good Samaritans that have been exposed to communicable diseases while rendering aid; amend definitions to include a new definition for "Good Samaritan"; amend applicability to include "Good Samaritan"; and amend notification system to allow "Good Samaritans" to submit the form to health care facilities. Health care facilities are to determine risk exposure for "Good Samaritans". "Good Samaritans will be able to request testing of a source patient, and notification of their exposure to a communicable disease.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

310:555-1-1. Purpose

The rules in this Chapter implement a system of notification for risk exposures which are capable of transmitting an occupational risk disease to health care workers, emergency responders, ~~and funeral workers, and Good Samaritans.~~ The employers of those classes of workers (excluding Good Samaritans) are required by federal OSHA standards (29 CFR Part 1910.1030) to have management policies and systems to handle such exposures. Only workers at health care facilities have access to patient charts and laboratory results; further, these facilities have systems to handle such exposures. Therefore, in order to facilitate access to source patient information, the notification system established in this Chapter shall apply to risk exposures to health care workers, emergency responders, ~~and funeral workers, Good Samaritans rendering aid~~ occurring outside of employment at a health care facility.

310:555-1-2. Definitions

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

"Designee providing post-exposure follow-up" means any person authorized by law and designated by the employer to be responsible for counseling the exposed health care worker, emergency responder or funeral worker regarding the potential risks, need for further evaluation, testing and treatment, and communicating source patient test results. Examples would be case managers, occupational health practitioners, infection control practitioners, etc. This person should

be current with the latest issues regarding occupational exposures and are responsible to comply with 63 O.S. Supp. 2001, Section 1-502.1 et seq.

"Emergency responder" means fire fighters, certified or designated first responders, emergency medical technicians and peace officers.

"Funeral worker" means any person who prepares a corpse for burial or other disposition.

"Good Samaritan" means where no prior contractual relationship exists, any person who in good faith renders or attempts to render emergency care consisting of artificial respiration, restoration of breathing, or preventing or retarding the loss of blood, or aiding or restoring heart action or circulation of blood to the victim or victims of an accident or emergency, wherever required, shall not be liable for any civil damages as a result of any acts or omissions by such person in rendering the emergency care.

"Health care facility" means any hospital, medical center, clinic, medical examiner, ambulatory surgical center, home care agency, hospice, nursing facility, assisted living facility and residential care facility or other inpatient or outpatient health care supplier to which a source patient is transported after a risk exposure.

"Health care facility designated person" means the person authorized by law and designated by the health care facility to be responsible for following up reported risk exposures.

"Health care worker" means any health care facility employee, physician, nurse or other health care provider whose job activities involve contact with patients or with any blood or body fluids from patients in an inpatient or outpatient health care facility, including the patient's home.

"Licensed health care professional" means a physician, a registered nurse, or a physician assistant (PA).

"Occupational Risk disease" for the purpose of these rules, are those infectious diseases which are transmitted from person-to-person by close or intimate contact with blood or body secretions and which may pose an occupational risk to emergency responders, health care workers, and funeral workers. Such diseases include, but are not limited to, Hepatitis B (HBV), Hepatitis C (HCV), Human Immunodeficiency Virus (HIV), meningococcus, measles, pertussis and tuberculosis.

"Potentially infectious body fluids" means blood or blood products; semen or vaginal secretions; pleural, synovial, cerebrospinal, pericardial, peritoneal and amniotic fluids; any fluid visibly contaminated with blood; and all body fluids in situations where it is difficult or impossible to differentiate between body fluids.

"Risk exposure" means an exposure which has been epidemiologically demonstrated to pose a risk for transmission of an occupational risk disease. Such an exposure would include a parenteral (e.g. needle stick or cut), permucosal (e.g. mouth-to-mouth resuscitation or splash to the eye or mouth) exposure to blood or other body fluids, or contact with blood to skin which is chapped, abraded or afflicted with dermatitis or exposure to respiratory secretions.

"Source patient" means the person to whom the health care worker, emergency responder, or funeral worker has had a risk exposure.

310:555-1-3. Applicability

The notification system established in this Chapter shall apply to employers of health care workers, emergency responders, ~~and~~ funeral workers, and Good Samaritans for risk exposures not occurring during employment at a health care facility.

310:555-1-4. Notification system

(a) Any health care worker, emergency responder, ~~or funeral worker or Good Samaritan~~ who sustains a risk exposure, not occurring during employment at a health care facility, is responsible for immediately reporting that exposure. To initiate this notification system, the exposed ~~worker~~ person shall complete Part I of the OSDH Communicable Disease Risk Exposure Report Form (ODH #207) and submit it to their employer or employer's designated person. Good Samaritans submit the form directly to health care facility where the source patient was transferred.

(b) For exposures happening while on duty, The employer shall be responsible for having the circumstances of the exposure reviewed by a licensed health care professional to determine if a risk exposure occurred. The licensed health care professional should use guidelines of the Centers for Disease Control and Prevention to make this determination. The facility where the source patient was transported will determine if a risk exposure occurred for Good Samaritans.

(c) If the licensed health care professional determines that a valid risk exposure has occurred, then the employer /Good Samaritan shall be responsible to submit within 24 hours of exposure, if possible, the Risk Exposure Report to:

- (1) The health care facility's designated person at the institution to which the source patient was transported, or
- (2) The source patient's attending physician, if the source patient was being cared for outside of a health care facility, or
- (3) The health care facility that last had responsibility for a deceased source patient, such as hospital of death, medical examiner or attending physician.

(d) The health care facility or the source patient's attending physician, if the source patient was being cared for outside of a health care facility, shall be responsible for designating an appropriate person authorized by law (and at least one back-up person) to provide confidential follow-up of the Risk Exposure Report. Follow-up should include:

- (1) Review of the source patient's medical record and consultation with the patient's attending physician to determine if the patient is known to have an occupational risk disease or if the source patient has risk factors for HBV, HCV, and/or HIV infection.
- (2) Testing of the source patient for HBV, HCV and/or HIV should be pursued upon request of the exposed worker's employer or Good Samaritan under the following conditions:

- (A) the health care facility has been provided with a completed written report of occupational or Good Samaritan exposure utilizing ODH Form 207, and
- (B) ODH Form 207 has been signed by a licensed health care professional verifying that a risk exposure

to the source patient's blood or other potentially infectious body fluid has occurred. In accordance with 63 O.S. 2001, Section 1-502.3(A), testing of a source patient's blood may be performed:

- (i) with their written consent,
- (ii) without consent when ODH Form 207 is presented to the health care facility as noted above, or
- (iii) upon court order.

(3) The source patient's blood, whenever available, shall be submitted for testing within 24 hours after ODH Form 207 has been received. When Rapid HIV Testing of the source patient is available and appropriate, efforts shall be made to have these results communicated to the health care facility's designated person immediately. All other test results shall be communicated to the health care facility's designated person within the next 5 days. In some instances, special arrangements (e.g., telephone call) may need to be made in order to have results within 5 days.

(4) Positive test results for HIV, HBV, and HCV from source patients should be made available by the health care facility designee immediately, and not more than 24 hours of receipt of the results to the physician or designee providing post-exposure follow-up to the exposed worker /Good Samaritan named on ODH Form 207. In addition, the health care facility designated person may (without consent) release the results of the source patient's HIV, HBV and HCV tests to:

- (A) the source patient (and his/her physician);
- (B) the exposed worker / Good Samaritan named on ODH Form 207; and/or
- (C) Oklahoma State Department of Health.

(e) The health care facility designated person shall complete Part II of the Risk Exposure Report and mail it to the Oklahoma State Department of Health within six (6) working days.

(f) The physician or designee providing post-exposure follow-up to the exposed worker /Good Samaritan shall be responsible for ensuring the exposed worker/Good Samaritan has been informed whether or not he or she has been exposed to an occupational risk disease and make recommendations for appropriate follow-up.

(g) All reasonable costs associated with follow-up and testing of the source patient or exposed worker(s) as directed by these rules shall be paid by the exposed worker's employer, with the exception of a Good Samaritan who is responsible for all costs themselves, unless such costs to the source patient are borne by other payment sources.

(h) All information on the OSDH Risk Exposure Report shall be strictly confidential in accordance with applicable state laws.

[OAR Docket #20-677; filed 7-24-20]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 605. ADULT DAY CARE CENTERS

[OAR Docket #20-678]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 11. Staffing Requirements
310:605-11-1 [AMENDED]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

The 2019 Guidelines for preventing the transmission of *mycobacterium tuberculosis* in healthcare settings as published by the Centers for Disease Control and Prevention.

Incorporating rules:

310:605-11-1(7)

Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-4200

GIST/ANALYSIS:

This action will update tuberculosis (TB) workplace testing requirements to align with federal recommendations. An amendment is provided at 310:605-11-1.7 to align with the most current guidelines for preventing the transmission of *mycobacterium tuberculosis* in healthcare settings as published by the Centers for Disease Control and Prevention.

CONTACT PERSON:

Audrey C. Talley, Agency Rules Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-944, ext. 56535. AudreyT@health.ok.gov.

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

310:605-11-1. Staffing requirements

Each adult day care center shall have a staff adequate in number, and appropriately qualified and trained to provide the essential services of the center.

(1) Each adult day care center shall have the following positions:

- (A) A director who shall have the authority and responsibility for managing and implementing the day care program.
- (B) An activity director.
- (C) A social services coordinator or case manager.
- (D) A dietary supervisor. Centers that are a part of larger organization which provides food service to the center, or centers that contract with an outside service for food service may employ a part time dietary supervisor.

(2) Each center shall employ additional staff, such as nurses, therapists, consultants, drivers, etc., as needed.

(3) Staff who serve in more than one staff position shall meet the minimum qualifications for each position served.

(4) Centers that administer medication shall have a registered nurse (R.N.), licensed practical nurse (L.P.N.), certified medication aide (CMA), or a medication administration technician (MAT) who has successfully completed a course of training in administration of medications approved by the Department. Monthly consultation by an R.N. or L.P.N. shall be required for centers where medications are administered by a certified medication aide (CMA), or a medication administration technician.

(5) Staff who have direct contact with participants shall be free of communicable disease.

(6) Each center shall be in compliance with the criminal arrest check, training, examination, application, registration and certification requirements in 63 O.S. Section 1-1950.1, 1-1950.3, 1-1950.4, and 1-1951.

(7) Each paid day care center staff person (professional or non-professional) shall arrange for an employment examination within 72 hours of employment which shall include but not be limited to a tuberculin skin test for tuberculosis. ~~(The Mantoux test is recommended by the Oklahoma State Department of Health). A tuberculin skin test shall be repeated annually unless the individual has already had a positive reaction to a previous skin test.~~ All tests and examinations shall be in conformance with the 2019 Guidelines for preventing the transmission of *mycobacterium tuberculosis* in healthcare settings as published by the Centers for Disease Control and Prevention.

[OAR Docket #20-678; filed 7-24-20]

**TITLE 310. OKLAHOMA STATE
DEPARTMENT OF HEALTH
CHAPTER 638. DRUG AND ALCOHOL
TESTING**

[OAR Docket #20-690]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Drug Screen Testing Facilities
310:638-5-2 [AMENDED]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

An amendment is provided to update the minimum personnel qualifications of the Director of Drug Screen Testing Facilities. This action will expand eligibility requirements for this role to allow for varied education, experience, and professional certifications.

CONTACT PERSON:

Audrey C. Talley, Agency Rules Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-944, ext. 56535. AudreyT@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
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SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

**SUBCHAPTER 5. DRUG SCREEN TESTING
FACILITIES**

310:638-5-2. Personnel

The drug screen testing facility shall contract with, or employ, the following personnel to perform, supervise, and report drug screen tests:

- (1) **Director.** The drug screen testing facility shall have a qualified individual to assume professional, organizational, educational, and administrative responsibility for the drug screen testing facility. The director shall possess the following minimum qualifications:

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- (A) A bachelor's degree from an accredited institution in the chemical, biological, or physical sciences or medical ~~technology~~ laboratory science; and ~~two (2)~~ or more years of full-time drug testing experience; or
- (B) ~~Subsequent to graduation have had two (2) A bachelor's degree from an accredited institution; and four (4)~~ or more years of full-time drug testing experience; or
- (C) ~~An associate's degree from an accredited institution in the chemical, biological, or physical sciences or a medical laboratory science; and three (3) or more years of full-time drug testing experience.~~
- (2) **Director responsibilities.** The director shall be engaged in, and be responsible for, the management of the drug screen testing facility even where another individual has overall responsibility for an entire multispecialty testing facility.
- (A) The director shall be responsible for ensuring that there are sufficient personnel with adequate training and experience to supervise and conduct the work of the drug screen testing facility. The director shall ensure the continued competency of drug screen testing facility personnel by documenting their inservice training, reviewing their work performance, and verifying their skills.
- (B) The director shall be responsible for the drug screen testing facility having a procedure manual which is complete, up-to-date, available for personnel performing tests, and followed by those personnel. The procedure manual shall be reviewed, signed, and dated by the director whenever procedures are first placed into use, or changed, or when a new individual assumes responsibility for direction of the drug screen testing facility. Copies of all procedures and dates on which they are in effect shall be maintained.
- (C) The director shall be responsible:
- for maintaining a quality assurance program to ensure the proper performance and reporting of all test results;
 - for maintaining acceptable analytical performance for all controls and standards;
 - for maintaining quality control testing; and
 - for assuring and documenting the validity, reliability, accuracy, precision, and performance characteristics of each test and test system.
- (D) The director shall be responsible for assuring all necessary action is taken to maintain satisfactory operation and performance of the drug screen testing facility in response to quality control systems not being within performance specifications, errors in result reporting or in analysis of performance testing results. The director shall ensure that sample results are not reported until all corrective actions have been taken and he or she can ensure that the test results provided are accurate and reliable.
- (3) **General supervisor.** A qualified general supervisor shall be on the premises during all hours in which tests

are performed. The general supervisor shall be responsible for day-to-day operations and supervision of analysts. The general supervisor shall possess the following minimum qualifications:

- (A) A high school diploma or equivalent and documented training by the manufacturer, or other qualified person, in the operation and maintenance of the test system utilized, to include the instrumentation, test reagents, calibration and quality control materials, and any other equipment or supplies required in the performance of the drug screen testing procedure; and
- (B) Have training and experience in the theory and practice of the procedures used in the drug screen testing facility, resulting in a thorough understanding of:
- quality control practices and procedures;
 - the review, interpretation, and reporting of test results;
 - maintenance of chain of custody; and
 - proper remedial actions to be taken in response to test systems being out of control limits or detecting aberrant test or quality control results.
- (4) **Test validation.** The drug screen testing facility shall have a qualified individual(s) who reviews all pertinent data and quality control results in order to attest to the validity of the drug screen testing facility's test reports. A drug screen testing facility may designate more than one person to perform this function. This individual(s) shall be any employee who is qualified as director or general supervisor.
- (5) **Other personnel.** Other technical or nontechnical staff shall have the necessary training and skills for the tasks assigned, and shall perform only those procedures that require a degree of skill commensurate with their training, education, and technical ability.
- (6) **Training.** The drug screen testing facility shall make available continuing education programs to meet the needs of facility personnel.
- (7) **Personnel records.** Personnel records shall include at least the following:
- verification of education;
 - initial skills orientation program;
 - resume of training and experience;
 - documentation of continuing education;
 - certification or license, if any;
 - references;
 - job descriptions;
 - records of performance evaluation and advancement;
 - incident reports; and
 - results of tests which establish employee competency.

[OAR Docket #20-690; filed 7-24-20]

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

[OAR Docket #20-666]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General EMS Programs
Part 1. General Provisions
310:641-1-7 [AMENDED]
Subchapter 3. Ground Ambulance Service
Part 5. Ground Transport Vehicles
310:641-3-20 [AMENDED]
Subchapter 5. Personnel Licenses and Certification
Part 3. Emergency Medical Personnel Licenses
310:641-5-11.1 [NEW]
310:641-5-13.1 [NEW]
310: 641-5-20 [AMENDED]
310:641-5-20.1 [NEW]
Part 5. Procedures Authorized
310:641-5-33 [AMENDED]
Subchapter 13. Air Ambulance Service
310:641-13-9 [AMENDED]
Subchapter 15. Emergency Medical Response Agency
310:641-15-11 [AMENDED]
Subchapter 17. Stretcher ~~Aid~~-Van Service
310:641-17-1 [AMENDED]
310:641-17-2 [AMENDED]
310:641-17-3 [AMENDED]
310:641-17-4 [AMENDED]
310:641-17-5 [AMENDED]
310:641-17-8 [AMENDED]
310:641-17-9 [AMENDED]
310:641-17-10 [AMENDED]
310:641-17-11 [AMENDED]
310:641-17-12 [AMENDED]
310:641-17-13 [AMENDED]
310:641-17-14 [AMENDED]
310:641-17-16 [AMENDED]
310:641-17-17 [AMENDED]
310:641-17-18 [AMENDED]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

(1) The Commission on Accreditation of Ambulance Services Ground Vehicle Standard for Ambulances (GVS), effective July 1, 2019.

(2) National Fire Protection Association (NFPA) 1917 Standard for Automotive Ambulances- 2019 Edition.

(3) The standards established in the U.S. General Services Administration Federal Specification or the Star-of-Life Ambulance (GSA KKK-A-1822) in effect on November 1, 1994.

Incorporating rules:

310:641-3-20

Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-4200

GIST/ANALYSIS:

The amendments change the minimum standard for ground ambulance vehicles; add regulations to allow for the evaluation, issuance and maintenance of Oklahoma certifications and licenses issued to military members and their dependents; and rename "Stretcher Aid Vans" to "Stretcher Vans" and "patients" to "passengers".

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 1. GENERAL EMS PROGRAMS

PART 1. GENERAL PROVISIONS

310:641-1-7. Definitions

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

"**ACLS**" means Advanced Cardiac Life Support.

"**Act**" means the "Oklahoma Emergency Response Systems Development Act".

"**Advanced Emergency Medical Technician**" means an AEMT as licensed pursuant to the Act or this chapter.

"**Advanced Life Support (ALS) Emergency Medical Services Training Program**" means an organization approved by the Department to conduct the following ALS training: Emergency Medical Responder, Emergency Medical Responder Refresher, Emergency Medical Technician, Emergency Medical Technician Refresher, Advanced Emergency Medical Technician, Advanced Emergency Medical Technician Refresher, Intermediate Refresher, Paramedic, Paramedic Refresher, Continuing Education at the Intermediate and Paramedic Levels, and such other courses of instruction that may be designated by the Department.

"**Agency**" means a Ground Ambulance Service, Specialty Care Ambulance Service, Stretcher ~~Aid~~-Van Service, Air Ambulance Service, or Emergency Medical Response Agency.

"**AHA**" means the American Heart Association.

"**Ambulance**" means any ground, air or water vehicle which is or should be approved by the Commissioner of Health, designed and equipped to transport a patient or patients and to provide appropriate on-scene and en route patient stabilization

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and care as required. Vehicles used as ambulances shall meet such standards as may be required by the State Board of health for approval, and shall display evidence of such approval at all times. [Title 63 O.S. Section ~~1-2501(1)~~1-2503].

"AMLS" means Advanced Medical Life Support.

"ATLS" means Advanced Trauma Life Support.

"Base Station" means the primary location from which ambulances and crews respond to emergency calls on a twenty-four (24) hour basis. The Base Station may include the principal business office, living quarters for personnel, training institution, and/or communications center.

"Basic Life Support (BLS) Emergency Medical Services Training Program" means an organization approved by the Department to conduct the following BLS training: Emergency Medical Responder, Emergency Medical Responder Refresher, Emergency Medical Technician Basic, Emergency Medical Technician Basic Refresher, Continuing Education at the Emergency Medical Technician Basic level, and such other courses of instruction that may be designated by the Department.

"BLS" means Basic Life Support, and includes cardiopulmonary resuscitation (CPR) and utilization of Semi-Automated Advisory Defibrillator (SAAD).

"BTLS" means Basic Trauma Life Support.

"Board" means the State Board of Health.

"Call Log" means a summary of all requests for service that an agency receives, regardless of disposition.

"Call Received" means that a call has been received by an agency when enough information has been received to begin responding to a request for service.

"Certificate" means any certification or certificate issued by the Department, pursuant to the Act or this Chapter.

"Clinical Coordinator" means the individual designated in writing by a training program as responsible for coordination and supervision of clinical experiences.

"Clinical Experience" means all supervised learning experiences required and included as part of a training course in which the student provides or observes direct patient care. This includes vehicular experiences with a licensed ambulance service.

"Council" means the Oklahoma Trauma and Emergency Response Advisory Council.

"Critical Care Paramedic" means an Oklahoma licensed Paramedic that has received additional training to provide specialized care to patients during interfacility transfers and has provided his or her registration information to the Department.

"Department" means the State Department of Health.

"Distance Learning" is instruction of didactic portions of curriculum which requires participation of the instructor and students but does not require the students to be physically present in the same location as the instructor.

"Distributive Education" means educational activity, in which the learner, the instructor, and the educational materials are not all present in the same place at the same time, e.g., continuing education activities that are offered on the Internet, via CD ROM or video, or through journal articles or audio tapes.

"Documents, Records, or Copies" means an electronic or paper copy maintained at the agency, on units, or provided to receiving facilities.

"DOT" means the United States Department of Transportation.

"Division" means the Emergency Medical Services Division.

"Emergency Medical Dispatcher (EMD)" means a person trained using a Department-approved curriculum for the management of calls for emergency medical care.

"Emergency Medical Personnel" means all certified and licensed personnel which provide emergency medical care for an ambulance service.

"Emergency Medical Responder" means a person who has successfully completed a state-approved course using the national standard Emergency Medical Responder curriculum and passed a competency-based examination from a state approved testing agency such as the National Registry of EMTs.

"Emergency Medical Response Agency" or "EMRA" means a person, company, or governmental entity that will utilize certified or licensed emergency medical personnel to provide emergency care but does not transport or transfer patients to a facility. The Department will provide two types of certification.

(A) Pre-hospital EMRAs will operate as part of an Emergency Medical System, responding to requests for service within a response area, supporting and being supported by a licensed ambulance service.

(B) Event Stand-by EMRAs will operate or contract for on-site medical care at locations that are open to the public or that will respond to the public. These types of EMRAs are certified to standby at a location or site and provide medical care to the public.

"EMS" means Emergency Medical Services.

"Emergency Medical System" means a network of hospitals, different ambulance services, and other healthcare providers that exist in the state.

"Emergency Medical Technician (EMT)" means an individual licensed by the Department as an Emergency Medical Technician, formerly known as an EMT-B or Basic.

"Emergency transfer" means the movement of an acutely ill or injured patient from the scene to a health care facility (pre-hospital), or the movement of an acutely ill or injured patient from one health care facility to another health care facility (interfacility).

"Emergency Vehicle Operators Course" means a course that is meant to improve existing driving skills and familiarize an emergency vehicle operator or driver with the unique characteristics of driving emergency vehicles.

"En route Time" means the elapsed time from the time the emergency call is received by the EMS agency until the ambulance and complete crew is en route to the scene of the emergency.

"FDA Class One Device" means a device that is not life-supporting or life-sustaining and does not present a reasonable source of injury through normal usage. In the regulatory context, this applies to the stretcher/gurney and its locking system within the unit or vehicle.

"Ground ambulance service" means an ambulance service licensed at the basic, intermediate, advanced or paramedic life support level as provided in Subchapter 3. It does not mean a specialty care service licensed pursuant to Subchapter 11 or a stretcher and van service licensed pursuant to Subchapter 17.

"Initial Certification or Initial Licensure" means the first certification or license that an applicant receives after an initial course, or the license or certification an applicant receives after the previous license or certification expired.

"Intermediate" means an Emergency Medical Technician-Intermediate as licensed pursuant to the Act or this chapter.

"Instructor" means a Department approved instructor that provides instruction for initial courses, but may also teach refresher and continuing education courses.

"Lapse in Medical Direction" means the Medical Director for an agency has not been accessible to the agency for a period of time as detailed with the agency's policies and agreement.

"License" means any license issued by the Department, pursuant to the Act or this Chapter.

"Licensed Service Area" means the contiguous geographical area identified in an initial ambulance service application or in an amendment to an existing license. The geographic area is identified by the application and supported with documents provided by the local governmental jurisdictions. For ground ambulance services, this is the geographic area the ambulance service has a duty to act within.

"Medical Control Physician or Medical Director" means the licensed physician (M.D. or D.O.) that authorizes certified or licensed emergency medical personnel to perform procedures and interventions detailed in the agency's approved protocols.

"NHTSA" means National Highway Traffic Safety Administration.

"National Registry" means the National Registry of Emergency Medical Technicians (NREMT), Columbus, Ohio.

"Non-emergency transfer" means the movement of any patient in an ambulance other than an emergency transfer.

"PALS" means Pediatric Advanced Life Support.

"Patient" means the person who requests assistance or the person for whom assistance is being requested from an agency.

"Paramedic" means an individual licensed by the Department as a Paramedic, formerly known as an EMT-P.

"PEPP" means Pediatric Education for the Prehospital Professional.

"PHTLS" means Prehospital Trauma Life Support.

"PIC" means Pilot in Command.

"PPC" means Prehospital Pediatric Care.

"Post" means a location where an ambulance may be positioned for an unspecified period of time while awaiting dispatch.

"Preceptor" means an individual with education, experience, and expertise in healthcare and approved by a training program to supervise and provide instruction to EMS students during clinical experiences.

"Program Administrator" means the individual designated in writing by a training program as responsible for all aspects of EMS training.

"Program Coordinator" means the individual designated in writing by a training program as responsible for all aspects of a specified course(s) or EMS program. This individual shall have at least two (2) years experience of full-time equivalent employment as a healthcare practitioner.

"Response time" means the time from which a call is received by the EMS agency until the time the ambulance and complete crew arrives at the scene, unless the call is scheduled in advance.

"State Interoperability Governing Body" or "SIGB" means the formal group of public safety officials from across the State working with the Oklahoma Office of Homeland Security to improve communication interoperability.

"Semi-Automated Advisory Defibrillator" or "SAAD" means a defibrillator that is part of the Basic Life Support curriculum and is also known as Automated External Defibrillator (AED) and Semi-Automated External Defibrillator (SAED).

"Specialty Care Transports" or (SCT) means inter-facility transfers of critically ill or injured patients by an agency with the provision of medically necessary supplies and equipment, above the level of care of the Paramedic. SCT is necessary when a patient's condition requires ongoing care that must be provided by one or more healthcare providers in an appropriate specialty area. Examples include emergency or critical care nursing, emergency medicine, respiratory care, cardiovascular care, or a Paramedic with additional training in IV infusions including vasopressors, vasoactive compounds, antiarrhythmics, fibrinolytics, tocolytics, and/or any other parenteral pharmaceutical unique to the patient's special health care needs or special monitors or procedures such as mechanical ventilation, multiple monitors, cardiac balloon pump, external cardiac support (ventricular assist devices, etc.), or any other specialized device or procedure outside the Paramedic scope of practice certified by the referring physician as unique to the patient's health care needs.

"Statewide Ambulance coverage area" means a map of all ambulance response areas, maintained by the Department.

"State Designated Resource Status Reporting and Communication Tool" means the electronic system utilized to communicate in near real time status of the emergency medical system.

"Stretcher and van" means any ground vehicle *which is or should be approved by the State Commissioner of Health, which is designed and equipped to transport individuals on a stretcher or gurney type apparatus* [Title 63 O.S. Section 1-2503 (48) and (25)].

"Stretcher and van patientpassenger" means any person who is or will be transported in a reclining position on a stretcher or gurney, who is medically stable, nonemergent and does not require any medical monitoring equipment or assistance during transport [Title 63 O.S. Section 1-2503 (26)].

"Substation" means a permanent structure where an ambulance(s) is/are stationed and available for calls on a twenty-four (24) hour basis.

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"Tax Hold" means an individual with an Oklahoma certification or license who is not in compliance with Title 68 O.S. Section 238.1 and the Oklahoma Administrative Code 710:95-9 as it pertains to professional licensing compliance.

"Title 47" means the Oklahoma Motor Vehicle statutes.

"Training" means that education which is received through training programs as authorized by emergency medical services rule for training programs (Subchapter 7 of this Chapter).

"Training Manager" means an instructor or manager that provides or oversees the training that occurs at an agency, such as continuing education or refresher courses.

"Transfer" means the movement of a patient in an ambulance.

"Trauma transfer and referral center" means an organization certified by the Department and staffed and equipped for the purpose of directing trauma patient transfers within a region that consists of a county with a population of three hundred thousand (300,000) or more and its contiguous communities, and facilitating the transfer of trauma patients into and out of the region for definitive trauma care at medical facilities that have the capacity and capability to appropriately care for the emergent medical needs of the patient.

SUBCHAPTER 3. GROUND AMBULANCE SERVICE

PART 5. GROUND TRANSPORT VEHICLES

310:641-3-20. Ground ambulance vehicles

(a) ~~A used vehicle which has new ownership, or a new vehicle which is of first registration, either leased, contracted for, or purchased on or after July 18, 1991, shall conform to the General Services Administration (GSA) specifications KKK A-1822 in effect at the time of manufacture. An ambulance manufactured prior to January 1, 2021 shall meet or exceed the standards established in the U.S. General Services Administration Federal Specification for the Star-of-Life Ambulance (GSA KKK-A-1822) in effect on November 1, 1994.~~

(b) ~~Copies of the GSA KKK A-1822, and their respective dates of effect, may be obtained from the Department. These several specifications are as follows:~~

- ~~(1) KKK A-1822, effective January 2, 1974;~~
- ~~(2) KKK A-1822A, effective April 1, 1980;~~
- ~~(3) KKK A-1822B, effective June 1, 1985;~~
- ~~(4) KKK A-1822C, effective January 1, 1990;~~
- ~~(5) KKK A-1822D, effective November 1, 1994;~~
- ~~(6) KKK A-1822E, effective June 1, 2002;~~
- ~~(7) KKK A-1822F, effective August 1, 2007.~~ A new or remounted production ground ambulance that is ordered or purchased after January 1, 2021 shall comply fully with the ambulance design criteria in either:

(1) The Commission on Accreditation of Ambulance Services Ground Vehicle Standard for Ambulances (GVS), effective July 1, 2019. A decal or letter of verification from the manufacturer certifying that the vehicle

meets the GVS standard, if ordered after January 1, 2021, shall be made available upon inspection; or

(2) The National Fire Protection Association (NFPA) 1917 Standard for Automotive Ambulances - 2019 Edition. A decal or letter of verification from the manufacturer certifying that the vehicle meets the NFPA standard, if ordered after January 1, 2021, shall be made available upon inspection;

(c) Additionally, each ground ambulance service vehicle purchased or ordered after January 1, 2021 will meet the following requirements:

(1) the business name, and/or a logo of the licensed ambulance service or acceptable legal abbreviation of the name of the service shall be placed on each side and the rear of the vehicle, and shall be at least three (3") inch high letters,

(2) the purchaser of any vehicle that is not compliant with this section shall be responsible for corrective action, and A minimum of one Star of Life emblem that is a minimum of three (3) inches in diameter shall be placed on the front, sides, and rear of the vehicle.

(3) A decal, notice, or other documentation showing the ambulance meets the manufacturing standard at the time of manufacture will be affixed to the vehicle. The word "Ambulance", "Emergency Medical Services", "EMS", or licensure level shall be on the sides and rear of the vehicle in at least three (3) inch high letters. If nomenclature is placed on a vehicle relating to a license level as defined in 63 O.S. § 1-2503, the nomenclature must reflect the agency license level of the agency operating the vehicle.

(4) Ambulance vehicles shall be exempt from the sections of GVS and NFPA specifications which specify color, emblems, and markings except for (c) of this sub-chapter.

(d) If while waiting delivery of a new, remounted, or refurbished vehicle, a manufacturer or dealer provides a service with a vehicle on a temporary loan or lease, such temporarily loaned or leased vehicle shall comply with specification KKK-A-1822 in effect at the time of manufacture and shall be inspected and permitted by the Department prior to utilization as an ambulance.

(e) A vehicle may not be permitted by the Department as an ambulance prior to the submission and approval of all required documentation, fees, and a Department inspection.

(f) The purchaser of any vehicle that is not compliant with this section shall be responsible for corrective action.

(g) A decal, notice, or other documentation showing the ambulance meets the manufacturing standard at the time of manufacture will be affixed to the vehicle.

(h) Ambulances purchased after January 1, 2021 by Federal healthcare systems such as Department of Defense or Indian Health Services shall meet one of the following standards:

(1) The Commission on Accreditation of Ambulance Services Ground Vehicle Standard for Ambulances (GVS), effective July 1, 2019. A decal or letter of verification from the manufacturer certifying that the vehicle

meets the GVS standard, if ordered after January 1, 2021, shall be made available upon inspection ;

(2) The National Fire Protection Association (NFPA) 1917 Standard for Automotive Ambulances - 2019 Editions. A decal or letter of verification from the manufacturer certifying that the vehicle meets the NFPA standard, if ordered after January 1, 2021, shall be made available upon inspection; or

(3) U.S. General Services Administration Federal Specification for the Star-of-Life Ambulance (GSA KKK-A-1822) Version F with change orders 1 through 10.

SUBCHAPTER 5. PERSONNEL LICENSES AND CERTIFICATION

PART 3. EMERGENCY MEDICAL PERSONNEL LICENSES

310:641-5-11.1. Military reciprocity certification and license qualifications

(a) Emergency medical personnel while on duty will have a copy of their certification or license.

(b) Persons applying for a Military Reciprocity Certification or License shall submit an application to the Department using Department approved forms.

(c) Persons applying for shall meet the requirements for qualification, application, and procedure as follows:

(1) Emergency Medical Responder certification:

(A) Applicant shall be at least eighteen (18) years of age.

(B) Applicant shall submit the following documentation:

(i) A copy of their orders or their spouses orders, their honorable discharge to Oklahoma, or other evidence of their affiliation with the Department of Defense and their requirement to serve within the State of Oklahoma.

(ii) Documentation showing that the applicant is Certified or Licensed in another State or Territory as an Emergency Medical Responder.

(iii) A signed "Affidavit of Lawful Presence" form.

(iv) Documentation describing the scope of practice authorized by the State issuing the certification or license as an Emergency Medical Responder.

(2) Emergency Medical Technician, or EMT:

(A) Applicant shall be at least eighteen (18) years of age.

(B) Applicant shall submit the following documentation:

(i) A copy of their orders or their spouses orders, their honorable discharge to Oklahoma, or

other evidence of their affiliation with the Department of Defense and their requirement to serve within the State of Oklahoma.

(ii) Documentation showing that the applicant is Certified or Licensed in another State or Territory as an Emergency Medical Technician.

(iii) A signed "Affidavit of Lawful Presence",
(iv) Documentation describing the scope of practice authorized by the State issuing the certification or license as an Emergency Medical Technician.

(3) Intermediate

(A) Applicant shall be at least eighteen (18) years of age.

(B) Applicant shall submit the following documentation:

(i) A copy of their orders or their spouses orders, their honorable discharge to Oklahoma, or other evidence of their affiliation with the Department of Defense and their requirement to serve within the State of Oklahoma.

(ii) Documentation showing that the applicant is Certified or Licensed in another State or Territory as an Intermediate.

(iii) A signed "Affidavit of Lawful Presence",
(iv) Documentation describing the scope of practice authorized by the State issuing the certification or license as an Intermediate.

(4) Advanced EMT:

(A) Applicant shall be at least eighteen (18) years of age.

(B) Applicant shall submit the following documentation:

(i) A copy of their orders or their spouses orders, their honorable discharge to Oklahoma, or other evidence of their affiliation with the Department of Defense and their requirement to serve within the State of Oklahoma.

(ii) Documentation showing that the applicant is Certified or Licensed in another State or Territory as an Advanced EMT.

(iii) A signed "Affidavit of Lawful Presence",
(iv) Documentation describing the scope of practice authorized by the State issuing the certification or license as an Advanced EMT.

(5) Paramedic

(A) Applicant shall be at least eighteen (18) years of age.

(B) Applicant shall submit the following documentation:

(i) A copy of their orders or their spouses orders, their honorable discharge to Oklahoma, or other evidence of their affiliation with the Department of Defense and their requirement to serve within the State of Oklahoma.

(ii) Documentation showing that the applicant is Certified or Licensed in another State or Territory as an Advanced EMT.

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- (iii) a signed "Affidavit of Lawful Presence",
 - (iv) Documentation describing the scope of practice authorized by the State issuing the certification or license as Paramedic.
- (d) Initial licensure and certification shall be from the date of issue through the second June 30 after the initial date.
- (e) Any certification or license application submitted to the Department under this subchapter may be denied on the basis of a felony conviction, adjudication, or plea of guilty or nolo contendere for any of the following offenses:
 - (1) assault, battery, or assault and battery with a dangerous weapon; aggravated assault and battery;
 - (2) murder or attempted murder; manslaughter, except involuntary manslaughter;
 - (3) rape, incest, or sodomy; indecent exposure and indecent exhibition; pandering;
 - (4) child abuse; abuse, neglect, or financial exploitation of any person entrusted to his care or possession;
 - (5) burglary in the first or second degree; robbery in the first or second degree; robbery or attempted robbery with a dangerous weapon, or imitation firearm;
 - (6) arson, substance abuse, or any such other conviction, adjudication, or plea of guilty or nolo contendere, or circumstances which in the opinion of the Department would render the applicant unfit to provide emergency medical care to the public;
 - (7) Each decision shall be determined on a case-by-case basis.
- (f) A license application may be denied on the basis of any falsification. Application for initial licensure pursuant to the Act shall constitute authorization for an investigation by the Department.
- (g) Applicants will be notified in writing of the status of their application. The notification will be completed by either issuing the certification or license or by providing a denial to the application with an explanation of the denial and what steps are required to make the application acceptable.
- (h) An applicant may request a review of adverse decisions, made within this section, by applying in writing within thirty (30) calendar days after the notice of rejection. Review, by the Department, shall be held in accordance with the Administrative Procedures Act.
- (i) The Department shall maintain a registry of all qualified Emergency Medical Responders.

310:641-5-13.1. Issuance of a military reciprocity license and certification

- (a) Upon successful completion of the application and submission of supporting documentation, a Military Reciprocity Certification or License shall be issued at the most appropriate Oklahoma Certification or License level that can be verified.
- (b) Initial licensure and certification shall be from the date of issue through the second June 30 after the initial date.
- (c) If the applicant has a current certification from the National Registry of Emergency Medical Technicians, a Military Reciprocity Certification or License may be provided to the applicant at that certification same level.

310:641-5-20. Scope of practice authorized by certification or licensure

- (a) The Department shall establish a scope of practice for each certificate and license level.
- (b) The medical control physician may limit an individual certificate or license holder's scope of practice.
- (c) Certified and licensed emergency medical personnel may perform authorized skills and procedures when authorized by medical control. When emergency medical personnel are without medical control, the scope of practice for any level of emergency medical personnel is limited to first aid, CPR, and the use of the AED.
- (d) Certified Emergency Medical Responders may perform to the following level or within this scope of practice:
 - (1) patient assessment, including the determination of vital signs, and triage,
 - (2) oxygen administration and airway management,
 - (3) basic wound management, including hemorrhage controls to include the use of tourniquets; treatment of shock,
 - (4) cardiopulmonary resuscitation (CPR) and the use of only adjunctive airway devices and the use of a semi-automated external defibrillator (SAED),
 - (5) splinting of suspected fractures;
 - (6) rescue and extrication procedures,
 - (7) assistance of patient prescribed medications including sublingual nitroglycerin, epinephrine auto injector and hand held aerosol inhalers,
 - (8) administration of agency supplied oral glucose, activated charcoal, aspirin, agency supplied epinephrine auto injector, albuterol or approved substitute per medical direction, and nasally administered or atomized naloxone,
 - (9) such other emergency medical care skills and measures included in the instructional guidelines adopted by the Department, and,
 - (10) upon the approval of the Department additional skills may be authorized upon the written request of a local medical director,
- (e) A licensed Emergency Medical Technician may perform to the following level or within this scope of practice:
 - (1) all skills listed for the Emergency Medical Responder,
 - (2) patient assessment, determination of vital signs, diagnostic signs, and triage,
 - (3) bandaging, splinting, control of hemorrhage, and shock management,
 - (4) Administration of medications per medical direction and approved by the Department,
 - (5) maintenance of established intravenous fluids without medications,
 - (6) CPR, use of adjunctive airway devices to include supraglottic airway devices, and the use of the AED,
 - (7) Upon the approval of the Department, additional skills may be authorized upon the written request of a local medical director.
- (f) A licensed Intermediate may perform to the following level or within this scope of practice,

- (1) all skills listed within the Emergency Medical Responder and Emergency Medical Technician scope of practice,
 - (2) establishment of vascular or intraosseous access for the administration of fluids without medications. Approved fluids include; lactated ringers, normal saline, $\frac{1}{2}$ normal saline, dextrose 5%, and dextrose 10%,
 - (3) administration of medications per medical direction and approved by the Department,
 - (4) venipuncture to obtain blood samples per local medical control,
 - (5) the use and placement of definitive airway adjuncts for adults, children, and infants,
 - (6) all other emergency medical care skills and measures included in the instructional guidelines adopted by the Department which are not specifically listed above, and
 - (7) Upon the approval of the Department, additional skills may be authorized upon the written request of a medical director.
- (g) A licensed Advanced Emergency Medical Technician may perform to the following level and within this scope of practice:
- (1) all skills listed for the Emergency Medical Responder, Emergency Medical Technician and Intermediate,
 - (2) other skills and procedures included in the instructional guidelines adopted by the Department, and
 - (3) upon approval of the Department, additional skills may be authorized upon the written request of the medical director.
- (h) A licensed Paramedic may perform to the following level or within this scope of practice:
- (1) all skills listed for the other certified or licensed emergency medical personnel
 - (2) recognitions, interpretation, treatment of cardiac arrhythmias using a cardiac monitor/defibrillator/external pacemaker,
 - (3) advanced management of pediatric emergencies, including resuscitation, airway placement, and medication,
 - (4) advanced management of obstetric and gynecologic emergency including medication administration,
 - (5) advanced interventions of psychiatric patients including medication administration,
 - (6) all other emergency medical skills and measures included in the instructional guidelines adopted by the Department, and
 - (7) upon approval of the Department, additional skills may be authorized upon the written request of a medical director.
- (i) Pursuant to 63 O.S. § 1-502.1, emergency medical personnel shall assist Good Samaritans who may have been exposed to a communicable disease. This includes, but is not limited to:
- (1) Providing OSDH information relating to communicable disease exposure, and
 - (2) Assistance with completing OSDH approved forms.
- (j) Emergency medical personnel may also consult with a Good Samaritan for potential exposures based on OSDH Guidance.
- (k) The Department will provide support to emergency medical personnel through educational material to ensure evidence based material is available.
- 310:641-5-20.1. Scope of practice authorized by military reciprocity certification or licensure**
- (a) As part of the Military Reciprocity Certification or License Application process, the applicant is required to submit documentation that details the Scope of Practice for their level that is authorized by the source state.
- (b) The Department will review and compare the source state scope of practice with the Scope of Practice detailed in O.A.C. 310:641-5-20.
- (c) Based on the submitted documentation, the Department will issue a certification or license to the applicant that most closely matches an OSDH Emergency Personnel certification or license as described in this subchapter.
- PART 5. PROCEDURES AUTHORIZED**
- 310:641-5-33. Certification and licensure enforcement actions**
- (a) The Department may revoke, suspend, place on probation, fine, or deny ~~any~~ license or certificate, or renewal of any license or certificate for the following:
- (1) Violations of any provision of Oklahoma statutes, the Act, or this Chapter;
 - (2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;
 - (3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;
 - (4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;
 - (5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;
 - (6) offering, giving, or promising anything of value or benefit, as prohibited in Oklahoma law or rule, to a Federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a Federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;
 - (7) conviction, adjudication, or plea of guilty or nolo contendere, for an offense involving moral turpitude, whether a misdemeanor or felony, and whether or not an appeal is pending;
 - (8) permitting, aiding, or abetting any illegal act;
 - (9) conduct of any practice that is detrimental to the welfare of the patient or potential users of the service;

(10) conduct likely to deceive, defraud, or harm the public including, but not limited to, practicing while subject to a physical or mental condition which renders the licensee unable to safely engage in activities required of a licensee under this subchapter;

(11) acting in such a manner as to present a danger to public health or safety, or to any patient including, but not limited to incompetence, negligence, malpractice, or engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health without taking adequate precautions;

(12) engaging in any act which is designed or intended to hinder, impede, or obstruct an investigation of any matter governed by the Act or by lawful authority;

(13) making a false or misleading statement regarding the licensee's skill in connection with the activities required of a licensee under this subchapter;

(14) use of a false, fraudulent, or deceptive statement, whether written or verbal, in connection with the activities required of a licensee under this subchapter;

(15) knowingly make a false statement of material fact;

(16) failure to disclose a fact necessary to correct a misapprehension known by the licensee to have arisen in the application or the matter under investigation;

(17) failure to respond to a demand for information made by the Department or any designated representative thereof;

(18) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(19) having been subject to disciplinary action of another state or jurisdiction against a license or other authorization, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for disciplinary action. A report from the National Practitioners Database (NPDB) or a certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct;

(20) having voluntarily relinquished or surrendered a professional or occupational license, certificate, or registration in this state or in another state;

(21) having withdrawn an application for licensure, certification, or registration while under investigation or prior to a determination of the completed application in this state or in another state or jurisdiction;

(22) failure to practice within the scope of practice of the certificate or license as established by the Department or by the medical director;

(23) failure to practice within adopted protocols and procedures established and approved by the Department and the medical director;

(24) failure to practice within the protocols set forth by the medical director and approved by the Department;

(25) habitual intemperance or excessive use of an addictive drug, alcohol, or other substance to the extent that the use impairs the user physically or mentally; this provision does not apply to a licensee who is in compliance with an approved therapeutic regimen under a physicians' care;

(26) filing a complaint with or providing information to the Department which the licensee knows, or ought to know, is false or misleading. This provision does not apply to any filing of a complaint or providing information to the board when done in good faith;

(27) failing to report to the Department any adverse judgement or award arising from a medical liability claim or other unprofessional conduct;

(28) committing any act of sexual abuse, misconduct, or exploitation by the licensee whether or not related to the practice;

(29) failing to exercise technical competence in carrying out medically authorized skills, medication administration, or procedures related to their scope of practice;

(30) unauthorized possession of patient care reports, falsifying, or altering patient care reports, intentionally documenting patient records incorrectly, failing to document patient care records, or prepare patient care reports;

(31) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services except as authorized or required by law;

(32) diversion of a medication for any purpose or a violation of state or Federal laws governing the administration of medications;

(33) failing as a clinical preceptor or lead instructor, to supervise, manage or train students practicing under the licensee's supervision, according to:

(A) scope of practice,

(B) generally accepted standards of patient care,

(C) board approved instructional guidelines,

(D) protocols, policies, and procedures,

(34) willfully harassing, abusing, or intimidating a patient or student, either physically or verbally;

(35) practicing as an emergency medical professional at any level without a current, active Oklahoma certification or license;

(36) failing to comply with administrative orders, to include probation, suspension, or revocation orders;

(37) failure to comply with a term, condition, or limitation of a certificate or license by final order of the Department;

(38) any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct;

(39) failing to report to the Department the unprofessional conduct or noncompliance of regulations of other certified or licensed emergency medical providers;

(40) conduct that does not meet the generally accepted standards of practice, which may be, but not required to be, supported by malpractice judgements, or tort judgements; and

(41) Failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:

- (A) peer review committee;
- (B) professional association; or
- (C) local, state, Federal, territorial, provincial, or tribal government.

(b) Any license or certificate issued by the Department may voluntarily be surrendered at any time during the license period for any reason by the license/certificate holder. The voluntary surrender of a license or certificate does not preclude the Department's authority to complete any pending action against said license/certificate holder. A surrendered license/certificate shall be treated as if revoked by the Department.

(c) The Department may require a one (1) year period from the date of revocation before the license / certificate holder may apply for a license or certificate from the Department.

(d) If in the course of an investigation the Department determines that a license/certificate/permit holder or applicant has engaged in conduct that is detrimental to the health, safety, or welfare of the public, and which conduct necessitates immediate action to prevent further harm, the Commissioner may order a summary suspension of the license/certificate/permit holder's license, certificate, or permit respectively. A presumption of imminent harm to the public shall exist if the Department determines probable cause for conduct of any practice that is detrimental to the welfare of the patient or potential users of the service exists.

(e) In addition to any other penalties, a civil fine of not more than one hundred (\$100.00) dollars per violation per day may be assessed, for violations of the Act or this Chapter.

SUBCHAPTER 13. AIR AMBULANCE SERVICE

310:641-13-9. Air ambulance vehicle

(a) An air ambulance vehicle (aircraft) may be fixed wing, single or multi-engine, or rotary wing, single or multi-engine.

(b) Operations of the aircraft shall be under the appropriate provisions of the Federal Aviation Regulations (FAR) within 14 CFR, Part 1 et seq.

(c) The interior of the patient compartment of their aircraft shall have the capability of being climate controlled to avoid adverse effects on patients and medical personnel on board by a means other than flight operations and flying to an altitude.

(d) The aircraft design and configuration shall not compromise patient stability in loading, unloading or in-flight operations.

(1) The aircraft shall have an entry that allows loading and unloading without excessive maneuvering (no more than 45 degrees about the lateral axis and 30 degrees about the longitudinal axis) of the patient, and does not compromise functioning of monitoring systems, intravenous lines, and manual or mechanical ventilation.

(2) A minimum of one stretcher shall be provided that can be carried to the patient.

(3) Aircraft stretchers and the means of securing it in-flight must be consistent with FAR's.

(4) The type and model of stretcher indicates the maximum gross weight allowed (inclusive of patient and equipment) as labeled on the stretcher.

(5) The stretcher shall be large enough to carry an American adult male.

(6) The stretcher shall be sturdy and rigid enough that it can support cardiopulmonary resuscitation. If a back-board or equivalent device is required to achieve this, such device will be readily available.

(7) The head of the stretcher is capable of being elevated at least 30 degrees for patient care and comfort.

(8) If the ambulance stretcher is floor supported by its own wheels, there is a mechanism to secure it in position under all conditions. These restraints permit quick attachment and detachment for patient transfer.

(e) Patients transported by air will be restrained with a minimum of three straps, including shoulder straps that must comply with FAA regulations. The following additional requirements shall apply to achieve patient stability.

(1) Patients less than 60 pounds (27kg) shall be provided with an appropriately sized restraining device (for patient's height and weight) which is further secured by a locking device. All patients less than 40 pounds must be secured in a five-point safety strap device that allows good access to the patient from all sides and permits the patient's head to be raised at least 30 degrees. Velcro straps are not encouraged for use on pediatric devices.

(2) If a car seat is used, it shall have an FAA approved sticker.

(3) There shall be some type of restraining device within the isolette to protect the infant in the event of air turbulence.

(f) A Supplemental lighting system shall be installed in the aircraft in which standard lighting is insufficient for patient care and a self-contained lighting system powered by a battery pack or portable light with a battery source must be available.

(g) Medical transport personnel shall be able to determine if medical oxygen is on the patient care area.

(1) Each gas outlet shall be clearly marked for identification.

(2) Oxygen flow shall be capable of being started and stopped at or near the oxygen source from inside the aircraft.

(3) The following indicators shall be accessible to medical transport personnel while en route:

(A) Quantity of oxygen remaining.

(B) Measurement of liter flow.

(h) A variety of medical oxygen delivery devices consistent with the service's medical protocols shall be available.

(i) An appropriately secured portable medical oxygen tank with a delivery device shall be carried on the aircraft. Portable medical oxygen tank may not be secured between patient's legs while the aircraft is in motion.

(j) There shall be a back-up source of medical oxygen sufficient to allow completion of the transport in the event the main system fails. For air transports, this back-up source can be the

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required portable tank as long as the portable tank is accessible in the patient care area during flight.

(k) Storage of oxygen shall comply with applicable OSHA standards within 29 CFR, Part 19 D.

(l) Oxygen flow meters and outlets shall be located to prevent injury to medical transport personnel to the extent possible.

(m) ~~In the event the licensee will be utilizing shall notify the Department prior to placing a substitute aircraft not previously permitted by the Department for a period of more than five (5) days, the licensee shall notify the Department to have the aircraft inspected and permitted by the Department.~~ into operation.

(1) Licensees with a substitute aircraft utilized for periods of five (5) days or less, the licensee shall complete an agency specific equipment log documenting the transfer of all required equipment onto the substitute aircraft at the time of transfer.

(2) The agency will maintain documentation of the transfer in accordance with 310:641-13-21 Air ambulance service records and files.

(n) Any vehicle initially placed in service after a purchase, lease, contract and/or refurbish shall be inspected, approved, and permitted by the Department as detailed within this section of 310:641 Subchapter 13.

SUBCHAPTER 15. EMERGENCY MEDICAL RESPONSE AGENCY

310:641-15-11. Prehospital emergency medical response agency equipment

(a) The tampering, modification, or removal of the manufacturer's expiration date is prohibited.

(b) Certified agencies shall ensure that all, recalled, outdated, misbranded, adulterated, or deteriorated fluids, supplies, and medications are removed from the response vehicles immediately.

(c) The unit checklist will establish the equipment, supplies, and medications for each unit. A list of the equipment, supplies, and medication will be included in the application. For medications this is to include the number, weight, and volume of the containers.

(d) At a minimum, the following equipment and supplies will be present on for each emergency medical response:

- (1) one (1) each adult, pediatric, and infant size bag-valve-mask resuscitators;
- (2) one (1) complete set of oropharyngeal airways, single wrapped for sanitation purposes;
- (3) portable oxygen system with two (2) each oxygen masks in adult, pediatric, and infant sizes;
- (4) two (2) adult nasal cannulas;
- (5) portable suction device with age and size appropriate tubing and tips;
- (6) one (1) bulb syringe with saline drops, sterile, in addition to any bulb syringes in an obstetric kit;

(7) instant cold packs;

(8) sterile dressing and bandages, to include:

- (A) sterile burn sheets,
- (B) sterile 4"x4" dressings,
- (C) sterile 6"x8" or 8"x10" dressings,
- (D) roller bandages, 2" or larger,
- (E) rolls of tape (minimum of one (1) inch width),
- (F) sterile occlusive dressings, 3" x 8" or larger,
- (G) triangular bandages, and
- (H) scissors;

(9) blood pressure cuff kit in adult, pediatric, and infant sizes;

(10) obstetrics kit;

(11) blankets;

(12) universal precaution kit for each person attending a patient;

(13) blood-glucose measurement equipment per medical direction and Department approval;

(14) AED with adult and pediatric capability;

(15) adult and pediatric upper and lower extremity splints;

(16) spinal immobilization equipment per medical control authorization;

(17) adult traction splint per medical control authorization and;

(18) patient care reports;

~~(19) digital thermometer.~~

(e) A list of equipment in addition to the minimum equipment will be sent to the Department with the application.

(f) The agency will have the equipment to support the procedures and interventions detailed within the protocols as authorized by the medical director.

(g) An electronic or paper copy of patient care protocols will be available to responding agency members.

(h) All assessment and medical equipment utilized for patient care will be maintained in accordance with the manufacturer's guidelines. Documentation will be maintained at the agency showing the periodic tests, maintenance, and calibration are being conducted in accordance with manufacturer's requirements. Equipment shall include, but not be limited to suction devices, pulse oximetry, glucometers, end-tidal Co2 and capnography monitors, CPAP/BiPAP devices, ventilators, and blood pressure monitors.

SUBCHAPTER 17. STRETCHER AND VAN SERVICE

310:641-17-1. Purpose

(a) This Subchapter incorporates the authorization, licensure, and minimum requirements for operating a ~~Stretcher Aid Van Ambulance Service~~ that transports patients/passengers that are medically stable, but need to be transported in a reclining position, and

(b) provide standards for the enforcement of the provisions of the Act and this Chapter.

310:641-17-2. Stretcher ~~aid~~ van service license required

- (a) No person, company, governmental entity or trust authority shall operate, advertise, or hold themselves out as providing any type of stretcher ~~aid~~ van service without first obtaining a license to operate a stretcher ~~aid~~ van service from the Department. The Department shall have sole discretion to approve or deny an application for a stretcher ~~aid~~ van service license based on the ability of the applicant to meet the requirements of this rule.
- (b) State and Federal agencies that respond to stretcher ~~aid~~ van transports off State and Federal property are required to become licensed by the Department.
- (c) Persons, companies, and governmental entities which operate on their own premises are exempt from this licensing requirement, unless the stretcher ~~aid~~ van ~~patient(s)~~ passenger(s) is/are transported on the public streets or highways of Oklahoma or outside of their own premises.
- (d) An application to operate a stretcher ~~aid~~ van service shall be submitted on forms prescribed and provided by the Department.
- (e) The application shall be signed under oath by the party or parties seeking to secure the license.
- (f) The party or parties who sign the application shall be considered the owner or agent (licensee) and responsible for compliance to the Act and this Chapter.
- (g) The application shall contain, but not be limited to the following:
 - (1) a statement of ownership which shall include the name, address, telephone number, occupation and/or other business activities of all owners or agents who shall be responsible for the service.
 - (A) If the owner is a partnership or corporation, a copy of incorporation documents and the name of all partner(s) or stockholder(s) with an ownership interest of five (5%) percent or more (principal), and the name and addresses of any other ambulance service in which any partner or stockholder holds an interest shall also be included.
 - (B) If the owner is an entity of government, governmental trust, trust authority, or non-profit corporation, the name of each board member, or the chief administrative officer and/or chief operation officer shall be included.
 - (2) proof of vehicle insurance, at least in the amount of one million dollars (\$1,000,000.00) or to the amount provided for in "The Governmental Tort Claims Act", Title 51 O.S. Section 151 et seq. This insurance requirement shall remain in effect at all times while the service is licensed;
 - (3) proof of professional liability insurance, at least in the amount of one million dollars (\$1,000,000) or to the amount provided for in "The Governmental Tort Claims Act", Title 51 O.S. Sections 151 et seq. This insurance requirement shall remain in effect at all times while the service is licensed;
 - (4) participation in a workers' compensation insurance program for employees who are subject to pertinent labor laws. This insurance requirement shall remain in effect at all times while the service is licensed;

- (5) copy of any contract(s) for vehicles, medical equipment, and/or personnel if such exist;
- (6) a written communication policy addressing:
 - (A) the receiving and dispatching of calls;
 - (B) ensuring compliance with State and local EMS Communication Plans; and
 - (C) applicants for this license will provide documentation that a screening process is in place to ensure a request for the transport of a stretcher ~~aid~~ van ~~patient~~ passenger will meet the agency's capability, capacity, and licensure requirements. Documentation of the screening will be retained as part of the ~~patient~~ passenger care report or call log.
- (7) Provide a response plan that includes:
 - (A) providing for and receiving mutual aid with all surrounding, contiguous, or overlapping service areas; and
 - (B) providing for and receiving disaster assistance in accordance with local and regional plans and command structures.
- (8) confidentiality policy ensuring confidentiality of all documents and communications regarding protected ~~patient~~ passenger health information;
- (9) an application for an initial or new license shall be accompanied by a non-refundable fee of six hundred (\$600.00) dollars plus twenty (\$20.00) dollars for each vehicle in excess of two (2) vehicles utilized for ~~patient~~ passenger transport. An additional fee of one hundred fifty (\$150.00) dollars shall be included for each stretcher ~~aid~~ van substation in addition to the base station.
- (10) A map or narrative description which identifies the proposed service area;
- (11) evidence that the proposed service area is an emergency medical service region, ambulance district, or county with a population in excess of five hundred thousand (500,000) people;
- (12) the defined hours of operation for the service; and
- (13) Stretcher Vans are prohibited from carrying medications other than oxygen and those other medications which are passenger supplied and administered. The passenger must have a current physician prescription and/or order for the administration of oxygen. A copy of the order shall be maintained in agency files.
- (14) A quality assurance plan or policy that includes:
 - (A) The Department may require quality assurance documentation for review and shall protect the confidentiality of that information.
 - (B) The quality assurance documentation shall be maintained by the agency for three (3) years.
 - (C) The quality assurance policy shall include, but not be limited to:
 - (i) Any passenger condition where the passenger entered the 911 system.
 - (ii) If oxygen is continued, the physician order must be maintained with the trip report or passenger report;
 - (iii) policy to review other selected passenger reports not specifically included, and

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(iv) policy to provide internal and external feedback of findings determined through reviews. Documentation of the feedback will be maintained as part of the quality assurance documentation.

(h) Stretcher ~~aid~~ van license applicants will provide documentation that reflects compliance with existing sole-source ordinances.

(i) Stretcher ~~aid~~ van services are exempt from a duty to act requirements and continuous staffing coverage.

(j) A business plan which includes a financial disclosure statement showing evidence of the ability to sustain the operation for at least one (1) year.

310:641-17-3. Issuance of a stretcher ~~aid~~ van service license

(a) The Department shall have sole discretion to approve or deny an application for a stretcher ~~aid~~ van service license based on the ability of the applicant to meet the requirements of this Chapter.

(b) A license may be issued for a stretcher ~~aid~~ van service.

(c) The license shall be issued only for the name, service area, and service provided. The license is not transferable or assignable.

(d) The initial license period shall expire the second June 30th; following the date of issue. Subsequent renewal periods shall be twenty-four (24) months, or two (2) years.

(e) The original, or a copy of the original, license shall be posted in a conspicuous place in the principal business office. If an office or other public place is not available, then the license shall be available to anyone requesting to see the license; during regular business hours.

(f) The stretcher ~~aid~~ van service is limited to the transportation of stable ~~patients~~ passengers that can only be transported in a reclining position. As such, the medical interventions the staff members can provide are that of first aid, BLS CPR, and AED interventions. Agency supplied medications are prohibited for this license type.

310:641-17-4. Renewal of a stretcher ~~aid~~ van license

(a) The Department shall provide to all licensed stretcher ~~aid~~ van services a "Survey/Renewal Form" in December each year. This form shall be considered and utilized as a renewal application if due. The "Survey/Renewal Form" along with proof of the required types of insurance shall be returned to the Department by January 31st each year.

(1) Upon receipt of a complete and correct renewal application, a renewal fee statement shall be mailed by the Department to each licensee in need of renewal.

(2) A non-refundable fee for the renewal of a stretcher ~~aid~~ van service license shall be one hundred dollars (\$100.00), fifty dollars (\$50.00) for each substation, plus twenty dollars (\$20.00) for each vehicle in excess of two (2).

(3) A stretcher ~~aid~~ van service license shall be renewed if:

(A) the service has applied for such renewal;

(B) the service has no outstanding deficiencies or is in need of correction as may be identified during inspection of the service, and;

(C) the proper fee has been received by the Department.

(b) A stretcher ~~aid~~ van service license; if not renewed by midnight June 30 of the expiration year, shall be considered non-renewed.

(1) A grace period of thirty (30) days is permitted under 63 O.S. Section 1-1702.

(2) Thereafter a new application shall be required for the continuation of any such license, and the applicant shall be subject to initial application procedures. An extension may be granted by the Department for the purpose of renewal, subject to a determination by the Department of the following:

(A) the safety, need, and well-being of the public and general populace to be served by the stretcher ~~aid~~ van service;

(B) the availability of personnel, equipment, and the financial ability of the applicant to meet the minimum standards of emergency medical services law;

(C) the number of estimated runs to be made by the stretcher ~~aid~~ van service;

(D) the desire of the community(ies) to be served.

310:641-17-5. Denial for an initial stretcher ~~aid~~ van license

(a) A stretcher ~~aid~~ van license application may be denied for any of the following reasons:

(1) a felony conviction, adjudication, or plea of guilty or nolo contendere of any person, member of the firm, partnership, corporation or the person designated to supervise the service; to include, but not be limited to, fraud, grand larceny, child abuse, sexual offense(s), drug offense(s), or a conviction, adjudication, or plea of guilty or nolo contendere which might otherwise have a bearing on the operation of the service;

(2) falsification of Department required information;

(3) ownership, management, or administration by principals of an entity whose license has been revoked; and

(4) licensure or re-licensure may not be in the best interest of the public as determined by the Department.

(b) An applicant shall be notified in writing within sixty (60) days from the date the Department receives a complete application of the granting or denial of a license. In the event of a denial, the specific reason(s) shall be noted and indications of the corrective action necessary to obtain a license or renewal shall be given, if applicable. A license application may be re-submitted, but each resubmission shall be considered an initial application.

310:641-17-8. Stretcher ~~aid~~ van staffing

(a) Each stretcher ~~aid~~ van service shall be staffed by a minimum of two (2) persons.

(b) The ~~patient~~ passenger shall be accompanied by a minimum of:

- (1) an attendant that has a current Oklahoma Emergency Medical Responder certification and maintains current BLS certification and
- (2) the driver shall hold a valid Oklahoma driver's license, possess a current BLS certification, and have completed an agency defensive driving course that includes driving a vehicle similar to a stretcher aid van.
- (c) Under no circumstance during the transport of a stretcher aid van ~~patient~~ passenger shall the attendant be less than an Oklahoma certified Emergency Medical Responder.
- (d) Each stretcher aid van service shall provide to each attendant and driver an orientation designed to familiarize these individuals with the local and regional emergency medical system and other Oklahoma public safety resources.
- (e) Agencies will maintain training records demonstrating competency in emergency procedures, ~~patient~~ passenger handling, and vehicle operations for all personnel utilized by the agency prior to ~~patient~~ passenger contact or vehicle operations.

310:641-17-9. Stretcher aid van vehicles

- (a) A stretcher aid van vehicle may not be permitted by the Department prior to the submission and approval of all required documentation, fees, and a Department inspection.
- (b) Authorized stretcher aid van vehicles of licensed services shall be in good mechanical and serviceable condition at all times, so as to not be hazardous to the ~~patient(s)~~ passenger(s) or crewmembers. If, in the determination of the Department, a vehicle does not meet this requirement, it may be removed from service until repairs are made.
- (c) Authorized stretcher aid van vehicles of licensed services shall be tested for interior carbon monoxide, in a manner acceptable to the Department. Carbon monoxide levels of more than ten parts per million (10ppm) shall be considered in excess and shall render the vehicle "out of compliance". Vehicles shall be removed from service if carbon monoxide levels exceed fifty parts per million (50ppm) and until repairs are made to reduce the amounts of carbon monoxide below ten parts per million (10ppm).
- (d) A class "S" permit shall be affixed to a vehicle in compliance and utilized as a stretcher aid van vehicle.
- (e) Stretcher aid van vehicles shall place a permit or inspection decal affixed by the Department. These decals shall be placed in the driver side rear window unless it is impossible or impractical to place in this area.
- (f) Stretcher aid van vehicles are not ambulances, and may not be authorized as emergency vehicles within Title 47, relating to definitions of emergency vehicles.
- (g) Violations that may justify immediate removal of a vehicle permit include:
 - (1) inadequate sanitation, including the presence of contamination by blood and or bodily fluids,
 - (2) inoperable heater or air conditioner as detailed within the vehicle manufacturing standards and specifications,
 - (3) inoperable AED,
 - (4) tires that do not meet Oklahoma Statutes Title 47, Chapter 12 requirements,

- (5) carbon monoxide levels greater than fifty (50) parts per million,
- (6) lapse of vehicle liability insurance,
- (7) lapse of worker compensation insurance,
- (8) inability to affix a class S" permit to the vehicle,
- (9) vehicle that does not comply with statutory safety equipment found in Title 47.
- (10) If such violation is not or cannot be corrected immediately, any affected vehicle shall be removed from service and the ambulance permit shall be removed until such time the vehicle is compliant and has been re-inspected and permitted by the Department.
- (h) The stretcher aid van vehicle must utilize a stretcher or gurney and locking system that meets or manufactures standards
- (i) ~~The stretcher aid van vehicle shall have:~~ Stretcher van vehicles purchased after the effective date of these amendments shall comply with the following:
 - (1) a mounted seat with seatbelts for the ~~patient~~ passenger are attendant in the passenger compartment or area of the vehicle,
 - (2) mounted cabinets for the purpose of storing supplies and equipment,
 - (3) mounted and rear loading lights,
 - (4) the capability to contact 911 should an emergency arise while transporting a passenger, and
 - (5) display exterior markings identifying the vehicle as a stretcher aid van and the business name in six (6) inch letters in a contrasting color on the rear and sides of the vehicle,
 - (6) brackets or other retaining system for securing oxygen cylinders on the gurney and within the stretcher van, and
 - (7) modifications made to stretcher van vehicles after initial testing may require the vehicle to undergo new AMD 004, 012, and/or 013 standard testing.
- (j) ~~All stretcher aid van vehicles purchased after the effective date of this Chapter's amendments shall comply with OAC 310:641-3-20 except for~~
 - (1) ~~oxygen systems,~~
 - (2) ~~emergency lights, and~~
 - (3) ~~sirens.~~ A stretcher van shall meet Ambulance Manufacturers Division (AMD) Standards 004, 012, and 013, and shall pass corresponding safety tests. Stretcher vans must not have functioning emergency lights or sirens.
- (k) ~~Stretcher aid van vehicles shall comply with the guidelines for displaying the Star of Life as set out in Star of Life Emergency Medical Care Symbol, Background, Specifications, and Criteria, U.S. Department of Transportation, National Highway Traffic Safety Administration, DOT HS 808 721, revised June 1995. Documentation of vehicle safety testing or manufacturer certification must be maintained in agency files.~~

310:641-17-10. Equipment for stretcher aid van vehicles

Each stretcher aid van vehicle shall carry, at a minimum the following:

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- ~~(1) one (1) each pediatric and adult size bag valve mask resuscitators;~~
- ~~(2) one suction unit (portable or vehicle mounted) which is capable of delivering adequate suction to clear the airway, with wide bore tubing (one quarter inch) (1/4"), and rigid and soft catheters for the types of patients the agency transports.~~
- ~~(3) one (1) emesis basin;~~
- ~~(4) one (1) pair of scissors or shears;~~
- ~~(5) body substance isolation kits with gowns, gloves, eye protection, and masks;~~
- ~~(6) latex or equivalent gloves separate from body substance isolation kits;~~
- ~~(7) pediatric and adult oropharyngeal airways;~~
- ~~(8) extra blankets, sheets, pillow cases;~~
- ~~(9) two (2) five (5) pound fire extinguishers, secured, with one (1) accessible to the driver and one (1) accessible to the patient/passenger care attendant;~~
- ~~(10) one (1) elevating gurney with locking equipment that complies with AMD 004;~~
- ~~(11) an AED with adult and pediatric capabilities if the agency transports pediatric passengers;~~
- ~~(12) if the agency transports children, then the agency is required to provide a child restraint system;~~
- (8) portable and spare oxygen cylinders shall be appropriately secured;
- (9) one (1) stretcher mount portable oxygen securing device; and
- (10) Stretcher van agencies may carry and provide oxygen and utilize equipment necessary for the provision of oxygen as prescribed by the physician, excluding agency supplied ventilator equipment.

310:641-17-11. Stretcher aid van medical control

As the scope of practice by the patient care attendant employed at a stretcher aid van service is limited to first aid, BLS CPR, and the use of an AED, a medical director or Department approved protocols are not required.

- (a) As defined in 63 O.S. § 1-2503, Stretcher van agencies may carry and provide oxygen and utilize any equipment necessary for the provision of oxygen.
- (b) As defined in 63 O.S. § 1-2503, Stretcher van passengers transported in or by Stretcher vans are to be medically stable, non-emergent, and do not require medical monitoring equipment or assistance during transport except oxygen.
- (c) As defined in 63 O.S. § 1-2503, all passengers transported by stretcher vans must be screened by a certified medical dispatching protocol approved by the Department.
- (d) Passengers that will continue oxygen during their Stretcher van transport will need to have a prescription or physician order for oxygen. This physician order or prescription completes the requirement for an agency specific medical director or medical control. This physician order completes the requirement for certified and licensed agencies and personnel to have medical control as defined in 63 O.S. § 1-2503.

310:641-17-12. Sanitation requirements

(a) The following shall apply regarding sanitation standards for all stretcher aid van services facilities, vehicles, and personnel:

- (1) the interior of the vehicle and the equipment within the vehicle shall be sanitary and maintained in good working order at all times;
- (2) the exterior of the vehicle shall be clean and maintained in good working order to ensure the vehicle can operate safely and in accordance with applicable sections of Title 47 of the Oklahoma Statutes;
- (3) linen shall be changed after each ~~patient~~passenger is transported, and the used linen will be bagged and stored in an outside or separate compartment;
- (4) clean linen, blankets, washcloths, and hand-towels shall be stored in a closed interior cabinet free of dirt and debris;
- (5) freshly laundered linen or disposable linen shall be used on the cots and pillows and changed between ~~patients~~passenger;
- (6) pillows and mattresses shall be kept clean and in good repair and any repairs made to pillows, mattresses, and padded seats shall be permanent;
- (7) soiled linen shall be placed in a container that deters accidental exposure. Any linen which is suspected of being contaminated with bodily fluids or other potentially hazardous infectious waste shall be placed in an appropriately marked closed container for disposal;
- (8) contaminated disposable supplies shall be placed in appropriately marked or designated containers in a manner that deters accidental exposure.
- (9) exterior and interior surfaces of vehicles shall be cleaned routinely;
- (10) blankets and hand towels used in any vehicle shall be clean;
- ~~(11) implements inserted into the patient's nose or mouth shall be single service wrapped and properly stored and handled. When multi use items are utilized, the local health care facilities should be consulted for instructions in sanitation and handling of such items;~~
- ~~(12) when a vehicle has been utilized to transport a patient(s) known to the operator to have a communicable disease, the vehicle shall be cleansed and all contact surfaces shall be washed with soap and water and appropriate disinfectant. The vehicle should be placed "out of service" until a thorough cleansing is conducted;~~
- ~~(13) all storage spaces used for storage of linens, equipment, medical supplies and other supplies at the base station shall be kept clean;~~
- ~~(14) personnel shall:~~
 - (A) be clean, especially hands and fingernails, and well groomed;
 - (B) clothing worn by personnel shall be clean;
 - (C) while on duty, employees shall wear an identifiable uniform or agency specific photo identification;
 - (D) The licensee shall provide in each vehicle a means of hand washing for the attendants;

(14) expired supplies and equipment shall be discarded appropriately. Tampering, removing, or altering expiration dates on medications, supplies, and equipment is prohibited; and

(15) the station facility, ambulance bays, living quarters, and office areas shall be clean, orderly, and free of safety and health hazards.

(b) Stretcher ~~aid~~ van vehicles and service facilities shall be free of any evidence of use of lighted or smokeless tobacco products except in designated smoking areas consistent with the provisions of 310:641-1-4 (c).

310:641-17-13. Inspections

(a) The Department shall conduct unannounced inspections of every licensed stretcher ~~aid~~ van service. Inspection may include a review of any requirements of the Act and rules promulgated thereunder. The Department may require copies of such records as deemed necessary consistent with the files section of this subchapter.

(b) All inspection reports will be sent to the agency director and license owner.

(c) A representative of the agency will be with the Department employee during the inspection.

310:641-17-14. Stretcher ~~aid~~ van notice of violation

(a) A violation of the Act or this Chapter is ground for the Department to issue a written order, sent via certified mail, citing the violation, affording the agency an opportunity to demonstrate compliance, and indicating the time no less than fifteen (15) days after receipt of the notice in which any needed correction shall be made. The fifteen-day notice period may be reduced as, in the opinion of the Department, may be necessary to render an order of compliance reasonably effectual.

(b) Unless the Department specifies a reduced period, within thirty (30) days after receipt of the notice of violation, the agency shall submit to the Department a written demonstration of compliance and/or plan of correction.

(c) A plan of correction shall include at least the following:

- (1) When the correction was or will be completed;
- (2) How the correction was or will be made;
- (3) What measures will prevent a recurrence; and
- (4) Who will be accountable to ensure future compliance.

(d) The Department shall ensure that the agency is afforded due process in accordance with the Procedures of the State Department of Health, Oklahoma Administrative Code, Title 310, Chapter 2, and the Administrative Procedures Act, Title 75 O.S. Section 250 et seq.

(e) Violations found by the Department which require immediate correction shall be handled in compliance with Title 75 of the Oklahoma Statutes, Section 314.1 and the Oklahoma Administrative Code, Title 310, Chapter 2, specifically 310:2-21-23.

310:641-17-16. Operational protocols

(a) Stretcher ~~aid~~ van vehicles are to be used for stretcher ~~aid~~ van ~~patients or~~ passengers only.

(1) Emergency transfers are prohibited.

(2) Stretcher ~~aid~~ vans are prohibited from conducting ~~patient—passenger~~ transfers or providing transportation from the pre-hospital setting.

(b) Stretcher ~~aid~~—van services are limited to providing non-emergency transportation to medically stable, nonemergent individuals who need to be transported in a reclining position on a stretcher but who do not require any type of monitoring or administration of medical care.

(c) Passenger supplied medications for self-administration are permitted.

(d) ~~Patient care~~ Passenger attendants are limited to first aid, BLS CPR, and AED interventions, and the continuation of oxygen.

(e) Stretcher ~~aid~~ vans shall define the days and hours of operation in which transportation is provided.

(f) When a facility requests a stretcher ~~aid~~ van, the agency will provide an accurate estimated time of arrival and ensure the ~~patient~~ passenger needs will be able to be met for the service being requested within the scope of the licensure capabilities and capacity.

(g) Stretcher ~~aid~~ van transports may be made to and from any State or Federal Veteran Centers.

(h) When a stretcher ~~aid~~ vans passenger develops an emergency condition, the service shall:

- (1) contact 911 or the local emergency number;
- (2) proceed to the closest hospital or to a rendezvous point;
- (3) provide appropriate first aid, BLS CPR, and AED interventions; and
- (4) submit an incident report to the Department within 48 hours of the incident;

(i) Mutual aid plan(s), regarding interfacility transports only, with licensed services shall be developed and placed in the agency files for inspection. Plans will be periodically reviewed to ensure accuracy and completeness. Licensed stretcher ~~aid~~—vans agencies shall provide mutual aid if the agency has the capability and if the requested activity is within the licensure requirements.

310:641-17-17. Transfer protocols

(a) ~~Patients~~ Passengers transported by stretcher ~~aid~~—van services may originate from a location other than a medical setting provided the ~~patient's~~ passenger's condition is appropriately screened to ensure the ~~patient~~ passenger condition is within the service's licensure capabilities.

(b) Transports that occur between medical facilities will be screened to ensure that any care and treatment at the sending facility has been discontinued prior to discharge or transport.

(c) Direct admits from a pre-hospital setting or admissions through the emergency room at a receiving facility are prohibited.

310:641-17-18. Stretcher ~~aid~~ van service records and files

(a) All required records for licensure will be maintained for a minimum of three years.

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(b) Each licensed stretcher ~~aid~~ van service shall maintain electronic or paper records about the operation, maintenance, and such other required documents at the business office. These files shall be available for review by the Department during normal work hours. Files which shall be maintained include the following:

- (1) a record of each ~~patient~~passenger transport to include, but not be limited to:
 - (A) personal information such as name, date of birth and address;
 - (B) contact information;
 - (C) originating location;
 - (D) destination;
 - (E) reason for the transport; and
 - (F) ~~a call log that contains:~~
 - (i) ~~time requested;~~
 - (ii) ~~time arrived;~~
 - (iii) ~~time departed;~~
 - (iv) ~~time at destination;~~
 - (v) ~~time transport was complete;~~
 - (vi) ~~unit number; and~~
 - (vii) ~~staff members on transport. if oxygen was continued.~~
- (2) Records shall be submitted to the Department as required.
- (c) All passenger ~~and patient~~ transport reports and information shall be considered as confidential.
- (d) All stretcher ~~aid~~ van agencies shall maintain electronic or paper records on the maintenance and regular inspections of each vehicle. Each vehicle must be inspected and a checklist completed after each call or on a daily basis, whichever is less frequent.
- (e) All stretcher ~~aid~~ van agencies shall maintain a licensure or credential file for licensed and certified emergency medical personnel employed by or associated with the service to include:
 - (1) Oklahoma license and certification,
 - (2) Basic Life Support certification that meets or exceeds American Heart Association standards,
 - (3) Incident Command System or National Incident Management Systems training at the 100, 200, and 700 levels or their equivalent,
 - (4) verification of an Emergency Vehicle Operations Course or other agency approved defensive driving course,
- (f) The electronic or paper copies of the licenses and credentials described in this section shall be kept separate from other personnel records to ensure confidentiality of records that do not pertain to the documents relating to ~~patient care~~ the passenger.
- (g) Copies of staffing patterns, schedules, or staffing reports.
- (h) Copies of in-service training and continuing education records.
- (i) Copies of the stretcher ~~aid~~ van service's:
 - (1) operational policies, guidelines, or employee handbook;
 - (2) OSHA and/or Department of Labor exposure plan, policies, or guidelines.

(j) A log of each request for service call received and/or initiated, to include the:

- (1) disposition of the request and the reason for declining the request, if applicable;;
- (2) ~~patient~~passenger care report number;;
- (3) date of request;;
- (4) ~~patient care report times;~~
- (5) location of the incident;;
- (6) where the ambulance originated, ~~and;~~
- (7) nature of the call;;
- (8) time requested;
- (9) time arrived;
- (10) time departed;
- (11) time at destination;
- (12) time transport complete;
- (13) unit number;
- (14) staff member on transport; and
- (15) medical screening documentation.
- (k) Documentation that verifies an ongoing quality assurance program.
 - (1) Such other documents which may be determined necessary by the Department. Such documents can only be required after a thorough, reasonable, and appropriate notification by the Department to the services and agencies.
 - (2) The standardized data set and an electronic submission standard for EMS data as developed by the Department shall be mandatory for each licensed service as defined in the Act. Reports of the data standard shall be forwarded to the Department by the last business day of the following month. Exceptions to the monthly reporting requirements shall be granted only by the Department, in writing.
 - (3) Review and the disclosure of information contained in the stretcher ~~aid~~ van service files shall be confidential, except for information which pertains to the requirements for license, certification, or investigation issued by the Department.
 - (4) Department representatives shall have prompt access to files, records, and property as necessary to appropriately survey the provider. Refusal to allow access by representatives of Department to records, equipment, or property may result in summary suspension of licensure by the Commissioner of Health.
 - (5) All information submitted and/or maintained in files for review shall be accurate and consistent with Department requirements.
 - (6) A representative of the agency will be present during the record review.

[OAR Docket #20-666; filed 7-24-20]

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

[OAR Docket #20-667]

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PERMANENT final adoption

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310:641-17-19 [AMENDED]
310:641-17-20 [AMENDED]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

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n/a

GIST/ANALYSIS:

Throughout Subchapter 17, "Stretcher Aid Vans" is renamed to "Stretcher Vans" and "patient" is changed to "passenger" pursuant to current statutory definitions and nomenclature.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 17. STRETCHER AID VAN SERVICE

310:641-17-19. Sole source ordinances

- (a) A stretcher aid van service which operates as a sole source provider established by EMS regions, ambulance service districts, or municipalities shall file with the Department a copy of the ordinance or regulation and a copy of the contract to operate as a sole source provider. This requirement shall be retroactive and includes all established sole source ordinances and resolutions.
- (b) A stretcher aid van service which operates as a sole source provider for a "region" as established pursuant to the Oklahoma Interlocal Cooperation Act (Title 74, Section 1001, et seq.), shall file with the Department, a copy of the interlocal agreement and any ordinance or other regulations or contract or agreement established by the region for ambulance service provision.
- (c) Violation of contracts established herein may be cause for enforcement action by the Department.

310:641-17-20. Suspension, revocation, probation, or non-renewal of a licensee

(a) The Department may suspend or revoke a license and/or fine or place on probation a license or licensee for the following:

- (1) violations of any of the provision of the Oklahoma Statutes, the Act, or this chapter;
- (2) permitting, aiding, or abetting in any illegal act in connection with the ambulance service;
- (3) conduct of any practice that is detrimental to the welfare of the ~~patient~~ passenger or potential users of the service;
- (4) responding to requests for service or completing transports that are not permitted by the type of license issued by the Department;
- (5) placing a vehicle into service before it is properly inspected, approved, and permitted by the Department;
- (6) failure to comply with a written order issued by the Department within the time frame specified by the Department;
- (7) engaging in any act which is designed or intended to hinder, impede, or obstruct the investigation of any matter governed by the Act or by any lawful authority;
- (8) a stretcher aid van service who fails to renew their Oklahoma license within the time frame and other requirements as specified in these rules shall be considered an expired or lapsed licensee and therefore no longer licensed as an ambulance service in the State of Oklahoma;
- (9) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;
- (10) offering, giving, promising anything of value or benefit, as defined in Oklahoma Statutes or Department Policy to a Federal, state, or local governmental official for the purpose of influencing the employee or official to circumvent a Federal, state, or local law, rule, or ordinance governing the licensee's profession or occupations;
- (11) interference with an investigation disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;
- (12) failure to report the unprofessional conduct or non-compliance of regulations by individually licensed and certified personnel as defined in this Chapter.

(b) No person, company, governmental entity or trust authority may operate an ambulance service or emergency medical response agency except in accordance with the Act and the rules as promulgated by the State Board. The Commissioner, District Attorney of the county wherein a violation occurs, or the Attorney General of this State, shall have the authority to enforce provisions of the law.

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(c) A license/certificate/permit holder or applicant in connection with a license application or an investigation conducted by the Department pursuant to this rule shall not:

- (1) knowingly make a false statement of material fact;
- (2) fail to disclose a fact necessary to correct a misapprehension known by the licensee to have arisen in the application or the matter under investigation; or
- (3) fail to respond to a demand for information made by the Department or any designated representative thereof.

(d) If in the course of an investigation, the Department determines that a license/certificate/permit holder or applicant has engaged in conduct that is detrimental to the health, safety, or welfare of the public, and which conduct necessitates immediate action to prevent further harm, the Commissioner may order a summary suspension of the license/certificate/permit holder's license, certificate, or permit respectively. A presumption of imminent harm to the public shall exist if the Department determines probable cause for conduct of any practice that is detrimental to the welfare of the ~~patient~~passenger or potential users of the service.

(e) In addition to any other penalties, a civil fine of not more than one hundred (\$100.00) dollars per violation per day may be assessed, for violations of the Act or this Chapter.

[OAR Docket #20-667; filed 7-24-20]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 642. EMERGENCY RESPONSE SYSTEMS STABILIZATION AND IMPROVEMENT REVOLVING FUND

[OAR Docket #20-679]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Proposals

310:642-3-1 [AMENDED]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Currently, 310:642-3-1(a) (3) (A) (i)-(iv) requires a panel of nine volunteers who have drawn lots to determine their eligibility to participate in the proposal review.

The amended language will: 1) decrease the panel membership from nine to five persons; and 2) the panelists will be appointed by the Commissioner. The purpose for amending the current regulations is to decrease the difficulty of Department staff in recruiting nine volunteers willing to serve on this panel. Additionally, by changing the selection to an appointment by the Commissioner, the opportunity for highly qualified panelists to be appointed increases.

CONTACT PERSON:

Audrey C. Talley, Agency Rules Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-944, ext. 56535. AudreyT@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 3. PROPOSALS

310:642-3-1. Proposal review and disposition

(a) **General procedures.** The general procedure to be followed in the funding proposal, review and consideration process for financial assistance under the OERSSIRF program shall be as follows:

(1) Pre-proposal conference.

(A) All potential applicants are encouraged to participate in a pre-proposal conference. The Department shall summarize available funding, areas of need identified by any state assessment, and the status of previous OERSSIRF-funded projects.

(B) At the pre-proposal conference, preliminary matters may be generally discussed to familiarize all concerned parties with the proposal period, requirements and procedures.

(2) **Proposal.** An applicant shall initiate proposal review and consideration by submission to the Department of applicant's proposal for financial assistance. A proposal shall be submitted by the qualified entity using forms described in 310:642-7-1 (relating to content of application), within the application period specified in OAC 310:642-3-2 (relating to deadlines for filing.)

(3) **Scoring and selection.** Eligible proposals shall be scored by the following process.

(A) A public meeting shall be scheduled for the purpose of scoring the eligible OERSSIRF proposals and awarding the funds that have been identified by the Department as the balance available for distribution on the last day of the preceding calendar year.

(i) A ~~nine (9)~~five (5) person review panel shall be ~~appointed by the Commissioner, selected by lot each year from volunteers present at the awards meeting.~~

- (ii) Each ~~panel appointed~~ member ~~so selected~~ will sign an attestation stating the ~~volunteer ap-~~
~~pointee~~ has no financial or other direct personal interest in any of the project proposals before the Department.
- (iii) ~~Only a single representative from a profes-~~
~~sional or business entity may serve on the review~~
~~panel at the same time.~~
- (iv) ~~If a selected volunteer is determined by De-~~
~~partment staff to have any such interest in the se-~~
~~lection, the volunteer will be disqualified and an-~~
~~other name shall be selected by the same method,~~
~~until nine members are empanelled.~~
- (B) The panel shall be seated and the reviews will begin under the direction of Department staff.
- (i) Department staff will distribute proposals and scoring tools, collect the completed scoring tools for each proposal from the panelists, and tally the scores for each proposal at the end of the process.
- (ii) The tallied scores shall be posted as soon as the totals are computed.
- (C) The project with the highest score of total points shall be selected for funding, and the projected cost of the project deducted from the balance of the fund.
- (D) The project with the next highest score of total points shall be selected for funding, and the cost deducted from the balance of the fund and continuing in like manner until insufficient funds remain to fund the next highest-scoring project.
- (E) Any remaining funding shall be retained by the fund and distributed the next year.
- (b) **Criteria applicability.**
- (1) The criteria set forth in subsections (c) and (d) of this Section shall constitute guidelines and standards for proposal review and consideration by the Department.
- (2) The criteria and standards set forth in subsections (c) and (d) of this Section shall be applied to each proposal without exception.
- (c) **General approval standards and criteria.** The Department shall be under a continuing obligation to ensure the following standards and criteria are satisfied before any proposal is approved for funding and may determine compliance with these standards and criteria during preliminary review, scoring and selection or during a post selection review:
- (1) **Compliance with applicable law.** The proposed project must be found to be in compliance with 63 O.S. § 1-2512.1, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.
- (2) **Eligibility.** The applicant must be a qualified entity and the proposed project must be for a qualified purpose as defined in 63 O.S. § 1-2512.1.
- (3) **Local need, support and priority.** The applicant shall demonstrate that the project is needed in the area to be served and is sufficient, as proposed, to serve such needs. Applicant shall demonstrate local support, interest and commitment in and to the proposed project.
- (4) **Availability of other assistance.** Applicant shall demonstrate appropriate due diligence to ensure no alternative sources of revenue could be obtained and utilized for project financing.
- (5) **Economic feasibility.** The applicant shall demonstrate the overall economic viability and feasibility of the project.
- (6) **Project feasibility.** The applicant shall demonstrate that the project is feasible and cost effective.
- (7) **Statewide needs and public interest.** The applicant shall demonstrate the relationship between the proposed project and the overall EMS development needs within the State of Oklahoma and show that proposed project will serve the public interest and welfare.
- (d) **Criteria for denying a proposal.** The Department may deny a proposal for OERSSIRF funding for any of the following reasons:
- (1) The applicant is not an eligible entity.
- (2) The project does not serve the goals of 63 O.S. § 1-2512.1.
- (3) Insufficient availability of funding.
- (4) The proposal is received after the deadline.
- (e) **Department action.**
- (1) After reviewing and considering the submitted proposal, the Department may take one of the following actions:
- (A) The Department may approve and fund the proposal as submitted.
- (B) The Department may reject and deny the proposal based upon any applicable criteria described in subsection (d) of this Section.
- (2) Upon approval of a proposal, the Department may authorize the execution of all necessary funding documents and instruments, and may accordingly authorize and provide for disbursements and such further or additional action as may be necessary to complete and implement the approved transaction.

[OAR Docket #20-679; filed 7-24-20]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 662. HOME CARE AGENCIES

[OAR Docket #20-680]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Administration
310:662-3-4 [AMENDED]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

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n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

The 2019 guidelines for preventing the transmissions of mycobacterium tuberculosis in healthcare settings as published by the Centers for Disease Control and Prevention.

Incorporating rules:

310:662-3-4(e)(6)

Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-4200

GIST/ANALYSIS:

This action will update tuberculosis (TB) workplace testing requirements to align with federal recommendations. An amendment is provided at 310:662-3-4(e)(6) to align with the most current guidelines for preventing the transmission of mycobacterium tuberculosis in healthcare settings as published by the Centers for Disease Control and Prevention (CDC).

CONTACT PERSON:

Audrey C. Talley, Agency Rules Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-944, ext. 56535. AudreyT@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 3. ADMINISTRATION

310:662-3-4. Organization

(a) **Governing body.** The home care agency shall have an organized governing body which is legally responsible for the conduct of the agency. The ownership of the agency shall be fully disclosed to the Department. Agency staff shall be currently licensed or registered in accordance with applicable laws of the State of Oklahoma. The governing body shall be responsible for periodic administrative and professional evaluations of the agency.

(b) **Financial.** Sufficient financial resources shall be maintained sufficient to ensure the agency's ability to provide adequate home care services. The agency shall have an annual operating budget which ensures sufficient resources to meet operating costs at all times and to maintain the standards required by this Chapter.

(c) **Administrator.** The governing body shall be legally responsible for the appointment of a qualified administrator and

the delegation of responsibility and authority. The administrator shall organize and direct the agency's ongoing functions, employ qualified personnel, ensure adequate staff in-service, continuing education, and evaluations. The administrator shall ensure the accuracy of public information materials and activities, and that agency practices are consistent with written agency policies. The administrator shall be properly certified as required by the Department. Proof of current certification for the administrator shall be posted in a conspicuous place at each licensed agency.

(d) **Supervising physician or nurse.** Each home care agency providing skilled care shall employ a physician or a qualified supervising registered nurse. An agency providing personal care only shall employ or contract with a supervising physician or registered nurse who shall be available to the agency to advise the client care staff whenever personal care is provided. Services of a supervising physician or registered nurse in an agency only providing personal care may be provided on an on-call basis. A physician or a qualified registered nurse alternate shall be designated in writing to serve in the supervising registered nurse's absence.

(e) **Personnel policies.** The agency shall implement and follow appropriate written policies. Personnel policies shall include at least the following:

- (1) Employment procedures.
- (2) Orientation of all personnel to the policies and objectives of the agency, and participation by all personnel in appropriate employee in-service programs.
- (3) Job descriptions (statement of those functions and responsibilities which constitute job requirements) and job qualifications (specific education and training necessary to perform the job).
- (4) Periodic evaluations of employee performance.
- (5) Provision for disciplinary action(s) and procedures.
- (6) Health screening requirements for staff with direct client contact including but not limited to ~~initial and annual Tuberculin skin tests~~ tuberculosis testing/tuberculin skin tests. All tests and examinations shall be in conformance with the "Tuberculosis Controllers Association and CDC, 2019" guidelines for preventing the transmissions of mycobacterium tuberculosis in healthcare settings as published by the Centers for Disease Control and Prevention. Any employee with a proven history of a positive tuberculin skin test may be excluded from this requirement if the employee has had a documented negative chest x-ray and no symptoms suggestive of tuberculosis.
- (7) Each home care agency shall have an annual influenza vaccination program consistent with the recommendations of the Centers for Disease Control and Prevention Advisory Committee on Immunization Practices that shall include at least the following:

- (A) The offer of influenza vaccination onsite, at no charge to all employees and/or workers in the home care agency or acceptance of documented evidence of current season vaccination from another vaccine source or hospital;

(B) Documentation of vaccination for each employee and/or worker or a signed declination statement on record from each individual who refuses the influenza vaccination for other than medical contraindications; and

(C) Education of all employees and/or workers about the following:

- (i) Influenza vaccination;
- (ii) Non-vaccine influenza control measures; and
- (iii) The symptoms, transmission, and potential impact of influenza.

(D) Each home care agency influenza vaccination program shall conduct an annual evaluation of the program including the reasons for non-participation.

(F) The requirements to complete vaccinations or declination statements for each employee and/or worker may be suspended by the agency's medical director in the event of a shortage of vaccine as recognized by the Commissioner of Health.

(f) **Personnel records.** Personnel records shall include, but not be limited to qualifications, employment history, records of orientation and in-service provided, verification that health screening was performed as required, performance evaluations, as required by policy, record of disciplinary actions and verification of current licensure/certification, if appropriate.

(g) **Contracted services.**

(1) If a home care agency contracts to provide home care services(s), there shall be a written agreement defining the nature and scope of services provided. The agreement shall include but not be limited to the following:

- (A) The services to be provided.
- (B) The manner in which services shall be coordinated, evaluated and supervised by the primary home care agency.
- (C) The process for development, review, and revision of the plan of care.
- (D) The process for scheduling of visits or hours.
- (E) The procedures for submitting clinical and/or progress notes or other entries to the clinical record which shall be maintained by the primary home care agency.

(2) Any home care agency providing home care service(s) on a contract basis shall require the contractor to provide verification of current licensure/certification of personnel as appropriate. Documentation of this verification shall be maintained in the home care agency.

(h) **Nurse registry.** A nurse registry which provides home care services shall function and be licensed as a home care agency.

[OAR Docket #20-680; filed 7-24-20]

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

[OAR Docket #20-681]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

310:663-1-2 [AMENDED]

Subchapter 19. Administration, Records and Policies

310:663-19-2 [AMENDED]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

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n/a

GIST/ANALYSIS:

Definitions have been updated to include definitions in SB 142. Rules updated to reflect statute prohibiting prescribing and administration of antipsychotic drugs to long-term care facility residents except under certain conditions; requiring informed consent; setting forth provisions related to prescriptions and administration; setting forth certain patient protections.

CONTACT PERSON:

Audrey C. Talley, Agency Rules Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-944, ext. 56535. AudreyT@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 1. GENERAL PROVISIONS

310:663-1-2. Definitions

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

"Abuse" means the willful infliction of injury, unreasonable confinement, intimidation or punishment, with resulting physical harm, impairment or mental anguish.

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"Act" means the Continuum of Care and Assisted Living Act, Title 63 O.S. Sections 1-890.1 et seq. of the Oklahoma Statutes.

"Antipsychotic drug" means a drug, sometimes called a major tranquilizer, used to treat symptoms of severe psychiatric disorders, including but not limited to schizophrenia and bipolar disorder.

"Assisted living center" means any home or establishment offering, coordinating or providing services to two (2) or more persons who:

- (A) are domiciled therein;
- (B) are unrelated to the operator;
- (C) by choice or functional impairments, need assistance with personal care or nursing supervision;
- (D) may need intermittent or unscheduled nursing care;
- (E) may need medication assistance; and
- (F) may need assistance with transfer and/or ambulation; ~~Intermittent nursing care and home health aids services may be provided in an assisted living facility by a home health agency~~ [63:1-890.2(1)].

"Chemical restraint" means the use of a medication for the purpose of discipline, convenience, or in an emergency situation to control mood or behavior and not required to treat the resident's symptoms. Chemical restraint does not mean medication prescribed to maintain emotional stability.

"Commissioner" means the Commissioner of Health.

"Continuum of care facility" means a home, establishment or institution providing nursing facility services as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes and one or both of the following:

- (A) assisted living center services as defined in the Continuum of Care and Assisted Living Act; and
- (B) adult day care center services as defined in Section 1-872 of Title 63 of the Oklahoma Statutes [63:1-890.2.4].

"Department" means the Oklahoma State Department of Health.

"Direct care staff" in an assisted living center means qualified nursing, activity, social and therapy staff employed by or under the direct supervisory control of the assisted living center.

"Intermittent or unscheduled nursing care" means skilled nursing care given by a licensed practical nurse or registered nurse that is not required twenty-four (24) hours a day.

"Long-term care facility" means:

- (A) a nursing facility as defined by Section 1-1902 of Title 63 of the Oklahoma Statutes;
- (B) a continuum of care facility as defined under the Continuum of Care and Assisted Living Act; or
- (C) the nursing care component of a life care community as defined by the Long-term Care Insurance Act.

"Misappropriation of resident's property" means the taking, sequestration, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal authority, or the taking of any action contrary to

any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of resident's property.

"Neglect" means a failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness.

"Personal care" means assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general supervision of the physical and mental well-being of a person [63:1-1902.17] and includes assistance with toileting.

"Prescribing clinician" means:

(A) an allopathic or osteopathic physician licensed by and in good standing with the Oklahoma State Board of Medical Licensure and Supervision or the Oklahoma State Board of Osteopathic Examiners, as appropriate;

(B) a physician assistant licensed by and in good standing with the Oklahoma State Board of Medical Licensure and Supervision; or

(C) an Advanced Practice Registered Nurse licensed by and in good standing with the Oklahoma Board of Nursing.

"Qualified nutritionist" is a Department approved person who holds a baccalaureate with major studies in food and nutrition, dietetics, or food service management; has one year experience in the dietetic service of a health care institution; and participates in continuing education annually.

"Representative" means an agent under a durable power of attorney for health care, or a court-appointed guardian or, if there is no court-appointed guardian, the parent of a minor, a relative, or other person, designated in writing by the resident.

"Resident" means anyone accepted for care through contractual agreement and who meets the admission criteria established pursuant to OAC 310:663-3-2.

"Physical restraint" means any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident's body that the resident cannot remove easily, that is not used for the purpose of therapeutic intervention or body alignment as determined by resident assessment and care planning, and which restricts the resident's desired freedom of movement and access to his or her body.

"Significant change" is defined as a major change in the resident's status that is not self limiting; affects more than one area of the resident's health status; and requires interdisciplinary review and/or revision of the care plan.

SUBCHAPTER 19. ADMINISTRATION, RECORDS AND POLICIES

310:663-19-2. Medication administration

(a) Each assisted living center shall adopt written procedures to ensure safe administration of medications.

(1) Medications shall be administered only on a physician's order.

(2) The person responsible for administering medications shall personally prepare the dose, observe the swallowing of oral medication, and record the medication.

Medications shall be prepared within one hour prior to administration.

(3) An accurate written record of medications administered shall be maintained. The medication record shall include:

- (A) The identity and signature of the person administering the medication.
- (B) The medication administered within one hour of the scheduled time.
- (C) Medications administered as the resident's condition may require (p.r.n.) are recorded immediately, including the date, time, dose, medication, and administration method.
- (D) Adverse reactions or results.
- (E) Injection sites.
- (F) An individual inventory record shall be maintained for each Schedule II medication prescribed for a resident.
- (G) Medication error incident reports.

(4) A resident's adverse reactions shall be reported at once to the attending physician.

(b) An assisted living center may maintain nonprescription drugs for dispensing from a common or bulk supply if all of the following are accomplished.

- (1) The assisted living center shall have and follow a written policy and procedure to assure safety in dispensing and documenting medications given to each resident.
- (2) The assisted living center shall maintain records which document the name of the medication acquired, the acquisition date, the amount and the strength received for each medication maintained in bulk.
- (3) Only a licensed nurse, physician, pharmacist, certified medication aide or medication aide technician may dispense for administration these medications and only upon a physician's written order for as needed or non-scheduled dosage regimens. The physician's written order shall be maintained in the resident's clinical record.
- (4) Bulk medications shall be stored in the medication area and not in resident rooms.
- (5) The assisted living center shall maintain records of all bulk medications that are dispensed on an individual signed medication administration record.
- (6) The assisted living center shall maintain the original label on the container as it comes from the manufacturer or on the unit-of-use or blister package.
- (7) The assisted living center shall establish in its policy and procedure the maximum size of packaging and shall ensure that each resident receives the correct dosage. The assisted living center shall not acquire nor maintain a liquid medication in a package size that exceeds 16 fluid ounces.
- (8) An assisted living center shall have only oral analgesics, antacids, and laxatives for bulk dispensing. No other category of medication shall be maintained as bulk medication.

(c) Antipsychotic drug administration shall be consistent with 63 O.S. § 1-881.

[OAR Docket #20-681; filed 7-24-20]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 667. HOSPITAL STANDARDS

[OAR Docket #20-682]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Compliance with Federal, State, and Local Laws
[AMENDED]

310:667-5-4 [AMENDED]

Subchapter 59. Classification of Hospital Emergency Services
[AMENDED]

310:667-59-1 [AMENDED]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S., § 1-104

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INCORPORATIONS BY REFERENCE:

Incorporated standards:

The "Tuberculosis Screening, Testing, and Treatment of U.S. Health Care Personnel: Recommendations from the National Tuberculosis Controllers Association and CDC, 2019" guidelines for preventing the transmissions of mycobacterium tuberculosis in healthcare settings as published by the Centers for Disease Control and Prevention.

Incorporating rules:

310:667-5-4(b)

Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-4200

GIST/ANALYSIS:

An amendment is provided to align with SB156, signed into law in 2019, effective 11/1/2019, at 310:667-59-1. This amendment specifies the inclusion of the requirement for hospitals to submit data into the ST-Elevated Myocardial Infarction (STEMI) registry in addition to stroke and trauma related illness and injury. This amendment will update tuberculosis (TB) workplace testing requirements to align with federal recommendations. An amendment is provided at 310:667-5-4(a)2 and 310:667-5-4(b) to align with the most current guidelines for preventing the transmission of mycobacterium tuberculosis in healthcare settings as published by the Centers for Disease Control and Prevention.

Permanent Final Adoptions

CONTACT PERSON:

Audrey C. Talley, Agency Rules Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-944, ext. 56535. AudreyT@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 5. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

310:667-5-4. Employee and/or worker health examinations

(a) **Pre-employment.** Each employee and/or worker (with or without patient care responsibilities, paid or volunteer, full-time or part-time: physicians, nurses, emergency medical personnel, dental professionals and students, medical and nursing students, laboratory and pharmacy workers, hospital volunteers, and administrative staff, including food service workers) in the hospital shall have a pre-employment health examination, which shall include (but not be limited to):

(1) An immunization history shall be part of each pre-employment examination or application for hospital privileges. The immunization history shall include documentation of immunity to measles, mumps, rubella and varicella.

(A) Birth before 1957 is considered acceptable evidence of immunity to measles, mumps, and rubella, with the exception that birth before 1957 is not acceptable evidence of immunity to rubella for female employees and/or workers born before 1957 who can become pregnant.

(B) Persons born in 1957 or later can be considered immune to measles, mumps or rubella only if they have documentation of one of the following:

- (i) measles or mumps disease diagnosed by a physician or licensed independent practitioner;
- (ii) laboratory evidence of measles, mumps, or rubella immunity; or
- (iii) vaccination on or after the first birthday with two doses of live measles vaccine separated by at least 28 days, at least one dose of live mumps vaccine, and at least one dose of live rubella vaccine.

(C) Persons can be considered immune to varicella if they have a reliable history of having had varicella or if they have received one dose of varicella vaccine on or after the first birthday prior to the 13th birthday, or two doses of varicella vaccine separated by at least 28 days on or after the 13th birthday.

(D) Serologic screening need not be done before vaccinating against measles, mumps, rubella and varicella unless the facility considers it cost-effective.

(E) Serologic screening is not necessary for persons who have documentation of appropriate vaccination or other acceptable evidence of immunity to measles, mumps, rubella, and varicella.

(F) Contraindications to MMR or varicella vaccines should be followed.

(2) ~~A tuberculin skin test utilizing the Mantoux technique shall be included as part of the pre-employment health examination or application for hospital privileges. Only a previous reactive tuberculin skin test or documented evidence of tuberculin skin testing within the previous twelve (12) months as a part of another licensed health care facility's tuberculosis control program would negate this requirement. If PPD (Purified Protein Derivative) is less than 10 mm., repeat PPD in one to two (1-2) weeks, if it has been more than a year since the employee's and/or worker's last non-reactive tuberculin test (Booster Effect). A history of vaccination with BCG (Bacillus of Calmette and Guérin) does not preclude initial tuberculin skin testing, and a reaction of ten (10) mm. or more should be managed in the same manner as it would be in a patient with no history of BCG vaccination.~~

(3) Hepatitis B vaccine shall be offered consistent with 29 CFR Section 1910.1030 (Occupational Exposure to Bloodborne Pathogens).

(34) Each hospital shall meet Occupational Safety and Health Act standards applicable to the facility.

(b) **Periodic health examinations.** ~~A tuberculin skin test utilizing the Mantoux technique shall be repeated at regular intervals on those employees and/or workers who have potential for exposure to Mycobacterium tuberculosis unless the employee and/or worker has a previous documented reactive skin test on file. Such periodic tuberculin skin testing shall be part of a documented tuberculosis control program that is based on a facility specific risk assessment that considers at a minimum: the type and size of the facility, the prevalence of tuberculosis in the community, the patient population served by the facility, the occupational group the person represents, the area of the facility where the person works, and the effectiveness of the facility's tuberculosis control program. The following guidelines shall be used for the information and education of facilities with regard to their tuberculosis control program: "Centers for Disease Control and Prevention. Guidelines for preventing the transmission of Mycobacterium tuberculosis in health care facilities, 1994. MMWR 1994;43(No. RR-13)". A test for tuberculosis shall be performed. All tests and examinations shall be in conformance with the "Tuberculosis Screening, Testing, and Treatment of U.S. Health Care Personnel: Recommendations from the National Tuberculosis Controllers Association and CDC, 2019" guidelines for preventing the transmissions of mycobacterium tuberculosis in healthcare settings as published by the Centers for Disease Control and Prevention.~~

(1) Follow-up examinations for employees and/or workers who react significantly to a tuberculin skin test shall be conducted.

(2) Employees and/or workers with an initial negative chest x-ray, whether they take appropriate preventive

therapy (treatment of latent tuberculosis infection) or not, shall be exempt from yearly, routine chest x-rays unless signs or symptoms suggestive of tuberculosis develop.

(3) Employees and/or workers with a documented reactive skin test and a proven negative chest x-ray, whether they have taken appropriate preventive therapy (treatment of latent tuberculosis infection) or not, shall be exempt from yearly, routine chest x-rays unless signs or symptoms suggestive of tuberculosis develop.

(4) Employees and/or workers with documented prior reactive tuberculin skin tests shall be seen yearly by medical personnel to determine if signs or symptoms are present. The results of such examinations shall be recorded on the individual employee's and/or worker's health record.

(c) **Interim health examinations.** Employees and/or workers, when found to be likely to transmit a communicable disease as determined by a physician or licensed independent practitioner, shall be removed from patient contact duties, consistent with state and federal laws, until such time as a physician or licensed independent practitioner certifies that the risk of transmission of communicable disease is within acceptable limits as defined by the infection control program in its written policies and procedures.

(d) **Follow-up examinations.** Follow-up of an employee and/or workers, who, while employed at the facility, is a contact to active tuberculosis:

(1) An employee and/or worker who is a known tuberculosis contact shall have a tuberculin skin test. If this test is reactive for the first time, the individual shall have a chest x-ray. If the individual with a reactive skin test does not take preventive medication (treatment of latent tuberculosis infection), the employee and/or worker shall be monitored.

(2) If an employee and/or worker is a known, recent tuberculosis contact, he or she shall have a tuberculin skin test and, if non-reactive, and if the individual is asymptomatic for tuberculosis, then a repeat tuberculin skin test shall be done in three (3) months. If the employee and/or worker is symptomatic, an x-ray shall be done immediately.

(3) If an employee and/or worker is a contact to active tuberculosis and has a documented previous reactive skin test, he or she shall be exempt from yearly, routine x-rays unless signs or symptoms develop suggestive of tuberculosis.

(e) **Annual influenza vaccination program.** Each hospital shall have an annual influenza vaccination program consistent with the recommendations of the Centers for Disease Control and Prevention Advisory Committee on Immunization Practices that shall include at least the following:

(1) The offer of influenza vaccination onsite, at no charge to all employees and/or workers in the hospital or acceptance of documented evidence of current season vaccination from another vaccine source or hospital;

(2) Documentation of vaccination for each employee and/or worker or a signed declination statement on record from each individual who refuses the influenza vaccination for other than medical contraindications; and

(3) Education of all employees and/or workers about the following:

- (A) Influenza vaccination;
- (B) Non-vaccine influenza control measures; and
- (C) The symptoms, transmission, and potential impact of influenza.

(4) Each hospital influenza vaccination program shall conduct an annual evaluation of the program including the reasons for non-participation.

(5) The requirements to complete vaccinations or declination statements for each employee and/or worker may be suspended by the hospital's medical staff executive in the event of a shortage of vaccine as recognized by the Commissioner of Health.

(f) **Health examination records.** A file shall be maintained for each employee and/or worker, containing the results of the evaluations and examinations specified at OAC 310:667-5-4 (a) through (d) and the dates of illnesses as relate to employment.

(g) **Credentialing records.** For credentialed non-employee workers, including physicians, hospitals may meet these requirements if as part of the credentialing process such workers provide evidence of an immunization history and tuberculin skin test, consistent with the tuberculosis control program required at 310:667-5-4(b), in the form of a signed attestation statement from the non-employee worker that documents the worker's immunization history and the date and results of the latest tuberculin skin test.

SUBCHAPTER 59. CLASSIFICATION OF HOSPITAL EMERGENCY SERVICES

310:667-59-1. General

(a) All hospitals that treat emergency patients shall identify the extent of the stabilizing and definitive emergency services they provide. For each of the clinical areas listed in OAC 310:667-59-7 for which a hospital provides emergency services, the hospital shall designate which classification level of service it provides.

(b) All hospitals shall participate in the state-wide trauma, stroke, and ST-Elevated Myocardial Infarction (STEMI) and stroke registries and shall submit the related data on stroke and trauma-related injury and illness to the Department as required. Hospitals shall submit data on the other emergency medical services they provide as required by the Department as the data collection tools to capture this information become available.

[OAR Docket #20-682; filed 7-24-20]

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

[OAR Docket #20-668]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
310:675-1-2 [AMENDED]
Subchapter 7. Administration
310:675-7-4.1 [NEW]
310: 675-7-17.1 [AMENDED]
310:675-7-18.1 [AMENDED]
Subchapter 9. Resident Care Services
310:675-9-6.1 [AMENDED]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

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n/a

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Incorporated standards:

The "Tuberculosis Screening, Testing, and Treatment of U.S. Health Care Personnel: Recommendations from the National Tuberculosis Controllers Association and CDC, 2019" guidelines for preventing the transmissions of mycobacterium tuberculosis in healthcare settings as published by the Centers for Disease Control and Prevention.

42 CFR 483.430 (2011).

Incorporating rules:

310:675-7-17.1(e)

Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-4200

GIST/ANALYSIS:

Definitions have been updated to include definitions in SB 142. Rules updated to reflect statute prohibiting prescribing and administration of antipsychotic drugs to long-term care facility residents except under certain conditions and to implement changes regarding 24-hour staff scheduling. The amendments update language from "tuberculin skin test" to "tests for tuberculosis" and also update the reference for guidance on administration of the test from a specific reference to broader guidance provided by the Centers for Disease Control and Prevention.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED**

**FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 1. GENERAL PROVISIONS

310:675-1-2. Definitions

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

"**Act**" means Title 63 of the Oklahoma Statutes, Sections 1-1901 and following as amended also known as the Nursing Home Care Act.

"**Allied health professional**" means one of the following persons: physician assistant, physical, speech, or occupational therapist, occupational therapy assistant, physical therapy assistant, or qualified social worker.

"**Antipsychotic drug**" means a drug, sometimes called a major tranquilizer, used to treat symptoms of severe psychiatric disorders, including but not limited to schizophrenia and bipolar disorder.

"**Attendant**" means the person having control of an animal/pet visiting or in residence in a facility.

"**Approval**" means the mandatory state government process by which an agency or program is reviewed, and publicly proclaimed, to render a service worthy of note.

"**CEP**" means the nurse aide competency evaluation program.

"**Certification**" means the process by which a non-governmental agency, or association, or governmental agency attests that an individual or facility has met certain predetermined standards specified by the certifying body.

"**Certified medication aide**" means a person who has passed a Department approved program for administering medications.

"**Certified nurse aide**" means any person who provides, for compensation, nursing care or health-related services to residents of a facility, who is not a licensed health professional and has completed a Department approved training and competency program.

"**Charge nurse**" means a registered nurse or licensed practical nurse responsible for supervising nursing services on a specific shift.

"**Chemical restraints**" means the use of a medication for the purpose of discipline, convenience, or in an emergency situation to control mood or behavior and not required to treat the resident's symptoms.

"**Consultant registered nurse**" means a registered nurse who provides consultation to the director of nursing and administrator concerning the delivery of nursing care for all residents in the facility.

"**Denial**" means a decision made by the appropriate body to disapprove an application.

"**Direct care staff**" means nursing, activity, social and therapy staff.

"Director of nursing" means either a registered nurse or licensed practical nurse, who has the authority and responsibility to administer nursing services within the facility.

"Emergency" means, for the purposes of Title 63 O.S. § 1-1912, a serious, potentially life-threatening or life-endangering situation in which immediate action is necessary to ensure the health, safety, or welfare of residents, and for which the facility:

- (A) does not have a plan acceptable to the Department to ensure health, safety or welfare of residents; or
- (B) refuses to remedy the situation.

"Health related services" means any medically directed service provided by any person in a facility that may include but is not limited to, the following:

- (A) Positioning and turning of residents;
- (B) Self-help skill training;
- (C) Assistance with prosthetic/assistive devices;
- (D) Medication administration;
- (E) Nutrition and hydration;
- (F) Monitoring of resident vital signs;
- (G) Catheter and nasogastric care;
- (H) Behavior modification programs;
- (I) Administering a medically related care plan; and
- (J) Restorative services.

"In charge" and **"supervision"** means the administrator must have the requisite authorization from the licensee to make those purchases and incur those necessarily attendant debts in order to comply with the rules promulgated by the Board and all pertinent state statutes.

"Inservice education" means activities intended to assist the individual to acquire, maintain, and/or increase competence in fulfilling the assigned responsibilities specific to the employer's expectations.

"Licensed health professional" means one of the following: a physician; dentist, podiatrist, chiropractor, physician assistant, nurse practitioner; pharmacist; physical, speech, or occupational therapist; registered nurse, licensed practical nurse; licensed or certified social worker; or licensed/registered dietitian.

"Licensed nurse" means a registered nurse or a licensed practical nurse who is currently licensed by the Oklahoma Board of Nursing.

"Licensed pharmacist" means a person who is a graduate of an accredited pharmacy program and is currently licensed by the Oklahoma Board of Pharmacy.

"Licensed practical nurse" means a person who is a graduate of a state approved practical nursing education program, or who meets other qualifications established by the Oklahoma Board of Nursing, and is currently licensed by the Oklahoma Board of Nursing.

"Licensure" means the process by which the Department grants to persons or entities the right to establish, operate, or maintain any facility.

"Local law enforcement" means:

(A) The municipal police department, if the facility is within the jurisdiction of any municipality of this state, or

(B) The county sheriff, if the facility is outside the jurisdiction of any municipality within this state.

"Long-term care facility" means:

(A) a nursing facility as defined in 63 O.S. § 1-1902;

(B) a continuum of care facility as defined under the Continuum of Care and Assisted Living Act; or

(C) the nursing care component of a life care community as defined by the Long-term Care Insurance Act.

"Manager" or "supervisor" means the person or entity which performs administrative services for the licensee. The manager or supervisor is not legally responsible for the decisions and liabilities of the licensee, and does not stand to gain or lose financially as a result of the operation of the facility. The manager is paid a fee or salary for services, and the primary remuneration shall not be based upon the financial performance of the facility.

"Misappropriation of resident's property" means the taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident, without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of resident's property.

"Nurse aide" means any person providing nursing or nursing related services to residents in a facility, but does not include an individual who is a licensed health professional, or who volunteers to provide such services without monetary compensation.

"Nurse aide trainee" means any person who has been employed by a facility to provide nursing care or health related services, and is enrolled in but has not completed a Department approved training and competency program.

"Orientation" means the training for a particular job activity given to all employees.

"Perishables" means food supplies, to include dietary supplements and intravenous feedings, medical supplies, and medications.

"Physical restraints" means any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident's body that the resident cannot remove easily, that is not used for the purpose of therapeutic intervention or body alignment as determined by resident assessment and care planning, and which restricts the resident's desired freedom of movement and access to his or her body.

"Prescribing clinician" means:

(A) an allopathic or osteopathic physician licensed by and in good standing with the Oklahoma State Board of Medical Licensure and Supervision or the Oklahoma State Board of Osteopathic Examiners, as appropriate;

(B) a physician assistant licensed by and in good standing with the Oklahoma State Board of Medical Licensure and Supervision; or

(C) an Advanced Practice Registered Nurse licensed by and in good standing with the Oklahoma Board of Nursing.

"Qualified nutritionist" is a Department approved person who holds a baccalaureate with major studies in food and nutrition, dietetics, or food service management; has one year experience in the dietetic service of a health care institution; and participates in continuing education annually.

"Registered/licensed dietitian" means a person who is registered as a dietitian by the American Dietetic Association and licensed by the Oklahoma Board of Medical Licensure and Supervision.

"Registered nurse" means a person who is a graduate of a state approved registered nursing education program, and who is currently licensed by the Oklahoma Board of Nursing.

"Registry" means a Department maintained list of individuals who have successfully completed a nurse aide training and competency evaluation program, or a competency evaluation program, approved by the Department.

"Representative of a resident" means a representative of a resident as defined by 63 O.S. § 1-1902.

"Resident" means a resident as defined by 63 O.S. § 1902.

"Revoke" means to rescind approval of a previous action.

"Specialized facility" means any facility which offers or provides inpatient long-term care services on a twenty-four hour basis to a limited category of persons requiring such services, including, but not limited to, a facility providing health or habilitation services for developmentally disabled persons, infants and/or children, or Alzheimer's and dementia residents.

"Standards of nursing practice" means an authoritative statement that describes a level of care or performance common to the profession of nursing by which the quality of nursing practice can be judged. Standards of nursing practice include both standards of care and standards of professional performance.

"Standards of care" means a description of a competent level of care demonstrated by a process of accurate assessment and diagnosis, planning, appropriate interventions, and predicted patient outcomes. (Appendix B of this Chapter.)

"Standards of professional performance" means a description of a competent level of behavior in the professional role including activities related to quality assurance, education, consultation, research, ethics, resource utilization, accountability, peer review, and interdisciplinary collaboration.

"Suspended license" means a license that is issued for a period not to exceed three years to a facility which has temporarily closed or ceased operations.

"Training and competency evaluation program" means a program approved by the Department to instruct and evaluate individuals to act as nurse aides.

"Transfer" means the move of a resident from one facility to another facility.

"Intra-facility transfer" means the moving of a resident from one room to another within a facility.

"Transfer of ownership" means a change of substantial, or controlling interest, in the ownership of a facility. A change of less than five percent (5%) of the interest of the owner does not constitute a transfer of ownership unless it also results in a change of control of the owner.

"Willful violation" means:

(A) a pattern of violation of ~~the direct care~~ staffing requirement;

(B) a violation of ~~the direct care~~ staffing requirement in which the facility knew or should have known staffing would be insufficient to meet the requirement yet took no action to avert the violation; or

(C) the reporting of materially inaccurate or misleading information of ~~direct care~~ staffing to the Health Care Authority.

SUBCHAPTER 7. ADMINISTRATION

310:675-7-4.1. Resident admission and continued residency based on administration of antipsychotic drugs

(a) **Reasons for denial of admission or continued residency.** No long-term care facility shall deny admission or continued residency to a person on the basis of the person's or his or her representative's refusal to the administration of antipsychotic drugs, unless:

(1) The prescribing clinician or care facility can demonstrate that the resident's refusal would place the health and safety of the resident, the facility staff, other residents or visitors at risk.

(2) The alleged risk shall be documented in detail and presented to the resident or the representative of the resident, to the State Department of Health and to the Long-Term Care Ombudsman; and shall inform the resident or the representative of the resident of the resident's right to appeal.

(b) **Procedures.** Procedures for resident appeal are as follows:

(1) Written documentation of the alleged risk associated with the administration of antipsychotic drugs shall be provided to the resident or representative of the resident, to the State Department of Health and to the Long-Term Care Ombudsman; and shall inform the resident or the representative of the resident of the resident's right to appeal the denial of admission or denial of continued residency to the State Department of Health. The documentation of the alleged risk shall include:

(A) A description of all nonpharmacological or alternative care options attempted; and

(B) Why all nonpharmacological or alternative care options attempted were unsuccessful; and

(C) Why the prescribing clinician determined alternative treatments were not medically appropriate for the condition following a physical examination.

(2) Procedures for antipsychotic drug refusal and the facility's notice of admission denial or continued residency are as follows:

(A) If a resident or a resident's representative is aggrieved by the facility's decision to deny admission or continued residency regarding the refusal of antipsychotic drugs at 63 O.S. 1-881(E)(2) the resident or resident's representative may file within ten (10) days of notice a written request for a hearing with the Department by sending a letter to the Hearing Clerk, Oklahoma State Department of Health, 1000 NE Tenth Street, Oklahoma City, OK 73117.

(B) The written notice shall include:

- (i) A full explanation of the reason for the denial of admission of residency or denial of continued residency;
- (ii) The date of the notice; and
- (iii) The date notice was given to the resident and the resident's representative.

(3) Failure of the facility to give the notice as substantially specified shall result in an order without hearing from the Department denying the right of the facility to discharge or deny admission to the resident.

(4) If a written request for a hearing is properly filed by an eligible aggrieved party, the Department shall convene a hearing within ten working days of receipt of the request. The request may be in the form of a letter or a formal request for hearing from the resident or resident's representative. In the event that the resident is unable to write, a verbal request made to the hearing clerk shall be sufficient. The Department shall reduce the verbal request to writing and send a copy to the resident. The request shall state the objection to the notice of denial of admission of residency or denial of continued residency and attach a copy of the notice from the facility.

(5) During the pendency of the hearing, the facility shall not discharge or deny admission or readmission for the resident unless the discharge or admission denial was required by the Department or is an emergency situation. If the resident relocates from the facility but wants to be admitted or readmitted, the Department may proceed with the hearing and the facility shall be required to admit or readmit the resident to the first available bed in a semi-private room if the discharge is found not to meet the requirements of the Nursing Home Care Act and OAC 310:675.

(6) The Department shall provide the Administrative Law Judge and the space for the hearing. The parties, including the resident and the facility, may be represented by counsel or may represent themselves.

(7) The hearing shall be conducted at the Oklahoma State Department of Health building unless there is a request for the hearing to be held at the facility or at another place. Providing the hearing room in such a case shall be the responsibility of the parties. The Department shall maintain a record on the case as it does for any other individual proceeding.

(8) The hearing shall be conducted in accordance with the Department's procedures, Chapter 2 of this Title. The Administrative Law Judge's order shall include findings of fact, conclusions of law and an order as to whether or not the transfer or discharge was according to law. If a facility

receives federal funds for services, it shall also comply with the certification standards. The more restrictive rule toward the facility shall be applied.

(9) If the Administrative Law Judge finds the notice of continued residency or denied admission was not according to law, the Department shall review, investigate and issue deficiencies as appropriate.

(10) If the notice of continued residency or denied admission is according to law, the order shall give the facility the right to discharge or deny admission to the resident.

(11) The scope of the hearing may include:

- (A) Inadequate notice;
- (B) Continued residency or admission denial based on reason not stated in the law;
- (C) Sufficiency of the evidence to support the continued residency or admission denial; or
- (D) The finding of emergency.

(12) The Administrative Law Judge shall render a written decision within ten working days of the close of the record.

(13) If the Administrative Law Judge sustains the facility, the facility may proceed with the discharge. If the Administrative Law Judge finds in favor of the resident, the facility shall withdraw its notice of intent to transfer, discharge or deny admission of the resident. The decision of the Administrative Law Judge shall be final and binding on all parties unless appealed under the Administrative Procedures Act.

310:675-7-17.1. Infection Control

(a) The facility shall have an infection control policy and procedures to provide a safe environment. The policy shall address the prevention and transmission of disease and infection. The facility, and its personnel, shall practice the universal precautions identified by the Centers for Disease Control. All personnel shall demonstrate their knowledge of universal precautions through performance of duties.

(b) The facility shall maintain a sanitary environment and prevent the development and transmission of infection in the following areas.

- (1) Food handling practices;
- (2) Laundry practices including linen handling.
- (3) Disposal of environmental and resident wastes.
- (4) Pest control measures.
- (5) Traffic control for high-risk areas.
- (6) Visiting rules for high-risk residents.
- (7) Sources of air-borne infections.
- (8) Health status of all employees and residents.
- (9) Isolation area for residents with communicable diseases.

(c) Infection control policies to prevent the transmission of infection shall include the following:

- (1) Excluding Personnel and visitors with communicable infections.
- (2) Limiting traffic in dietary and medication rooms.
- (3) Using aseptic and isolation techniques including hand washing techniques.
- (4) Bagging each resident's trash and refuse.

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- (5) Issuing daily damp wipe cloths, treated dust cloths and clean wet mops, as needed.
 - (6) Laundering the used wet mops and cleaning cloths every day.
 - (7) Cleaning the equipment for resident use daily, and the proper disposal of infected materials.
 - (8) Providing properly identifiable plastic bags for the proper disposal of infected materials.
 - (9) **Tuberculosis risk assessment.** An annual facility tuberculosis risk assessment is to be performed by a licensed nurse or physician using a Department approved risk assessment tool.
- (d) When scheduled to be cleaned, the toilet areas, utility rooms, and work closets, shall be cleaned with a disinfectant solution and fresh air shall be introduced to deodorize.
- (e) **~~Tuberculin~~Test for tuberculosis and tuberculinskin test for residents.** Within thirty (30) days from admission, all residents admitted to the facility after the adoption of this rule shall receive a ~~two-step tuberculin skin test in conformance with the "guidelines for preventing the transmission of Mycobacterium tuberculosis in Health Care Settings;" Centers for Disease Control and Prevention Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in health care settings, 2005. MMWR 2005; 54 (No. RR-17)-test for tuberculosis.~~ All tests and examinations shall be in conformance with the "Tuberculosis Screening, Testing, and Treatment of U.S. Health Care Personnel: Recommendations from the National Tuberculosis Controllers Association and CDC, 2019" guidelines for preventing the transmissions of mycobacterium tuberculosis in healthcare settings as published by the Centers for Disease Control and Prevention.
- (1) ~~Tuberculin skin tests~~Tests for tuberculosis shall be administered by a licensed nurse or physician.
 - (2) Where a skin test is contra-indicated, a chest radiograph, interpreted by a medical consultant in collaboration with the city, county or state health department, is acceptable.
 - (3) Residents claiming a prior positive tuberculin skin test shall have documentation in their medical record, obtained from a licensed health care professional, of their test results and interpretation; otherwise, a two-step tuberculin skin test shall be done.

310:675-7-18.1. Personnel records

Each facility shall maintain a personnel record for each current employee containing:

- (1) **Application for employment.** An application for employment which contains employee's full name, social security number, professional license or registration number, if any, employment classification, and information about past employment, including: place of employment, position held, length of employment, and reason for leaving.
- (2) **Employee time records.** Copies of current employee time records, signed by the employee, shall be maintained by the facility for at least thirty-six (36) months.

- (3) **Training, arrest check, and certification.** Documentation of orientation and training (may be kept in separate file), continuing education, a copy of the criminal arrest check, and appropriate certification and licensure.
- (4) **Health examination on hire.** Record of health examination conducted within thirty days of employment which shall include, but not be limited to, a complete medical history, physical examination by body system and, a ~~two-step tuberculin skin test in conformance with the "Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health Care Settings;" Centers for Disease Control and Prevention. Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health Care Settings, 2005. MMWR 2005; 54(No. RR-17)-test for tuberculosis.~~ All tests and examinations shall be in conformance with the "Tuberculosis Screening, Testing, and Treatment of U.S. Health Care Personnel: Recommendations from the National Tuberculosis Controllers Association and CDC, 2019" guidelines for preventing the transmission of mycobacterium tuberculosis in healthcare settings as published by the Centers for Disease Control and Prevention.

(A) ~~Tuberculin skin tests~~Tests for tuberculosis shall be administered by a licensed nurse or physician.

(B) Where a skin test is contra-indicated, a chest radiograph, interpreted by a medical consultant in collaboration with the city, county or state health department, is acceptable.

(C) Employees claiming a prior positive tuberculin skin test shall have documentation in their file, obtained from a licensed health care professional, of their test results and interpretation, otherwise, a two-step tuberculin skin test shall be done.

- (5) **Tests for tuberculosis.** Results of subsequent ~~tuberculin tests for tuberculosis~~ performed based on facility TB risk classification established in OAC 310:675-7-17(c)(9) (relating to annual facility tuberculosis risk assessment) or results of a physician's examination for signs and symptoms of tuberculosis for those employees who react significantly to a tuberculin skin test. ~~All tests and examinations shall be in conformance with the "Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health Care Settings;" Centers for Disease Control and Prevention Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in health care settings, 2005. MMWR 2005; 54 (No. RR-17)-All tests and examinations shall be in conformance with the "Tuberculosis Screening, Testing, and Treatment of U.S. Health Care Personnel: Recommendations from the National Tuberculosis Controllers Association and CDC, 2019" guidelines for preventing the transmissions of mycobacterium tuberculosis in healthcare settings as published by the Centers for Disease Control and Prevention.~~

SUBCHAPTER 9. RESIDENT CARE SERVICES

310:675-9-6.1. Restraints

(a) The resident has the right to be free from any physical or chemical restraints imposed for discipline or convenience. Restraints may be used in emergency situations, or for the purpose of treating a resident's medical condition. All physical restraints shall allow for quick release. Locked restraints shall not be used.

(b) In an emergency situation, physical restraints may be used only to ensure the physical safety of the resident, staff, or other residents. When restraints are used in an emergency, the facility shall comply with the following process:

(1) A licensed nurse may use physical restraints, without a physician's order, if necessary to prevent injury to the resident, or to other residents, when alternative measures are not effective. The licensed nurse shall document in the clinical record the application of the physical restraint and the alternative measures that were not effective. A licensed nurse shall contact the physician for physical restraint orders within six hours after application.

(2) The facility staff shall continually monitor the resident during the restraint period. An interdisciplinary team shall evaluate alternative placement if the resident requires physical restraints for longer than forty-eight consecutive hours.

(3) Circumstances requiring the physical restraints shall be re-evaluated every thirty minutes and documented in the clinical record.

(4) A resident who is physically restrained shall have the restraints released for at least ten minutes every two hours. Such residents shall also be repositioned, exercised and toileted as needed.

(c) In an emergency situation, chemical restraints may be used only to ensure the physical safety of the resident, staff, or other residents. When chemical restraints are used, the facility shall comply with the following process:

(1) The written order for the use of a chemical restraint shall be signed by a physician who specifies the duration and circumstances under which the chemical restraint is to be used.

(2) The physician's orders may be oral when an emergency necessitates parenteral administration of the chemical restraint but is valid only until a written order can be obtained within forty-eight hours.

(3) An emergency order for chemical restraints shall not be in effect for more than twelve hours and may be administered only if the resident is continually monitored for the first thirty minutes after administration and every fifteen minutes until such time as the resident appears stable to ensure that any adverse side effects are noticed and appropriate action taken as soon as possible. The clinical record shall accurately reflect monitoring.

(4) A licensed nurse shall document in the resident's clinical record any alternative measures that were not effective and precipitated the use of the chemical restraint.

(5) An interdisciplinary evaluation shall be made to consider alternative placement if the resident requires chemical restraints for longer than twelve continuous hours.

(d) When restraints are required for the resident's medical symptoms, the nursing staff shall ensure that physical and chemical restraints are administered only in accordance with the resident's care plan and under the following circumstances.

(1) When restraints are used to prevent falling, or for the purpose of positioning the resident, the resident and resident's representative shall be informed of the risk and benefits, and written consent shall be obtained.

(2) Restraints may be applied only on a physician's written order and shall identify the type and reason for the restraint. The physician shall also specify the period of time, and the circumstances under which the restraint may be applied.

(3) Alternative measures to the use of restraints shall be evaluated prior to their use. Circumstances requiring the restraints, and alternative measures, shall be re-evaluated and documented in the clinical record every thirty days.

(4) A restrained resident shall have the restraints released every two hours for at least ten minutes; and the resident shall be repositioned, exercised, or provided range of motion and toileted as necessary.

(e) Antipsychotic drug administration shall be consistent with 63 O.S. 1-881.

[OAR Docket #20-668; filed 7-24-20]

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

[OAR Docket #20-669]

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PERMANENT final adoption

RULES:

Subchapter 13. Staff Requirements
310:675-13-14 [AMENDED]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

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n/a

INCORPORATIONS BY REFERENCE:

n/a

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GIST/ANALYSIS:

The amendments impose a direct-care service ratio of staff to residents based on a twenty-four hour schedule.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 13. STAFF REQUIREMENTS

310:675-13-14. Flexible Twenty-four-hour-based staff-scheduling and eligibility requirements

(a) **Implementing flexible twenty-four-hour-based staff scheduling.** Each facility seeking to implement the flexible staff scheduling provisions of 63:1-1925.2(B)(5) shall request in writing a determination from the Department that the facility is in compliance with the staffing requirements of 63:1-1925.2(B)(3). Nursing facilities subject to the Nursing Home Care Act and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID) with seventeen or more beds may implement twenty-four-hour-based staff scheduling consistent with the requirements established by law at 63 O.S. 1-1925.2(B)(5).

(b) **Requirements for eligibility.** Loss of twenty-four-hour-based staffing privileges. Determination of flexible staff scheduling privileges shall be based on compliance with the requirements at 63:1-1925.2(B)(6) and review of the staffing hours reported to the Oklahoma Health Care Authority. Reports shall be submitted to the Oklahoma Health Care Authority either through electronic mail or three and one quarter inch diskette in an electronic format approved by that agency. The reviewed hours shall be for the previous three (3) calendar months from the date the request for determination is received. The Department shall require a facility to maintain the shift based staff-to-resident ratios provided in 63 O.S. 1-1925(B)(3), if the facility has been determined by the Department to meet the disqualifying criteria in 63 O.S. 1-1925.2(B)(6), relating to staffing levels, fraudulent Quality of Care reports, or findings of substandard quality of care as a result of insufficient staffing. For intermediate care facilities for individuals with intellectual disabilities, loss of eligibility shall include findings of non-compliance with the Condition of Participation at 42 CFR 483.430 (2011), Facility Staffing.

(c) **Determination of compliance.** Eligibility requirements following loss of twenty-four-hour-based staffing. A determination of compliance with the requirements at 63:1-1925.2(B)(6)(a)(2) (4) will be based on staffing reports and surveys for the three (3) months preceding the date the request for determination is received by the Department. For intermediate care facilities for individuals with intellectual disabilities loss of eligibility shall include findings of

non-compliance with the Condition of Participation at 42 CFR 483.430, Facility Staffing. Prior to a facility resuming eligibility for twenty-four-hour-based staffing privileges, the Department shall require that the facility maintain the shift-based, staff-to-resident ratios in 63 O.S. 1-1925.2(B)(3) for at least three (3) months and has corrected any deficiency described in (b) of this section.

(d) **Failure to meet the direct care service rate.** Right to Appeal. Facilities that have been granted flexible staff scheduling privileges and receive a determination they have not met the direct care service rate shall lose their flexible staff scheduling privileges until the facility re-establishes their eligibility under the requirements at 63:1-1925.2(B)(6)(b) and (c). Facilities shall have the right to appeal and to the informal dispute resolution process with regard to penalties and sanctions imposed due to staffing noncompliance. [63:1-1925.2(E)].

(e) **Loss of eligibility based on surveys or fraud.** Quality of Care Report Requirement. Facilities seeking to re-establish flexible staff scheduling privileges after a loss of eligibility under 63:1-1925.2(B)(7) shall be subject to the requirements at OAC 310:675-13-14(a), (b) and (c). For intermediate care facilities for the mentally retarded loss of eligibility shall include findings of non-compliance with the Condition of Participation at 42 CFR 483.430, Facility Staffing. Staffing hours reported to the Oklahoma Health Care Authority shall be submitted electronically through OHCA's Quality of Care (QOC) portal.

(f) **Minimum staff in flexible staffing.** Twenty-four-hour-based staffing in intermediate care facilities for individuals with intellectual disabilities (ICFs/IIDs) with sixteen or less beds. A facility failing to meet the flexible staff scheduling requirement at 63:1-1925.2(B)(5)(b) shall be ineligible for flexible staff scheduling privileges until the facility re-establishes their eligibility under the requirements at 63:1-1925.2(B)(6)(b) and (c). ICFs/IIDs with sixteen or less beds shall be authorized to use the twenty-four-hour-based staffing requirements specified in (c) and (d) of 42 CFR 483.430 (2011).

(g) **Notification requirements.** The Department shall notify the facility and Oklahoma Health Care Authority on all decisions of eligibility.

(h) **Re-establishing eligibility.** A facility seeking to re-establish eligibility shall submit a written request to the Department. A request to re-establish eligibility is subject to the requirements at OAC 310:675-13-14(b).

(i) **Shift-based ratios for noncompliant facilities.** This paragraph implements 63:1-1925.2(F)(4).

(1) When the provisions of 63:1-1925.2(F)(1) are in effect, pursuant to 63:1-1925.2(B)(7), the following minimum direct-care-staff-to-resident ratios for non-compliant facilities shall apply in addition to other state and federal requirements related to the staffing of nursing facilities:

(A) From 7:00 a.m. to 3:00 p.m., one direct-care staff to every five residents,

(B) From 3:00 p.m. to 11:00 p.m., one direct-care staff to every seven residents, and

(C) From 11:00 p.m. to 7:00 a.m., one direct-care staff to every thirteen residents.

(2) When the provisions of 63:1-1925.2(F)(2) are in effect, pursuant to 63:1-1925.2(B)(7), the following minimum direct-care-staff-to-resident ratios for non-compliant facilities shall apply in addition to other state and federal requirements related to the staffing of nursing facilities:

- (A) From 7:00 a.m. to 3:00 p.m., one direct-care staff to every five residents,
- (B) From 3:00 p.m. to 11:00 p.m., one direct-care staff to every six residents, and
- (C) From 11:00 p.m. to 7:00 a.m., one direct-care staff to every eleven residents.

(3) When the provisions of 63:1-1925.2(F)(3) are in effect, pursuant to 63:1-1925.2(B)(7), the following minimum direct-care-staff-to-resident ratios for non-compliant facilities shall apply in addition to other state and federal requirements related to the staffing of nursing facilities:

- (A) From 7:00 a.m. to 3:00 p.m., one direct-care staff to every four residents,
- (B) From 3:00 p.m. to 11:00 p.m., one direct-care staff to every six residents, and
- (C) From 11:00 p.m. to 7:00 a.m., one direct-care staff to every eleven residents.

[OAR Docket #20-669; filed 7-24-20]

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

[OAR Docket #20-673]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
 - 310:677-1-2 [AMENDED]
 - 310:677-1-3 [AMENDED]
- Subchapter 3. Nurse Aide Training and Competency Examination Program [AMENDED]
 - 310:677-3-4 [AMENDED]
- Subchapter 5. Nurse Aide Registry
 - 310:677-5-2 [AMENDED]
- Subchapter 13. Certified Medication Aides
 - 310:677-13-1 [AMENDED]
- Subchapter 15. ~~Developmentally Disabled Direct~~ ICF/IID Care Aides [AMENDED]
 - 310:677-15-1 [AMENDED]
 - 310:677-15-2 [AMENDED]
 - 310:677-15-3 [AMENDED]
 - 310:677-15-4 [AMENDED]
 - 310:677-15-5 [AMENDED]
- Subchapter 17. Residential Care Aides
 - 310:677-17-1 [AMENDED]
- Subchapter 19. Adult Day Care Program Aides
 - 3110:677-19-1 [AMENDED]

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n/a

GIST/ANALYSIS:

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

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

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

310:677-1-2. Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. The singular includes the plural as necessary.

"Abuse" means *any intentional physical or mental injury or sexual assault on a resident of a facility; by any person.* [63 O.S. 1991 §1-1902].

"Certified medication aide" means a certified nurse aide who has passed a Department approved program for administering medications.

"Client" means an individual receiving services from a home care agency or employer.

"Clinical skills observer" means a registered nurse, qualified ~~mental retardation~~ intellectual disability professional,

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licensed practical nurse, registered pharmacist or other qualified professional who has at least one (1) year experience and has successfully completed a Department approved clinical skills observer training program.

"Commissioner" or **"Commissioner of Health"** means the Oklahoma State Commissioner of Health, the chief executive officer of the Department.

"Deemed" means meeting specified requirements to qualify for other categories of nurse aide certification.

"Department" means the *State Department of Health*. [63 O.S. 1991, § 1-1902(7)].

"Direct supervision" means a licensed nurse or other qualified individual actually observes a trainee performing tasks.

"Educational based program" means a nurse aide training and competency examination program sponsored by a State approved educational entity including, but not limited to, vocational technical schools, schools of higher learning or State certified educational facilities.

"Employer" means any of the following entities: facilities, agencies or programs including, but not limited to, nursing facilities, specialized facilities, residential care homes, adult day care centers, assisted living centers, or a nurse registry or a home care agency.

"Employer based program" means a nurse aide training and competency examination program sponsored by, or offered in, a nursing facility, a residential care home, an adult day care center, a home care agency, or a specialized facility.

"Entity" means the provider of a Department-approved nurse aide training and competency evaluation program including but not limited to an employer based or an educational based program provider.

"Examination" means a competency examination that includes a written portion and/or a clinical skills portion.

"Health related services" means those services provided to patients, clients, or residents that include but are not limited to the following: personal hygiene, transferring, range of motion, supervision or assistance in activities of daily living, basic nursing care such as taking temperature, pulse or respiration, positioning, incontinent care, identification of signs and symptoms of disease, and behavior management.

"ICF/IID" means an Intermediate Care Facility for Individuals with Intellectual Disabilities.

"Inservice education" means activities intended to assist the nurse aide to acquire, maintain, and/or increase competence in fulfilling the assigned responsibilities specific to the employer's expectations.

"Instructor" means a qualified professional who teaches in an approved training program.

"Licensed health professional" means a physician, dentist, podiatrist, chiropractor, physician assistant, nurse practitioner, pharmacist, physical, speech, or occupational therapist, registered nurse, licensed practical nurse, licensed social worker or licensed registered dietitian.

"Licensed nurse" means a registered nurse or a licensed practical nurse that is currently licensed by the Oklahoma Board of Nursing.

"Misappropriation of property" means the taking, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident or client without the effective consent of the resident or client or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of a resident's/client's property.

"Mistreatment" means a negligent act or personal wrong against a resident or client which causes the resident or client actual physical pain, discomfort or mental anguish. This type of personal wrong does not necessarily have to present external or visible signs of existence but does not include actions which are unavoidable.

"Neglect" means a failure to provide adequate medical or personal care or maintenance which results in physical or mental injury to a resident. [63 O.S. 1991, §1-1902.].

"Orientation" means the training for a particular job activity given to a new employee.

"Performance record" means a list of the major duties and skills to be learned in a nurse aide training program and the trainee's performance of each.

"Qualified professional" means an individual qualified to perform training and skills testing in an approved nurse aide training and competency program.

"Reciprocity" means the process that allows a certified nurse aide from another state to be listed in the Department's nurse aide registry.

"Reconsideration" means a process that allows an applicant to obtain reconsideration of an adverse decision on an application by submission of clarifying materials to the original decision-making body.

"Registry" means a Department maintained list of individuals who have successfully completed a nurse aide training and competency examination program or a competency examination program approved by the Department or who have been deemed or waived to meet the requirements.

"Specialized facility" means any home, establishment, or institution which offers or provides inpatient long-term care services on a twenty-four-hour basis to a limited category of persons requiring such services, including but not limited to a facility providing health or habilitation services for ~~mentally retarded or developmentally disabled persons~~ individuals with intellectual or developmental disabilities. [63:1-1902(11)]

"Supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual.

"Trainee" means an individual who is enrolled in and has begun, but has not completed, a nurse aide training program.

"Trainer" means a qualified person who teaches in a nurse aide training and competency examination program.

"Training and competency examination program" means a program approved by the Department to teach and evaluate individuals to work as a nurse aide.

"Waiver" means a process that allows an individual with acceptable qualifications to be placed in the Department's registry without meeting other required qualifications.

310:677-1-3. Applicability

(a) This Chapter shall apply to specified employers, nurse aides, certified medication aides and other unlicensed employees providing health related services, and training and competency evaluation programs.

(b) An employer shall not use an individual as a nurse aide unless the employer has consulted the Oklahoma Nurse Aide Registry to determine whether the individual is listed on the nurse aide registry and whether the individual has no confirmed findings of abuse, neglect or misappropriation of patient/resident/client property.

(c) The Department shall grant an exception to the nurse aide training requirements in 310:677-9-4 for home health aides, 310:677-11-4 for long term care aides, 310:677-13-4 for certified medication aides, 310:677-15-3 for ~~developmentally disabled direct~~ ICF/IID care aides, 310:677-17-3 for residential care aides and 310:677-19-3 for adult day care aides, and allow an individual to sit for the competency examination if the individual submits all information specified on the Training Exception Application (ODH Form 832), which requires the following:

- (1) Individual's full name and personal identifying information;
- (2) Telephone number and address to include street, city, state, and zip code;
- (3) Copy of official transcript documenting classroom and clinical training equal to or greater than the classroom and clinical training as prescribed in 310:677-9-4, 310:677-11-4, 310:677-13-4, 310:677-15-3, 310:677-17-3 and 310:677-19-3; and
- (4) Type of nurse aide training to be excepted.

(d) The Department shall grant to a graduate of an approved practical or registered nurse program located in the United States a waiver to be placed on the nurse aide registry if the following criteria are met:

- (1) The individual submits all information specified on the Department's Nurse Aide Training and Competency Evaluation Program Waiver Application (ODH Form 844), which requires the following:
 - (A) Individual's full name and personal identifying information;
 - (B) Telephone number and address to include street, city, state, and zip code;
 - (C) Photocopy of diploma from an approved practical or registered nurse program;
 - (D) Type of nurse aide training and competency testing requesting to be waived; and
 - (E) Identification of all states, territories and districts of the United States and other countries where the individual has practiced or been licensed, certified or registered as a nurse; and
- (2) The individual does not have a denied, revoked or suspended license or certificate or an administrative penalty or disciplinary action imposed by the Oklahoma Board of Nursing or similar agency in another state, territory or district of the United States or in another country, to be evidenced by the individual's attestation.

(e) The Department shall allow a graduate of an approved practical or registered nurse program located outside the United States a training exception and shall be authorized to sit for a nurse aide competency examination if the following criteria are met:

- (1) The individual submits the Foreign Graduate Training Exception Application (ODH Form 843), which requires the following:
 - (A) Individual's full name;
 - (B) Telephone number and address to include street, city, state, and zip code;
 - (C) The location outside of the United States where the individual received their nursing education and licensing examination if applicable;
 - (D) The type of nurse aide training requesting to be excepted;
 - (E) Documentation verifying legal entry and resident status in the United States including but not limited to a photocopy of a Social Security Card, Visa, Green Card or naturalization papers; and
 - (F) A photocopy of a certified, translated diploma and transcript in English; and
- (2) The individual does not have a denied, revoked or suspended license or certificate or an administrative penalty or disciplinary action imposed by the Oklahoma Board of Nursing or similar agency in another state, territory or district of the United States, to be evidenced by the individual's attestation.

(f) An individual who has not completed an approved Oklahoma Nurse Aide Training program and is submitting an application to be included on the Oklahoma Nurse Aide Registry as a certified nurse aide shall submit the following nonrefundable fee with the required completed application:

- (1) Deeming Application, fifteen dollar (\$15.00) fee applicable to each of the following deeming applications except (A) of this paragraph;
 - (A) Home Health Aide ~~Deemed~~ deemed to Long Term Care Aide (ODH Form 755) with no fee required;
 - (B) Home Health Aide ~~Deemed~~ deemed to ~~Developmentally Disabled Direct~~ ICF/IID Care Aide (ODH Form 836);
 - (C) Home Health Aide ~~Deemed~~ deemed to residential Care Aide (ODH Form 837);
 - (D) Home Health Aide ~~Deemed~~ deemed to Adult Day Care Aide (ODH Form 838);
 - (E) Long Term Care Aide ~~Deemed~~ deemed to ~~Developmentally Disabled Direct~~ ICF/IID Care Aide (ODH Form 830);
 - (F) Long Term Care Aide ~~Deemed~~ deemed to ~~residential~~ Residential Care Aide, (ODH Form 831);
 - (G) Long Term Care Aide ~~Deemed~~ deemed to Adult Day Care Aide, (ODH Form 839);
 - (H) ~~Developmentally Disabled Direct~~ ICF/IID Care Aide ~~Deemed~~ deemed to Residential Care Aide (ODH Form 834); and

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- (I) ~~Developmentally Disabled Direct ICF/IID Care Aide Deemed~~ Deemed to Adult Day Care Aide (ODH Form 835);
- (2) Home Health Aide Reciprocity Application (ODH Form 735), \$15.00 fee;
- (3) Training Exception Application (ODH Form 832), or Foreign Graduate Training Exception Application (ODH Form 843), \$15.00 fee; or
- (4) Nurse Aide Training and Competency Evaluation Program Waiver Application (ODH Form 844), \$15.00 fee.
- (5) The fees specified in (1) through (4) of this subsection apply to applications for home health aides, certified medication aides, ~~developmentally disabled direct ICF/IID~~ care aides, residential care aides, and adult day care aides. A fee shall not be charged on an application requesting certification as a long term care aide only.
- (g) An individual who has previously completed a Department approved Nurse Aide Training and Competency Evaluation Program and is unable to renew certification may obtain approval to take a retest by filing a Certified Nurse Aide Retest Application (ODH Form 841) if any of the following criteria are met:
- (1) The individual did not provide eight (8) hours of nursing or health related services for compensation during the twenty-four (24) months prior to expiration of the certification;
 - (2) The individual did not provide eight (8) hours of nursing or health related services for compensation up to twenty-four (24) months after expiration; or
 - (3) The individual's nurse aide certification has been expired for over two (2) years but less than three (3) years.
 - (4) A Certified Nurse Aide Retest Application (ODH Form 841) submitted by a home health aide, ~~developmentally disabled direct ICF/IID~~ care aide, residential care aide, or adult day care aide shall be accompanied by a fifteen dollar (\$15.00) nonrefundable fee.
 - (5) An individual who fails the approved retest shall be required to retrain before taking any subsequent retests.
- (h) An individual may request a duplicate or amended certification card by submitting a Duplicate or Amended Nurse Aide Card Application (ODH Form 738) with a nonrefundable ten dollar (\$10.00) fee. A fee shall not be charged on an application requesting a duplicate or amended long term care aide certification card.

SUBCHAPTER 3. NURSE AIDE TRAINING AND COMPETENCY EXAMINATION PROGRAM

310:677-3-4. Program requirements

- (a) Before the Department approves a nurse aide training and competency examination program or a competency examination program, the Department shall determine whether the nurse aide training and competency examination program or the competency examination program meets the minimum requirements.

- (b) The Department shall not approve, or shall withdraw approval, of an employer based program when the employer has been assessed the following penalties or actions by the Department:

- (1) License suspended or revoked or had a conditional license issued.
 - (2) An administrative money penalty of five thousand dollars (\$5,000) or more for deficiencies cited under state licensure.
 - (3) Closed or had its residents or clients transferred pursuant to the Department's action.
 - (4) Enforcement actions based on the Department's authority under Medicare and Medicaid certification programs, except for facilities certified as Intermediate Care Facilities for ~~the Mentally Retarded~~ Individuals with Intellectual Disabilities.
 - (5) For Intermediate Care Facilities for ~~the Mentally Retarded~~ Individuals with Intellectual Disabilities, repeated enforcement actions based on the Department's authority.
- (c) The Department may withdraw approval of a nurse aide training and competency examination program sponsored by an entity when the following occurs:
- (1) The entity has been determined by the Department to have a competency examination failure rate greater than fifty (50) per cent during a calendar year.
 - (2) The entity no longer meets, at a minimum, the following requirements to be a certified program:
 - (A) The training program falls below the required clock hours of training;
 - (B) The curriculum does not include at least the subjects specified under 310:677-9-4 Home Health Aides, 310:677-11-4 Long Term Care Aides, 310:677-13-4 Certified Medication Aides, 310:677-15-3 ~~Developmentally Disabled Direct ICF/IID~~ Care Aides, 310:677-17-3 Residential Care Aides, and or 310:677-19-3 Adult Day Care Aides;
 - (C) A minimum of 16 hours of specified training for Long Term Care Aides is not provided prior to direct contact with residents;
 - (D) At least sixteen (16) hours of supervised practical training under the direct supervision of a registered nurse or a licensed practical nurse. The sixteen (16) hours does not include the administration of the skills examination.
 - (3) The entity uses an uncertified individual as a nurse aide for longer than four months. To use an uncertified individual as a nurse aide for four months or less, an entity must have a temporary emergency waiver approved pursuant to 63 O.S. Section 1-1950.3.
 - (4) The onsite review determines the training program is out of compliance with the requirements of 63 O.S. Section 1-1950.1, 1-1950.3 or 1-1951, or OAC 310:677.
- (d) The Department shall withdraw approval of a nurse aide training and competency evaluation program if:
- (1) The entity refuses to permit the Department to make unannounced visits; or

- (2) The entity falsifies records of competency or training.
- (e) Withdrawal of approval shall be for a period of two (2) years or until the Department is assured through review that the entity complies with the requirements.
- (f) If the Department withdraws approval of a nurse aide training and competency examination program, the Department shall:
 - (1) Notify the entity in writing, indicating the reason for withdrawal of approval.
 - (2) Allow the trainees who have started a training and competency examination program to complete the program or allow the trainees who have started the program to transfer to another approved program.
- (g) A program entity may request reconsideration of the Department's decision in accordance to Chapter 2 of this Title and appealed according to the Administrative Procedures Act.
- (h) The entity shall notify the trainee in writing, that successful completion of the nurse aide training and competency examination program shall result in the individual being listed in the Department's nurse aide registry and shall retain a copy of such notice, signed by the trainee, in the trainee's file.
- (i) A trainee shall not perform any services for which the trainee has not been trained and found proficient by an instructor.

SUBCHAPTER 5. NURSE AIDE REGISTRY

310:677-5-2. Registry operation

- (a) The Department shall maintain overall operation of the registry.
- (b) Only the Department may place in the registry findings of abuse, neglect, mistreatment or misappropriation of property.
- (c) The nurse aide registry shall indicate which individuals:
 - (1) Successfully completed a nurse aide training and competency examination;
 - (2) Were given a training exception to bypass training requirements and sit for the competency examination;
 - (3) Had the nurse aide training and competency examination program requirements waived; or
 - (4) Were placed on the Oklahoma Nurse Aide Registry via reciprocity from another state.
- (d) A home health aide, long term care aide, ~~developmentally disabled direct~~ICF/IID care aide, residential care aide, and adult day care aide shall renew individual certification once every two (2) years. The individual certified as a home health aide, ~~developmentally disabled direct~~ICF/IID care aide, residential care aide, or adult day care aide shall file a Recertification Application (ODH Form 717). The individual certified as a long term care aide shall file a Recertification Application for Long Term Care Aide (ODH Form 840). Each recertification application requires:
 - (1) Personal identifying and contact information for the applicant;
 - (2) Documentation that the applicant has provided at least eight (8) hours of nursing or health related services for compensation during the preceding 24 months. On

and after July 1, 2008, the documentation shall consist of one of the following:

- (A) A statement signed by the administrator or the administrator's representative for the licensed nursing facility, specialized facility, residential care home, home health or home care agency, adult day care center, assisted living center, continuum of care facility, Oklahoma Department of Veterans Affairs nursing facility, or Oklahoma correctional facility where the applicant provided services;
- (B) A statement signed by a physician or nurse under whose supervision the applicant provided services; or
- (C) A check stub, IRS Form W-2 or similar proof of wages paid to the applicant by a licensed nursing facility, specialized facility, residential care home, home health or home care agency, adult day care center, assisted living center, continuum of care facility, Oklahoma Department of Veterans Affairs nursing facility, or Oklahoma correctional facility; and
- (3) An oath of truthfulness and completeness to be signed by the applicant.
- (e) A home health aide, ~~developmentally disabled direct~~ICF/IID care aide, residential care aide, or adult day care aide shall pay a ten dollar (\$10.00) fee for the processing and renewal of certifications and for replacement of a wallet card for change of name or other reason.

SUBCHAPTER 13. CERTIFIED MEDICATION AIDES

310:677-13-1. General requirements

- (a) An individual shall be able to read, write, and speak English and be certified in good standing as a home health aide, a long term care aide, or a ~~developmentally disabled direct~~ICF/IID care aide listed in the Department's Nurse Aide Registry, prior to admission to a State approved certified medication aide training program. The Department shall make available an attestation form that training programs may use for admission to certified medication aide training.
- (b) A certified medication aide shall complete at least eight (8) hours of continuing education every twelve (12) months, excluding the first year of certification, from a State approved program. A record of successful completion shall be kept in the certified medication aide's personnel file.
- (c) An employer shall not use as a certified medication aide any individual who does not comply with 63 O.S. Section 1-1950.3(E), OAC 310:677, and the employer's policies and procedures.
- (d) A certified medication aide shall renew certification every 12 months. Recertification requires the following:
 - (1) Documentation of completion of at least eight (8) hours of continuing education every twelve (12) months, excluding the first year after certification as a medication aide. Classroom and supervised practical training hours completed by a CMA in a Department-approved advanced

training program may count towards the eight required hours of continuing education;

(2) Current certification as a long term care aide, home health aide or ~~developmentally disabled direct~~ ICF/IID care aide. CMAs may also be certified in the other two (2) categories in addition to the required certification as a long term care aide, home health aide and ~~developmentally disabled direct~~ ICF/IID care aide; and

(3) Current listing in the nurse aide registry.

(e) The Department shall approve certified medication aide training programs that meet the requirements of OAC 310:677-13-3 through 13-5, and 310:677-13-9.

(f) The Department shall review, approve or disapprove a Certified Medication Aide Continuing Education Program application and notify the entity of its action within thirty (30) days of the request or receipt of additional information from the applicant.

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

(1) "Stable diabetes" means diabetes associated with a blood glucose level consistently between 80 and 140 milligrams per deciliter (mg/dl) fasting and less than or equal to 180 mg/dl after a meal, and/or a Hemoglobin A1c (HbA1c) at or below 7.0 within the last three months.

(2) "Unstable diabetes" means:

(A) A non-acutely ill person with blood glucose levels more than three times over a six week period that are under 80 mg/dl or more than 140 mg/dl fasting, or more than 180 mg/dl two hours after a meal;

(B) A person with diabetes who has prescriptions for both insulin and glucagon;

(C) A person with Type I diabetes who experiences hypoglycemia unawareness;

(D) A person who is newly diagnosed with diabetes and for whom insulin is prescribed; or

(E) A person who has been previously diagnosed with diabetes and now requires insulin administration for management. They may be considered stable again when their glucose is maintained in the stable range specified in subsection (g)(1) of this section, which may include maintaining an HbA1c at or below 7.0.

(3) "Newly diagnosed" means a person who now has a diagnosis of either Type I or Type II diabetes, has a new prescription for insulin, has not been diagnosed with diabetes in the past and who does not have stable diabetes.

SUBCHAPTER 15. ~~DEVELOPMENTALLY DISABLED DIRECT~~ ICF/IID CARE AIDES

310:677-15-1. Deemed to meet state certification requirements

(a) A certified ~~developmentally disabled~~ ICF/IID care aide is deemed to meet the nurse aide certification requirements for the following employers after successful completion of at least sixteen (16) hours of orientation specific to the facility

population. Documentation of the sixteen (16) hours of orientation shall be submitted to the Department and the certified ~~developmentally disabled~~ ICF/IID care aide will be placed on the registry as a certified residential care aide or a certified adult day care aide. The employers to which this subsection applies are:

(1) Residential care.

(2) Adult day care.

(b) The Department shall deem a certified long term care aide or a home care aide who has at least sixteen (16) hours of training specific to ~~the developmentally disabled client population~~ individuals with intellectual or developmental disabilities to meet the requirements for a ~~developmentally disabled direct~~ ICF/IID care aide. Documentation of the sixteen (16) hours of training shall be submitted to the Department and the certified long term care nurse aide or the certified home care nurse aide will be added to the registry as being certified as a ~~developmentally disabled direct~~ ICF/IID care aide.

310:677-15-2. Instructor qualifications

(a) The instructor for training ~~developmentally disabled direct~~ ICF/IID care aides shall be a licensed nurse or a qualified ~~mental retardation~~ intellectual disability professional who has at least one (1) year experience in the provision of services in a facility for the developmentally disabled.

(b) Other personnel from the health professions may supplement the instructor as required by the curriculum.

310:677-15-3. Curriculum

(a) The ~~developmentally disabled direct~~ ICF/IID care aide training program shall include at least seventy-five (75) hours of classroom and supervised practical training or the equivalent.

(b) The ~~developmentally disabled direct~~ ICF/IID care aide training program shall include, but is not limited to, each of the following subject areas:

(1) Ethical conduct.

(2) Resident's rights.

(3) Principles of safety.

(4) Infection control techniques.

(5) Nutrition and hydration.

(6) Elements and changes of body functions.

(7) Basic nursing skills.

(8) Communication skills.

(9) Mobility.

(10) Hygiene, personal care, and comfort.

(11) Terminology, principles, and concepts of cognitive impairment.

(A) Characteristics of cognitive impairment.

(B) Discern between different levels of ~~mental retardation~~ intellectual disability.

(C) Principles of assessment tools.

(D) Terminology of active treatment.

(12) Psychosocial needs.

(A) Behavioral management techniques.

(B) Identification of psychosocial needs.

(C) Death and dying.

- (D) Recognizing deviant behavior.
- (E) Socialization skills.
- (13) Independent living skills.
 - (A) Promoting physical and mental independence.
 - (B) Promoting principles of normalization and community integration.
- (14) Active treatment components.
 - (A) Interdisciplinary team concepts and roles.
 - (B) Components of individual program plans.
 - (C) Using individual program plans.
 - (D) Proper documentation techniques.

310:677-15-4. Competency and skills examination

- (a) The written or oral examination shall be administered by a Department approved program. The skills examination shall be performed in a facility or laboratory setting comparable to the setting in which the individual will function as a ~~developmentally disabled direct~~ ICF/IID care aide.
- (b) The clinical skills observer shall be a licensed nurse or a qualified ~~mental retardation~~ intellectual disability professional.

310:677-15-5. Recertification

- (a) The training program shall inform the certified ~~developmentally disabled direct~~ ICF/IID care aide that they shall complete a new nurse aide training and competency examination or competency examination if, upon applying for renewal of certification, the nurse aide has not provided at least eight (8) hours of nursing or health related services for compensation during the previous twenty-four (24) months.
- (b) The ~~specialized facility~~ ICF/IID shall ensure that all certifications are current and not expired.

SUBCHAPTER 17. RESIDENTIAL CARE AIDES

310:677-17-1. Deemed to meet state certification requirements

- (a) The Department shall deem a certified residential care aide to meet the adult day care program aides certification requirements after successful completion of at least sixteen (16) hours of training specific to the facility population.
- (b) The Department shall deem a certified long term care aide, a certified home care aide or a certified ~~developmentally disabled direct~~ ICF/IID care aide who has at least sixteen (16) hours of training specific to the residential care population to meet the requirements for a certified residential care aide. Documentation of the sixteen (16) hours of training shall be submitted to the Department and the certified nurse aide will be listed on the registry as a certified residential care aide.

SUBCHAPTER 19. ADULT DAY CARE PROGRAM AIDES

310:677-19-1. Deemed to meet state certification requirements

- (a) The Department shall deem a certified adult day care program aide to meet the nurse aide certification requirements for a residential care employer after successful completion of at least sixteen (16) hours of training specific to the facility population. Documentation of the sixteen (16) hours shall be submitted to the Department and the certified adult day care aide will be placed on the registry as a certified residential care aide.
- (b) The Department shall deem a certified long term care aide, a certified home care aide or a certified ~~developmentally disabled direct~~ ICF/IID care aide who has at least sixteen (16) hours of training specific to the adult day care population to meet the requirements for certification as an adult day care aide. Documentation of the sixteen (16) hours of training shall be submitted to the Department and the certified long term care aide, certified home care aide or certified ~~developmentally disabled direct~~ ICF/IID care aide shall be certified as a certified adult day care aide.

[OAR Docket #20-673; filed 7-24-20]

**TITLE 310. OKLAHOMA STATE
DEPARTMENT OF HEALTH
CHAPTER 681. MEDICAL MARIJUANA
CONTROL PROGRAM REGULATIONS**

[OAR Docket #20-670]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

- 310:681-1-1. [AMENDED]
- 310:681-1-2. [AMENDED]
- 310:681-1-3. [AMENDED]
- 310:681-1-4. [AMENDED]
- 310:681-1-5. [AMENDED]
- 310:681-1-6. [AMENDED]
- 310:681-1-7. [AMENDED]
- 310:681-1-8. [AMENDED]
- 310:681-1-9. [AMENDED]
- 310:681-1-9.1. [AMENDED]

Subchapter 2. Medical Marijuana Licenses

- 310:681-2-1. [AMENDED]
- 310:681-2-2. [AMENDED]
- 310:681-2-3. [AMENDED]
- 310:681-2-3.1. [AMENDED]
- 310:681-2-4. [AMENDED]
- 310:681-2-5. [AMENDED]
- 310:681-2-8. [NEW]
- 310:681-2-9. [NEW]
- 310:681-2-10. [NEW]

Subchapter 3. ~~Transportation~~ Transporter License [AMENDED]

- 310:681-3-1. [AMENDED]
- 310:681-3-2. [AMENDED]
- 310:681-3-3. [NEW]
- 310:681-3-4. [NEW]
- 310:681-3-5. [NEW]
- 310:681-3-6. [NEW]

Subchapter 4. ~~Medical Research Facilities and Education Facilities~~ License [AMENDED]

- 310:681-4-1. [NEW]
- 310:681-4-1.1. [NEW]

Permanent Final Adoptions

310:681-4-2. [NEW]
310:681-4-3. [NEW]
310:681-4-4. [NEW]
310:681-4-5. [NEW]
310:681-4-6. [NEW]

Subchapter 5. ~~Commercial Establishments~~ Medical Marijuana Businesses

310:681-5-1. [AMENDED]
310:681-5-1.1. [AMENDED]
310:681-5-2. [AMENDED]
310:681-5-3. [AMENDED]
310:681-5-3.1. [NEW]
310:681-5-3.2. [NEW]
310:681-5-4. [AMENDED]
310:681-5-6. [AMENDED]
310:681-5-6.1. [AMENDED]
310:681-5-8. [AMENDED]
310:681-5-8.1. [AMENDED]
310:681-5-9. [AMENDED]
310:681-5-10. [AMENDED]
310:681-5-12. [AMENDED]
310:681-5-17. [AMENDED]
310:681-5-18. [AMENDED]

Subchapter 6. ~~Commercial Facilities~~ Licensees

310:681-6-1. [AMENDED]
310:681-6-2. [AMENDED]
Subchapter 7. Packaging and Labeling, and Advertising [AMENDED]

310:681-7-1. [AMENDED]
310:681-7-2. [AMENDED]
310:681-7-3. [NEW]

Subchapter 8. Laboratory Testing

310:681-8-1. [NEW]
310:681-8-2. [NEW]
310:681-8-3. [NEW]
310:681-8-4. [NEW]
310:681-8-5. [NEW]

Subchapter 9. Waste Disposal Facilities [NEW]

310:681-9-1. [NEW]
310:681-9-1.1. [NEW]
310:681-9-2. [NEW]
310:681-9-3. [NEW]
310:681-9-4. [NEW]
310:681-9-5. [NEW]
310:681-9-6. [NEW]
310:681-9-7. [NEW]
310:681-9-8. [NEW]
310:681-9-9. [NEW]

Subchapter 10. Receivership [NEW]

310:681-10-1. [NEW]
310:681-10-2. [NEW]
310:681-10-3. [NEW]
310:681-10-4. [NEW]

Appendix A. Testing Thresholds [NEW]

Appendix B. LQC Results [NEW]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S., § 1-104

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 13, 2019

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Approved by Governor's declaration on June 25, 2020

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Subchapter 1. General Provisions

310:681-1-1 [AMENDED]
310:681-1-2 [AMENDED]
310:681-1-3 [AMENDED]
310:681-1-4 [AMENDED]
310:681-1-5 [AMENDED]
310:681-1-6 [AMENDED]
310:681-1-7 [AMENDED]
310:681-1-8 [AMENDED]
310:681-1-9 [AMENDED]
310:681-1-9.1 [AMENDED]

Subchapter 2. Medical Marijuana Licenses

310:681-2-1 [AMENDED]
310:681-2-2 [AMENDED]
310:681-2-3 [AMENDED]
310:681-2-3.1 [AMENDED]
310:681-2-4 [AMENDED]
310:681-2-5 [AMENDED]
310:681-2-8 [NEW]
310:681-2-9 [NEW]
310:681-2-10 [NEW]

Subchapter 3. ~~Transportation~~ Transporter License [AMENDED]

310:681-3-1 [AMENDED]
310:681-3-2 [AMENDED]
310:681-3-3 [NEW]
310:681-3-4 [NEW]
310:681-3-5 [NEW]
310:681-3-6 [NEW]

Subchapter 4. ~~Medical~~ Research Facilities and Education Facilities [AMENDED]

310:681-4-1 [NEW]
310:681-4-1.1 [NEW]
310:681-4-2 [NEW]
310:681-4-3 [NEW]
310:681-4-4 [NEW]
310:681-4-5 [NEW]
310:681-4-6 [NEW]

Subchapter 5. Commercial Establishments

310:681-5-1 [AMENDED]
310:681-5-1.1 [AMENDED]
310:681-5-2 [AMENDED]
310:681-5-3 [AMENDED]
310:681-5-3.1 [NEW]
310:681-5-3.2 [NEW]
310:681-5-4 [AMENDED]
310:681-5-6 [AMENDED]
310:681-5-6.1 [AMENDED] 310:681-5-7 [AMENDED]
310:681-5-8 [AMENDED]
310:681-5-8.1 [AMENDED]
310:681-5-9 [AMENDED]
310:681-5-10 [AMENDED]
310:681-5-12 [AMENDED]
310:681-5-18 [AMENDED]

Subchapter 6. Commercial Facilities

310:681-6-1 [AMENDED]
310:681-6-2 [AMENDED]

Subchapter 7. Packaging and Labeling, and Advertising [AMENDED]

310:681-7-1 [AMENDED]
310:681-7-2 [AMENDED]
310:681-7-3 [NEW]

Subchapter 8. Laboratory Testing

310:681-8-1 [NEW]
310:681-8-2 [NEW]
310:681-8-3 [NEW]
310:681-8-4 [NEW]
310:681-8-5 [NEW]

Subchapter 9. Waste Disposal Facilities [NEW]

310:681-9-1 [NEW]
310:681-9-1.1 [NEW]
310:681-9-2 [NEW]
310:681-9-3 [NEW]
310:681-9-4 [NEW]

310:681-9-5 [NEW]
310:681-9-6 [NEW]
310:681-9-7 [NEW]
310:681-9-8 [NEW]
Subchapter 10. Receivership [NEW]
310:681-10-1 [NEW]
310:681-10-2 [NEW]
310:681-10-3 [NEW]
310:681-10-4 [NEW]

Gubernatorial approval:

October 31, 2019

Register publication:

37 Ok Reg 168

Docket number:

19-810

INCORPORATIONS BY REFERENCE:**Incorporated standards:**

Title 21, Part 101 of the Code of Federal Regulations (CFR), as of August 22, 2018

16 CFR § 1700.15 (1995)
16 CFR § 1700.20 (1995)
21 CFR Part 120
21 CFR § 101.1
21 CFR § 101.2
21 CFR § 101.9
29 CFR § 1910.1450
45 CFR § 46
ISO/IEC Standard 17025
Food and Drug Administration Food Labeling Guide

Incorporating rules:

310:681-1-4
310:681-5-8.1
310:681-4-3(c)(11)
310:681-5-8.1(e)(1)
310:681-5-8.1(e)(2)(F)
310:681-5-8.1(e)(4)
310:681-5-8.1(f)
310:681-8-2(d)
310:681-8-2(h)(10)
310:681-8-5(b)

Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-4200

GIST/ANALYSIS:

The Title of Chapter 681 is changed to Medical Marijuana Regulations. The proposed new and amended rules contain emergency rules that the Oklahoma State Department of Health proposes to adopt as permanent rules. The proposed rulemaking would make permanent the 2019 emergency rules at OAC 310:681 which the Department adopted to fulfill requirements and to provide procedures and processes necessary to implement legislative changes mandated by SB162, HB2612, HB2601, SB882, HB2613, SB 532, and SB1030, as codified under 63 O.S. §§ 420 *et seq.*, 63 O.S. §§ 427.1 *et seq.*, 63 O.S. §§ 427a *et seq.* Patient license changes include the removal of board certification as a requirement for physicians recommending medical marijuana, as well as the addition of physicians licensed by the Board of Podiatric Medical Examiners as physicians that can provide recommendations. The requirement that patients smile with their mouth closed in their picture has been removed. The processing time for patient licenses changed from 14 calendar days to 14 business days, and a reduced application fee for 100% disabled veterans has been established. Medical marijuana business changes that are addressed in the proposed permanent rules include adding a definition for business licensee to be consistent with 63 O.S. §427.14, the increased application processing timeline, renewal application process, new residency documentation requirements, and approved waste disposal method to destroy root balls, stems, fan leaves, and seeds. Additionally, medical marijuana businesses will need to provide a certificate of compliance with zoning classifications, municipal ordinances, and all applicable safety, electrical, fire, plumbing, waste, construction, and building specification codes. The definition of school is modified to now include preschools for the purposes of the 1,000 feet requirement for dispensaries. The proposed rules establish new business compliance components that include the authority for certain business types to sell to other business types, the requirement

to participate in a seed-to-sale inventory tracking system, to test harvest and product batches, and to comply with new packaging and labeling requirements. The proposed permanent rules address several new license categories: transporter, transporter agent, short-term patient, research facility, education facility, testing laboratory, and waste disposal facility (including waste disposal permits). The rule proposals include provisions for testing laboratory operating requirements and sampling requirements. It also modifies testing requirements and testing thresholds and provides provisions regarding remediation of medical marijuana and medical marijuana products. The proposed rules also include provisions related to a quality assurance laboratory for oversight of licensed testing laboratories and inventory management for current and new license.

CONTACT PERSON:

Audrey C. Talley, Agency Rules Liaison, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-9444, ext. 56535. AudreyT@health.ok.gov.

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OKLAHOMA STATE DEPARTMENT OF HEALTH, 1000 NORTHEAST TENTH STREET, OKLAHOMA CITY, OKLAHOMA 73117-1207 AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B).:

The proposed new and amended rules contain emergency rules that the Oklahoma State Department of Health proposes to adopt as permanent rules. The proposed rulemaking would make permanent the 2019 emergency rules at OAC 310:681 which the Department adopted to fulfill requirements and to provide procedures and processes necessary to implement legislative changes mandated by SB162, HB2612, HB2601, SB882, HB2613, SB 532, and SB1030, as codified under 63 O.S. §§ 420 *et seq.*, 63 O.S. §§ 427.1 *et seq.*, 63 O.S. §§ 427a *et seq.* Patient license changes include the removal of board certification as a requirement for physicians recommending medical marijuana, as well as the addition of physicians licensed by the Board of Podiatric Medical Examiners as physicians that can provide recommendations. The requirement that patients smile with their mouth closed in their picture has been removed. The processing time for patient licenses changed from 14 calendar days to 14 business days, and a reduced application fee for 100% disabled veterans has been established. Medical marijuana business changes that are addressed in the proposed permanent rules include adding a definition for business licensee to be consistent with 63 O.S. §427.14, the increased application processing timeline, renewal application process, new residency documentation requirements, and approved waste disposal method to destroy root balls, stems, fan leaves, and seeds. Additionally, medical marijuana businesses will need to provide a certificate of compliance with zoning classifications, municipal ordinances, and all applicable safety, electrical, fire, plumbing, waste, construction, and building specification codes. The definition of school is modified to now include preschools for the purposes of the 1,000 feet requirement for dispensaries. The proposed rules establish new business compliance components that include the authority for certain business types to sell to other business types, the requirement to participate in a seed-to-sale inventory tracking system, to test harvest and product batches, and to comply with new packaging and labeling requirements. The proposed permanent rules address several new license categories: transporter, transporter agent, short-term patient, research facility, education facility, testing laboratory, and waste disposal facility (including waste disposal permits). The rule proposals include provisions for testing laboratory operating requirements and sampling requirements. It also modifies testing requirements and testing thresholds and provides provisions regarding remediation of medical marijuana and medical marijuana products. The proposed rules also include provisions related to a quality assurance laboratory for oversight of licensed testing laboratories and inventory management for current and new license. The name of the rules is changed to "Medical Marijuana Regulations". The full text of the rule may be obtained from the "Contact Person" at the Oklahoma State Department of Health.

[OAR Docket #20-670; filed 7-24-20]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #20-432]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Organization and Administration

317:1-1-4 [AMENDED]

317:1-1-6 [AMENDED]

317:1-1-7 [AMENDED]

(Reference APA WF # 19-11)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; and the Oklahoma Health Care Authority Board

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 21, 2019

COMMENT PERIOD:

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PUBLIC HEARING:

January 15, 2020

ADOPTION:

January 22, 2020

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

January 23, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

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EFFECTIVE:

September 14, 2020

SUPERSEDED EMERGENCY ACTIONS:

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Subchapter 1. Organization and Administration

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317:1-1-6 [AMENDED]

317:1-1-7 [AMENDED]

Gubernatorial approval:

October 2, 2019

Register publication:

37 Ok Reg 99

Docket number:

19-780

(Reference APA WF # 19-11)

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will comply with Oklahoma Senate Bill (SB) 456, which directed the reorganization of the OHCA Board. The seven-member Board was replaced with a nine-member Board. Further revisions establish that the chair and vice-chair elections are held at the last regular meeting before January 1 of each year. Other revisions are needed to correct outdated language.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 14, 2020:**

SUBCHAPTER 1. ORGANIZATION AND ADMINISTRATION

317:1-1-4. Organization and meetings

(a) The Authority Board consists of ~~seven (7)~~nine (9) members. Section 5007 of Title 63 of the Oklahoma Statutes (O.S.) provides for their appointment and service.

(b) A chair and a ~~Vice Chair~~vice-chair shall be elected by a majority of the members of the Board. The terms of office of the ~~Chair and Vice Chair~~chair and vice-chair shall be one (1) year beginning July/January 1 of each year. A member elected to serve as ~~Chair or Vice Chair~~chair or vice-chair may be elected to serve more than one (1) term. Elections will be held at the last regular meeting before July/January 1. However, in the event the last regular meeting before July/January 1 shall be canceled for any reason, the election may be held at a specially-scheduled meeting or, if it is not possible to schedule a special meeting, at the next ~~regularly scheduled~~regularly-scheduled meeting. In the event an election ~~can~~cannot be conducted prior to July/January 1 of any year, the ~~Chair and Vice Chair~~chair and vice-chair who are in office ~~June 30~~December 31 shall continue their terms until an election is held.

(c) The chair will preside over meetings and perform other duties as required by the Authority ~~{65:5008(A)}~~.

(d) A majority of the members of the Board shall constitute a quorum for the transaction of business and for taking any official action. Any action or decision of the Board requires an affirmative vote of at least a majority of the members present ~~{63:5007(D)}~~[63 O.S. § 5007(D)].

(e) All meetings of the Authority Board will be conducted in accordance with the Open Meetings Meeting Act, ~~Sections 301 through 314 of Title 25 of the Oklahoma Statutes~~25 O.S. §§ 301 - 314.

317:1-1-6. ~~Cancellation~~Emergency cancellation of meetings

The ~~Chairman~~chair, or the vice-chair in the chair's absence, shall have the power to cancel or reschedule any regular or special meeting of the Authority due to anticipated lack of quorum, inclement weather, or other emergency. Notice ~~of cancellation of said meeting~~thereof shall be ~~posted~~filed with the Secretary of State and publicly posted as soon as reasonably possible ~~and in the same manner as the agenda~~.

317:1-1-7. Minutes of the Authority

A summary shall be made of all proceedings before the Authority which shall show those members present and absent, all matters considered, all actions taken, and the vote of each member on any motion, and shall be made public, ~~as prescribed in OAC 317:1-1-10(e)~~on the Authority's website.

[OAR Docket #20-432; filed 6-26-20]

**TITLE 317. OKLAHOMA HEALTH CARE
AUTHORITY
CHAPTER 2. GRIEVANCE PROCEDURES
AND PROCESS**

[OAR Docket #20-434]

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317:2-1-2 [AMENDED]

317:2-1-6 [REVOKED]

317:2-1-13 [AMENDED]

317:2-1-18 [NEW]

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AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 of Title 63 of Oklahoma Statutes; and the Oklahoma Health Care Authority Board, Senate Bill 509

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n/a

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The proposed revisions will comply with Oklahoma Senate Bill (SB) 509, which was signed into law on April 16, 2019. SB 509 directed the OHCA to revise current step therapy protocols for medications approved by the Drug Utilization Review (DUR) Board and provide for exceptions to the drug step therapy protocol. The exception applies to cases when: the required prescribed drug will likely cause an adverse reaction or harm; the prescription drug will likely be ineffective; the patient has already tried the prescription drug and discontinued use; the prescription drug is not in the best interest of the patient; or the patient is stable on another prescription drug. Finally, revisions will establish an appeals process for step therapy exception requests that have been denied. Other revisions are needed to correct outdated language.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

**SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 14, 2020:**

317:2-1-2. Appeals

(a) Request for ~~Appeal~~appeals.

(1) For the purpose of calculating the timeframe for requesting an administrative appeal of an agency action, the date on the written notice shall not be included. The last day of the ~~thirty day~~ (30 day) timeframe shall be included, unless it is a legal holiday as defined by Title 25 of the Oklahoma Statutes (O.S.) § Section (§) 82.1, or any other day the Oklahoma Health Care Authority (OHCA) is closed or closes early, in which case, the timeframe runs until the close of the next full business day.

(2) An appeals request that an aggrieved member or provider sends via mail is deemed filed on the date that the agency receives it.

(b) ~~Member Process Overview~~process overview.

(1) The appeals process allows a member to appeal a decision relating to program benefits. Examples are decisions involving medical services, prior authorizations for medical services, or discrimination complaints.

(2) In order to initiate an appeal, the member must file a LD-1 (Member Complaint/Grievance Form) within thirty (30) calendar days of the date the OHCA sends written notice of its action, in accordance with Oklahoma Administrative Code (OAC) 317:2-1-2(a), above, or, in matters in which a formal notice is not sent by the agency, within thirty (30) days of the date on which the member knew or should have known the facts or circumstances serving as the basis for appeal.

(3) If the LD-1 form is not received timely, the ~~Administrative Law Judge~~administrative law judge (ALJ) will cause to be issued a letter stating the appeal will not be heard. In the case of tax warrant intercept appeals, if the LD-1 form is not received by OHCA within the timeframe pursuant to 68 O.S. § 205.2, OHCA similarly will cause to be issued a letter stating the appeal will not be heard because it is untimely.

(4) If the LD-1 form is not completely filled out or if necessary documentation is not included, then the appeal will not be heard.

(5) OHCA will advise members that if assistance is needed in reading or completing the grievance form, arrangements will be made to provide such assistance.

(6) Upon receipt of the member's appeal, a fair hearing before the ALJ will be scheduled. The member will be notified in writing of the date and time of the hearing. The member must appear at the hearing, either in person or telephonically. Requests for a telephone hearing must be received in writing on OHCA's LD-4 (Request for Telephonic Hearing) form no later than ten (10) calendar days prior to the scheduled hearing date. Telephonic hearing requests will only be granted by the OHCA's ~~Chief Executive Officer~~chief executive officer (CEO) or his/her designee, at his/her sole discretion, for good cause shown, including, for example, the member's physical condition, travel distances, or other limitations that either preclude

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an in-person appearance or would impose a substantial hardship on the member.

(7) The hearing shall be conducted according to OAC 317:2-1-5. The ALJ's decision may be appealed to the CEO of the OHCA, which is a record review at which the parties do not appear (OAC 317:2-1-13).

(8) Member appeals are ordinarily decided within ninety (90) days from the date on which the member's timely request for a fair hearing is received, ~~unless, in accordance with Section 431.244(f) of Title 42 of the Code of Federal Regulations:~~

(A) ~~The Appellant~~appellant was granted an expedited appeal pursuant to OAC 317:2-1-2.5;

(B) ~~The~~ OHCA cannot reach a decision because the ~~Appellant~~appellant requests a delay or fails to take a required action, as reflected in the record; ~~or~~

(C) There is an administrative or other emergency beyond OHCA's control, as reflected in the record; ~~or~~

(D) The appellant filed a request for an appeal of a denied step therapy exception request, pursuant to OAC 317:2-1-18.

(9) Tax warrant intercept appeals will be heard directly by the ALJ. A decision is normally rendered by the ALJ within twenty (20) days of the hearing before the ALJ.

(c) **~~Provider Process Overview~~process overview.**

(1) The proceedings as described in this subsection contain the hearing process for those appeals filed by providers. These appeals encompass all subject matter cases contained in OAC 317:2-1-2(d)(2).

(2) All provider appeals are initially heard by the OHCA ALJ under OAC 317:2-1-2(d)(2).

(A) In order to initiate an appeal, a provider must file the appropriate LD form within thirty (30) calendar days of the date the OHCA sends written notice of its action, in accordance with OAC 317:2-1-2(a), above. LD-2 forms should be used for Program Integrity audit appeals; LD-3 forms are to be used for all other provider appeals.

(B) Except for OHCA Program Integrity audit appeals, if the appropriate LD form is not received timely, the ALJ will cause a letter to be issued stating that the appeal will not be heard.

(C) A decision ordinarily will be issued by the ALJ within forty-five (45) days of the close of all evidence in the appeal.

(D) Unless otherwise limited by OAC 317:2-1-7 or 317:2-1-13, the ALJ's decision is appealable to OHCA's CEO.

(d) **ALJ jurisdiction.** The ALJ has jurisdiction of the following matters:

(1) **~~Member Appeals~~appeals.**

(A) Discrimination complaints regarding the SoonerCare program;

(B) Appeals which relate to the scope of services, covered services, complaints regarding service or care, enrollment, disenrollment, and reenrollment in the SoonerCare Program;

(C) ~~Fee for Service~~Fee-for-service appeals regarding the furnishing of services, including prior authorizations;

(D) Appeals which relate to the tax warrant intercept system through the OHCA. Tax warrant intercept appeals will be heard directly by the ALJ. A decision will be rendered by the ALJ within twenty (20) days of the hearing;

(E) Proposed administrative sanction appeals pursuant to OAC 317:35-13-7. Proposed administrative sanction appeals will be heard directly by the ALJ. A decision by the ALJ will ordinarily be rendered within twenty (20) days of the hearing before the ALJ. This is the final and only appeals process for proposed administrative sanctions;

(F) Appeals which relate to eligibility determinations made by OHCA; ~~and~~

(G) Appeals of insureds participating in Insure Oklahoma which are authorized by OAC 317:45-9-8; ~~and~~

(H) Appeals which relate to a requested step therapy protocol exception as provided by 63 O.S. § 7310.

(2) **~~Provider Appeals~~appeals.**

(A) Whether Pre-admission Screening and Resident Review (PASRR) was completed as required by law;

(B) Denial of request to disenroll member from provider's SoonerCare Choice panel;

(C) Appeals by ~~Long Term Care~~long-term care facilities for administrative penalty determinations as a result of findings made under OAC 317:30-5-131.2(b)(5)(B) and (d)(8);

(D) Appeals of Professional Service Contract awards and other matters related to the Central Purchasing Act pursuant to Title 74 O.S. § 85.1 et seq.;

(E) Drug rebate appeals;

(F) Provider appeals of OHCA Program Integrity audit findings pursuant to OAC 317:2-1-7. This is the final and only appeals process for appeals of OHCA Program Integrity audit findings;

(G) Oklahoma Electronic Health Records Incentive program appeals related only to incentive payments, incentive payment amounts, provider eligibility determinations, and demonstration of adopting, implementing, upgrading, and meaningful use eligibility for incentives;

(H) Supplemental Hospital Offset Payment Program (SHOPP) annual assessment, ~~Supplemental Payments~~supplemental payment, fees or penalties as specifically provided in OAC 317:2-1-15; ~~and~~

(I) The Nursing Facility Supplemental Payment Program (NFSPP) and its issues consisting of the amount of each component of the ~~Intergovernmental~~intergovernmental transfer, the Upper Payment Limit payment, the Upper Payment Limit gap, and the penalties specifically provided in OAC 317:30-5-136. This is the final and only process for appeals regarding NFSPP; ~~and~~

(J) Appeals from any adjustment made to a long-term care facility's cost report pursuant to OAC 317:30-5-132, including any appeal following a request for reconsideration made pursuant to OAC 317:30-5-132.1.

317:2-1-6. Other grievance procedures and processes [REVOKED]

~~Other grievance procedures and processes include those set out in Oklahoma Administrative Code (OAC) 317:2-1-7 (Program Integrity Audit Appeals); OAC 317:2-1-9 (OHCA's Designated Agent's Appeal Process for QIO Services); OAC 317:2-1-10 (Drug Rebate Appeal Process); OAC 317:2-1-11 (Medicaid Drug Utilization Review Board (DUR) Appeal Process); OAC 317:2-1-12 (For Cause and Immediate Provider Contract Termination Appeals Process); OAC 317:2-1-14 (Contract Award Protest Process); and OAC 317:2-1-15 (Supplemental Hospital Offset Payment Program (SHOPP) Appeals).~~

317:2-1-13. Appeal to the Chief Executive Officer/Chief executive officer

(a) The Oklahoma Health Care Authority offers approximately forty (40) different types of administrative appeals. Some of the appeals are appealable to the ~~Chief Executive Officer~~ chief executive officer (CEO) and some are not. The following appeals may be heard by the CEO following the decision of an ~~Administrative Law Judge~~ administrative law judge:

- (1) Appeals under Oklahoma Administrative Code (OAC) 317:2-1-2(d)(1)(A) to (d)(1)(~~G~~)(H), with the exception of subsection (d)(1)(E);
- (2) Appeals under OAC 317:2-1-2(d)(2)(A) to (d)(2)(I), with the exceptions of subsections (d)(2)(F) and (G); and
- (3) Appeals under 317:2-1-10.

- (b) Appeals to the CEO must be filed with the OHCA within thirty (30) days of the date of the Order, or decision by OHCA.
- (c) No new evidence may be presented to the CEO.
- (d) Appeals to the CEO under (a) of this Section may be filed by the provider, member, or agency. The CEO will ordinarily render decisions within sixty (60) days of the receipt of the appeal.

317:2-1-18. Step therapy protocol exception appeals

This rule describes a member's rights to administratively appeal the denial of a requested exception to a step therapy protocol, in accordance with Title 63 of the Oklahoma Statutes (O.S.) § 7310 and Oklahoma Administrative Code (OAC) 317:30-5-77.4.

- (1) Appeals will be heard by the Oklahoma Health Care Authority (OHCA) administrative law judge (ALJ).
- (2) Appeals must be filed by the member within thirty (30) days of the date of the denial of a requested exception. Appeals must be filed electronically using a form LD-5 and must set forth the basis for the appeal. The form

LD-5 shall be made available on the OHCA's public web-site. If the LD-5 is not completely filled out or if necessary documentation is not included, the appeal will not be considered.

(3) Appeals shall be heard at a time and place and in a manner as may be decided by the ALJ. Hearings may be conducted telephonically.

(4) The docket clerk will send the member or his/her authorized representative an electronic notice setting forth the location, date, and time of the hearing.

(5) A member can waive the right to an evidentiary hearing and permit the ALJ to consider and rule on the appeal based upon the parties' submissions.

(6) The member shall have the burden of proof by the preponderance of the evidence standard as defined by the Oklahoma Supreme Court.

(7) Absent exigent circumstances, as defined in OAC 317:30-5-77.4(a), the ALJ shall respond to any request for appeal within seventy-two (72) hours of receipt of the request. In the case of exigent circumstances, the ALJ shall respond within twenty-four (24) hours of receipt. Provided, however, that if the timeframe for response ends on a weekend, or on any other day the OHCA is closed or closes early, including, but not limited to, legal holidays as defined by 25 O.S. § 82.1, the timeframe for response shall run until the close of the next full business day. An appeal request that is not responded to within this timeframe shall be deemed granted.

(8) All orders shall be considered non-precedential decisions.

(9) The hearing shall be digitally recorded.

[OAR Docket #20-434; filed 6-26-20]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 2. GRIEVANCE PROCEDURES AND PROCESS**

[OAR Docket #20-436]

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317:2-1-16 [REVOKED]

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Not applicable

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will remove rule sections that were created for the nursing home supplemental payment program, a program that was never implemented; the Centers for Medicare and Medicaid Services (CMS) did not ultimately approve the proposal.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

317:2-1-16. Nursing Facility Supplemental Payment Program appeals [REVOKED]

~~In accordance with Oklahoma Administrative Code (OAC) 317:30-5-136, the Oklahoma Health Care Authority (OHCA) is authorized to promulgate rules for appeals of the Nursing Facility Supplemental Payment Program (NFSPP). The rules in this section describe those appeal rights.~~

~~(1) The following are appealable issues of the program: the assessed amount for each component of the intergovernmental transfer (IGT), the Upper Payment Limit (UPL) payment, the UPL Gap payment, and penalties for the non-state government owned entity (NSGO). This is the final and only process for appeals regarding NFSPP. Suspensions or terminations from the program are not appealable in the administrative process.~~

~~(2) Appeals are heard by the OHCA Administrative Law Judge (ALJ).~~

~~(3) To file an appeal, the NSGO (appellant is the NSGO who files an appeal) shall file an LD-2 form within thirty (30) days from the date of the OHCA letter which advises the NSGO of component of IGT, UPL payment, UPL Gap payment and/or a penalty. An IGT that is not received by the date specified by OHCA, or that is not in the total amount indicated on the notice of program reimbursement (NPR) shall be subject to penalty and suspension from the program. Any applicable penalties shall also be deducted from the UPL payment regardless of any appeal action requested by the facility. Any change in the payment amount resulting from an appeals decision in which a recoupment or additional allocation is necessary will be adjusted in the future from any SoonerCare payments.~~

~~(4) The LD-2 shall only be filed by the NSGO or the NSGO's attorney in accordance with (5) below.~~

~~(5) Consistent with Oklahoma rules of practice, the non-state government owned (NSGO) entity shall be represented by an attorney licensed to practice within the~~

~~State of Oklahoma. Attorneys not licensed to practice in Oklahoma shall comply with Article II, Section 5 of Title 5 of the Oklahoma Statutes (O.S.), and rules of the Oklahoma Bar Association.~~

~~(6) The hearing will be conducted in an informal manner, without formal rules of evidence or procedure. However, parties who fail to appear at a hearing, after notification of said hearing date, will have their cases dismissed for failure to prosecute.~~

~~(7) The appellant has the burden of proof by the preponderance of the evidence standard as defined by the Oklahoma Supreme Court.~~

~~(8) The docket clerk will send the appellant and any other necessary party a notice which states the hearing location, date, and time.~~

~~(9) The ALJ may:~~

~~(A) Identify and rule on issues being appealed which will be determined at the administrative hearing;~~

~~(B) Require the parties to state their positions concerning appeal issue(s);~~

~~(C) Require the parties to produce for examination those relevant witnesses and documents under their control;~~

~~(D) Rule on whether witnesses have knowledge of the facts at issue;~~

~~(E) Establish time limits for the submission of motions or memoranda;~~

~~(F) Rule on relevant motions, requests, and other procedural items; limiting all decisions to procedure matters and issues directly related to the contested determination resulting from OAC 317:30-5-136;~~

~~(G) Rule on whether discovery requests are relevant;~~

~~(H) Strike or deny witnesses, documents, exhibits, discovery requests, and other requests or motions which are cumulative, not relevant, not material, or used as a means of harassment, unduly burdensome, or not timely filed;~~

~~(I) Schedule pre-hearing conferences to settle, simplify, or identify issues in a proceeding or to consider other matters that may end the appeal;~~

~~(J) Impose appropriate sanctions against any party failing to obey an order of the ALJ;~~

~~(K) Rule on any requests for extension of time;~~

~~(L) Dismiss an issue or appeal if:~~

~~(i) it is not timely filed or is not within the OHCA's jurisdiction or authority;~~

~~(ii) it is moot or there is insufficient evidence to support the allegations;~~

~~(iii) the appellant fails or refuses to appear for a scheduled meeting, conference or hearing; or~~

~~(iv) the appellant refuses to accept a settlement offer which affords the relief the party could reasonably expect if the party prevailed in the appeal;~~

~~(M) Set and/or limit the time frame for the hearing.~~

~~(10) After the hearing:~~

(A) The ALJ should attempt to make the final hearing decision within ninety (90) days from the date of the hearing and send a copy of the ALJ's decision to both parties outlining their rights to appeal the decision. Any appeal of the final order pursuant to 12 O.S. § 951 shall be filed with the District Court of Oklahoma County within thirty (30) days.

(B) It shall be the duty of the appellant in any District Court appeal to order a written transcript of proceedings to be used on appeal. The transcript must be ordered within thirty (30) days of the filing of an appeal in the District Court and any costs associated with the preparation of the transcript shall be borne by the appellant.

(11) All orders and settlements are non-precedential decisions.

(12) The hearing shall be digitally recorded and closed to the public.

(13) The case file and any audio recordings shall remain confidential.

[OAR Docket #20-436; filed 6-26-20]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 2. GRIEVANCE PROCEDURES AND PROCESS

[OAR Docket #20-433]

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n/a

GIST/ANALYSIS:

The proposed revisions will bring the OHCA into compliance with Senate Bill (SB) 280. Revisions will implement an administrative appeals process for disputed long-term care facility cost reports and cost report consideration. These rules are currently in place as emergency rules.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 14, 2020:**

317:2-1-17. Long-term care facility cost report appeals

This rule describes a long-term facility's rights to administratively appeal any cost adjustment(s) made by the Oklahoma Health Care Authority (OHCA) to the facility's annual cost report, in accordance with the Oklahoma Administrative Code (OAC) 317:30-5-132, or any cost report reconsideration, in accordance with OAC 317:30-5-132.1.

(1) The following are appealable issues of the program:

(A) Any disputed adjustment(s) that are made by the OHCA to the facility's annual cost report, in accordance with OAC 317:30-5-132(5); or

(B) Any disputed cost report adjustment reconsideration decision, made by OHCA's chief financial officer or his/her designee in accordance with OAC 317:30-5-132.1.

(2) Appeals are heard by the OHCA administrative law judge (ALJ).

(3) To file an appeal, the provider shall submit an LD-2 form within thirty (30) days of the date of the written notice of the OHCA's report adjustment(s) that resulted from an on-site audit, or a cost report reconsideration decision, as applicable.

(4) The LD-2 shall only be filed by the provider or the provider's attorney in accordance with five (5) below.

(5) Consistent with Oklahoma rules of practice, the provider shall be represented by an attorney licensed to practice within the State of Oklahoma. Attorneys not licensed to practice in Oklahoma shall comply with Article II, Section (§) 5 of Title 5 of the Oklahoma Statutes (O.S.), and rules of the Oklahoma Bar Association.

(6) Parties who fail to appear at a hearing, after notification of said hearing date, will have their cases dismissed for failure to prosecute.

(7) The long-term care facility has the burden of proof by the preponderance of the evidence standard as defined by the Oklahoma Supreme Court.

(8) The docket clerk will send the long-term care facility and any other necessary party a notice which states the hearing location, date, and time.

- (9) The ALJ may:
- (A) Identify and rule on issues being appealed which will be determined at the administrative hearing;
 - (B) Require the parties to state their positions concerning appeal issue(s);
 - (C) Require the parties to produce for examination those relevant witnesses and documents under their control;
 - (D) Rule on whether witnesses have knowledge of the facts at issue;
 - (E) Establish time limits for the submission of motions or memoranda;
 - (F) Rule on relevant motions, requests, and other procedural items, limiting all decisions to procedural matters and issues directly related to the contested determination resulting from OAC 317:30-5-132 and/or 317:30-5-132.1;
 - (G) Rule on whether discovery requests are relevant;
 - (H) Strike or deny witnesses, documents, exhibits, discovery requests, and other requests or motions which are cumulative, not relevant, not material, or used as a means of harassment, unduly burdensome, or not timely filed;
 - (I) Schedule pre-hearing conferences to settle, simplify, or identify issues in a proceeding or to consider other matters that may end the appeal;
 - (J) Impose appropriate sanctions against any party failing to obey an order of the ALJ;
 - (K) Rule on any requests for extension of time;
 - (L) Dismiss an issue or appeal if:
 - (i) It is not timely filed or is not within the OHCA's jurisdiction or authority; and/or
 - (ii) It is moot or there is insufficient evidence to support the allegations; and/or
 - (iii) The appellant fails or refuses to appear for a scheduled meeting, conference, or hearing; and/or
 - (iv) The appellant refuses to accept a settlement offer which affords the relief the party could reasonably expect if the party prevailed in the appeal; and/or
 - (M) Set and/or limit the time frame for the hearing.
- (10) After the hearing:
- (A) The ALJ should attempt to make the final hearing decision within ninety (90) days from the date of the hearing and send a copy of the ALJ's decision to both parties outlining their rights to appeal the decision. Any appeal of the final order pursuant to 12 O.S. § 951 shall be filed with the District Court of Oklahoma County within thirty (30) days.
 - (B) It shall be the duty of the appellant in any District Court appeal to order a written transcript of proceedings to be used on appeal, as required by 12 O.S. § 951.
- (11) All orders and settlements are non-precedential decisions.

- (12) The hearing shall be digitally recorded.

[OAR Docket #20-433; filed 6-26-20]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 2. GRIEVANCE PROCEDURES AND PROCESS

[OAR Docket #20-435]

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SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

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EFFECTIVE:

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Not applicable

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will specify that requests for expedited appeal hearings should be sent to the Administrative Law Judge (ALJ) with a copy sent to the OHCA. Additionally, the appeal hearing request shall specify the services denied and the specific reason(s) why a regular 30-day appeal will seriously jeopardize the life or health of the member requesting an expedited appeal hearing.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 14, 2020:**

317:2-1-2.5. Expedited appeals

- (a) ~~An Appellant may request an expedited hearing request may be granted within three (3) working days of the request for hearing, if the time otherwise permitted for a hearing as described in OAC~~ Oklahoma Administrative Code (OAC) 317:2-1-2(a)(8) could jeopardize the Appellant's life or health or ability to attain, maintain, or regain maximum function.

Any request for expedited consideration should be made to the Administrative Law Judge (ALJ), with a copy to the Oklahoma Health Care Authority (OHCA) Legal division and shall be ruled upon within three (3) working days of the date of the request. The request shall specify the reason for the appeal and the specific basis for the Appellant's assertion that a delay will jeopardize the Appellant's life or health.

(b) If ~~OHCA~~ the ALJ determines that ~~the request meets the criteria for an expedited hearing is warranted, it~~ he or she shall:

(1) ~~Initiate the hearing process as described in Schedule the matter for hearing pursuant to OAC 317:2-1-5; Telephonic hearings may be scheduled as appropriate under the particular facts of the case; and~~

(2) ~~All matters relating to the hearing must be heard and disposed of~~ Issue a preliminary or final decision as expeditiously as possible, but no later than three (3) working days after OHCA has received the request for an ~~the close of the expedited hearing.~~

(c) If ~~OHCA~~ the ALJ determines that the request does not meet the criteria for an expedited hearing consideration, ~~it~~ he or she shall:

(1) ~~Initiate the ordinary hearing process~~ Schedule the appeal for hearing within the ordinary timeframe, in accordance with OAC 317:2-1-2(a)(8); and

(2) Notify the Appellant of the denial orally or through an ~~electronic~~ written notice as described in OAC 317:35-5-66. If oral notification is provided, ~~OHCA the ALJ will follow up with~~ shall issue a written ~~notice~~ notification within three (3) calendar days of the denial.

[OAR Docket #20-435; filed 6-26-20]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 25. SOONERCARE CHOICE

[OAR Docket #20-437]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:

Subchapter 7. SoonerCare
Part 1. General Provisions
317:25-7-2 [AMENDED]
317:25-7-3 [AMENDED]
317:25-7-5 [AMENDED]
Part 3. Enrollment Criteria
317:25-7-10 [AMENDED]
317:25-7-13 [AMENDED]
Part 5. Enrollment Process
317:25-7-25 [AMENDED]
317:25-7-26 [AMENDED]
317:25-7-27 [AMENDED]
317:25-7-28 [AMENDED]
Part 7. Coordination and Continuity of Care
317:25-7-29 [REVOKED]
317:25-7-30 [AMENDED]
Part 9. Reimbursement
317:25-7-40 [AMENDED]
Subchapter 9. Health Access Networks
317:25-9-1 [AMENDED]
317:25-9-2 [AMENDED]

317:25-9-3 [AMENDED]
Subchapter 11. Health Management Program [NEW]
317:25-11-1 [NEW]
317:25-11-2 [NEW]
317:25-11-3 [NEW]
(Reference APA WF # 19-41A)

AUTHORITY:

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

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Not applicable

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n/a

GIST/ANALYSIS:

The proposed revisions will update the policy for the Patient-Centered Medical Homes (PCMH) and Health Access Networks (HAN). Additionally, a new section of policy will be added to address the Health Management Program (HMP) which will provide an overview of the program and outline provider participation guidelines. Finally, policy changes will include general policy cleanup and align policy with current business practices.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 7. SOONERCARE

PART 1. GENERAL PROVISIONS

317:25-7-2. SoonerCare Choice: overview

(a) The Oklahoma Health Care Authority (OHCA) operates a Primary Care Case Management (PCCM) system for SoonerCare Choice eligible members. PCCM is a managed care model in which each enrollee has a medical home with a primary care provider (PCP). Enrollees may select their own primary care provider or clinic as their PCP if that provider is enrolled with OHCA as a PCP and as a SoonerCare provider. ~~For those~~ Those who do not choose a PCP, ~~they will~~ may be assigned to one- (1). Members may change PCPs at any time.

(b) The PCP is paid a monthly care coordination payment in accordance with the conditions in the PCP's SoonerCare

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Choice contract to provide or otherwise assure the delivery of medically-necessary preventive and primary care medical services, including securing referrals for specialty services and prior authorizations for an enrolled group of eligible members, with the exception of services described in subsection (c) of this Section for which authorization is not required. The PCP assists the member in gaining access to the health care system and monitors the member's condition, health care needs and service delivery.

(c) Services which do not require a referral from ~~the~~ PCP include preventive or primary care services rendered by another SoonerCare contracted provider, such as: outpatient behavioral health ~~agency~~ services; vision services for children; dental services; child abuse/sexual abuse examinations; prenatal and obstetrical services; family planning services; emergency physician and hospital services; ~~disease management services, chronic disease prevention and management programs and other care coordination programs;~~ and services delivered to Native Americans at ~~IHS, Indian Health Service,~~ tribal, or urban Indian clinics. Female members may access a SoonerCare women's health specialist without a referral for covered routine and preventive health care services. This is in addition to the enrollee's PCP if that source is not a woman's health specialist.

(d) SoonerCare Choice covered services delivered by ~~the~~ PCP are reimbursed at the SoonerCare fee schedule rate under the procedure code established for each individual service. ~~To the extent~~ If services are provided or authorized by ~~the Primary Care Provider,~~ a PCP, the OHCA does not make SoonerCare Choice payments for services delivered outside the scope of coverage of the SoonerCare Choice program; thus, a referral by ~~the~~ PCP does not guarantee payment.

(e) ~~The~~ PCP may charge a co-payment for services provided to SoonerCare members in accordance with ~~OAC~~ Oklahoma Administrative Code (OAC) 317:30-3-5(d).

(f) Members with chronic conditions may elect to enroll in a health management program to improve their health.

(g) PCPs may elect to participate in Health Access Networks pursuant to Subchapter 9 to improve access to care.

(h) PCPs may elect to participate in a Health Management Program pursuant to Subchapter 11 to improve access to care.

317:25-7-3. Definitions

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

~~"Aged, Blind and Disabled"~~ "Aged, Blind and Disabled (ABD)" means the Medicaid covered populations under 42 U.S.C., United States Code (U.S.C.) Section 1396a (a)(10)(A)(i) and (F).

"Board" means the board designated by the Oklahoma legislature to establish policies and adopt and promulgate rules for the Oklahoma Health Care Authority.

"CEO" means the Chief Executive Officer of the Oklahoma Health Care Authority.

"Custody" means the custodial status, as reported by the Oklahoma Department of Human Services.

"Medicaid" means the medical assistance program authorized by 42 U.S.C., Section 1396a et seq. The program provides medical benefits for certain low-income persons. It is jointly administered by the federal and state governments.

"Medicare" means the program defined at 42 U.S.C. § 1395 et seq.

"OHCA" means the Oklahoma Health Care Authority.

"OKDHS" means the Oklahoma Department of Human Services.

"PCCM" means Primary Care Case Management.

~~"PCP" means Primary Care Provider, including a Provider or Physician Group.~~

"Primary Care Case Management" means a managed care health service delivery system in which health services are delivered and coordinated by Primary Care Providers.

~~"Primary Care Provider"~~ "Primary care provider (PCP)" means a Primary Care Provider, including a provider or physician group, ~~a provider~~ under contract with the ~~Oklahoma Health Care Authority~~ OHCA to provide primary care services and case management, including securing all medically-necessary referrals for specialty services and prior authorizations.

~~"Provider" or Physician Group~~ "physician group" means a partnership, limited partnership, limited liability company, corporation or professional corporation, composed of doctors of medicine and/or doctors of osteopathy and/or advanced practice registered nurses, and/or physician assistants who provide health care of the nature provided by independent practitioners and are permitted by state and federal law and regulations to receive SoonerCare provider payments.

"SoonerCare" means the Medicaid program administered by the ~~Oklahoma Health Care Authority~~ OHCA.

"SoonerCare Choice" means a comprehensive medical benefit plan featuring a medical home including a ~~Primary Care Provider~~ PCP for each member.

317:25-7-5. Primary care providers (PCPs)

For provision of health care services, the OHCA contracts with qualified ~~Primary Care Providers~~ PCPs. All providers serving as PCPs must have a valid SoonerCare Fee-for-Service contract as well as an exercised SoonerCare Choice addendum. Additionally, all PCPs, excluding ~~Provider~~ provider or ~~Physician Groups~~ physician groups must agree to accept a minimum capacity of patients; provided, however, this does not guarantee PCPs a minimum patient volume. ~~Primary Care Providers~~ PCPs are limited to:

(1) **Physicians.** Any physician licensed to practice medicine in the state in which he or she practices who is engaged in a general practice or in family medicine, general internal medicine or general pediatrics may serve as a PCP. ~~The Chief Executive Officer (CEO) of the OHCA may designate physicians to serve as PCPs who are licensed to practice medicine in the state in which they practice who are specialized in areas other than those described above. In making this determination, the CEO may consider such factors as the percentage of primary care services delivered in the physician's practice, the availability of primary care providers in~~

the geographic area of the state in which the physician's practice is located, the extent to which the physician has historically provided services to SoonerCare members, and the physician's medical education and training.

(A) For physicians serving as SoonerCare Choice PCPs, the State caps the number of members per physician at 2,500 two thousand, five hundred (2,500). However, the CEO in his/her discretion may increase this number in under served areas based on a determination that this higher cap is in conformance with usual and customary standards for the community. If a physician practices at multiple sites, the capacity at each site is determined based on the number of hours per week the physician holds office hours, not to exceed one (1) FTE. Thus, the physician cannot exceed a maximum total capacity of 2500 two thousand, five hundred (2,500) members.

(B) In areas of the ~~State~~ state where cross-state utilization patterns have developed because of limited provider capacity in the ~~State~~ state the ~~CEO~~ OHCA may authorize contracts with out-of-state providers for PCP services. ~~Out of State~~ Out-of-state PCPs are required to comply with all access standards imposed on Oklahoma physicians, as well as Oklahoma Administrative Code (OAC) 317:30-3-89 through 317:30-3-92.

(2) **Advanced Practice Registered Nurses (APRNs).** ~~Advanced Practice Nurses~~ APRNs who have prescriptive authority may serve as PCPs for the Primary Care Case Management delivery system if licensed to practice in the state in which he or she practices. ~~Advanced Practice Nurses~~ APRNs who have prescriptive authority may serve as PCPs for a maximum number of 1,250 one thousand, two hundred and fifty (1,250) members. However, the CEO in his/her discretion may increase this number.

(3) **Physician Assistants (PAs).** ~~Physician Assistants~~ PAs may serve as PCPs if licensed to practice in the state in which he or she practices. ~~Physician Assistants~~ PAs may serve as PCPs for a maximum number of 1,250 one thousand, two hundred and fifty (1,250) members. However, the CEO in his/her discretion may increase this number.

(4) **Indian Health Service (IHS) Facilities and Federally Qualified Health Center (FQHC) provider groups and Rural Health Clinics (RHC).**

(A) ~~Indian Health Service~~ IHS facilities whose professional staff meet the general requirements in paragraphs (1) through (3) of this Section and the provider participation requirements at OAC 317:30-5-1088 may serve as PCPs.

(B) ~~Federally Qualified Health Centers~~ FQHCs whose professional staff meet the general requirements in paragraphs (1) through (3) of this Section and the provider participation requirements in OAC 317:30-5-660.2 may serve as PCPs.

(C) RHCs whose professional staff meet the general requirements in paragraphs (1) through (3) of this

Section and the provider participation requirements in OAC 317:30-5-355 may serve as PCPs.

(5) **Provider or physician group capacity and enrollment.**

(A) Provider or physician groups must agree to accept a minimum enrollment capacity and may not exceed 2,500 two thousand, five hundred (2,500) members per physician participating in the provider group.

(B) If licensed ~~physician assistants~~ PAs or ~~advanced practice nurses~~ APRNs are members of a group, the capacity may be increased by 1,250 one thousand, two hundred and fifty (1,250) members if the provider is available full-time.

(C) Provider or physician groups must designate a medical director to serve as the primary contact with OHCA.

PART 3. ENROLLMENT CRITERIA

317:25-7-10. Enrollment with a Primary Care Provider (PCP)

(a) All SoonerCare Choice members described in ~~OAC~~ Oklahoma Administrative Code (OAC) 317:25-7-12 may enroll with a PCP. SoonerCare Choice applicants have the opportunity to select a PCP during the application process. Enrollment with a PCP may begin any day of the month.

(1) The OHCA offers all members the opportunity to choose a PCP from a directory which lists available PCPs.

(2) When a notice of PCP enrollment is sent to a member, the member is advised of the right to change ~~the~~ a PCP at any time.

(b) Members may receive services from ~~the~~ a PCP or from a provider to which the member has been referred by ~~the~~ a PCP. Notwithstanding this provision, subject to limitations which may be placed on services by the OHCA, members may ~~self refer~~ self-refer for preventive or primary care services rendered by another SoonerCare contracted provider, outpatient behavioral health ~~agency~~ services, vision services for children, dental services, child abuse/sexual abuse examinations, prenatal and obstetrical services, family planning services, services delivered to Native Americans at ~~IHS~~ Indian Health Service, tribal, or urban Indian clinics, chronic disease prevention and management programs and other care coordination programs, and emergency physician and hospital services.

317:25-7-13. Enrollment ineligibility

Members in certain categories are excluded from participation in the SoonerCare Choice program. All other members ~~are may be~~ enrolled in the SoonerCare Choice program and subject to the provisions of this Subchapter. Members excluded from participation in SoonerCare Choice include:

(1) Individuals receiving services in a ~~nursing~~ long-term care facility, in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), or through a Home and Community Based Waiver;

(2) ~~Individuals privately enrolled in an HMO.~~

(3) ~~Individuals who would be traveling more than 45 miles or an average of 45 minutes to obtain primary care services.~~

(42) Individuals in the former foster care children's group ~~(see OAC 317:35-5-2)~~ [see Oklahoma Administrative Code (OAC) 317:35-5-2];

(53) ~~Individuals who are eligible for SoonerCare solely due to presumptive eligibility in benefit programs with limited scope, such as Tuberculosis, Family Planning, or pregnancy only;~~

(64) Non-qualified or ineligible aliens;

(75) Children in subsidized adoptions;

(86) Individuals who are dually-eligible for SoonerCare and Medicare;

(97) Individuals who are in an Institution for Mental Disease (IMD); and/or

(108) ~~Individuals who have other primary medical insurance-creditable coverage.~~

PART 5. ENROLLMENT PROCESS

317:25-7-25. Member enrollment process

(a) SoonerCare eligible individuals whose eligibility is based on one (1) of the aid categories ~~included in the program as defined in OAC Oklahoma Administrative Code (OAC) 317:25-7-12~~ must be eligible to enroll with a PCP-primary care physician (PCP). Parents or guardians will choose on behalf of minor members in the household. Families with more than one (1) enrollee may choose a different PCP for each family member.

(b) Until the effective date of enrollment with a PCP, services for a newborn are reimbursed at a fee-for-service rate. Upon eligibility determination, newborns may enroll with a PCP who is in general practice, family practice, or general pediatrics. Enrollment materials will advise the parent or guardian of the right to change ~~the~~ PCP after the effective date of enrollment.

(c) A description of the PCCM program and the PCP directory is ~~provided by the OHCA to OKDHS for distribution to OKDHS county offices~~ are available on the Oklahoma Health Care Authority's (OHCA) website.

(d) For purposes of determining the member's choice of PCP, the most recent PCP selection received by the OHCA determines the PCP with which the member is enrolled ~~with~~, as long as capacity is available. If capacity is not available or the member does not choose, the member is assigned according to the assignment mechanism as defined by the OHCA. A member who is eligible for SoonerCare Choice but is not assigned, may request enrollment with a PCP by contacting the SoonerCare Helpline, or through the member's mySoonerCare.org account, if applicable.

(e) PCPs may not refuse an assignment, seek to disenroll a member, or otherwise discriminate against a member on the basis of age, sex, race, physical or mental disability, national origin, or type of illness or condition, unless that condition can be better treated by another provider type, except that ~~IHS, Indian Health Service,~~ tribal or urban Indian programs may

provide services to ~~Native American IHS~~ members consistent with federal law.

317:25-7-26. Automatic re-enrollment

SoonerCare members who become disenrolled from a PCP solely by virtue of becoming temporarily ~~(for 365 days or less)~~ [for three hundred and sixty-five (365) days or less] ineligible for SoonerCare services, ~~are automatically~~ may be re-enrolled with their previously-selected PCP, subject to capacity. The member is notified of the automatic re-enrollment and any right to disenroll from that PCP, or change to another PCP.

317:25-7-27. Changing PCPs Primary care providers (PCPs)

(a) The ~~OHCA~~ Oklahoma Health Care Authority (OHCA) is responsible for changing a member's enrollment from one (1) PCP to another:

(1) ~~without~~ Without cause upon the member's request; or

(2) ~~upon~~ Upon demonstration of good cause. For purposes of this paragraph, good cause means:

(A) ~~those~~ Those members who are habitually non-compliant with the documented medical directions of the provider; or

(B) ~~those~~ Those members who pose a threat to employees, or other patients of the PCP; or

(C) ~~as~~ As a result of a grievance determination by the OHCA; or

(D) ~~in~~ In those cases where reliable documentation demonstrates that the physician-patient relationship has so deteriorated that continued service would be detrimental to the member, the provider or both; or

(E) ~~the~~ The member's illness or condition would be better treated by another type of provider; or

(3) when the state imposes an intermediate sanction.

(b) A written request by the PCP to change the enrollment of a member is acted upon by the OHCA within ~~30~~ thirty (30) days of its receipt. The decision to change PCPs for cause is made at the discretion of the OHCA, subject to appeals policies delineated at ~~OAC~~ Oklahoma Administrative Code 317:2-1. The effective date of change is set so as to avoid the issue of abandonment.

(c) In the event a SoonerCare PCP contract is terminated by OHCA for any reason, or the PCP terminates participation in the SoonerCare Choice program ~~the CEO may, at his or her discretion, assign members to a participating PCP when it is determined to be in the best interests of the member whose PCP has terminated the panel members formerly aligned with the terminating PCP shall be enrolled with a different PCP.~~

317:25-7-28. Disenrolling a member from SoonerCare Choice

(a) The ~~OHCA~~ Oklahoma Health Care Authority (OHCA) may disenroll a member from SoonerCare Choice if:

(1) ~~the~~ The member is no longer eligible for SoonerCare Choice services;

- (2) ~~the~~The member ~~has been~~is incarcerated;
 - (3) ~~the~~The member dies;
 - (4) ~~disenrollment~~Disenrollment is determined to be necessary by the OHCA;
 - (5) ~~the~~The status of the member changes, rendering him/her ineligible for SoonerCare;
 - (6) ~~the~~The member is authorized to receive services in a nursing facility, in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) or through a Home and Community Based Waiver;
 - (7) ~~the~~The member becomes dually-eligible for SoonerCare and Medicare; or
 - (8) ~~the~~The member becomes covered under other ~~primary medical insurance-creditable coverage~~.
- (b) The OHCA may disenroll the member at any time if the member is disenrolled for good cause, as it is defined in ~~OAC~~Oklahoma Administrative Code (OAC) 317:25-7-27. The OHCA will inform the PCP of any disenrollments from his or her member roster.
- (c) OHCA may disenroll a member upon the PCP's request as described in (1) through (5) of this subsection.
- (1) ~~The A~~PCPprimary care provider (PCP) may file a written request asking OHCA to take action, including, but not limited to, disenrolling a member when the member:
 - (A) ~~is~~Is physically or verbally abusive to office staff, providers, and/or other patients;
 - (B) ~~is~~Is habitually non-compliant with the documented medical directions of ~~the~~a PCP; or
 - (C) ~~regularly~~Regularly fails to arrive for scheduled appointments without cancelling and the PCP has made all reasonable efforts to accommodate the member.
 - (2) The request from ~~the~~a PCP for disenrollment of a member must include ~~one of one~~ (1) or more of the following:
 - (A) ~~documentation~~Documentation of the difficulty encountered with the member, including the nature, extent, and frequency of abusive or harmful behavior, violence, and/or inability to treat or engage the member;
 - (B) ~~identification~~Identification and documentation of unique religious or cultural issues that may be ~~effecting~~affecting~~the~~a PCP's ability to provide treatment effectively to the member; or
 - (C) ~~documentation~~Documentation of special assistance or intervention offered.
 - (3) ~~The A~~PCP may not request disenrollment because of a change in the member's health status, the member's utilization of medical services, diminished mental capacity, or uncooperative or disruptive behavior resulting from the member's special needs except when the member's enrollment with ~~the~~a PCP seriously impairs his/her ability to furnish services to this member or other members.
 - (4) ~~The A~~PCP must document efforts taken to inform the member orally or in writing of any actions that have interfered with the effective provision of covered services, as well as efforts to explain what actions or language of the member are acceptable and unacceptable and the

consequences of unacceptable behavior, including disenrollment from ~~the~~a PCP.

- (5) The OHCA will give written notice of the disenrollment request to the member.

PART 7. COORDINATION AND CONTINUITY OF CARE

317:25-7-29. Screening, diagnosis and preventive benefits [REVOKED]

- (a) ~~The PCP is responsible for coordinating or delivering preventive and primary care services which are medically necessary to all SoonerCare members enrolled with him/her.~~
- (b) ~~School and health department clinics may conduct EPSDT screening examinations on children who have not been screened by their PCP pursuant to the EPSDT periodicity schedule. If it is ascertained that a child is not current, the school or health department clinic must first contact the PCP and attempt to set up an appointment for the child within three weeks. If the PCP cannot meet this condition, the clinic will be permitted to conduct the screen and bill fee for service.~~
- (1) ~~The school or health department clinic must submit a claim for reimbursement, as well as documentation that:~~
 - (A) ~~the PCP was contacted and an examination could not be conducted by the PCP within the specified guidelines; and~~
 - (B) ~~the PCP has forwarded information for the patient file regarding the diagnosis, services rendered and need for follow up. This documentation must be returned to the child's record for verification that PCPs have first been contacted and that school and health department clinics are providing PCPs with the information necessary to ensure continuity of care.~~
 - (2) ~~The school-based clinic or health department must conduct the screening examination within three weeks from the date the determination was made that the PCP could not conduct the exam within the specified guidelines.~~

317:25-7-30. Obtaining SoonerCare Choice services

- (a) Medical services which are not the responsibility of the ~~PCP~~primary care provider (PCP) to authorize under the care coordination component of SoonerCare, Choice, as described in ~~OAC~~Oklahoma Administrative Code (OAC) 317:25-7-10(b), are obtained in the same manner as under the regular SoonerCare fee-for-service program.
- (b) ~~Authorization for out-of-state transportation for primary care and specialty care is determined by the OHCA Medical Director. For policy regarding out-of-state transportation for primary and specialty care, refer to OAC 317:30-3-89 through 317:30-3-92.~~
- (c) An American Indian/Alaska Native (AI/AN) eligible SoonerCare member may choose a PCP from the provider directory, including the ~~IHS~~Indian Health Service (IHS), tribal and ~~Urban~~urban Indian clinics that participate as SoonerCare PCPs. ~~The member needs to have the Certified Degree of Indian Blood information in order to enroll.~~ An American

~~Indian~~AI/AN member in SoonerCare may enroll with a PCP who is not an IHS, tribal, or urban Indian clinic and still use the IHS, tribal, or urban Indian clinic for medical care. A referral from ~~the~~ PCP is needed for services that the clinic cannot provide, except for self-referred services.

(d) If an IHS, tribal, or urban Indian clinic is unable to deliver a service to a SoonerCare enrollee and must refer the member for the service to a non-IHS, tribal, or urban Indian clinic, SoonerCare reimbursement is made only to the specialist when the service ~~is has been~~ referred by ~~the~~ PCP, unless PCP authorization is not required under OAC 317:25-7-10(b). 317:25-7-2(c).

(e) ~~The~~A PCP is not obligated to provide emergency services and is not responsible for authorization or approval for payment for members seen in the emergency room. ~~The~~A PCP may not require members to seek prior authorization (PA) for emergency services. However, ~~the~~ PCP may provide emergency care in an emergency setting, within his/her legal scope of practice.

(f) ~~Some outpatient procedures require prior authorization. The PCP is responsible for obtaining a list before an outpatient procedure is done. A PA is required for some medical procedures, equipment, medications, and specialty services. The PCP and/or requesting provider are responsible for submitting the PA request to SoonerCare. The member and requesting provider will be notified of SoonerCare's decision to authorize the requested services. A PA is not a guarantee of payment.~~

PART 9. REIMBURSEMENT

317:25-7-40. SoonerCare Choice reimbursement

(a) **Care coordination component.** Participating ~~PCPs~~primary care providers (PCPs) are paid a monthly care coordination payment to assure the delivery of medically-necessary preventive and primary care medical services, including referrals for specialty services for an enrolled group of eligible members. The PCP assists the member in gaining access to the health care system and monitors the member's condition, health care needs and service delivery.

(b) **Visit-based fee-for-service component.** SoonerCare Choice covered services provided by ~~the~~ PCP are reimbursed at the SoonerCare fee schedule rate under the procedure code established for each individual service. To the extent services are authorized by ~~the~~ PCP, the ~~OHCA~~Oklahoma Health Care Authority (OHCA) does not make SoonerCare Choice payments for services delivered outside the scope of coverage of the SoonerCare Choice program, ~~thus, In other words, a referral by the PCP does not guarantee payment.~~

(c) **Incentive program component.** Subject to the availability of funds, OHCA will develop a bonus payment program to encourage coordination of services, to reward improvement in health outcome and promote efficiency.

(d) **SoonerCare networks.** For every PCP who participates in an OHCA approved ~~health care access network~~Health Access Network, a per-member-per-month payment is established by OHCA and paid to the network.

SUBCHAPTER 9. HEALTH ACCESS NETWORKS

317:25-9-1. Purpose

The purpose of this Subchapter is to describe the rules governing the Health Access Networks (~~HAN's~~)(HANs) participating in the statewide SoonerCare program. The rules provide assurances that ~~Health Access Networks~~HANs will work with providers to coordinate and improve the quality of care for SoonerCare members. ~~The use of Health Access Networks is a limited pilot program with the purpose of enhancing the development of comprehensive medical homes for Oklahoma SoonerCare Choice members.~~

317:25-9-2. Requirements

(a) ~~HAN's~~Health Access Networks (HANs) are non-profit, administrative entities that work with providers to coordinate and improve the quality of care for SoonerCare members. The HAN must:

(1) ~~be~~Be organized for the purpose of restructuring and improving the access, quality, and continuity of care to SoonerCare members;

(2) ~~offer patients~~Facilitate members' access to all levels of care, including primary, outpatient, specialty, certain ancillary services, and acute inpatient care, within a community or across a broad spectrum of providers across a service region or the ~~State~~state through improved access to specialty care, telehealth, and expended quality improvement strategies;

(3) ~~submit an application to the OHCA as specified in (e) of this Section;~~

(4) ~~offer core components of electronic medical records, improved access to specialty care, telemedicine, and expended quality improvement strategies;~~

(5) ~~have an organized and systematic quality improvement process, including the identification of measurable performance targets; and~~

(6) ~~offer~~Offer care management/care coordination to persons in the HANs. This includes care management for specified members with complex health care needs as approved by OHCA. The HAN will not provide care management services to HMP members in the HAN, as these members will receive care management from HMP health coaches or from the OHCA internal Chronic Care Unit with complex health care needs as specified in the state-HAN provider agreement.

(b) ~~Networks must meet at least two of the following:~~

(1) ~~have a formal affiliation agreement/partnership at the community level with traditional and non-traditional providers;~~

(2) ~~have a formal program to promote public health principles, community development, and local educational programs to address the challenges of rural and underserved populations; and~~

(3) ~~have 501(c)3 or not for profit status.~~

(c) ~~In order to qualify to participate as a SoonerCare contracted HAN's, the network must submit an application to the OHCA that details how the network plans to:~~

- (1) reduce costs associated with the provision of health care services to SoonerCare, uninsured and underinsured individuals;
 - (2) improve access to, and the availability of, health care services provided to individuals served by the health access network;
 - (3) enhance the quality and coordination of health care services provided to such individuals through mutually defined quality improvement initiatives;
 - (4) improve the health status of communities served by the health access network;
 - (5) reduce health disparities in such communities;
 - (6) identify all PCPs, specialty providers, and other provider types affiliated with the health access network.
- (d) The application to participate as a SoonerCare contracted HAN's will be accepted and approved at the sole discretion of OHCA with implementation initiated after completion of a readiness review by OHCA staff and approval by OHCA's Medical Advisory Taskforce (MAT).

317:25-9-3. Reimbursement

- (a) In order to be eligible for payment, HAN's Health Access Networks (HANs) must have on file with OHCA, the Oklahoma Health Care Authority (OHCA) an approved Provider Agreement. Through this agreement, the HAN assures that OHCA's requirements are met and assures compliance with all applicable Federal federal and State state regulations. These agreements are renewed annually with each provider.
- (b) The HAN will be reimbursed a per member per month (PMPM) rate based on the number of member months paid to the PCPs affiliated with the HAN. OHCA reserves the right to limit reimbursement based on availability of funds.

SUBCHAPTER 11. HEALTH MANAGEMENT PROGRAM

317:25-11-1. Purpose

The purpose of this Subchapter is to describe the rules governing the Health Management Program (HMP) participating in the statewide SoonerCare program. The rules provide assurances that the HMP will work with providers to coordinate and improve the quality of care for SoonerCare members.

317:25-11-2. Requirements

- (a) The Health Management Program (HMP) is a voluntary program offered statewide and serves SoonerCare Choice members ages four (4) through sixty-three (63) with or at risk for chronic illness who are at the highest risk for adverse outcome and increased health care expenditures.
- (b) HMP services are grounded in motivational interviewing and evidence-based guidelines. The HMP services are designed by the HMP vendor and approved by the Oklahoma Health Care Authority (OHCA). The HMP vendor's activities may include services delivered directly to SoonerCare Choice members or activities in connection with health care providers

that are designed to benefit SoonerCare Choice members. HMP activities/services can include:

- (1) Health coaching;
- (2) Practice facilitation;
- (3) Health navigation;
- (4) Performance improvement projects; and
- (5) Transition of care assistance.

317:25-11-3. Reimbursement

The Health Management Program (HMP) vendor must have an approved Provider Agreement on file. Through this agreement, the HMP assures that the Oklahoma Health Care Authority's requirements are met and assures compliance with all applicable federal and state regulations. HMPs are not a service delivery system.

[OAR Docket #20-437; filed 6-26-20]

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

[OAR Docket #20-463]

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Subchapter 1. General Provisions
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GIST/ANALYSIS:

The proposed revisions will establish definitions to clarify what the OHCA views as a child and an adult, unless otherwise specified by federal and/or state law. Additional revisions will involve limited rewriting aimed at clarifying text; fixing any grammatical errors; and aligning rules with the current business practice.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

Permanent Final Adoptions

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

317:30-1-3. Description of rules

How to use this Chapter. This Chapter contains basic information concerning the ~~Oklahoma Title XIX Medical Assistance/SoonerCare Program (Medicaid)~~. It is intended for use by all providers of medical and health related services participating in the program.

(1) The Chapter contains Sections dealing with ~~the organization, administration and financing of the program, recipient eligibility, provider policies, coverage of medical and health services, and other general program policies and procedures applicable to all providers. Rules and procedures applicable to particular provider groups and billing instructions are distributed to providers according to the type of services rendered.~~

(2) Providers and their office staff are urged to familiarize themselves with the contents of this Chapter and to refer to it when questions arise. Use of the Chapter will ~~do much to eliminate~~ reduce misunderstandings concerning the coverage, ~~status and reimbursement of SoonerCare services, recipient eligibility and proper billing procedures all of which can result in delays in payment, incorrect payment or denial of payment and the Agency's expectations of providers.~~ As users of the rules in this Chapter, OHCA also solicits suggestions and comments from providers.

317:30-1-4. Definitions

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

"Adult" means an individual twenty-one (21) years of age or older, unless otherwise specified by statute, regulation, and/or policy adopted by the Oklahoma Health Care Authority (OHCA). For eligibility criteria policy for children and adults, please refer to Oklahoma Administrative Code (OAC) 317:35-5-2.

"Child" means an individual under twenty-one (21) years of age, unless otherwise specified by statute, regulation, and/or policy adopted by the OHCA. For eligibility criteria policy for children and adults, please refer to OAC 317:35-5-2.

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

[OAR Docket #20-461]

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GIST/ANALYSIS:

The proposed revisions will comply with House Bill (HB) 2591 which creates the Defunding Statutory Rape Cover-Up Act. The new law requires the OHCA to deny an application for a new or renewed provider agreement, or terminate an existing agreement, if a provider is investigated and found by a court to have failed to report statutory rape. The new rule outlines how an individual can report a complaint on a provider, and the actions OHCA can take if the complaint has been found valid.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-19.6. Complaints related to the Defunding Statutory Rape Cover-up Act

(a) In accordance with Title 56 of the Oklahoma Statutes (O.S.) § 1007.4, the Oklahoma Health Care Authority (OHCA) shall investigate complaints made pursuant to the Defunding Statutory Rape Cover-up Act that are submitted in writing to OHCA's Legal Division, and that include:

- (1) The name and contact information of the person submitting the complaint;
- (2) The name of the health care provider and/or affiliate, as that term is defined by 56 O.S. § 1007.1, who is alleged:

(A) To have been found by a court of law to have failed to report statutory rape; or

(B) To have failed to report statutory rape where the statutory rape resulted in a conviction against the assailant;

- (3) The name of the SoonerCare member who allegedly was the victim of statutory rape (if the member is an adult), or of the member's parent(s) or legal guardian (if the member is a minor); and
- (4) A short summary of any other relevant information.

(b) A complaint made pursuant to the Defunding Statutory Rape Cover-up Act may result in a denial of an application for a new or renewed provider enrollment contract, pursuant to Oklahoma Administrative Code (OAC) 317:30-3-19.3, or termination of an existing provider agreement, pursuant to OAC 317:30-3-19.5.

(c) A complaint made pursuant to the Defunding Statutory Rape Cover-up Act may also result in a referral to local law enforcement authorities, where appropriate.

[OAR Docket #20-461; filed 6-26-20]

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

[OAR Docket #20-449]

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Part 1. General Scope and Administration
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Subchapter 5. Individual Providers and Specialties
Part 5. Pharmacies
317:30-5-72 [AMENDED]
317:30-5-77.1 [AMENDED]
(Reference APA WF # 19-20)

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The Oklahoma Health Care Authority Act, Section 5007 of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; and 42 CFR § 447.56(a)(1)(x)

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The proposed revisions will remove prescription limits of certain frequently monitored prescription drugs and medication-assisted treatment (MAT) drugs for opioid use disorder. The proposed rule changes will also remove co-payments for MAT drugs. Additional rule changes will amend prescription quantity limits when a product is on the maintenance drug list. The proposed rule changes will allow certain products to be dispensed in quantities of up to a 90-day supply. Other revisions will align administrative rules regarding cost sharing exemptions for AI/AN members with Oklahoma's Medicaid State Plan language and federal regulation at 42 CFR § 447.56(a)(x). Finally, revisions will align policy with current practice and correct grammatical errors.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-5. Assignment and ~~Cost Sharing~~cost sharing

(a) **Definitions.** The following words and terms, when used in subsection (c) of this Section, shall have the following meaning, unless the context clearly indicates otherwise:

- (1) **"Fee-for-service contract"** means the provider agreement specified in ~~OAC~~Oklahoma Administrative

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Code (OAC) 317:30-3-2. This contract is the contract between the Oklahoma Health Care Authority (OHCA) and medical providers which provides for a fee with a specified service involved.

(2) **"Within the scope of services"** means the set of covered services defined at OAC 317:25-7 and the provisions of the SoonerCare Choice contracts in the SoonerCare Program.

(3) **"Outside of the scope of the services"** means all medical benefits outside the set of services defined at OAC 317:25-7 and the provisions of the SoonerCare Choice contracts in the SoonerCare Program.

(b) **Assignment in fee-for-service.** The OHCA's Oklahoma's Medicaid State Plan provides that participation in the medical program is limited to providers who accept, as payment in full, the amounts paid by OHCA plus any deductible, coinsurance, or co-payment required by the State Plan to be paid by the member and make no additional charges to the member or others.

(1) OHCA presumes acceptance of assignment upon receipt of an assigned claim. This assignment, once made, cannot be rescinded, in whole or in part by one party, without the consent of the other party.

(2) Once an assigned claim has been filed, the member must not be billed and the member is not responsible for any balance except the amount indicated by OHCA. The only amount a member may be responsible for is a co-payment, or the member may be responsible for services not covered under the medical programs. In any event, the member should not be billed for charges on an assigned claim until the claim has been adjudicated or other notice of action received by the provider. Any questions regarding amounts paid should be directed to OHCA, Provider Services.

(3) When potential assignment violations are detected, the OHCA will contact the provider to assure that all provisions of the assignment agreement are understood. When there are repeated or uncorrected violations of the assignment agreement, the OHCA is required to suspend further payment to the provider.

(c) **Assignment in SoonerCare.** Any provider who holds a ~~fee for service~~ fee-for-service contract and also executes a contract with a provider in the SoonerCare Choice program must adhere to the rules of this subsection regarding assignment.

(1) If the service provided to the member is outside of the scope of the services outlined in the SoonerCare ~~Contract~~ contract, then the provider may bill or seek collection from the member.

(2) In the event there is a disagreement whether the services are in or out of the scope of the contracts referenced in (1) of this subsection, the ~~Oklahoma Health Care Authority~~ OHCA shall be the final authority for this decision.

(3) Violation of this provision shall be grounds for a contract termination in the fee-for-service and SoonerCare programs.

(d) **Cost Sharing Copayments sharing/co-payment.** Section 1902(a)(14) of the Social Security Act permits states

to require certain members to share some of the costs of SoonerCare by imposing upon them such payments as enrollment fees, premiums, deductibles, coinsurance, co-payments, or similar cost sharing charges. OHCA requires a co-payment of some SoonerCare members for certain medical services provided through the ~~fee for service~~ fee-for-service program. A co-payment is a charge which must be paid by the member to the service provider when the service is covered by SoonerCare. Section 1916(e) of the Act requires that a provider participating in the SoonerCare program may not deny care or services to an eligible individual based on such individual's inability to pay the co-payment. A person's assertion of their inability to pay the co-payment establishes this inability. This rule does not change the fact that a member is liable for these charges, and it does not preclude the provider from attempting to collect the co-payment.

(1) Co-payment is not required of the following members:

(A) Individuals under age ~~24~~ twenty-one (21). Each member's date of birth is available on the REVS system or through a commercial swipe card system.

(B) Members in nursing facilities (NF) and intermediate care facilities for individuals with intellectual disabilities (ICF/IID).

(C) Home and ~~Community Based Service~~ Community-Based Services (HCBS) waiver members except for prescription drugs.

(D) ~~Native Americans providing documentation of ethnicity in accordance with OAC 317:35-5-25 who receive items and services furnished by the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization or through referral under contract health services~~ American Indian and Alaska Native members, per Section 5006 of the American Recovery and Reinvestment Act of 2009 and as established in the federally-approved Oklahoma Medicaid State Plan.

(E) Individuals who are categorically eligible for SoonerCare through the Breast and Cervical Cancer Treatment program.

(F) Individuals receiving hospice care, as defined in section 1905(o) of the Social Security Act.

(2) Co-payment is not required for the following services:

(A) Family planning services. This includes all contraceptives and services rendered.

(B) Emergency services provided in a hospital, clinic, office, or other facility.

(C) Services furnished to pregnant women, if those services relate to the pregnancy or to any other medical condition which may complicate the pregnancy, including prenatal vitamins.

(D) Smoking and ~~Tobacco Cessation~~ tobacco cessation counseling and products.

(E) ~~Diabetic supplies~~ Blood glucose testing supplies and insulin syringes.

(F) Medication-assisted treatment (MAT) drugs.

(3) Co-payments are required in an amount not to exceed the federal allowable for the following:

- (A) Inpatient hospital stays.
- (B) Outpatient hospital visits.
- (C) Ambulatory surgery visits including free-standing ambulatory surgery centers.
- (D) Encounters with the following rendering providers:
 - (i) Physicians;
 - (ii) ~~Advanced Practice Nurses, practice registered nurses;~~
 - (iii) ~~Physician Assistants, assistants;~~
 - (iv) ~~Optometrists;~~
 - (v) ~~Home Health Agencies, health agencies;~~
 - (vi) ~~Certified Registered Nurse Anesthetists, registered nurse anesthetists;~~
 - (vii) ~~Anesthesiologist Assistants, assistants;~~
 - (viii) ~~Durable Medical Equipment, medical equipment providers;~~ and
 - (ix) Outpatient behavioral health providers.

(E) Prescription drugs.

(F) Crossover claims. Dually eligible Medicare/SoonerCare members must make a co-payment in an amount that does not exceed the federal allowable per visit/encounter for all Part B covered services. This does not include dually eligible HCBS waiver members.

(4) Medicaid premiums and cost sharing incurred by all individuals in the Medicaid household may not exceed an aggregate limit of five percent (5%) of the family's income applied on a monthly basis, as specified by the agency.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 5. PHARMACIES

317:30-5-72. Categories of service eligibility

(a) **Coverage for adults.** Prescription drugs for categorically needy adults are covered as set forth in this subsection.

(1) With the exception of (2) and (3) of this subsection, categorically needy adults are eligible for a maximum of six (6) covered prescriptions per month with a limit of two (2) brand name prescriptions. A prior authorization may be granted for a third brand name if determined to be medically necessary by OHCA and if the member has not already utilized their six (6) covered prescriptions for the month.

(2) Subject to the limitations set forth in ~~OCAC~~Oklahoma Administrative Code (OAC) 317:30-5-72.1, 317:30-5-77.2, and 317:30-5-77.3, exceptions to the six (6) medically necessary prescriptions per month limit are:

(A) ~~unlimited~~Unlimited monthly medically necessary prescriptions for categorically related individuals who are residents of nursing facilities (NF) or ~~ICF/IID~~intermediate care facilities for individuals with an intellectual disability (ICF/IID); and

(B) ~~seven~~Seven (7) additional medically necessary prescriptions which are generic products per month to the six (6) covered under the State Plan ~~(including three (3) brand name prescriptions)~~[including three (3) brand name prescriptions] are allowed for adults receiving services under the 1915(c) ~~HCBS Waivers~~Home and Community-Based Services (HCBS) waivers. Medically necessary prescriptions beyond the three (3) brand name or thirteen (13) total prescriptions will be covered with prior authorization.

(3) ~~Drugs exempt from the prescription limit include: Antineoplastics, anti-retroviral agents for persons diagnosed with Acquired Immune Deficiency Syndrome (AIDS) or who have tested positive for the Human Immunodeficiency Virus (HIV), certain prescriptions that require frequent laboratory monitoring, birth control prescriptions, over the counter contraceptives, hemophilia drugs, compensable smoking cessation products, naloxone for use in opioid overdose, certain carrier or diluent solutions used in compounds (i.e. sodium chloride, sterile water, etc.), and drugs used for the treatment of tuberculosis. For purposes of this Section, exclusion from the prescription limit means claims filed for any of these prescriptions will not count toward the prescriptions allowed per month. For purposes of this Section, "exempt from the prescription limit" means claims filed for any of these prescriptions will not count toward the prescriptions allowed per month. Drugs exempt from the prescription limit include:~~

- (A) Antineoplastics;
- (B) Anti-retroviral agents for persons diagnosed with Acquired Immune Deficiency Syndrome (AIDS) or who have tested positive for the Human Immunodeficiency Virus (HIV);
- (C) Frequently monitored prescription drugs. A complete list of the selected drugs considered as frequently monitored can be viewed on the agency's website at www.okhca.org.
- (D) Medication-assisted treatment (MAT) drugs for opioid use disorder;
- (E) Contraceptives;
- (F) Hemophilia drugs;
- (G) Compensable smoking and tobacco cessation products;
- (H) Naloxone for use in opioid overdose;
- (I) Certain carrier or diluent solutions used in compounds (i.e. sodium chloride, sterile water, etc.);
- (J) Drugs used for the treatment of tuberculosis; and
- (K) Prenatal vitamins.

(4) When a brand drug is preferred over its generic equivalent due to lower net cost, that drug shall not count

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toward the brand limit; however, it will count toward the monthly prescription limit.

(b) **Coverage for children.** Prescription drugs for SoonerCare eligible individuals under twenty-one (21) years of age are not limited in number per month, but may be subject to prior authorization, quantity limits or other restrictions.

(c) **Individuals eligible for Part B of Medicare.** Individuals eligible for Part B of Medicare are also eligible for the Medicare Part D prescription drug benefit. Coordination of benefits between Medicare Part B and Medicare Part D is the responsibility of the pharmacy provider. The SoonerCare pharmacy benefit does not include any products which are available through either Part B or Part D of Medicare.

(d) **Individuals eligible for a prescription drug benefit through a Prescription Drug Plan (PDP) or Medicare Advantage - Prescription Drug (MA-PD) plan as described in the Medicare Modernization Act (MMA) of 2003.** Individuals who qualify for enrollment in a PDP or MA-PD are specifically excluded from coverage under the SoonerCare pharmacy benefit. This exclusion applies to these individuals in any situation which results in a loss of Federal Financial Participation for the SoonerCare program. This exclusion shall not apply to items covered at OAC 317:30-5-72.1(2) unless those items are required to be covered by the prescription drug provider in the MMA or subsequent federal action.

317:30-5-77.1. Dispensing ~~Quantity~~quantity

(a) Prescription quantities ~~are to~~ shall be limited to a ~~34~~thirty-four (34) day supply, except in the following situations:

(1) The Drug Utilization Review (DUR) Board has recommended a different day supply or quantity limit based on published medical data, including the manufacturer's package insert, ~~provided the Chief Executive Officer of the OHCA has approved the recommendation;~~

(2) The product is included on the Maintenance List of medications, which are ~~exempt~~exempted from this limit, and may be dispensed up to ~~100 units~~a ninety (90) day supply;

(3) The manufacturer of the drug recommends a dispensing quantity less than a ~~34~~thirty-four (34) day supply;

(b) Refills are to be provided only if authorized by the prescriber, allowed by law, and should be in accordance with the ~~best~~current medical and pharmacological practices. A provider may not generate automated refills unless the member has specifically requested such service. Documentation of this request must be available for review by OHCA auditors.

(c) ~~The Drug Utilization Review~~DUR Board shall develop a Maintenance List of medications which are used in general practice on a continuing basis. These drugs shall be made available through the ~~vendor drug program~~Vendor Drug Program in quantities up to ~~100 units~~a ninety (90) day supply when approved by the prescriber. ~~The Drug Utilization Review~~DUR Board shall review the Maintenance List at least annually. ~~The Maintenance List shall be approved by the Chief Executive Officer of OHCA.~~ When approved by the prescriber, all maintenance medications must be filled at the maximum quantity allowed after a sufficient stabilization period when

dispensed to SoonerCare members who do not reside in a ~~long term~~long-term care facility. For members residing in a ~~long term~~long-term care facility, chronic medications, including all products on the Maintenance List, must be dispensed in quantities of not less than a ~~28~~twenty-eight (28) day supply.

(d) For products covered by the Oklahoma Vendor Drug Program, the metric quantity shown on the claim form must be in agreement with the descriptive unit of measure applicable to the specific ~~NDC~~National Drug Code (NDC). Only numeric characters should be entered. Designations, such as the form of drug, i.e., ~~Tabs, Caps, Suppositories,~~tabs, caps, suppositories, etc., must not be used. Products should be billed in a manner consistent with quantity measurements.

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

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The proposed revisions will add necessary policy revisions due to a new streamlined electronic process developed by OHCA for providers. The revisions will outline how providers can request a review of submitted claims and how to submit supporting documentation for their request through the OHCA provider portal. The electronic review process will replace the previous manual process of submitting paper forms and documentation to a post office box.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-20. Claim inquiry procedures (excluding nursing homes and hospitals)

A medical provider may request a review of the decision of the amount paid or the non-payment of medical services provided to an eligible member. If the medical provider does not agree with the original payment from the Fiscal Agent adjudication of the original claim, he/she may submit a written explanation on HCA 17 (Claim Inquiry Form) as to why the adjustment is being requested and what action is to be taken, a copy of the paid remittance statement and/or detailed explanation of the paid information and a copy of the original claim with the corrections to be made for consideration of additional payment. The claim should be submitted in accordance with the instructions in the OHCA Provider Billing and Procedures Manual, an electronic request for review on the Oklahoma Health Care Authority (OHCA) provider portal in accordance with the instructions in the Provider Billing and Procedures Manual, available on OHCA's website, www.okhca.org. Documentation, including but not limited to, supporting medical documentation and/or proof of timely filing as outlined in Oklahoma Administrative Code (OAC) 317:30-3-11, must be included with each submission.

[OAR Docket #20-450; filed 6-26-20]

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

[OAR Docket #20-442]

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PERMANENT final adoption

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Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-27 [AMENDED]
(Reference APA WF # 19-08)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; and 25 Oklahoma Statutes, Sections 2004 and 2005

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n/a

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The proposed revisions will comply with Oklahoma Senate Bill (SB) No. 575, which amended 25 Oklahoma Statutes (O.S.), Section 2004 and 2005. Revisions outline and further define the following requirements: parental consent for telehealth services; confidentiality and security of protected health information in order to comply with state and federal law; that services provided or received outside of Oklahoma may require prior authorization; and that services provided must be within the scope of the practitioner's license or certification. Revisions also define that program restrictions and coverage for telehealth services mirror those which exist for the same services when not provided through telehealth, provided, however, that only certain telehealth codes are reimbursable by SoonerCare.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-27. Telehealth

(a) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise.

(1) **"Remote patient monitoring"** means the use of digital technologies to collect medical and other forms of health data (e.g. vital signs, weight, blood pressure, blood sugar) from individuals in one (1) location and

electronically transmit that information securely to health care providers in a different location for assessment and recommendations.

(2) **"School-based services"** means medically necessary health-related and rehabilitative services that are provided by a qualified school provider to a student under the age of twenty-one (21), pursuant to an Individualized Education Program (IEP), in accordance with the Individuals with Disabilities Education Act. See Oklahoma Administrative Code (OAC) 317:30-5-1020.

(23) **"Store and forward technologies"** means the acquisition (storing) of clinical information (e.g., data, document, image, sound, video) that is then electronically transmitted (forwarded to or retrieved by) to another site for clinical evaluation. transmission of a patient's medical information from an originating site to the health care provider at the distant site; provided, photographs visualized by a telecommunications system shall be specific to the patient's medical condition and adequate for furnishing or confirming a diagnosis or treatment plan. Store and forward technologies shall not include consultations provided by telephone audio-only communication, electronic mail, text message, instant messaging conversation, website questionnaire, nonsecure video conference, or facsimile transmission.

(34) **"Telehealth"** means the ~~mode of delivering healthcare services via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self management of patients, at a distance from health care providers.~~ practice of health care delivery, diagnosis, consultation, evaluation and treatment, transfer of medical data or exchange of medical education information by means of a two-way, real-time interactive communication, not to exclude store and forward technologies, between a patient and a health care provider with access to and reviewing the patient's relevant clinical information prior to the telemedicine visit. Telehealth shall not include consultations provided by telephone audio-only communication, electronic mail, text message, instant messaging conversation, website questionnaire, nonsecure video conference, or facsimile transmission.

(5) **"Telehealth medical service"** means, for the purpose of the notification requirements of OAC 317:30-3-27(d)(2), telehealth services that expressly do not include physical therapy, occupational therapy, and/or speech and hearing services.

(b) **Applicability and scope.** The purpose of this Section is to implement telehealth policy that improves access to health care services, while complying with all applicable ~~Federal and State laws~~ state and federal laws and regulations. Telehealth services are not an expansion of ~~SoonerCare covered~~ SoonerCare-covered services, but an option for the delivery of certain covered services. However, if there are technological difficulties in performing an objective, thorough medical assessment, or problems in the member's understanding of telehealth, hands-on-assessment and/or ~~in person~~ in-person care must be provided for the member. Any

service delivered using telehealth technology must be appropriate for telehealth delivery and be of the same quality and otherwise on par with the same service delivered in person. A telehealth encounter must ~~comply with the Health Information Portability and Accountability Act (HIPAA)~~ maintain the confidentiality and security of protected health information in accordance with applicable state and federal law, including, but not limited to, 42 Code of Federal Regulations (CFR) Part 2, 45 CFR Parts 160 and 164, and 43A Oklahoma Statutes (O.S.) § 1-109. For purposes of SoonerCare reimbursement, telehealth is the use of interactive audio, video, or other electronic media for the purpose of diagnosis, consultation, or treatment that ~~occurs~~ occurs in real-time and when the member is actively participating during the transmission. ~~Telehealth does not include the use of audio only telephone, electronic mail or facsimile transmission.~~

(c) **Conditions Requirements.** The following ~~conditions~~ requirements apply to all services rendered via telehealth.

(1) Interactive audio and video telecommunications must be used, permitting encrypted, real-time communication between the physician or practitioner and the SoonerCare member. The telecommunication service must be secure and adequate to protect the confidentiality and integrity of the telehealth information transmitted. As a condition of payment the member must actively participate in the telehealth visit.

(2) The telehealth equipment and transmission speed and image must be technically sufficient to support the service billed. If a peripheral diagnostic scope is required to assess the member, it must provide adequate resolution or audio quality for decision making. Staff involved in the telehealth visit need to be trained in the use of the telehealth equipment and competent in its operation.

(3) The medical or behavioral health related service must be provided at an appropriate site for the delivery of telehealth services. An appropriate telehealth site is one that has the proper security measures in place; the appropriate administrative, physical, and technical safeguards should be in place that ensures the confidentiality, integrity, and security of electronic protected health information. The location of the room for the encounter at both ends should ensure comfort, privacy, and confidentiality. Both visual and audio privacy are important, and the placement and selection of the rooms should consider this. Appropriate telehealth equipment and networks must be used considering factors such as appropriate screen size, resolution, and security. Providers and/or members may provide or receive telehealth services outside of Oklahoma when medically necessary; however, prior authorization may be required, per OAC 317:30-3-89 through 317:30-3-91.

(4) The provider must be contracted with SoonerCare and appropriately licensed ~~for the service to be provided or certified, in good standing.~~ Services that are provided must be within the scope of the practitioner's license or certification. If the provider is outside of Oklahoma, the provider must comply with all laws and regulations of the

provider's location, including health care and telehealth requirements.

(5) ~~If the member is a minor child, a parent/guardian must present the minor child for telehealth services unless otherwise exempted by State or Federal law.~~ If the member is a minor, the provider must obtain the prior written consent of the member's parent or legal guardian to provide services via telehealth, that includes, at a minimum, the name of the provider; the provider's permanent business office address and telephone number; an explanation of the services to be provided, including the type, frequency, and duration of services. Written consent must be obtained annually, or whenever there is a change in the information in the written consent form, as set forth above.

The ~~parent/guardian~~ parent or legal guardian need not attend the telehealth session unless attendance is therapeutically appropriate. The requirements of subsection OAC 317:30-3-27(c)(5), however, do not apply to telehealth services provided in a primary or secondary school setting.

(6) If the member is a minor, the telehealth provider shall notify the parent or legal guardian that a telehealth service was performed on the minor through electronic communication whether a text message or email.

(67) The member retains the right to withdraw at any time.

(78) All telehealth activities must comply with ~~the HIPAA Security Standards, OHCA~~ Oklahoma Health Care Authority (OHCA) policy, and all other applicable State and Federal laws and regulations, including, but not limited to, 59 O.S. § 478.1.

(89) The member has access to all transmitted medical information, with the exception of live interactive video as there is often no stored data in such encounters.

(910) There will be no dissemination of any member images or information to other entities without written consent from the member or member's parent or legal guardian, if the member is a minor.

(11) A telehealth service is subject to the same SoonerCare program restrictions, limitations, and coverage which exist for the service when not provided through telehealth; provided, however, that only certain telehealth codes are reimbursable by SoonerCare. For a list of the SoonerCare-reimbursable telehealth codes, refer to the OHCA's Behavioral Health Telehealth Services and Medical Telehealth Services, available on OHCA's website, www.okhca.org.

(12) Where there are established service limitations, the use of telehealth to deliver those services will count towards meeting those noted limitations. Service limitations may be set forth by Medicaid and/or other third party payers.

(d) **Additional requirements specific to telehealth services in a school setting.** In order for OHCA to reimburse medically necessary telehealth services provided to SoonerCare members in a primary or secondary school setting, all of the requirements in (c) above must be met, with the exception of (c)(5), as well as all of the requirements shown below, as applicable.

(1) **Consent requirements.** Advance parent or legal guardian consent for telehealth services must be obtained for minors, in accordance with 25 O.S. §§ 2004 through 2005. Additional consent requirements shall apply to school-based services provided pursuant to an IEP, per OAC 317:30-5-1020.

(2) **Notification requirements.** For telehealth medical services provided in a primary or secondary school setting, the telehealth practitioner must provide a summary of the service, including, but not limited to, information regarding the exam findings, prescribed or administered medications, and patient instructions, to:

(A) The SoonerCare member, if he or she is an adult, or the member's parent or legal guardian, if the member is a minor; or

(B) The SoonerCare member's primary care provider, if requested by the member or the member's parent or legal guardian.

(3) **Requirements specific to physical therapy, occupational therapy, and/or speech and hearing services.** Even though physical therapy, occupational therapy, and/or speech and hearing services are not subject to the notification requirements of OAC 317:30-3-27(d)(2), said services must still comply with all other State and Federal Medicaid requirements, in order to be reimbursable by Medicaid. Accordingly, for those physical therapy, occupational therapy, and/or speech and hearing services that are provided in a primary or secondary school setting, but that are not school-based services (i.e., not provided pursuant to an IEP), providers must adhere to all state and federal requirements relating to prior authorization and prescription or referral, including, but not limited to, 42 C.F.R. § 440.110, OAC 317:30-5-291, 317:30-5-296, and 317:30-5-676.

(de) **Reimbursement.**

(1) Health care services delivered by telehealth such as Remote Patient Monitoring, Store and Forward, or any other telehealth technology, must be compensable by OHCA in order to be reimbursed.

(2) Services provided by telehealth must be billed with the appropriate modifier.

(3) If the technical component of an X-ray, ultrasound or electrocardiogram is performed during a telehealth transmission, the technical component can be billed by the provider that provided that service. The professional component of the procedure and the appropriate visit code should be billed by the provider that rendered that service.

(4) The cost of telehealth equipment and transmission is not reimbursable by SoonerCare.

(ef) **Documentation.**

(1) Documentation must be maintained by the rendering provider to substantiate the services rendered.

(2) Documentation must indicate the services were rendered via telehealth, and the location of the services.

(3) All other SoonerCare documentation guidelines apply to the services rendered via telehealth. Examples include but are not limited to:

(A) Chart notes;

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- (B) Start and stop times;
- (C) Service provider's credentials; and
- (D) Provider's signature.

(f) **Final authority.** The OHCA has discretion and the final authority to approve or deny any telehealth services based on agency and/or SoonerCare members' needs.

[OAR Docket #20-442; filed 6-26-20]

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

[OAR Docket #20-465]

RULEMAKING ACTION:

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RULES:

Subchapter 3. General Provider Policies

Part 4. Early and Periodic Screening, ~~Diagnosis~~Diagnostic and Treatment (EPSDT) Program/Child-Health Services

317:30-3-65 [AMENDED]

Subchapter 5. Individual Providers and Specialties

Part 103. Qualified Schools as Providers of Health-Related Services

317:30-5-1022 [REVOKED]

317:30-5-1023 [AMENDED]

317:30-5-1024 [REVOKED]

317:30-5-1025 [REVOKED]

317:30-5-1026 [AMENDED]

317:30-5-1027 [AMENDED]

(Reference APA WF # 19-46)

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Not applicable

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n/a

GIST/ANALYSIS:

The proposed revisions will cleanup the school-based policy to separate and differentiate between services provided in a school setting under EPSDT benefit versus those school-based services that are pursuant to an Individual Education Plan (IEP).

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED**

**FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 14, 2020:**

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

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

317:30-3-65. Early and Periodic Screening, ~~Diagnosis~~Diagnostic and Treatment (EPSDT) Program/Child-health Services

Payment is made to eligible providers for Early and Periodic Screening, ~~Diagnosis~~Diagnostic and Treatment (EPSDT) services on behalf of eligible individuals under the age of ~~21~~twenty-one (21).

(1) The EPSDT program is a comprehensive child-health program, designed to ensure the availability of, and access to, required health care resources and help parents and guardians of Medicaid-eligible children and adolescents use these resources. An effective EPSDT program assures that health problems are diagnosed and treated early before they become more complex and their treatment more costly. The physician plays a significant role in educating parents and guardians about all services available through the EPSDT program. The receipt of an identified EPSDT screening makes the member eligible for all necessary follow-up care that is within the scope of the SoonerCare program. Early and Periodic Screening, ~~Diagnosis~~Diagnostic and Treatment (EPSDT) covers services, supplies, or equipment that are determined to be medically necessary for a child or adolescent, and which are included within the categories of mandatory and optional services in Section 1905(a) of Title XIX, regardless of whether such services, supplies, or equipment are listed as covered in ~~Oklahoma's State Plan~~Oklahoma's Medicaid State Plan.

(2) Federal regulations also require that the State set standards and protocols for each component of EPSDT services. The standards must provide for services at intervals which meet reasonable standards of medical and dental practice. The standards must also provide for EPSDT services at other intervals as medically necessary to determine the existence of certain physical or behavioral health illnesses or conditions.

(3) SoonerCare providers who perform EPSDT screenings must assure that the screenings they provide meet the minimum standards established by the Oklahoma Health Care Authority in order to be reimbursed at the level established for EPSDT services.

(4) An EPSDT screening is considered a comprehensive examination. A provider billing SoonerCare for an EPSDT screen may not bill any other Evaluation and Management Current Procedure Terminology (CPT) code

for that patient on that same day. It is expected that the screening provider will perform necessary treatment as part of the screening charge. However, there may be other additional diagnostic procedures or treatments not normally considered part of a comprehensive examination, including diagnostic tests and administration of immunizations, required at the time of screening. Additional diagnostic procedures or treatments may be billed independently from the screening. Some services as set out in this section may require prior authorization.

(5) For an EPSDT screening to be considered a completed reimbursable service, providers must perform, and document, all required components of the screening examination. Documentation of screening services performed must be retained for future review.

(6) All comprehensive screenings provided to individuals under age ~~21~~ twenty-one (21) must be filed on HCFA-1500 using the appropriate preventive medicine procedure code or an appropriate Evaluation and Management code from the Current Procedural Terminology Manual (CPT) accompanied by the appropriate "V" diagnosis code.

(7) For EPSDT services in a school-based setting that are provided pursuant to an IEP, please refer to Part 103, Qualified Schools As Providers Of Health-Related Services, in Oklahoma Administrative Code 317:30-5-1020 through 317:30-5-1028.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 103. QUALIFIED SCHOOLS AS PROVIDERS OF HEALTH-RELATED SERVICES

317:30-5-1022. Periodicity schedule [REVOKED]

(a) ~~The SoonerCare program has adopted the recommendations of the American Academy of Pediatrics' Bright Futures' periodicity schedule for services.~~

(b) ~~Children and adolescents enrolled in SoonerCare are referred to their SoonerCare provider for services. In cases where the SoonerCare provider authorizes the school to perform the screen or fails to schedule an appointment within three (3) weeks and a request has been made and documented by the school, the school may then furnish the Early and Periodic Screening, Diagnosis and Treatment child health screening and bill it as a fee for service activity. Results of the child health screening are forwarded to the member's SoonerCare provider.~~

317:30-5-1023. Coverage by category

(a) **Adults.** There is no coverage for services rendered to adults twenty-one (21) years of age and older.

(b) **Children.** For non-Individualized Education Program (IEP) medical services that can be provided in a school setting, refer to Part 4, Early and Periodic Screening, Diagnostic and Treatment program, of Oklahoma Administrative Code at

317:30-3-65 through 317:30-3-63.12. Payment is made for the following compensable services rendered by qualified school providers:

(1) **Child health screening.** ~~An initial screening may be requested by an eligible member at any time and must be provided without regard to whether the member's age coincides with the established periodicity schedule. Coordination referral is made to the SoonerCare provider to assure at a minimum, that periodic screens are scheduled and provided in accordance with the periodicity schedule following the initial screening. Child health screening must adhere to the following requirements:~~

(A) ~~Children and adolescents enrolled in SoonerCare must be referred to their SoonerCare provider for child health screenings. In cases where the SoonerCare provider authorizes the school to perform this screen or fails to schedule an appointment within three (3) weeks and a request has been made and documented by the school, the school may then furnish the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) child health screening. Written notification must be mailed to the SoonerCare member's primary care provider (PCP) prior to the school's intent to furnish and bill for the screen. Results of this screening must be forwarded to the member's SoonerCare provider.~~

(B) ~~Child health screenings must be provided by a state licensed physician (M.D. or D.O.), state licensed nurse practitioner with prescriptive authority, or state licensed physician assistant. Screening services must include the following:~~

- ~~(i) Comprehensive health and developmental history, including assessment of both physical and mental health development;~~
- ~~(ii) Comprehensive unclothed physical exam;~~
- ~~(iii) Appropriate immunizations according to the age and health history;~~
- ~~(iv) Laboratory test, including blood level assessment; and~~
- ~~(v) Health education, including anticipatory guidance.~~

(C) ~~Mass screenings for any school-based service are not billable to SoonerCare, nor are screenings that are performed as a child or adolescent find activity pursuant to an Individuals with Disabilities Education Act (IDEA) requirement. There must be a documented referral in place that indicates the child or adolescent has an individualized need that warrants a screening to be performed.~~

(2) **Child health encounter.** ~~The child health encounter may include a diagnosis and treatment encounter, a follow up health encounter, or a home visit. A child health encounter may include any of the following services:~~

- ~~(A) vision;~~
- ~~(B) hearing;~~
- ~~(C) dental;~~
- ~~(D) a health history;~~

- ~~(E) physical examination;~~
- ~~(F) developmental assessment;~~
- ~~(G) nutrition assessment and counseling;~~
- ~~(H) social assessment and counseling;~~
- ~~(I) genetic evaluation and counseling;~~
- ~~(J) indicated laboratory and screening tests;~~
- ~~(K) screening for appropriate immunizations; or~~
- ~~(L) health counseling and treatment of childhood illness and conditions.~~

(31) **Diagnostic encounters.** Diagnostic encounters are defined as those services necessary to fully evaluate defects, physical or behavioral health illnesses, or conditions discovered by the screening. Approved diagnostic encounters may include the following:

(A) **Hearing and hearing aid evaluation.** Hearing evaluation includes pure tone air, bone, and speech audiometry. Hearing evaluations must be provided by a state-licensed audiologist who:

- (i) ~~holds~~Holds a Certificate of Clinical Competence from the American Speech-Language-Hearing Association (ASHA); or
- (ii) ~~has~~Has completed the equivalent educational requirements and work experience necessary for the certificate; or
- (iii) ~~has~~Has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(B) **Audiometry test.** Audiometric test (Immittance [Impedance] audiometry or tympanometry) includes bilateral assessment of middle ear status and reflex studies (when appropriate) provided by a state-licensed audiologist who:

- (i) ~~holds~~Holds a Certificate of Clinical Competence from ASHA; or
- (ii) ~~has~~Has completed the equivalent educational requirements and work experience necessary for the certificate; or
- (iii) ~~has~~Has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(C) **Ear impression (for earmold).** Ear impression (for earmold) includes taking an impression of a member's ear and providing a finished earmold ~~which is to be used~~ with the member's hearing aid as provided by a state-licensed audiologist who:

- (i) ~~holds~~Holds a Certificate of Clinical Competence from the ASHA; or
- (ii) ~~has~~Has completed the equivalent educational requirements and work experience necessary for the certificate; or
- (iii) ~~has~~Has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(D) **Vision screening.** Vision screening in schools includes application of tests and examinations to identify visual defects or vision disorders. The vision screening may be performed by a Registered Nurse (RN) or Licensed Practical Nurse (LPN) under the

supervision of an RN, ~~or state certified vision impairment teacher.~~ The service can be billed when a SoonerCare member has an individualized documented concern that warrants a screening. A vision examination must be provided by a state-licensed Doctor of Optometry (O.D.) or licensed physician specializing in ophthalmology (M.D. or D.O.). This vision examination, at a minimum, includes diagnosis and treatment for defects in vision.

(E) **Speech-language evaluation.** Speech-language evaluation is for the purpose of identification of children or adolescents with speech or language disorders and the diagnosis and appraisal of specific speech and language services. Speech-language evaluations must be provided by state-licensed speech-language pathologist who:

- (i) ~~holds~~Holds a Certificate of Clinical Competence from the ASHA; or
- (ii) ~~has~~Has completed the equivalent educational requirements and work experience necessary for the certificate; or
- (iii) ~~has~~Has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(F) **Physical therapy evaluation.** Physical therapy evaluation includes evaluating the student's ability to move throughout the school and to participate in classroom activities and the identification of movement dysfunction and related functional problems ~~and must be provided by a state-licensed physical therapist. It must be provided by a state-licensed physical therapist.~~ Physical therapy evaluations must adhere to guidelines found at OAC 317:30-5-291.

(G) **Occupational therapy evaluation.** Occupational therapy evaluation services include determining what therapeutic services, assistive technology, and environmental modifications a student requires for participation in the special education program and must be provided by a state-licensed occupational therapist.

(H) ~~**Psychological evaluation and testing.** Psychological evaluation and testing are for the purpose of diagnosing and determining if emotional, behavioral, neurological, or developmental issues are affecting academic performance and for determining recommended treatment protocol. Evaluation/testing for the sole purpose of academic placement (e.g. diagnosis of learning disorders) is not a compensable service. Psychological evaluation and testing must be provided by state licensed, board certified psychologist or school psychologist certified by Oklahoma State Department of Education (OSDE).~~ **Evaluation and testing.** Evaluation and testing by psychologists and certified school psychologists are for the purpose of assessing emotional, behavioral, cognitive, or developmental issues that are affecting academic performance and for determining recommended treatment protocol. Evaluation or testing for the sole

purpose of academic placement (e.g., diagnosis of learning disorders) is not a compensable service. These evaluations and tests must be provided by a state-licensed, board-certified psychologist or a certified school psychologist certified by the State Department of Education (SDE).

(42) **Child-guidance treatment encounter.** A child-guidance treatment encounter may occur through the provision of individual, family, or group treatment services to children and adolescents who are identified as having specific disorders or delays in development, emotional or behavioral problems, or disorders of speech, language, or hearing. These types of encounters are initiated following the completion of a diagnostic encounter and subsequent development of a treatment plan, or as a result of an ~~Individualized Education Program (IEP)~~IEP and may include the following:

(A) **Hearing and vision services.** Hearing and vision services may include provision of habilitation activities, such as: auditory training; aural and visual habilitation training; including Braille, and communication management; orientation and mobility; and counseling for vision and hearing losses and disorders. Services must be provided by or under the direct guidance of one (1) of the following individuals practicing within the scope of his or her practice under state law:

(i) state-licensed, ~~Master's Degree Audiologist~~master's degree audiologist who:

(I) ~~holds~~Holds a Certificate of Clinical Competence from the ASHA; or

(II) ~~has~~Has completed the equivalent educational requirements and work experience necessary for the certificate; or

(III) ~~has~~Has completed the academic program and is acquiring supervised work experience to qualify for the certificate;

(ii) ~~state-licensed~~State-licensed, ~~Master's Degree Speech-Language Pathologist~~master's degree speech-language pathologist who:

(I) ~~holds~~Holds a Certificate of Clinical Competence from the ASHA; or

(II) ~~has~~Has completed the equivalent educational requirements and work experience necessary for the certificate; or

(III) ~~has~~Has completed the academic program and is acquiring supervised work experience to qualify for the certificate; and

(iii) ~~state-certified deaf education teacher;~~

(iv) ~~certified~~Certified orientation and mobility specialists; and

(v) ~~state-certified vision impairment teachers.~~

(B) **Speech-language therapy services.** Speech-language therapy services include provisions of speech and language services for the habilitation or prevention of communicative disorders. Speech-language therapy services must be provided by or under the direct guidance and supervision of a state-licensed

~~Speech-Language Pathologist~~speech-language pathologist within the scope of his or her practice under state law who:

(i) ~~holds~~Holds a Certificate of Clinical Competence from the ASHA; or

(ii) ~~has~~Has completed the equivalent educational requirements and work experience necessary for the certificate; or

(iii) ~~has~~Has completed the academic program and is acquiring supervised work experience to qualify for the certificate; or

(C) **Physical therapy services.** Physical therapy services are provided for the purpose of preventing or alleviating movement dysfunction and related functional problems that adversely affect the member's education. Physical therapy services must adhere to guidelines found at OAC 317:30-5-291 and must be provided by or under the direct guidance and supervision of a state-licensed physical therapist; services may also be provided by a ~~Physical Therapy Assistant~~physical therapy assistant who has been authorized by the Board of Examiners working under the supervision of a licensed ~~Physical Therapist~~physical therapist. The licensed ~~Physical Therapist~~physical therapist may not supervise more than ~~three~~Physical Therapy Assistants~~three (3) physical therapy assistants.~~

(D) **Occupational therapy services.** Occupational therapy may include provision of services to improve, develop, or restore impaired ability to function independently. Occupational therapy services must be provided by or under the direct guidance and supervision of a state-licensed ~~Occupational Therapist~~occupational therapist; services may also be provided by an ~~Occupational Therapy Assistant~~occupational therapy assistant who has been authorized by the Board of Examiners, working under the supervision of a licensed ~~Occupational Therapist~~occupational therapist.

(E) **Nursing services.** Nursing services may include provision of services to protect the health status of children and adolescents, correct health problems and assist in removing or modifying health-related barriers, and must be provided by a RN or LPN under supervision of a RN. Services include medically necessary procedures rendered at the school site, such as catheterization, suctioning, tube feeding, and administration and monitoring of medication.

(F) **Psychotherapy/Counseling services.** ~~Psychotherapy services are the provision of counseling for children and parents.~~All services must be for the direct benefit of the member. ~~Psychotherapy/Counseling~~services must be provided by a state-licensed ~~Social Worker~~social worker, a state-licensed ~~Professional Counselor~~professional counselor, a state-licensed ~~Psychologist~~psychologist or ~~School Psychologist~~certified by the OSDE~~SDE-certified school psychologist~~, a state-licensed ~~Marriage~~

~~and Family Therapist~~ marriage and family therapist, or a state-licensed ~~Behavioral Practitioner~~ behavioral health practitioner, or under Board supervision to be licensed in one (1) of the above-stated areas.

(G) **Assistive technology.** Assistive technology ~~are~~ is the provision of services that help to select a device and assist a student with disability(ies) to use an assistive technology device, including coordination with other therapies and training of member and caregiver. Services must be provided by a:

(i) ~~state licensed, Speech Language Pathologist~~ State-licensed speech-language pathologist who:

(I) ~~holds~~ Holds a Certificate of Clinical Competence from the ASHA; or

(II) ~~has~~ Has completed the equivalent educational requirements and work experience necessary for the certificate; or

(III) ~~has~~ Has completed the academic program and is acquiring supervised work experience to qualify for the certificate;

(ii) ~~state licensed Physical Therapist~~ State-licensed physical therapist; or

(iii) ~~state licensed Occupational Therapist~~ State-licensed occupational therapist.

(H) **Personal care.** Provision of personal care services (PCS) allow students with disabilities to safely attend school; ~~includes, but is not limited to, assistance with toileting, oral feeding, positioning, hygiene, and riding the school bus, to handle medical or physical emergencies.~~ Services include, but are not limited to: dressing, eating, bathing, assistance with transferring and toileting, positioning, and instrumental activities of daily living such as preparing meals and managing medications. PCS also includes assistance while riding a school bus to handle medical or physical emergencies. Services must be provided by registered paraprofessionals/assistants that have completed training approved or provided by OSDESDE, or Personal Care Assistants personal care assistants, including LPNs, who have completed on-the-job training specific to their duties. ~~Personal Care services do~~ PCS does not include behavioral monitoring. Paraprofessionals are not allowed to administer medication, nor are they allowed to assist with or provide therapy services to SoonerCare members. Tube feeding of any type may only be reimbursed if provided by a RN or LPN. Catheter insertion and Catheter/Ostomy care may only be reimbursed when done by a RN or LPN. All PCS must be prior authorized.

(I) **Therapeutic behavioral services (TBS).** ~~Therapeutic behavioral services are interventions to modify the non adaptive behavior necessary to improve the student's ability to function in the community as identified on the plan of care. Medical necessity must be identified and documented~~

~~through assessment and annual evaluations/re-evaluations. Services encompass behavioral management, redirection, and assistance in acquiring, retaining, improving, and generalizing socialization, communication and adaptive skills. Services are goal-directed activities for each client to restore, retain and improve the self-help, socialization, communication, and adaptive skills necessary to reside successfully in home and community-based settings. It also includes problem identification and goal setting, medication support, restoring function, and providing support and redirection when needed. TBS activities are behavioral interventions to complement more intensive behavioral health services and may include the following components: basic living and self-help skills; social skills; communication skills; organization and time management; and transitional living skills.~~ This service must be provided by a ~~Behavioral Health School Aide~~ behavioral health school aide (BHSA) who has a high school diploma or equivalent and has successfully completed the ~~paraprofessional~~ training approved by the OSDE and a training curriculum in behavioral interventions for pervasive developmental disorders as recognized by OHCA.SDE, and in collaboration with the Oklahoma Department of Mental Health and Substance Abuse Services, along with corresponding continuing education. BHSA must be supervised by a bachelor's level individual with a special education certification. BHSA must have CPR and First Aid certification. Six (6) additional hours of related continuing education are required per year.

~~(J) **Immunization.** Immunizations must be coordinated with the PCP for children and adolescents enrolled in SoonerCare. An administration fee, only, can be paid for immunizations provided by the schools.~~

(c) **Members eligible for Part B of Medicare.** EPSDT school health-related services provided to Medicare eligible members are billed directly to the fiscal agent.

317:30-5-1024. Periodic screening examination [REVOKED]

~~At a minimum, referrals to SoonerCare providers for periodic screening must be completed and provided in accordance with the periodicity schedule following the initial screening.~~

317:30-5-1025. Interperiodic screening examination [REVOKED]

~~Interperiodic screenings must be provided when medically necessary to determine the existence of suspected physical or mental illnesses or conditions. They may include physical, mental or dental conditions. The determination of whether an interperiodic screen is medically necessary may be made by a health, developmental or educational professional who comes into contact with the child outside of the formal health care system. Children enrolled in SoonerCare are referred to their SoonerCare provider for these services. In cases where~~

the SoonerCare provider authorizes the School to perform the screen or fails to schedule an appointment within three weeks and a request has been made and documented by the School, the School may then furnish the EPSDT child health screening and bill it as a fee for services activity. Results of this interperiodic screening are forwarded to the child's SoonerCare provider.

317:30-5-1026. Reporting of suspected child abuse/neglect

Instances of child abuse and/or neglect discovered through screenings and regular examinations are to be reported in accordance with State law. Section 7103 of Title 10 of the Oklahoma Statutes mandates reporting suspected abuse or neglect to the Oklahoma Department of Human Services. Section 7104 of Title 10 of the Oklahoma Statutes further requires reporting of criminally injurious conduct to the nearest law enforcement agency. Instances of child abuse and/or neglect are to be reported in accordance with state law, including, but not limited to, Section (§) 1-2-101 of Title 10A of the Oklahoma Statutes and 43A O.S. § 10-104. Any person suspecting child abuse or neglect shall immediately report it to the Oklahoma Department of Human Services (OKDHS) hotline, at 1-800-522-3511; any person suspecting abuse, neglect, or exploitation of a vulnerable adult shall immediately report it to the local DHS County Office, municipal or county law enforcement authorities, or, if the report occurs after normal business hours, the OKDHS hotline. Health care professionals who are requested to report incidents of domestic abuse by adult victims with legal capacity shall promptly make a report to the nearest law enforcement agency, per 22 O.S. § 58.

317:30-5-1027. Billing

~~(a)~~ Each service has a specified unit of service (unit) for billing purposes which represents the actual time spent providing a direct service. Direct service must be face-to-face with the child. There is no reimbursement for time reviewing/completing paperwork and/or documentation related to the service or for staff travel to/from the site of service, unless otherwise specified.

(1) Most units of service are time-based, meaning that the service must be of a minimum duration in order to be billed. A unit of service that is time-based is continuous minutes; the time cannot be aggregated throughout the day.

(2) There are no minimum time requirements for evaluation services, for which the unit of service is generally a completed evaluation. The only exception is the Psychological Evaluation/evaluation and testing (OAC 317:30-5-1023(b)(1)(H), which is billed in hourly increments.

~~(b) The following units of service are billed on the appropriate claim form:~~

- ~~(1) Service: Child Health Screening; Unit: Completed comprehensive screening.~~
- ~~(2) Service: Interperiodic Child Health Screening; Unit: Completed interperiodic screening.~~

~~(3) Service: Child Health Encounter; Unit: per encounter; limited to 3 encounters per day.~~

~~(4) Service: Individual Treatment Encounter; Unit: 15 minutes, unless otherwise specified.~~

~~(A) Hearing and Vision Services.~~

~~(B) Speech Language Therapy; Unit: per session, limited to one per day.~~

~~(C) Physical Therapy.~~

~~(D) Occupational Therapy.~~

~~(E) Nursing Services; Unit: up to 15 minutes; maximum 32 units per day.~~

~~(F) Psychotherapy Services; maximum 8 units per day.~~

~~(G) Assistive Technology.~~

~~(H) Therapeutic Behavioral Services.~~

~~(5) Service: Group Treatment Encounter; no more than 5 members per group, Unit: 15 minutes, unless otherwise specified. A daily log/list must be maintained and must identify the SoonerCare participants for each group therapy session.~~

~~(A) Hearing and Vision Services.~~

~~(B) Speech Language Therapy; Unit: per session, limited to one per day.~~

~~(C) Physical Therapy.~~

~~(D) Occupational Therapy.~~

~~(E) Psychotherapy Services; maximum 8 units per day.~~

~~(6) Service: Administration only, Immunization; Unit: one administration.~~

~~(7) Service: Hearing Evaluation; Unit: Completed Evaluation.~~

~~(8) Service: Hearing Aid Evaluation; Unit: Completed Evaluation.~~

~~(9) Service: Audiometric Test (Impedance); Unit: Completed Test (Both Ears).~~

~~(10) Service: Tympanometry and acoustic reflexes.~~

~~(11) Service: Ear Impression Mold; Unit: 2 molds (one per ear).~~

~~(12) Service: Vision Screening; Unit: one examination, by state licensed O.D., M.D., or D.O.~~

~~(13) Service: Speech Language Evaluation; Unit: one evaluation.~~

~~(14) Service: Physical Therapy Evaluation; Unit: one evaluation.~~

~~(15) Service: Occupational Therapy Evaluation; Unit: one evaluation.~~

~~(16) Service: Psychological Evaluation and Testing; Unit: one hour.~~

~~(17) Service: Personal Care Services; Unit: 10 minutes, 32 units daily.~~

~~(18) Service: Nursing Assessment/Evaluation (Acute episodic care); Unit: one assessment/evaluation, 18 yearly.~~

~~(19) Service: Psychological Evaluation and Testing; Unit: per hour of psychologist time, 8 hours yearly.~~

[OAR Docket #20-465; filed 6-26-20]

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

[OAR Docket #20-439]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. General Provider Policies
Part 4. Early and Periodic Screening, ~~Diagnosis~~Diagnostic and Treatment
(EPSDT) Program/Child-Health Services
317:30-3-65.12 [NEW]
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-2 [AMENDED]
Part 35. Rural Health Clinics
317:30-5-355.1 [AMENDED]
317:30-5-357 [AMENDED]
Part 37. Advanced Practice Registered Nurse
317:30-5-376 [AMENDED]
Part 75. Federally Qualified Health Centers
317:30-5-664.1 [AMENDED]
Part 108. Nutrition Services
317:30-5-1076 [AMENDED]
Part 110. Indian Health Services, Tribal Programs, and Urban Indian
Clinics (I/T/Us)
317:30-5-1090 [AMENDED]
Part 112. Public Health Clinic Services
317:30-5-1154 [AMENDED]
(Reference APA WF # 19-03)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 of Title 63 of Oklahoma Statutes; and the Oklahoma Health Care Authority Board

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Subchapter 3. General Provider Policies
Part 4. Early and Periodic Screening, ~~Diagnosis~~Diagnostic and Treatment
(EPSDT) Program/Child-Health Services
317:30-3-65.12 [NEW]
Subchapter 5. Individual Providers and Specialties
Part 35. Rural Health Clinics
317:30-5-355.1 [AMENDED]
317:30-5-357 [AMENDED]
Part 37. Advanced Practice Registered Nurse
317:30-5-376 [AMENDED]
Part 75. Federally Qualified Health Centers
317:30-5-664.1 [AMENDED]
Part 108. Nutrition Services
317:30-5-1076 [AMENDED]
Part 110. Indian Health Services, Tribal Programs, and Urban Indian
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n/a

GIST/ANALYSIS:

The proposed revisions will define scope of service, medical necessity, prior authorization and extension requests for continued services. The proposed rule changes will define provider criteria and credentialing requirements for Board Certified Behavior Analyst® (BCBA®), Board Certified Assistant Behavior Analyst® (BCaBA®), Registered Behavior Technician™ (RBT®) and human services professionals. Additionally, SoonerCare will set prior authorization limits for ABA treatment. Authorizations will be granted for up to thirty (30) hours per week within a six (6) month period. SoonerCare recognizes that in some cases additional hours may be medically necessary; therefore, providers must submit a prior authorization request with supporting documentation for a secondary medical review. Other revisions will involve limited rewriting aimed at clarifying medical necessity criteria and updating outdated policy sections. These rules are currently in place as emergency rules. Further rule changes will clarify how Indian Health Services, Tribal Programs, and Urban Indian Clinics (I/T/Us) obstetrical (OB) providers should bill for OB care. I/T/Us have the option of either billing for OB encounters or a bundled rate for total OB care. The clarification will require I/T/Us to be specific when choosing a billing method as they are only allowed to choose one of the billing methods.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 14, 2020:**

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

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

317:30-3-65.12. Applied behavior analysis (ABA) services
(a) **Purpose and general provisions.** The purpose of this Section is to establish guidelines for the provision of ABA services under the EPSDT benefit.

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

(2) ABA may be provided in a variety of settings, including home, community, or a clinical setting. It involves

development of an individualized treatment plan that includes transition and aftercare planning, and family/caregiver involvement.

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

(4) ABA services require prior authorization [refer to Oklahoma Administrative Code (OAC) 317:30-3-31 and 317:30-3-65.12(e)].

(b) Functional behavior assessment (FBA) and treatment plan components.

(1) The FBA serves as a critical component of the treatment plan and is conducted by a board certified behavior analyst (BCBA) to identify the specific behavioral needs of the member. The FBA consists of:

- (A) Description of the problematic behavior (topography, onset/offset, cycle, intensity, severity);
- (B) History of the problematic behavior (long-term and recent);
- (C) Antecedent analysis (setting, people, time of day, events);
- (D) Consequence analysis; and
- (E) Impression and analysis of the function of the problematic behavior.

(2) The treatment plan is developed by a BCBA from the FBA. The treatment plan shall:

- (A) Be person-centered and individualized;
- (B) Delineate the baseline levels of target behaviors;
- (C) Specify long and short term objectives that are defined in observable, measureable behavioral terms;
- (D) Specify criteria that will be used to determine achievement of objectives;
- (E) Include assessment and treatment protocols for addressing each of the target behaviors;
- (F) Clearly identify the schedule of services planned and the individuals responsible for delivering the services, including frequent review of data on target behaviors and adjustments in the treatment plan and/or protocols by the BCBA as needed;
- (G) Include training and supervision to enable board certified assistant behavior analysts (BCaBAs) and registered behavior technicians (RBTs) to implement assessment and treatment protocols;
- (H) Include training and support to enable parents and other caregivers to participate in treatment planning and successfully reinforce the established treatment plan;
- (I) Include care coordination involving the parents or caregiver(s), school, state disability programs, and others as applicable; and
- (J) Ensure that services are consistent with applicable professional standards and guidelines relating to the practice of applied behavior analysis as well as state Medicaid laws and regulations.

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

(1) Board certified behavior analyst® (BCBA®) - A master's or doctoral level independent practitioner who is certified by the national-accrediting Behavior Analyst Certification Board, Inc.® (BACB®) and licensed by Oklahoma Department of Human Services' (OKDHS) Developmental Disabilities Services Division (DDS) to provide behavior analysis services. A BCBA may supervise the work of board certified assistant behavior analysts and registered behavior technicians implementing behavior analytic interventions;

(2) Board certified assistant behavior analyst® (BCaBA®) - A bachelor's level practitioner who is certified by the national-accrediting BACB and certified by OKDHS DDS to provide behavior analysis services under the supervision of a BCBA;

(3) Registered behavior technician™ (RBT®) - A high school level or higher paraprofessional who is certified by the national-accrediting BACB and practices under the close and ongoing supervision of a BCBA. The RBT works under the license number of a BCBA and is primarily responsible for the direct implementation of BCBA designed and prescribed behavior-analytic services; and

(4) Human services professional - A practitioner who is licensed by the State of Oklahoma pursuant to (A) - (H), and certified by the national-accrediting BACB, and who is working within the scope of his or her practice, to include:

- (A) A licensed physical therapist;
- (B) A licensed occupational therapist;
- (C) A licensed clinical social worker or social worker candidate under the supervision of a licensed clinical social worker;
- (D) A licensed psychologist;
- (E) A licensed speech-language pathologist or licensed audiologist;
- (F) A licensed professional counselor or professional counselor candidate under the supervision of a licensed professional counselor;
- (G) A licensed marital and family therapist or marital and family therapist candidate under the supervision of a licensed marital and family therapist; or
- (H) A licensed behavioral practitioner or behavioral practitioner candidate under the supervision of a licensed behavioral practitioner.

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

- (1) A BCBA shall:
 - (A) Be currently licensed by OKDHS DDS as a BCBA;
 - (B) Have no sanctions or disciplinary actions by OKDHS DDS or the BACB;
 - (C) Have no current overpayment(s) due to SoonerCare, and no Medicare or Medicaid sanctions or exclusions from participation in federally funded programs; and
 - (D) Be fully contracted with SoonerCare as a provider.

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- (2) A BCaBA shall:
 - (A) Be currently certified by OKDHS DDS as a BCaBA;
 - (B) Work under the supervision of a SoonerCare-contracted BCBA provider;
 - (C) Have no current overpayment(s) due to SoonerCare, and no Medicare or Medicaid sanctions or exclusions from participation in federally funded programs; and
 - (D) Be fully contracted with SoonerCare as a provider.
- (3) An RBT shall:
 - (A) Be currently certified by the national-accrediting BACB as an RBT;
 - (B) Work under the supervision of a SoonerCare-contracted BCBA provider;
 - (C) Have no current overpayment(s) due to SoonerCare, and no Medicare or Medicaid sanctions or exclusions from participation in federally funded programs; and
 - (D) Be fully contracted with SoonerCare as a provider.
- (4) A human services professional shall:
 - (A) Be currently licensed or certified by the State of Oklahoma, in accordance with Section 1928 of Title 59 of the Oklahoma Statutes;
 - (B) Be currently certified by the national-accrediting BACB;
 - (C) Have no sanctions or disciplinary actions by the applicable state licensing board or the BACB;
 - (D) If working under supervision within the scope of his or her practice, have a documented relationship with a fully-licensed human service professional working in a supervisory capacity;
 - (E) Have no current overpayment(s) due to SoonerCare, and no Medicare or Medicaid sanctions or exclusions from participation in federally funded programs; and
 - (F) Be fully contracted with SoonerCare as a provider.
- (e) **Medical necessity criteria for members under twenty-one (21) years of age.** ABA services are considered medically necessary when all of the following conditions are met:
 - (1) The member is under twenty-one (21) years of age with a definitive diagnosis of an Autism Spectrum Disorder (ASD) from the following providers:
 - (A) Pediatric neurologist or neurologist;
 - (B) Developmental pediatrician;
 - (C) Licensed psychologist;
 - (D) Psychiatrist or neuropsychiatrist; or
 - (E) Other licensed physician experienced in the diagnosis and treatment of autism.
 - (2) A comprehensive diagnostic evaluation completed by one (1) of the above identified professionals must:
 - (A) Be completed within the last two (2) years;
 - (B) Include a complete pertinent medical and social history, including pre-and perinatal, medical, developmental, family, and social elements; and
 - (C) Be based on criteria outlined in the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) or the most current version of the DSM for ASD and/or may also include scores from the use of formal diagnostic tests such as the Autism Diagnostic Interview-Revised (ADI-R), Autism Diagnostic Observation Schedule-2 (ADOS-2), Childhood Autism Rating Scale (CARS) or other tools with acceptable psychometric properties. Screening scales are not sufficient to make a diagnosis and will not be accepted as the only formal scale.
 - (3) There must be a reasonable expectation that the member will benefit from ABA. The member must exhibit:
 - (A) The ability/capacity to learn and develop generalized skills to assist with his or her independence; and
 - (B) The ability to develop generalized skills to assist in addressing maladaptive behaviors associated with ASD.
 - (4) The member is medically stable and does not require twenty-four (24) hour medical/nursing monitoring or procedures provided in a hospital or intermediate care facility for individuals with intellectual disabilities (ICF/IID).
 - (5) The member exhibits atypical or disruptive behavior within the most recent thirty (30) calendar days that significantly interferes with daily functioning and activities. Such atypical or disruptive behavior may include, but is not limited to:
 - (A) Impulsive aggression toward others;
 - (B) Self-injury behaviors; or
 - (C) Intentional property destruction.
 - (6) The focus of treatment is not custodial in nature (which is defined as care provided when the member "has reached maximum level of physical or mental function and such person is not likely to make further significant improvement" or "any type of care where the primary purpose of the type of care provided is to attend to the member's daily living activities which do not entail or require the continuing attention of trained medical or paramedical personnel.")
 - (7) It has been determined that there is no other appropriate service which can be safely and effectively provided.
- (f) **Prior authorization.** Eligible providers must submit an initial prior authorization request to the Oklahoma Health Care Authority (OHCA) or its designated agent. Prior authorization requests shall be granted up to six (6) months of ABA treatment services at one (1) time unless a longer duration of treatment is clinically indicated. The number of hours authorized may differ from the hours requested on the prior authorization request based on the review by an OHCA reviewer and/or physician. If the member's condition necessitates a change in the treatment plan, the provider must request a new prior authorization. The

prior authorization request must meet the following Sooner-Care criteria for ABA services.

(1) The criteria includes a comprehensive behavioral and FBA outlining the behaviors consistent with the diagnosis of ASD and its associated comorbidities. In addition to completing the initial request form, providers will be required to submit documentation that will consist of the following:

(A) Information about relevant medical status, prior assessment results, response to prior treatment, and other relevant information gathered from review of records and past assessments.

(B) Information gathered from interview of family and/or caregivers, rating scales, and social validity measures to assess perceptions of the client's skill deficits and behavioral excesses, and the extent to which these deficits impede the daily life of the member and the family.

(C) Direct assessment and observation, including any data related to the identified problem behavior. The analysis of such data serves as the primary basis for identifying pretreatment levels of functioning, developing and adapting treatment protocols, and evaluating response to treatment and progress towards goals.

(D) Functional assessment of problem behavior that includes antecedent factors, skill deficits, and consequences contributing to the problem behavior. The treatment plan should address all three (3) areas, including antecedent interventions, teaching replacement skills, and modification of consequences.

(2) The prior authorization for ABA treatment will be time limited for up to thirty (30) hours per week unless other hours are deemed medically necessary and authorized through a prior authorization request and must:

(A) Be a one-on-one encounter (face to face between the member and ABA provider) except in the case of family adaptive treatment guidance;

(B) Be child-centered and based upon individualized goals that are strengths-specific, family focused, and community based;

(C) Be culturally competent and the least intrusive as possible;

(D) Clearly define in measurable and objective terms the specific target behaviors that are linked to the function of (or reason for) the behavior;

(E) Record the frequency, rate, symptom intensity/duration, or other objective measures of baseline levels;

(F) Set quantifiable criteria for progress;

(G) Establish and record behavioral intervention techniques that are appropriate to target behaviors. The detailed treatment plan utilizes reinforcement and other behavioral principles and excludes the use of methods or techniques that lack consensus about their effectiveness based on evidence in peer-reviewed publications;

(H) Specify strategies for generalization of learned skills;

(I) Document planning for transition through the continuum of interventions, services, and settings, as well as discharge criteria;

(J) Include parent(s)/legal guardian(s) in behavioral training techniques so that they can practice additional hours of intervention on their own. The treatment plan is expected to achieve the parent(s)/legal guardian(s) ability to successfully reinforce the established plan of care. Frequency of parental involvement will be determined by the treatment provider and listed on the treatment plan;

(K) Document parent(s)/legal guardian(s) participation in the training of behavioral techniques in the member's medical record. Parent(s)/legal guardian(s)' participation is critical to the generalization of treatment goals to the member's environment; and

(L) Ensure that recommended ABA services do not duplicate or replicate services received in a member's primary academic education setting, or provided within an Individualized Education Plan (IEP), Individualized Service Plan (ISP), or any other individual plan of care.

(g) **ABA extension requests.** Extension requests for ABA services must be submitted to the OHCA or its designated agent. Extension requests must contain the appropriate documentation validating the need for continued treatment and establish the following:

(1) Eligibility criteria in OAC 317:30-3-65.12(d) 1-6;

(2) The frequency of the target behavior has diminished since last review, or if not, there has been modification of the treatment or additional assessments have been conducted;

(3) If progress has not been measurable after two (2) extension requests, a functional analysis will be completed which records the member's maladaptive serious target behavioral symptom(s), and precipitants, as well as makes a determination of the function a particular maladaptive behavior serves for the member in the environmental context;

(4) Appropriate consultations from other staff or experts have occurred (psychiatric consults, pediatric evaluation for other conditions) and interventions have been changed, including the number of hours per week of service or setting (higher level of care);

(5) Parent(s)/legal guardian(s) have received re-training on these changed approaches; and

(6) The treatment plan documents a gradual tapering of higher intensities of intervention and shifting to supports from other sources (i.e., schools) as progress occurs.

(h) **Reimbursement methodology.** SoonerCare shall provide reimbursement for ABA services in accordance with the Medicaid State Plan.

(1) Payment shall only be made to SoonerCare-contracted groups or qualified individual providers who are currently licensed and in good standing. Payment is not

made to under supervision ABA practitioners/paraprofessionals, including but not limited to, BCaBAs and RBTs.

(2) Reimbursement for ABA services is only made on a fee-for-services basis. The maximum allowable fee for a unit of service has been determined by OHCA to be a reasonable fee, consistent with efficiency, economy, and quality of care. Payment for covered services is the lower of the provider's actual billed charges, consistent with the provider's usual and customary charge to the general public for the service, or the maximum allowable per unit of service.

(3) Reimbursement shall only be made for services that have been prior-authorized by OHCA or its designee; and performed on an individualized basis and not in a group setting except for family adaptive behavior treatment guidance by a qualified ABA provider [OAC 317:30-3-65.12(b)].

(4) Reimbursement for ABA services shall not be made to or for services rendered by a parent, legal guardian, or other legally responsible person.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

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

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

(1) Coverage includes the following medically necessary services:

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

(B) Inpatient psychotherapy by a physician.

(C) Inpatient psychological testing by a physician.

(D) One (1) inpatient visit per day, per physician.

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

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

(G) Physician services on an outpatient basis include:

(i) ~~A maximum of four (4) primary care visits per member per month.~~ visits per member per

month, including primary care or specialty, with the exception of SoonerCare Choice members, or,

~~(ii) A maximum of four (4) specialty visits per member per month.~~

~~(iii)~~ Additional visits are allowed per month for treatment related to emergency medical conditions and family planning services.

(H) Direct physician services in a nursing facility.

(i) A maximum of two (2) nursing facility visits per month are allowed; and if the visit (s) is for psychiatric services, it must be provided by a psychiatrist or a physician with appropriate behavioral health training.

(ii) To receive payment for a second nursing facility visit in a month denied by Medicare for a Medicare/SoonerCare member, attach the explanation of Medicare benefits (EOMB) showing denial and mark "carrier denied coverage."

(I) Diagnostic x-ray and laboratory services.

(J) Mammography screening and additional follow-up mammograms as per current guidelines.

(K) Obstetrical care.

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

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

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

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

(P) Genetic counseling.

(Q) Laboratory testing.

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

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

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

- (i) Attending physician performs chart review and signs off on the billed encounter;
- (ii) Attending physician is present in the clinic/or hospital setting and available for consultation; and
- (iii) Documentation of written policy and applicable training of physicians in the training program regarding when to seek the consultation of the attending physician.

(U) Payment for services rendered by medical residents in an outpatient academic setting when the following conditions are met:

- (i) The resident has obtained a medical license or a special license for training from the appropriate regulatory state medical board; and
- (ii) has the appropriate contract on file with the OHCA to render services within the scope of their licensure.

(V) The payment to a physician for medically directing the services of a certified registered nurse anesthetist (CRNA) or for the direct supervision of the services of an anesthesiologist assistant (AA) is limited. The maximum allowable fee for the services of both providers combined is limited to the maximum allowable had the service been performed solely by the anesthesiologist.

(W) Screening and follow up pap smears as per current guidelines.

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

- ~~(i) Transplant procedures, except kidney and cornea, must be prior authorized to be compensable.~~
- ~~(ii) To be prior authorized all procedures are reviewed based on appropriate medical criteria.~~
- ~~(iii) To be compensable under the SoonerCare program, all organ transplants must be performed at a facility which meets the requirements contained in Section 1138 of the Social Security Act.~~
- ~~(iv) Procedures considered experimental or investigational are not covered. Medically necessary organ and tissue transplantation services for children and adults are covered services based upon the conditions listed in (i)-(v) of this subparagraph:~~

- (i) All transplantation services, except kidney and cornea, must be prior authorized;
- (ii) All transplant procedures are reviewed and prior authorization is based upon appropriate medical criteria;
- (iii) All organ transplants must be performed at a Medicare-approved transplantation center;
- (iv) Procedures considered experimental or investigational are not covered; and

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

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

~~(ZY)~~ Donor expenses incurred for complications are covered only if they are directly and immediately attributable to the donation procedure. Donor expenses that occur after the ninety (90) day global reimbursement period must be submitted to the OHCA for review.

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

~~(BBAA)~~ Ventilator equipment.

~~(CCBB)~~ Home dialysis equipment and supplies.

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

~~(EEDD)~~ Smoking and tobacco use cessation counseling for treatment of members using tobacco.

(i) Smoking and tobacco use cessation counseling consists of the 5As:

- (I) Asking the member to describe their smoking use;
- (II) Advising the member to quit;
- (III) Assessing the willingness of the member to quit;
- (IV) Assisting the member with referrals and plans to quit; and
- (V) Arranging for follow-up.

(ii) Up to eight (8) sessions are covered per year per individual.

(iii) Smoking and tobacco use cessation counseling is a covered service when performed by physicians, physician assistants (PA), advanced registered nurse practitioners (ARNP), certified nurse midwives (CNM), dentists, Oklahoma State Health Department (OSDH) and Federally Qualified Health Center (FQHC) nursing staff, and maternal/child health licensed clinical social worker trained as a certified tobacco treatment specialist (CTTS). It is reimbursed in addition to any other appropriate global payments for obstetrical care, primary care provider (PCP) care coordination payments, evaluation and management codes, or other appropriate services rendered. It must be a

significant, separately identifiable service, unique from any other service provided on the same day.

(iv) Chart documentation must include a separate note that addresses the 5A's and office note signature along with the member specific information addressed in the five (5) steps and the time spent by the practitioner performing the counseling. Anything under three (3) minutes is considered part of a routine visit and not separately billable.

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

(~~GGFF~~) Genetic testing and other molecular pathology services are covered when medically necessary. Genetic testing may be considered medically necessary when the following conditions are met:

(i) The member displays clinical features of a suspected genetic condition, is at direct risk of inheriting the genetic condition in question (e.g., a causative familial variant has been identified) or has been diagnosed with a condition where identification of specific genetic changes will impact treatment or management; and

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

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

(iv) A medical geneticist, physician, or licensed genetic counselor provides documentation that supports the recommendation for testing based on a review of risk factors, clinical scenario, and family history.

(2) General coverage exclusions include the following:

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

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

(C) Services of two (2) physicians for the same type of service to the same member on the same day, except when supplemental skills are required and different specialties are involved.

(D) Routine eye examinations for the sole purpose of prescribing glasses or visual aids, determination of refractive state, treatment of refractive errors or purchase of lenses, frames or visual aids.

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

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

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

(H) Non-therapeutic hysterectomies.

(I) Medical services considered experimental or investigational.

(J) Payment for more than four (4) outpatient visits per member (home or office) per month, except visits in connection with family planning, services related to emergency medical conditions, or primary care services provided to SoonerCare Choice members.

(K) Payment for more than two (2) nursing facility visits per month.

(L) More than one (1) inpatient visit per day per physician.

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

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

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

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

(Q) Speech and hearing services.

(R) Mileage.

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

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

(U) Inpatient chemical dependency treatment.

(V) Fertility treatment.

(W) Payment for removal of benign skin lesions.

(X) Sleep studies.

(b) **Children.** Payment is made to physicians for medical and surgical services for members under the age of twenty-one (21) within the scope of the SoonerCare program, provided the services are medically necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Medical and surgical services for children are comparable to those listed for adults. For services rendered to a minor child, the child's parent or court-appointed legal guardian must provide written authorization prior to

the service being rendered, unless there is an explicit state or federal exception to this requirement. In addition to those services listed for adults, the following services are covered for children.

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

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

(B) For out of state placements, refer to OAC 317:30-3-89 through 317:30-3-92.

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

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

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

(5) **Early and periodic screening diagnosis and treatment (EPSDT) program.** Payment is made to eligible providers for EPDST of members under age twenty-one (21). These services include medical, dental, vision, hearing and other necessary health care. Refer to OAC 317:30-3-65.2 through ~~317:30-3-65.11~~ 317:30-3-65.12 for specific guidelines.

(6) **Reporting suspected abuse and/or neglect.** Instances of child abuse and/or neglect are to be reported in accordance with state law, including, but not limited to, ~~10A Oklahoma Statute (O.S.) § 1-2-101~~ Section 1-2-101 of Title 10A of the Oklahoma Statutes and 43A O.S. § 10-104. Any person suspecting child abuse or neglect shall immediately report it to the Oklahoma Department of Human Services (~~DHS~~) (OKDHS) hotline, at 1-800-522-3511; any person suspecting abuse, neglect, or exploitation of a vulnerable adult shall immediately report it to the local ~~DHS~~ OKDHS county office, municipal or

county law enforcement authorities, or, if the report occurs after normal business hours, the ~~DHS~~ OKDHS hotline. Health care professionals who are requested to report incidents of domestic abuse by adult victims with legal capacity shall promptly make a report to the nearest law enforcement agency, per 22 O.S. § 58.

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

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

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

(C) Services of two (2) physicians for the same type of service to the same member on the same day, except when supplemental skills are required and different specialties are involved.

(D) Pre-operative care within twenty-four (24) hours of the day of admission for surgery and routine post-operative care as defined under the global surgery guidelines promulgated by CPT and CMS.

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

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

(G) Non-therapeutic hysterectomies.

(H) Medical services considered experimental or investigational.

(I) More than one (1) inpatient visit per day per physician.

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

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

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

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

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

(O) Mileage.

Permanent Final Adoptions

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

(c) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the OHCA allowable for comparable services. Claims filed with Medicare Part B should automatically cross over to OHCA. The EOMB reflects a message that the claim was referred to SoonerCare. If such a message is not present, a claim for coinsurance and deductible must be filed with the OHCA within ninety (90) days of the date of Medicare payment and within one (1) year of the date of service in order to be considered timely filed.

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

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

PART 35. RURAL HEALTH CLINICS

317:30-5-355.1. Definition of services

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

(1) **RHC services.** RHC services are covered when furnished to a member at the clinic or other location, including the member's place of residence. These services are described in this Section.

(A) **Core services.** As set out in ~~Federal Regulations at 42 CFR~~C.F.R. §440.20(b), RHC "core" services include, but are not limited to:

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

(B) **Physicians' services.** In addition to the professional services of a physician, and services provided by an ~~APN~~APRN, PA, and ~~NM~~CNM which would be covered as RHC services under Medicare, certain primary preventive services are covered under the

SoonerCare RHC benefit. The services must be furnished by or under the direct supervision of ~~an~~ RHC practitioner who is a clinic employee:

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

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

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

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

- (i) ~~the~~The RHC is located in an area in which the Centers for Medicare and Medicaid Services (CMS) has determined there is a shortage of home health agencies;
- (ii) ~~the~~The services are rendered to members who are homebound;
- (iii) ~~the~~The member is furnished nursing care on a part-time or intermittent basis by a registered nurse, licensed practical nurse, or licensed vocational nurse who is employed by or receives compensation for the services from the RHC; and
- (iv) ~~the~~The services are furnished under a written plan of treatment.

(E) **RHC encounter.** RHC "core" services (including preventive services, i.e., prenatal, EPSDT, or family planning) are part of an all-inclusive visit. A "visit" means a face-to-face encounter between a clinic patient and ~~an~~ RHC health professional (~~i.e., physicians, physician assistants, advanced practice nurses, certified nurse midwives, clinical psychologists and clinical social workers~~)(physicians, PAs, APRNs, CNMs, CPs, and CSWs). Encounters with more than one (1) health professional and multiple

encounters with the same health professional that takes place on the same day and a single location, constitute a single visit except when the member, after the first encounter, suffers illness or injury requiring additional diagnosis or treatment. Payment is made for one (1) encounter per member per day. Medical review will be required for additional visits for children. Payment is also limited to four (4) visits per member per month for adults.

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

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

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

- (i) ~~dental~~Dental services for members under age ~~21~~the age of twenty-one (21);
- (ii) ~~optometric~~Optometric services;
- (iii) ~~clinical~~Clinical lab tests performed in the RHC lab, including the lab tests required for RHC certification;
- (iv) ~~technical~~Technical component of diagnostic tests such as x-rays and EKGs (interpretation of the test provided by the RHC physician is included in the encounter rate);
- (v) ~~durable~~Durable medical equipment;
- (vi) ~~emergency—ambulance—transportation~~Transportation by ambulance [refer to Oklahoma Administrative Code (OAC) 317:30-5-335];
- (vii) ~~prescribed~~Prescribed drugs;
- (viii) ~~prosthetic~~Prosthetic devices (other than dental) which replace all or part of an internal body organ (including colostomy bags) and supplies directly related to colostomy care and the replacement of such devices;
- (ix) ~~specialized~~Specialized laboratory services furnished away from the clinic;
- (x) ~~inpatient~~Inpatient services;
- (xi) ~~outpatient~~Outpatient hospital services; and

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

(xiii) Diabetes self-management training (DSMT) (refer to OAC 317:30-5-1080 - 1084).

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

(i) **EPSDT dental screening.** An EPSDT dental screening includes oral examination, prophylaxis and fluoride treatment, charting of needed treatment, and, if necessary, x-rays (including two bite wing films). This service must be filed on claim form ADM-36-D for EPSDT reporting purposes.

(ii) **Dental encounter.** A dental encounter consists of all dental treatment other than a dental screening. This service must be billed on the ADM-36-D.

(iii) **Visual analysis.** Visual analysis (initial or yearly) for a child with glasses, or a child who needs glasses, or a medical eye exam. This includes the refraction and medical eye health evaluation. Glasses must be billed separately. Payment is limited to two (2) glasses per year. Any glasses beyond this limit must be prior authorized and determined to be medically necessary.

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

(D) Other ambulatory services provided off-site by independent practitioners (through subcontracting agreements or arrangements for services not available at the clinic) must be billed to the SoonerCare program by the provider rendering the service. Independent practitioners must meet provider eligibility criteria and must have a current contract with the OHCA.

317:30-5-357. Coverage for children

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

- (1) The receipt of an Early and Periodic Screening, Diagnosis and Treatment (EPSDT) examination by a Medicaid eligible individual under age 21 renders that individual child eligible for all necessary follow up care, whether or not the medically necessary services are covered under the Medicaid Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services are covered for eligible members under twenty-one (21) years of age in accordance with Oklahoma Administrative Code

(OAC) 317:30-3-65. An EPSDT exam performed by ~~an~~ RHC must be billed on the appropriate claim form with the appropriate ~~Preventative Medicine~~ preventive medicine procedure code from the Current Procedural Terminology Manual (CPT) manual. If an EPSDT screening is billed, ~~an~~ RHC encounter should not be billed on the same day. ~~Refer to OAC 317:30-3-47 through 317:30-3-54 for coverages under EPSDT.~~ Refer to OAC 317:30-3-65 through 317:30-3-65.12.

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

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

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

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

PART 37. ADVANCED PRACTICE REGISTERED NURSE

317:30-5-376. Coverage by category

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

(1) **Adults.** Payment for adults is made for primary care health services, within the scope of practice of ~~Advanced Practice Nurse~~ an APRN and within the scope of the Oklahoma Health Care Authority (OHCA) medical programs.

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

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

Administrative Code (OAC) 317:30-3-65 through ~~317:30-3-65.11~~ 317:30-3-65.12.

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

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

PART 75. FEDERALLY QUALIFIED HEALTH CENTERS

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

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

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

(1) ~~dental~~ Dental services (refer to OAC 317:30-5-696) except for primary preventive dental services;

(2) ~~eyeglasses~~ (OAC 317:30-5-430 and OAC 317:30-5-450) Eyeglasses (refer to OAC 317:30-5-431, 317:30-5-432.1 and 317:30-5-451);

(3) ~~clinical~~ Clinical lab tests performed in the Center lab (other than the specific laboratory tests set out for Health Centers' certification and covered as Health Center services);

(4) ~~technical~~ Technical component of diagnostic tests such as x-rays and EKGs (interpretation of the test provided by the Center physician is included as physician professional services);

(5) ~~durable~~ Durable medical equipment (refer to OAC 317:30-5-210);

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

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

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

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

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

- (11) ~~behavioral~~Behavioral health related case management services (refer to OAC 317:30-5-241.6); and
 (12) Applied behavior analysis (ABA) (refer to OAC 317:30-3-65.12).
 (13) Diabetes self-management training (DSMT) (refer to OAC 317:30-5-1080 through 317:30-5-1084).

PART 108. NUTRITION SERVICES

317:30-5-1076. Coverage by category

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

- (1) **Adults.** Payment is made for six (6) hours of medically necessary nutritional counseling per year by a licensed registered dietitian. All services must be prescribed by a physician, physician assistant (PA), advanced practice registered nurse (APRN), or certified nurse midwife (CNW), and be ~~face-to-face~~face-to-face encounters between a licensed registered dietitian and the member. Services must be expressly for diagnosing, treating or preventing, or minimizing the effects of illness. Nutritional services for the treatment of obesity is not covered unless there is documentation that the obesity is a contributing factor in another illness.
- (2) **Children.** Payment is made for medically necessary nutritional counseling as described above for adults. Nutritional services for the treatment of obesity may be covered for children as part of the ~~EPSDT~~Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit. Additional services which are deemed medically necessary and allowable under federal regulations may be covered by the EPSDT benefit found at OAC 317:30-3-65 and ~~through 317:30-3-65.11~~317:30-3-65.12.
- (3) ~~Home and Community Based Waiver Services~~community-based services (HCBS) waiver for the intellectually disabled~~intellectually disabled~~. All providers participating in the ~~Home and Community Based Waiver Services~~HCBS waiver for the intellectually disabled program must have a separate contract with ~~OHCA~~the Oklahoma Health Care Authority (OHCA) to provide ~~Nutrition Services~~nutrition services under this program. All services are specified in the individual's plan of care.
- (4) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the Medicaid allowable for comparable services. Services which are not covered under Medicare should be billed directly to OHCA.
- (5) **Obstetrical patients.** Payment is made for a maximum of six (6) hours of medically necessary nutritional counseling per year by a licensed registered dietitian for members at risk for or those who have been recently diagnosed with gestational diabetes. The initial consultation may be in a group setting for a maximum of two (2) hours of class time. Thereafter, four (4) hours of nutritional counseling by a licensed registered dietitian may be provided to the individual if deemed medically necessary, which may include a post-partum visit, typically done

at ~~six~~ (6) weeks after delivery. All services must be prescribed by a physician, ~~physician assistant, advanced practice nurse or a certified nurse midwife~~PA, APRN, or CNM and be ~~face-to-face~~face to face between a licensed registered dietitian and the member(s). Services must be solely for the prevention, diagnosis, or treatment of gestational diabetes.

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

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

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

- (1) ~~durable~~Durable medical equipment [refer to Oklahoma Administrative Code (OAC) 317:30-5-210];
 (2) ~~glasses~~Eyeglasses (refer to OAC 317:30-5-431, 317:30-5-432.1 and 317:30-5-451);
 (3) ~~ambulance~~Transportation by ambulance (refer to OAC 317:30-5-335);
 (4) ~~home~~Home healthrefer to OAC 317:30-5-546;
 (5) ~~inpatient~~Inpatient practitioner services (refer to OAC 317:30-5-1100);
 (6) ~~non-emergency~~Non-emergency transportation refer to OAC 317:35-3-2;
 (7) ~~behavioral~~Behavioral health case management refer to OAC 317:30-5-241.6;
 (8) ~~psychosocial~~Psychosocial rehabilitative services refer to OAC 317:30-5-241.3; and
 (9) ~~psychiatric~~Psychiatric residential treatment facility services[refer to OAC 317:30-5, Part 6, Inpatient Psychiatric Hospitals], (refer to OAC 317:30-5-95 through 317:30-5-97);
 (10) Applied behavior analysis (ABA) (refer to OAC 317:30-3-65.12); and
 (11) Diabetes self-management training (DSMT) (refer to OAC 317:30-5-1080 through 317:30-5-1084).

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

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(c) Providers may bill for antepartum and postpartum visits, and a cesarean or vaginal delivery as individual encounters, or a provider can bill the packaged/bundled rate for total obstetrical care (OB) (which includes antepartum/postpartum visits and delivery). Providers may not bill for both antepartum/postpartum visits and a packaged/bundled rate for total OB care for the same episode of care. Refer to OAC 317:30-5-22 for more detailed obstetrical care policy.

PART 112. PUBLIC HEALTH CLINIC SERVICES

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

CHD/CCHD service limitations are:

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

[OAR Docket #20-439; filed 6-26-20]

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

[OAR Docket #20-452]

RULEMAKING ACTION:

PERMANENT final adoption

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Subchapter 5. Individual Providers and Specialties

Part 1. Physicians
317:30-5-20 [AMENDED]
317:30-5-20.1 [AMENDED]
(Reference APA WF # 19-24)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; 42 CFR § 440.230; and 42 CFR § 411.15

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Not applicable

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n/a

GIST/ANALYSIS:

The proposed revisions will update policy by removing the word "urine", in order to clarify that this policy applies to multiple specimens and not just urine specimens. Additionally, the proposed revisions will update laboratory services policy to clarify that laboratory testing for routine diagnostic or screening purposes are compensable when they are recommended by the clinical guidelines of nationally recognized professional medical academies or societies, and those sources meet medical necessity criteria, as outlined in OHCA rules.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-20. Laboratory services

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

- (1) **Compensable services.** Providers may be reimbursed for compensable clinical diagnostic laboratory services only when they personally perform or supervise the performance of the test. If a provider refers specimen to a certified laboratory or a hospital laboratory serving

outpatients, the certified laboratory or the hospital must bill for performing the test.

(A) Reimbursement for lab services is made in accordance with the Clinical Laboratory Improvement Amendment of 1988 (CLIA). These regulations provide that payment may be made only for services furnished by a laboratory that meets CLIA conditions, including those furnished in physicians' offices. Eligible providers must be certified under the CLIA program and have obtained a CLIA ID number from Centers for Medicare and Medicaid Services and have a current contract on file with the Oklahoma Health Care Authority (OHCA). Providers performing laboratory services must have the appropriate CLIA certification specific to the level of testing performed.

(B) Only medically necessary laboratory services are compensable.

(i) Testing must be medically indicated as evidenced by patient-specific indications in the medical record.

(ii) Testing is only compensable if the results will affect patient care and are performed to diagnose conditions and illnesses with specific symptoms.

(iii) Testing is only compensable if the services are performed in furtherance of the diagnosis and/or treatment of conditions that are covered under SoonerCare.

(C) Laboratory testing must be ordered by the physician or non-physician provider, and must be individualized to the patient and the patient's medical history or assessment indicators as evidenced in the medical documentation.

(D) Laboratory testing for routine diagnostic or screening tests following clinical guidelines such as those found in the American Academy of Pediatrics (AAP) Bright Futures' periodicity schedule, the United States Preventive Services Task Force (USPSTF) A and B recommendations, the American Academy of Family Practitioners (AAFP), or other nationally recognized medical professional academy or society standards of care, is compensable. Additionally, such sources as named in this subdivision should meet medical necessity criteria as outlined in Oklahoma Administrative Code (OAC) 317:30-3-1(f).

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

(A) Laboratory testing for routine diagnostic or screening tests not supported by the clinical guidelines of a nationally recognized medical professional academy or society standard of care, and/or testing that is performed without apparent relationship to treatment or diagnosis of a specific illness, symptom, complaint or injury is not covered.

(B) Non-specific, blanket panel or standing orders for laboratory testing, custom panels particular to the ordering provider, or lab panels which have no impact on the patient's plan of care are not covered.

(C) Split billing, or dividing the billed services for the same patient for the same date of service by the same ~~rendering~~rendering laboratory into two or more claims is not allowed.

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

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

(F) Billing multiple units of nucleic acid detection for individual infectious organisms when testing for more than one infectious organism in a specimen is not permissible. Instead, OHCA considers it appropriate to bill a single unit of a procedure code indicated for multiple organism testing.

(G) Billing multiple Current Procedural Terminology (CPT) codes or units for molecular pathology tests that examine multiple genes or incorporate multiple types of genetic analysis in a single run or report is not permissible. Instead, OHCA considers it appropriate to bill a single CPT code for such test. If an appropriate code does not exist, then one unit for an unlisted molecular pathology procedure may be billed.

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

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

(B) Full service or interpretation of surgical pathology for outpatient surgery performed in an outpatient hospital or ambulatory surgery center setting.

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

(A) Experimental or investigational procedures.

(B) Interpretation of clinical laboratory procedures.

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

(a) **Purpose.** ~~Urine~~Drug Testing (UDT) is performed for undisclosed drug use and/or abuse, and to verify compliance with treatment. Testing for drugs of abuse to monitor treatment compliance should be included in the treatment plan for pain management when chronic opioid therapy is involved.

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

(2) Quantitative (definitive) drug testing is specific to the drug or metabolite being tested and is expressed as a numeric result or numeric level which verifies concentration.

(3) Specimen validity testing is used to determine if a ~~urine~~ specimen has been diluted, adulterated or substituted. Specimen validity tests include, but are not limited

to, creatinine, oxidants, specific gravity, urine pH, nitrates and alkaloids.

(b) **Eligible providers.** Providers performing ~~urine~~ drug testing should have CLIA certification specific to the level of testing performed as described in 317:30-5-20(1)(A).

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

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

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

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

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

(3) Quantitative (definitive) ~~urine~~ drug testing may be indicated for the following:

(A) To identify a specific substance or metabolite that is inadequately detected or undetectable by a qualitative (presumptive) test; or

(B) To definitively identify specific drugs in a large family of drugs; or

(C) To identify drugs when a definitive concentration of a drug is needed to guide management; or

(D) To identify a negative, or confirm a positive, qualitative (presumptive) result that is inconsistent with a patient's self-report, presentation, medical history or current prescribed medication plan; or

(E) To identify a non-prescribed medication or illicit use for ongoing safe prescribing of controlled substances.

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

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

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

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

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

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

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

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

(8) Confirmatory testing exceeding three specific drug classes at an interval of greater than every ~~30~~thirty (30)

days will require specific documentation in the medical record to justify the medical necessity of testing; and

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

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

(1) A current treatment plan;

(2) Patient history and physical;

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

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

(5) Opioid agreement and informed consent of ~~UDT~~ drug testing, as applicable;

(6) List of prescribed medications;

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

(8) Office/provider monitoring protocols, such as random pill counts; and

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

[OAR Docket #20-452; filed 6-26-20]

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

[OAR Docket #20-444]

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Subchapter 5. Individual Providers and Specialties

Part 9. Long-Term Care Facilities

317:30-5-132 [AMENDED]

317:30-5-132.1 [NEW]

317:30-5-132.2 [NEW]

317:30-5-136.1 [AMENDED]

(Reference APA WF # 19-13B)

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Subchapter 5. Individual Providers and Specialties
Part 9. Long-Term Care Facilities
317:30-5-132 [AMENDED]
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n/a

GIST/ANALYSIS:

The proposed revisions will comply with Senate Bill (SB) 280. Revisions provide the OHCA's website for cost report instructions, establishes procedures for annual cost report submission extension requests for long-term care facilities, outline the processes when, based on onsite audit findings, the cost report may be adjusted, and define allowable and unallowable costs for long-term care facilities. Finally, the proposed policy changes will establish new quality measures and criteria, as well as, recalculate the incentive reimbursement rate plan for nursing facilities participating in the pay-for-performance program. These rules are currently in place as emergency rules.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 9. LONG-TERM CARE FACILITIES

317:30-5-132. Cost reports

Each Medicaid-participating ~~long-term~~ long-term care facility is required to submit an annual uniform cost report, designed by ~~OHCA, the Oklahoma Health Care Authority (OHCA)~~ for the state fiscal year just completed. The state fiscal year is July 1 through June 30. The reports must be submitted to the OHCA on or before ~~the last day of October of the subsequent year.~~ October 31st following the end of the state fiscal year just completed.

(1) The report must be prepared on the basis of generally accepted accounting principles and the accrual basis of accounting, except as otherwise specified in the cost

report instructions. The OHCA's cost report instructions are publicly available on the OHCA's website (www.okhca.org), in the Nursing Home Cost Report Instruction Manual: A Guide for Entering Annual Nursing Home Cost Report Data via the OHCA Secure Site (hereinafter referred to as "Cost Report Instruction Manual").

(2) ~~The cost report must be filed using the Secure Website. The instructions and data entry screen simulations will be made available on the OHCA public website, as set forth in the Cost Report Instruction Manual.~~

(3) When there is a change of operation or ownership, the selling or closing ownership is required to file a cost report for that portion of the fiscal year it was in operation. The successor ownership is correspondingly required to file a cost report for that portion of the fiscal year it was in operation. These "Partial Year Reports" must be filed on paper or electronically by e-mail (not on the ~~secure website~~ Secure Website system) to the Finance Division of the OHCA on the forms and by the instructions found ~~on the OHCA public website (see directions as noted above).~~ in the Cost Report Instruction Manual.

(4) ~~Normally, all ordinary and necessary expenses net of any offsets of credits incurred in the conduct of an economical and efficiently operated business are recognized as allowable. Allowable costs include all items of Medicaid covered expense which nursing facilities incur in the provision of routine services. "Routine services" include, but are not limited to, regular room, dietary and nursing services, minor medical and surgical supplies, over the counter medications, transportation, dental examinations, dentures and related services, eye glasses, routine eye examinations, and the use and maintenance of equipment and facilities essential to the provision of routine care. Allowable costs must be considered reasonable, necessary and proper, and shall include only those costs that are considered allowable for Medicare purposes and that are consistent with federal Medicaid requirements. (The guidelines for allowable costs in the Medicare program are set forth in the Medicare Provider Reimbursement Manual ("PRM"), HCFA Pub. 15-). Ancillary items reimbursed outside the nursing facility rate are not included in the cost report and are not allowable costs. A long-term care facility may request an extension of time to submit an annual cost report, not to exceed fifteen (15) calendar days. Extensions of time shall be requested by a letter addressed to the Finance Division or by email, as is set forth in the Cost Report Instruction Manual. Any such request must be received by October 31, and must explain the good faith reason for the extension. OHCA shall provide a written notice of any denial of a request for an extension, which shall become effective on the date it is sent to the long-term care facility. Decisions to deny requests for extensions are solely within the discretion of the OHCA and are not administratively appealable.~~

(5) ~~All reports are may be subject to on-site audits and are deemed public records. An on-site audit may result in cost adjustment(s), by which the OHCA, or its designee, identifies and corrects for costs that were included in the~~

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cost report. The OHCA or its designee shall provide written notice of any cost adjustment(s) it makes to a cost report, to the long-term care facility affected by the cost adjustment(s). Such notice shall contain, but is not limited to, a written list of the audit findings with a summary explanation of why any cost is deemed non-allowable.

(6) In accordance with 63 Oklahoma Statute § 1-1925.2, a long-term care facility may contest any cost adjustment(s) it disagrees with by requesting reconsideration of the cost adjustment(s), and/or by requesting an administrative appeal of the cost adjustment(s), pursuant to Oklahoma Administrative Code (OAC) 317:30-5-132.1 and OAC 317:2-1-17, respectively.

317:30-5-132.1. Reconsideration of cost report adjustments

(a) A long-term care facility may request reconsideration of cost report adjustment(s)/finding(s) within thirty (30) calendar days of the date of notification of the cost adjustment(s) by submitting a request for reconsideration to the Oklahoma Health Care Authority (OHCA), Chief Financial Officer (CFO), Finance/NF Cost Reporting, 4345 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

(b) Simultaneous with the request for reconsideration, the long-term care facility shall submit a statement as to why the request for reconsideration is being made and may submit any new or additional information that he or she wishes the CFO or his/her designee to consider. Any request for an informal meeting according to subsection (c), below, must be made at the same time as the request for reconsideration.

(c) At the request of the long-term care facility, the reconsideration may be conducted by the CFO or his/her designee as:

(1) An informal meeting between the long-term care facility and the CFO or his/her designee; or

(2) A review by the CFO or his/her designee of the information described below:

(A) A review of all information submitted by the long-term care facility; and

(B) A review of the cost report adjustments made by the OHCA, in order to determine the accuracy of the adjustments.

(d) The CFO or his/her designee shall send a written decision of the reconsideration to the long-term care facility within thirty (30) calendar days of the date of OHCA's receipt of the reconsideration request, or the date of any informal meeting, whichever occurs later.

(e) If the provider disagrees with the decision rendered by the CFO or his or her designee, the provider may utilize the administrative appeals process in accordance with Oklahoma Administrative Code 317:2-1-17.

317:30-5-132.2. Allowable costs

The Oklahoma Health Care Authority (OHCA) shall reimburse long-term care facilities in accordance with its federally-approved Oklahoma Medicaid Plan. According to the Oklahoma Medicaid Plan, per-diem rates for long-term care

facilities are established on, among other things, analyses of annual uniform cost reports. These reports may only include allowable costs, as follows:

(1) To be allowable, the costs shall be reasonable and necessary for services related to resident care, and pertinent to the operation of the long-term care facility. More specifically:

(A) To be reasonable, costs shall be such as would ordinarily be incurred for comparable services provided by comparable facilities, for example, facilities of similar size and level of care; and

(B) To be necessary, costs related to patient care must be common and accepted occurrences; and,

(C) Allowable costs for services and items directly related to resident care include routine services, as established by Oklahoma Administrative Code (OAC) 317:30-5-133.1, and quality of care assessment fees, as established by OAC 317:30-5-131.2. Ancillary services, as established by OAC 317:30-5-133.2, are not allowable costs, but may be reimbursed outside the long-term care facility rate, unless reimbursement is available from Medicare or other insurance or benefit programs.

(2) The following costs shall not be allowable:

(A) Costs resulting from inefficient operations;

(B) Costs resulting from unnecessary or luxurious care;

(C) Costs related to activities not common and accepted in a long-term care facility, as determined by OHCA or its designee;

(D) Costs that are not actually paid by the provider, including, but not limited to, costs that are discharged in bankruptcy; forgiven; or converted to a promissory note;

(E) Costs that are paid to a related party that has not been identified on the reports;

(F) Cost of services, facilities, and supplies furnished by organizations related to the provider, by common ownership or control, that exceed the price of comparable services, facilities, or supplies purchased by independent providers in Oklahoma, in accordance with 42 Code of Federal Regulations § 413.17; and,

(G) Costs or financial transactions used to circumvent OHCA's applicable reimbursement rules.

(3) Allowable costs shall include only those costs that are considered allowable for Medicare purposes and that are consistent with federal Medicaid requirements. The guidelines for allowable costs in the Medicare program are set forth in the Medicare Provider Reimbursement Manual, HCFA-Pub. 15.

317:30-5-136.1. ~~Focus on Excellence~~ Pay-for-Performance program

(a) **Purpose.** The ~~Focus on Excellence (FOE)~~ Pay-for-Performance (PFP) program was established through Oklahoma State Statute, Title 56, Section 56-1011.5, as amended. ~~FOE's~~ PFP's mission is to enhance the quality of

life for target citizens by delivering effective programs and facilitating partnerships with providers and the community they serve. The program has a full commitment to the very best in quality, service and value which will lead to measurably improved quality outcomes, healthier lifestyles; greater satisfaction and confidence for our members.

(b) **Eligible Providers.** Any Oklahoma long-term care nursing facilities that are licensed and certified by the Oklahoma State Department of Health and accommodate SoonerCare members at their facility as defined in Oklahoma Administrative Code (OAC) 317:30-5-120.

(c) **Quality measure care criteria.** To maintain status in the FOEPFP program, each nursing facility ~~must enter quality data either monthly, quarterly, annually for the following care criteria metrics. All metrics in detail can be found on the Oklahoma Health Care Authority's (OHCA) FOE website or on FOE/QOC (Quality of Care) Data Collection Portal.~~ shall submit documentation as it relates to program metrics (below) quarterly or upon the request of the Oklahoma Health Care Authority (OHCA). The program metrics can be found on the OHCA's PFP website or on PFP/Quality of Care (QOC) data collection portal. For the period beginning October 1, 2019 and until changed by amendment, qualifying facilities participating in the PFP program have the potential to earn an average of the five dollars (\$5.00) quality incentive per Medicaid patient per day. Facility(s) baseline is calculated annually and will remain the same for the twelve (12) month period. Facility(s) will meet or exceed five-percent (5%) relative improvement or the Centers for Medicare and Medicaid Services national average each quarter for the following metrics:

- (1) Decrease percent of high risk pressure ulcers for long stay residents.
- (2) Decrease percent of unnecessary weight loss for long stay residents.
- (3) Decrease percent of use of anti-psychotic medications for long stay residents.
- (4) Decrease percent of urinary tract infection for long stay residents.

(1) **Person-Centered Care.** Facility must meet six (6) out of ten (10) of the established measurement criteria for this metric to receive the points. This metric is measured quarterly and must be completed by the 15th of the month following the close of the quarter.

(2) **Direct Care Staffing.** Facility must maintain a direct care staffing ratio of three and a half (3.5) hours per patient day to receive the points for this metric. This metric must be completed monthly by the 15th of each month.

(3) **Resident/Family Satisfaction.** Facility must maintain a score of 76 of a possible 100 points on overall satisfaction to receive the points for this metric. This metric is collected in a survey format and must be completed once a year in the fall. Surveys are to be completed by the resident, power of attorney and/or with staff assistance.

(4) **Employee Satisfaction.** Facility must maintain a score of 70 points or higher in order to receive the points for this metric. Surveys are completed by FOE facility employees and must be completed once a year in the fall.

(5) **Licensed Nurse Retention.** Facility must maintain a one year tenure rate of 60 percent (60%) or higher of its licensed nursing staff to receive the points for this metric. This metric must be completed monthly by the 15th of the month.

(6) **Certified Nurse Assistant (CNA) Retention.** Facility must maintain a one year tenure rate of 50 percent (50%) or higher of its CNA staff to receive the points for this metric. This metric must be completed monthly by the 15th of the month.

(7) **Distance Learning Program Participation.** Facility must contract and use an approved distance learning vendor for its frontline staff in order to receive points for this metric. This metric is measured quarterly and must be completed by the 15th of the month following the close of the quarter.

(8) **Peer Mentoring.** Facility must establish a peer mentoring program in accordance with OHCA guidelines. This metric is measured quarterly and must be completed by the 15th of the month following the close of the quarter.

(9) **Leadership Commitment.** Facility must meet six (6) out of ten (10) of the established measurement criteria for this metric to receive the points. This metric is measured quarterly and must be completed by the 15th of the month following the close of the quarter.

(d) **Payment.** The amount of eligible dollars is reimbursable based on the SoonerCare FOE nursing facility meeting the quality metric thresholds listed in (b). Facilities must meet a minimal of 100 points to even be eligible for reimbursement. Payment to long-term care facilities for meeting the metrics will be awarded quarterly. A facility may earn a minimum of \$1.25 per Medicaid patient per day for each qualifying metric. A facility receiving a deficiency of "I" or greater related to a targeted quality measure in the program is disqualified from receiving an award related to that measure for that quarter.

(1) **Distribution of Payment.** OHCA will notify the FOEPFP facility of the quality reimbursement amount on a quarterly basis.

(2) **Penalties.** Facilities that do not submit on the appropriated due dates will not receive reimbursable dollars. Facilities that do not submit quality measures will not receive reimbursable dollars for those specific measures. Due dates can be found on the OHCA FOE webpage. shall have performance review(s) and provide documentation upon request from OHCA to maintain program compliance. Program payments will be withheld from facilities that fail to submit the requested documentation within fifteen (15) business days of the request.

(e) **Appeals.** Facilities can file an appeal with the Quality Review Committee and in accordance, with the grievance procedures found at OAC 317:2-1-2(c) and 317:2-1-16.

[OAR Docket #20-444; filed 6-26-20]

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

[OAR Docket #20-453]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 1. Physicians

317:30-5-20.2 [NEW]

(Reference APA WF # 19-25)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (F)(1) and (3) of Title 63 of Oklahoma Statutes; Section 5003 through 5016 of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; and 42 CFR § 440.230

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SUPERSEDED EMERGENCY ACTIONS:

Not applicable

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will establish guidelines to assure medical necessity and consistency in the prior authorization (PA) process for polymerase chain reaction (PCR) testing. The guidelines include criteria to meet medical necessity and required documentation for approval of the PA.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 14, 2020:**

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-20.2. Molecular diagnostic testing utilizing polymerase chain reaction for infectious diseases

(a) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise.

(1) **"Polymerase Chain Reaction (PCR)"** means a biochemical laboratory technique used to make thousands or even millions of copies of a segment of DNA. It is commonly used to amplify a small amount of specifically targeted DNA from among a mixture of DNA samples. It is also known as Nucleic Acid Amplification Test (NAAT).

(2) **"Direct Probe Technique"** means detection methods where nucleic acids are detected without initial amplification processing.

(3) **"Amplified Probe Technique"** means technique without quantification, a detection method in which the sensitivity of the assay is improved over direct probe techniques.

(4) **"Probe with Quantification Technique"** means methods used to report absolute or relative amounts of nucleic acid sequences in the original sample.

(b) **Medical necessity.**

(1) PCR testing for infectious diseases, following clinical guidelines such as those set forth by the Infectious Disease Society of America's (IDSA) or other nationally recognized medical professional academy or society standards of care, may be compensable.

(2) For the full PCR guideline which includes medically necessity and prior authorization criteria, and a list of codes that require authorization, please refer to www.okhca.org.

(c) **Documentation.**

(1) The medical record must contain documentation that the testing is expected to influence treatment of the condition towards which the testing is directed.

(2) The laboratory or billing provider must have on file the physician requisition which sets forth the diagnosis or condition that warrants the test(s).

(3) Examples of documentation requirements for the ordering provider include, but are not limited to, history and physical exam findings that support the decision making, problems/diagnoses, relevant data (e.g., lab testing results).

(4) Documentation requirements for the performing laboratory include, but are not limited to, lab accreditation, test requisition, test records, preliminary and final report, and quality control record.

(5) Documentation requirements for lab developed tests/protocols include diagnostic test/assay, lab manufacturer, names of comparable assays/services (if relevant), descriptions of assay, analytical validity evidence, clinical validity evidence, and clinical utility.

(6) Billing providers are required to code specificity; however, if an unlisted or not otherwise specified Current Procedural Terminology (CPT) code is used, the documentation must clearly identify the unique procedure performed. When multiple procedure codes are submitted

(unique, unlisted, and/or not otherwise specified), the documentation supporting each code should be easily identifiable. If on review the billed code cannot be linked to the documentation, this service may be denied.

(7) When the documentation does not meet the criteria for the service rendered/requested or the documentation does not establish the medical necessity for the service, the service may be denied as not reasonable and necessary.

[OAR Docket #20-453; filed 6-26-20]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY

CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #20-443]

RULEMAKING ACTION:

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RULES:

Subchapter 5. Individual Providers and Specialties

Part 1. Physicians

317:30-5-22.1 [AMENDED]

Part 3. Hospitals

317:30-5-42.11 [AMENDED]

(Reference APA WF # 19-12)

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

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Subchapter 5. Individual Providers and Specialties

Part 1. Physicians

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Part 3. Hospitals

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n/a

GIST/ANALYSIS:

The proposed revisions will add "family practice physician - obstetrics (FP/OB)" as a new provider type under the enhanced services for medically high risk pregnancy policy. This policy change will address and improve

access to care for obstetrical-related services in rural Oklahoma. Further revisions will update policy to reflect current business practices.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

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

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

- (1) ~~prenatal~~Prenatal at risk antepartum management;
- (2) ~~a~~A combined maximum of five (5) fetal non stress test(s) and biophysical profiles (additional units can be prior authorized for multiple fetuses)with one (1) test per week beginning at ~~32~~thirty-two (32) weeks gestation and continuing to ~~38~~thirty-eight (38) weeks; and
- (3) ~~a~~A maximum of three (3) follow-up ultrasounds not covered under OAC 317:30-5-22(b)(2).

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

- (1) ~~ACOGA~~ACOG comprehensive prenatal assessment from the American College of Obstetricians and Gynecologist (ACOG) or other comparable comprehensive prenatal assessment; and
- (2) ~~appropriate~~Appropriate documentation supporting medical necessity from a ~~Board—Eligible/Board Certified~~board eligible/board certified Maternal Fetal Medicine (MFM) specialist, ~~or a Board—Eligible/Board Certified~~board eligible/board certified Obstetrician-Gynecologist (OB-GYN), ~~or a board eligible/board certified~~Family Practice Physician who has completed an Accreditation Council for Graduate Medical Education (ACGME) approved residency. The medical residency program must include appropriate obstetric training, and the physician must be credentialed by the hospital at which they provide obstetrical services in order to perform such services. The documentation must include information identifying and detailing the qualifying high risk condition. Non-MFM obstetrical providers requesting enhanced services are

limited to a specific set of diagnoses as outlined on the OHCA website (www.okhca.org).

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

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

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

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

PART 3. HOSPITALS

317:30-5-42.11. Observation/treatment

(a) Payment is made for the use of a treatment room associated with outpatient observation services. Observation services must be ordered by a physician or other individual authorized by state law. Observation services are furnished by the hospital on the hospital's premises and include use of the bed and periodic monitoring by hospital staff. Observation services must include a minimum of ~~eight~~ (8) hours of continuous care. Outpatient observation services are not covered when they are provided:

- (1) On the same day as an emergency department visit.
- (2) Prior to an inpatient admission, as those observation services are considered part of the inpatient DRG.
- (3) For the convenience of the member, member's family or provider.
- (4) When specific diagnoses are not present on the claim.
- (5) As part of another service, i.e. for post operative monitoring; recovery after diagnostic testing or concurrently with therapeutic services such as chemotherapy.

(b) Payment is made for observation services in a labor or delivery room. Observation services must include a minimum of eight (8) hours of continuous care. Specific pregnancy-related diagnoses are required. ~~During active labor, a fetal non-stress test is covered in addition to the labor and delivery room charge.~~

[OAR Docket #20-443; filed 6-26-20]

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

[OAR Docket #20-456]

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RULES:

Subchapter 5. Individual Providers and Specialties

Part 21. Outpatient Behavioral Health Agency Services

317:30-5-240.3 [AMENDED]

Part 37. Advanced Practice Registered Nurse

317:30-5-375 [AMENDED]

Part 39. Skilled Nursing Services

317:30-5-390 [AMENDED]

317:30-5-391 [AMENDED]

Part 85. Advantage Program Waiver Services

317:30-5-763 [AMENDED]

Part 105. Residential Behavioral Management Services in Group Settings

317:30-5-1043 [AMENDED]

(Reference APA WF # 19-31)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; 59 O.S. § 567.21

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SUPERSEDED EMERGENCY ACTIONS:

Not applicable

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will comply with 59 Oklahoma Statutes (O.S.) § 567.21, which allows Oklahoma to enter into the enhanced Nurse Licensure Compact (eNLC). The eNLC is an agreement between states that allows a nurse's licensure to be portable to other member-states of the Compact. These revisions amend references that narrowly tie a nurse's license to the Oklahoma Board of Nursing and align SoonerCare rules with the eNLC.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 21. OUTPATIENT BEHAVIORAL HEALTH AGENCY SERVICES

317:30-5-240.3. Staff ~~Credentials~~credentials

(a) ~~Licensed Behavioral Health Professional~~behavioral health professional (LBHPs). LBHPs are defined as follows~~any of the following practitioners~~:

(1) ~~Allopathic or Osteopathic Physicians~~An allopathic or osteopathic physician with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry practicing as described in OAC 317:30-5-2.

(2) ~~Practitioners~~A practitioner with a current license to practice in the state in which services are provided, ~~issued by one of the licensing boards~~within one (1) of the areas of practice listed in (A) through (F). The exemptions from licensure under 59 O.S. § 1353(4) (Supp. 2000) and (5), 59 O.S. § 1903(C) and (D) (Supp. 2000), 59 O.S. § 1925.3(B) (Supp. 2000) and (C), and 59 O.S. § 1932(C) (Supp. 2000) and (D) do not apply to Outpatient Behavioral Health Servicesoutpatient behavioral health services.

(A) Psychology;

(B) Social ~~Workwork~~ (clinical specialty only);

(C) Professional Counselor,counselor;

(D) Marriage and Family Therapist,family therapist;

(E) Behavioral Practitioner,or practitioner; or

(F) Alcohol and ~~Drug Counselor~~drug counselor.

(3) ~~Advanced Practice Nurse (certified in a psychiatric mental health specialty)~~An advanced practice registered nurse (APRN) certified in a psychiatric mental health specialty, and licensed as a registered nurse (RN) with a current certification of recognition from the board of nursing in the state in which services are provided.

(4) A ~~Physician Assistant~~physician assistant who is licensed and in good standing in ~~this~~the state in which services are provided and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.

(b) ~~Licensure Candidates~~candidates. Licensure candidates are practitioners actively and regularly receiving ~~board approved~~board-approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one (1) of the licensing boards~~areas of practice listed in (2)(A) through (F) above~~. The supervising LBHP responsible for the member's care must:

(1) ~~staff~~Staff the member's case with the candidate;

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

(3) ~~agree~~Agree with the current plan for the member; and;

(4) ~~confirm~~Confirm that the service provided by the candidate was appropriate; and

(5) The member's medical record must show that the requirements for reimbursement were met and the LBHP

responsible for the member's care has reviewed, countersigned, and dated the service plan and any updates thereto so that it is documented that the licensed professional is responsible for the member's care.

(c) ~~Certified Alcohol and Drug Counselors~~alcohol and drug counselors (CADCs). CADCs are defined as having a current certification as a CADC in the state in which services are provided.

(d) ~~Multi-Systemic Therapy (MST) Providers~~systemic therapy (MST) provider. ~~Masters~~Master's level therapist who works on a team established by ~~OJA~~the Oklahoma Juvenile Affairs Office (OJA) which may include ~~Bachelor~~bachelor's level staff.

(e) ~~Peer Recovery Support Specialist~~recovery support specialist (PRSS). The ~~Peer Recovery Support Specialist~~PRSS must be certified by ODMHSAS pursuant to requirements found in OAC 450:53.

(f) ~~Family Support and Training Provider (FSP)~~. FSPs are defined as follows:

(1) Have a high school diploma or equivalent;

(2) be 21 years of age and have successful experience as a family member of a child or youth with serious emotional disturbance, or a minimum of 2 years' experience working with children with serious emotional disturbance or be equivalently qualified by education in the human services field or a combination of work experience and education with one year of education substituting for one year of experience (preference is given to parents or care givers of child with SED);

(3) successful completion of ODMHSAS Family Support Training;

(4) pass background checks;

(5) service plans must be overseen and approved by an LBHP or Licensure Candidate; and

(6) must function under the general direction of an LBHP, or Licensure Candidate or systems of care team, with an LBHP or Licensure Candidate available at all times to provide back up, support, and/or consultation.Family support and training provider (FSP). FSPs must:

(1) Have a high school diploma or equivalent;

(2) Be twenty-one (21) years of age and have a successful experience as a family member of a child/adolescent with serious emotional disturbance, or a minimum of have lived experience as the primary caregiver of a child/adolescent who has received services for substance use disorder and/or co-occurring substance use and mental health, or have lived experience being the caregiver for a child/adolescent with Child Welfare/Child Protective Services involvement;

(3) Successfully complete family support training according to a curriculum approved by ODMHSAS and pass the examination with a score of eighty percent (80%) or better;

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

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- (5) Have treatment plans be overseen and approved by a licensed behavioral health professional (LBHP) or licensure candidate; and
- (6) Function under the general direction of an LBHP, licensure candidate or systems of care team, with an LBHP or licensure candidate available at all times to provide back up, support, and/or consultation.
- (g) ~~Behavioral Health Aide (BHA). BHAs are defined as follows:~~
- (1) ~~Behavioral Health Aides must have completed 60 hours or equivalent of college credit; or~~
- (2) ~~may substitute one year of relevant employment and/or responsibility in the care of children with complex emotional needs for up to two years of college experience; and~~
- (3) ~~must have successfully completed the specialized training and education curriculum provided by the ODMHSAS; and~~
- (4) ~~must be supervised by a bachelor's level individual with a minimum of two years case management or care coordination experience; and~~
- (5) ~~service plans must be overseen and approved by an LBHP or Licensure Candidate; and~~
- (6) ~~must function under the general direction of an LBHP, or Licensure Candidate and/or systems of care team, with an LBHP or Licensure Candidate available at all times to provide back up, support, and/or consultation.~~
- Qualified behavioral health aide (QBHA). QBHAs must:
- (1) Have completed sixty (60) hours or equivalent of college credit; or may substitute one (1) year of relevant employment and/or responsibility in the care of children with complex emotional needs for up to two (2) years of college experience; and
- (2) Have successfully completed the specialized training and education curriculum provided by the ODMHSAS; and
- (3) Be supervised by a bachelor's level individual with a minimum of two (2) years case management or care coordination experience; and
- (4) Have service plans be overseen and approved by an LBHP or licensure candidate; and
- (5) Function under the general direction of an LBHP, or licensure candidate and/or systems of care team, with an LBHP or licensure candidate available at all times to provide back up, support, and/or consultation.
- (h) ~~Behavioral Health Case Manager~~health case manager. For behavioral health case management services to be compensable by SoonerCare, the provider performing the services must be an LBHP, ~~Licensure Candidate~~licensure candidate, CADC or have and maintain a current certification as a ~~Case Manager~~case manager II (CM II) or Case Managercase manager I (CM I) from ODMHSAS. The requirements for obtaining these certifications are as follows:
- (1) ~~Certified Behavioral Health Case Manager II (CM II)~~The CM II must meet the requirements in (A), (B), (C) or (D) below:

- (A) Possess a ~~Bachelor's or Master's~~bachelor's or master's degree in a behavioral health related field earned from a regionally accredited college or university recognized by the United States Department of Education (USDE) or a ~~Bachelor's or Master's~~bachelor's or master's degree in education; and complete web-based training for behavioral health case management and behavioral health rehabilitation as specified by ODMHSAS; and complete one (1) day of face-to-face behavioral health case management training and two (2) days of face-to-face behavioral health rehabilitation training as specified by ODMHSAS; and pass web-based competency exams in behavioral health case management and behavioral health rehabilitation.
- (B) ~~Possess a current license as a registered nurse in the State of Oklahoma~~Be licensed and in good standing as a registered nurse in the state in which services are provided, with experience in behavioral health care; complete web-based training for behavioral health case management and behavioral health rehabilitation as specified by ODMHSAS; complete one (1) day of face-to-face behavioral health case management training and two (2) days of face-to-face behavioral health rehabilitation training as specified by ODMHSAS; and pass web-based competency exams for behavioral health case management and behavioral health rehabilitation.
- (C) Possess a ~~Bachelor's or Master's~~bachelor's or master's degree in any field earned from a regionally accredited college or university recognized by the USDE and a current certification or Children's Certificate in Psychiatric Rehabilitation from the US Psychiatric Rehabilitation Association (USPRA); complete the behavioral health case management web-based training as specified by ODMHSAS; complete one (1) day of face-to-face behavioral health case management training; and pass web-based competency exams for behavioral health case management. Applicants who have not received a certificate in children's psychiatric rehabilitation from the ~~US Psychiatric Association (USPRA)~~USPRA must also complete the behavioral health rehabilitation web-based training as specified by ODMHSAS.
- (D) Possess a ~~Bachelor's or Master's~~bachelor's or master's degree in any field and proof of active progression toward obtaining a clinical licensure ~~Master's or Doctoral~~master's or doctoral degree at a regionally accredited college or university recognized by the USDE and complete web-based training for behavioral health case management and behavioral health rehabilitation as specified by ODMHSAS; complete one (1) day of face-to-face behavioral health case management training and two (2) days of face-to-face behavioral health rehabilitation training as specified by ODMHSAS; and pass web-based competency exams in behavioral health case management and behavioral health rehabilitation.

(2) ~~Certified Behavioral Health Case Manager~~The CM meets the requirements in either (A) or (B) and (C):

(A) ~~completed 60~~Completed sixty (60) college credit hours; or

(B) ~~has~~Possesses a high school diploma with ~~36~~thirty-six (36) total months of experience working with persons who have a mental illness and/or substance abuse. Documentation of experience on file with ODMHSAS; and

(C) ~~completes~~Completes two (2) days of ODMHSAS specified behavioral health case management training and passes a web-based competency exam for behavioral health case management.

(3) ~~Wraparound Facilitator Case Manager~~facilitator case manager is ~~an~~an LBHP, ~~Licensure Candidate~~licensure candidate or CADC that meets the qualifications for CM II and has the following:

(A) ~~successful~~Successful completion of the ODMHSAS training for wraparound facilitation within six (6) months of employment; and

(B) ~~participate~~Participate in ongoing coaching provided by ODMHSAS and employing agency; and

(C) ~~successfully~~Successfully complete wrap-around credentialing process within nine (9) months of beginning process; and

(D) ~~direct~~Direct supervision or immediate access and a minimum of one (1) hour weekly clinical consultation with a ~~Qualified Mental Health Professional~~qualified mental health professional, as required by ODMHSAS.

(4) ~~Intensive Case Manager~~case manager is ~~an~~an LBHP, ~~Licensure Candidate~~licensure candidate, or CADC that meets the provider qualifications of a ~~Case Manager~~CM II and has the following:

(A) A minimum of two (2) years ~~Behavioral Health Case Management~~behavioral health case management experience, crisis diversion experience, and

(B) ~~must~~Must have attended the ODMHSAS six (6) hours ~~Intensive~~intensive case management training.

PART 37. ADVANCED PRACTICE REGISTERED NURSE

317:30-5-375. Eligible providers

The Advanced Practice Nurse must be a registered nurse in good standing with the Oklahoma Board of Nursing, and have acquired knowledge and clinical skills through the completion of a formal program of study approved by the Oklahoma Board of Nursing Registration and have obtained professional certification through the appropriate National Board recognized by the Oklahoma Board of Nursing. Advanced Practice Nurse services are limited to the scope of their practice as defined in 59 O.S. 567.3a and corresponding rules and regulations at OAC 485:10-5-1 through 10-16-9. Rules regarding Certified

Nurse Midwives are referenced in OAC 317:30-5-225. Advanced Practice Nurses who practice in states other than Oklahoma must be appropriately licensed in the state in which they practice. In addition, all providers must have a current contract on file with the Oklahoma Health Care Authority.

(a) The advanced practice registered nurse (APRN) must:

(1) Be licensed and in good standing in the state in which services are provided;

(2) Have completed an accredited graduate level advanced practice registered nursing education program approved by the board of nursing in the state in which services are provided; and

(3) Possess a current national certification by a national certifying body recognized by the board of nursing in the state in which services are provided.

(b) APRN services are limited to the scope of practice defined in 59 O.S. § 567.3a and corresponding administrative rules at Oklahoma Administrative Code (OAC) 485:10-5-1 through 485:10-16-9. Rules regarding certified nurse midwives are referenced in OAC 317:30-5-225. APRNs who practice in states other than Oklahoma must be appropriately licensed in the state in which they practice. In addition, all providers must have a current contract on file with the Oklahoma Health Care Authority.

PART 39. SKILLED NURSING SERVICES

317:30-5-390. Home and Community-Based Services ~~Waivers~~waivers for adults with an intellectual disability or certain adults with related conditions

(a) **Introduction to waiver services.** Each Home and Community-Based Services (HCBS) ~~Waiver~~waiver that includes services for adults with an intellectual disability or certain adults with related conditions allows payment for home health care services as defined in the waiver approved by the Centers for Medicare and Medicaid Services.

(1) Home health care services are skilled nursing services provided to a member by a registered nurse (RN) or a licensed practical nurse (LPN) that include:

(A) ~~direct~~Direct nursing care;

(B) ~~assessment~~Assessment and documentation of health changes;

(C) ~~documentation~~Documentation of significant observations;

(D) ~~maintenance~~Maintenance of nursing plans of care;

(E) ~~medication~~Medication administration;

(F) ~~training~~Training of the member's health care needs;

(G) ~~preventive~~Preventive and health care procedures; and

(H) ~~preparing~~Preparing, analyzing, and presenting nursing assessment information regarding the member.

(2) The first ~~36~~^{thirty-six} (36) visits provided by the home health care agency are covered by the Oklahoma Medicaid State Plan.

(b) **Eligible providers.** Skilled nursing services providers must enter into contractual agreements with the Oklahoma Health Care Authority (OHCA) to provide HCBS for adults with an intellectual disability or certain adults with related conditions.

(1) Individual providers must be currently licensed ~~in Oklahoma as a~~ and in good standing in the state in which services are provided as a:

- (A) ~~registered nurse~~RN; or
- (B) ~~licensed practical nurse~~LPN.

(2) Agency providers must:

- (A) ~~have~~Have a current Medicaid HCBS home health care agency contract; or
- (B) ~~be~~Be certified by the Oklahoma State Department of Health (OSDH) as a home health care agency.

317:30-5-391. Coverage for Skilled Nursing Services ~~Skilled nursing services~~

(a) All ~~Skilled Nursing Services~~skilled nursing services must be ordered and prescribed by a physician, supported by a nursing plan of care, included in the individual plan as described in ~~OAC~~Oklahoma Administrative Code (OAC) 340:100-5-53 and reflected in the ~~Plan of Care~~plan of care approved in accordance with OAC 340:100-3-33 and ~~OAC~~ 340:100-3-33.1. For purposes of this Section, a physician is defined as all licensed medical and osteopathic physicians, physician assistants (PAs) and advanced practice registered nurses (APRNs) in accordance with the rules and regulations covering the OHCA's medical care program. Arrangements for waiver ~~Skilled Nursing Services~~skilled nursing services are made through the personal support team with the specific involvement of the assigned Oklahoma Department of Human Services (OKDHS) Developmental Disabilities Services Division (DDSD) registered nurse (RN). The DDSD RN develops a nursing service support plan subject to review and authorization by the DDSD state nursing director or designee.

(b) ~~Skilled Nursing Services~~nursing services are rendered in such a manner as to provide the service recipient as much autonomy as possible.

- (1) ~~Skilled Nursing Services~~nursing services must be flexible and responsive to changes in the service recipient's needs.
- (2) Providers are expected to participate in annual personal support team meetings and other team meetings as required.
- (3) Appropriate supervision of ~~Skilled Nursing Services~~skilled nursing services including services provided by licensed practical nurses (LPNs) is provided pursuant to State law and regulatory board requirements.
- (4) Individual service providers must be RNs or LPNs currently licensed ~~to practice in the State of Oklahoma~~ and in good standing in the state in which services are provided.

PART 85. ADVANTAGE PROGRAM WAIVER SERVICES

317:30-5-763. Description of services

Services included in the ADvantage ~~Program~~program are:

(1) Case management.

(A) Case management services, regardless of payment source, assist a member to gain access to medical, social, educational, or other services that may benefit him or her to maintain health and safety. Case managers:

- (i) ~~initiate~~Initiate and oversee necessary assessments and reassessments to establish or reestablish waiver program eligibility;
- (ii) ~~develop~~Develop the member's comprehensive person-centered service plan, listing only the services necessary to prevent institutionalization of the member, as determined through the assessments;
- (iii) ~~initiate~~Initiate the addition of necessary services or deletion of unnecessary services, as dictated by the member's condition and available support; and
- (iv) ~~monitor~~Monitor the member's condition to ensure delivery and appropriateness of services and initiate person-centered service plan reviews. Case managers submit an individualized Form 02CB014, Services Backup Plan, on all initial service plans, annually at reassessment, and on updates as appropriate throughout the year, reflecting risk factors and measures in place to minimize risks. When a member requires hospital or nursing facility (NF) services, the case manager:

- (I) ~~assists~~Assists the member in accessing institutional care and, as appropriate, periodically monitors the member's progress during the institutional stay;
- (II) ~~helps~~Helps the member transition from institution to home by updating the person-centered service plan;
- (III) ~~prepares~~Prepares services to start on the date the member is discharged from the institution; and
- (IV) ~~must~~Must meet ADvantage ~~Program~~program minimum requirements for qualification and training prior to providing services to ADvantage members.

(B) Providers of ADvantage services for the member or for those who have an interest in or are employed by an ADvantage provider for the member must not provide case management or develop the person-centered service plan, except when the ADvantage Administration (AA) demonstrates the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area, also provides other ADvantage services. Prior to providing services to members receiving Consumer-Directed Personal Assistance

Services and Supports (CD-PASS), case manager supervisors, and case managers are required to receive training and demonstrate knowledge regarding the CD-PASS service delivery model, "Independent Living Philosophy," and demonstrate competency person-centered planning.

(C) Providers may only claim time for billable case management activities, described as:

(i) ~~any~~Any task or function, per Oklahoma Administrative Code (OAC) 317:30-5-763(1)(A) that only an ADvantage case manager can perform on behalf of the member, because of skill, training, or authority can perform on behalf of a member; and

(ii) ~~ancillary~~Ancillary activities, such as clerical tasks, including, but not limited to, mailing, copying, filing, faxing, driving time, or supervisory and administrative activities are not billable case management activities. The administrative cost of these activities and other normal and customary business overhead costs are included in the reimbursement rate for billable activities.

(D) Case management services are prior authorized and billed per ~~fifteen minute (15 minute)~~fifteen (15) minute unit of service using the rate associated with the location of residence of the member served.

(i) ~~Standard rate. — case~~Case management services are billed using a standard rate for reimbursement for billable service activities provided to a member who resides in a county with a population density greater than twenty-five (25) persons per square mile.

(ii) ~~Very rural/difficult service area rate. — case~~Case management services are billed using a very ~~rural/difficult~~rural/outside providers' service area rate for billable service activities provided to a member who resides in a county with a population density equal to, or less than twenty-five (25) persons per square mile. Exceptions are services to members who reside in Oklahoma Department of Human Services (~~DHS~~)(OKDHS) Aging Services identified zip codes in Osage County adjacent to the metropolitan areas of Tulsa and Washington counties. Services to these members are prior authorized and billed using the standard rate.

(iii) The latest United States Census, Oklahoma counties population data is the source for determination of whether a member resides in a county with a population density equal to, or less than twenty-five (25) persons per square mile, or resides in a county with a population density greater than twenty-five (25) persons per square mile.

(2) **Respite.**

(A) Respite services are provided to members who are unable to care for themselves. Services are provided on a short-term basis due to the primary caregiver's absence or need for relief. Payment for respite care does not include room and board costs

unless more than seven (7) hours are provided in a NF. Respite care is only utilized when other sources of care and support are exhausted. Respite care is only listed on the service plan when it is necessary to prevent institutionalization of the member. Units of services are limited to the number of units approved on the service plan.

(B) In-home respite services are billed per ~~fifteen minute (15 minute) units~~fifteen (15) minute unit of service. Within any ~~one day (1 day)~~one (1) day period, a minimum of eight (8) units [two (2) hours] must be provided with a maximum of twenty-eight (28) units [seven (7) hours] provided. The service is provided in the member's home.

(C) Facility-based extended respite is filed for a per diem rate when provided in a NF. Extended respite must be at least eight (8) hours in duration.

(D) In-home extended respite is filed for a per diem rate. A minimum of eight (8) hours must be provided in the member's home.

(3) **Adult day health (ADH) care.**

(A) ADH is furnished on a regularly-scheduled basis for one (1) or more days per week in an outpatient setting. It provides both health and social services necessary to ensure the member's optimal functioning. Most assistance with activities of daily living (ADLs), such as eating, mobility, toileting, and nail care are integral services to ADH care service and are covered by the ADH care basic reimbursement rate.

(B) ADH care is a ~~fifteen minute (15 minute)~~fifteen (15) minute unit of service. No more than ~~eight (8) hours, thirty-two (32) units [eight (8) hours]~~eight (8) hours, [thirty-two (32) units] are authorized per day. The number of units of service a member may receive is limited to the number of units approved on the member's approved service plan.

(C) Physical, occupational, and speech therapies are only provided as an enhancement to the basic ADH care service when authorized by the service plan and are billed as a separate procedure. ADH care therapy enhancement is a maximum of one (1) session unit per day of service.

(D) Meals provided as part of this service do not constitute a full nutritional regimen. One (1) meal, that contains at least one-third (1/3) of the current daily dietary recommended intake (DRI), as established by the Food and Nutrition Board of the ~~Institute of Medicine of the National Academy~~Academies of Sciences, Engineering, and Medicine, is provided to those participants who are in the center for four (4) or more hours per day, and does not constitute a full nutritional regimen. Member's access to food at any time must also be available in addition to the required meal and is consistent with an individual not receiving Medicaid-funded services and supports.

(E) Personal-care service enhancement in ADH is assistance in bathing, hair care, or laundry service, authorized by the person-centered service plan and

billed as separate procedures. This service is authorized when an ADvantage ~~Waiver~~waiver member who uses ADH requires assistance with bathing, hair care, or laundry to maintain health and safety. Assistance with bathing, hair care, or laundry service is not a usual and customary ADH care service. ADH personal care enhancement is a maximum of one (1) unit per day of bathing, hair care, or laundry service.

(F) ~~DHS~~OKDHS Home and Community-Based Services (HCBS) ~~Waiver~~waiver settings have qualities defined in ~~federal regulation, per Section (§) 441.301 (c)(4) of Title 42 of Code of Federal Regulations (CFR)~~Home and Community-Based Services: Waiver Requirements, 42 Code of Federal Regulations, Section (§) 441.301 (c)(4) based on the individual's needs, defined in the member's authorized service plan.

(i) The ADH center is integrated and supports full access of ADvantage members to the greater community, including opportunities to:

- (I) ~~seek~~Seek employment and work in competitive integrated ADH Center, not a requirement for persons that are retirement age;
- (II) ~~engage~~Engage in community life;
- (III) ~~control~~Control personal resources; and
- (IV) ~~receive~~Receive services in the community, to the same degree as individuals not receiving ADvantage Program or other Medicaid HBCS ~~Waiver~~waiver services.

(ii) The ADH is selected by the member from all available service options and given the opportunity to visit and understand the options.

(iii) The ADH ensures the member's rights of privacy, dignity, respect, and freedom from coercion and restraint.

(iv) The ADH optimizes the member's initiative, autonomy, and independence in making life choices including, but not limited to:

- (I) ~~daily~~Daily activities;
- (II) ~~the~~The physical environment; and
- (III) ~~with whom to interact~~Social interactions.

(v) The ADH facilitates the member's choice regarding services and supports including the provider.

(vi) Each member has the freedom and support to control his or her own schedules, activities, and access to food at any time.

(vii) Each member may have visitors whenever he or she chooses.

(viii) The ADH center is physically accessible to the member.

(G) ADH centers that are presumed not to be HCBS settings per 42 ~~CFR~~C.F.R. § 441.301(c)(5)(v) include, ADH centers:

(i) in a publicly- or privately-owned facility providing inpatient treatment;

(ii) on the grounds of or adjacent to a public institution; and

(iii) with the effect of isolating individuals from the broader community of individuals not receiving ADvantage ~~Program~~program or another Medicaid HCBS;

(H) When the ADH is presumed not HCBS, according to 42 ~~CFR~~C.F.R. § 441.301(c)(5)(v), it may be subject to heightened scrutiny by AA, ~~OHCA~~the Oklahoma Health Care Authority (OHCA), and the Centers for Medicare and Medicaid Services (CMS). The ADH must provide evidence that the ADH portion of the facility has clear administrative, financial, programmatic, and environmental distinctions from the institution and comply with additional monitoring by the AA.

(4) **Environmental modifications.**

(A) Environmental modifications are physical adaptations to the home, required by the member's person-centered service plan that are necessary to ensure the member's health, welfare, and safety or enable the member to function with greater independence in the home, and that without such, the member would require institutionalization. Adaptations or improvements to the home but not of direct medical or remedial benefit to the waiver member are excluded.

(B) All services require prior authorization.

(5) **Specialized medical equipment and supplies.**

(A) Specialized medical equipment and supplies are devices, controls, or appliances specified in the person-centered service plan that enable members to increase their abilities to perform ADLs, or to perceive, control, or communicate with the environment in which they live. Necessary items for life support, ancillary supplies, and equipment necessary for the proper functioning of such items, and durable and non-durable medical equipment not available under the Oklahoma Medicaid State Plan are also included. This service excludes any equipment and/or supply items not of direct medical or remedial benefit to the waiver member and necessary to prevent institutionalization.

(B) Specialized medical equipment and supplies are billed using the appropriate HealthCare Common Procedure Code (HCPC). Reoccurring supplies shipped and delivered to the member are compensable only when the member remains eligible for ~~Waiver~~waiver services, continues to reside in the home, and is not institutionalized in a hospital, skilled nursing facility, or nursing home. It is the provider's responsibility to verify the member's status prior to shipping and delivering these items. Payment for medical supplies is limited to the SoonerCare (Medicaid) rate when established, to the Medicare rate, or to actual acquisition cost, plus ~~thirty (30) percent~~thirty percent (30%). All services must have prior authorization.

(6) **Advanced supportive/restorative assistance.**

(A) Advanced supportive/restorative assistance services are maintenance services used to assist a member who has a chronic, yet stable condition. These services assist with ADLs that require devices and procedures related to altered body functions. These services are for maintenance only and are not utilized as treatment services.

(B) Advanced supportive/restorative assistance service is billed per ~~fifteen minute (15 minute)~~ fifteen (15) minute unit of service. The number of units of service a member may receive is limited to the number of units approved on the person-centered service plan.

(7) **Nursing.**

(A) Nursing services are services listed in the person-centered service plan that are within the scope of the ~~Oklahoma Nursing Practice Act~~ state's Nurse Practice Act. These services are provided by a registered nurse (RN), a licensed practical nurse (LPN), or a licensed vocational nurse (LVN) under the supervision of an RN licensed to practice and in good standing in the state in which services are provided. Nursing services may be provided on an intermittent or part-time basis or may be comprised of continuous care. The provision of the nursing service works to prevent or postpone the institutionalization of the member.

(B) Nursing services are services of a maintenance or preventative nature provided to members with stable, chronic conditions. These services are not intended to treat an acute health condition and may not include services reimbursable under either the Medicaid or Medicare ~~Home Health Program~~ home health program. This service primarily provides nurse supervision to the personal care assistant or to the advanced supportive/restorative assistance aide and assesses the member's health and prescribed medical services to ensure they meet the member's needs as specified in the person-centered service plan. A nursing assessment/evaluation, on-site visit is made to each member, with additional visits for members with advanced supportive/restorative assistance services authorized to evaluate the condition of the member and medical appropriateness of services. An assessment/evaluation report is forwarded to the ADvantage ~~Program~~ program case manager and the skilled nurse in accordance with review schedule determined between the case manager and the skilled nurse and outlined in the member's person-centered service plan, to report the member's condition or other significant information concerning each ADvantage member.

(i) The ADvantage ~~Program~~ program case manager may recommend authorization of nursing services as part of the interdisciplinary team planning for the member's person-centered service plan and/or assessment/evaluation of the:

(I) ~~member's~~ Member's general health, functional ability, and needs; and/or

(II) ~~adequacy~~ Adequacy of personal care and/or advanced supportive/restorative assistance services to meet the member's needs, including providing on-the-job training and competency testing for personal care or advanced supportive/restorative care aides per rules and regulations for the delegation of nursing tasks established by the ~~Oklahoma Board of Nursing~~ board of nursing in the state in which services are provided.

(ii) In addition to assessment/evaluation, the ADvantage ~~Program~~ program case manager may recommend authorization of nursing services to:

(I) ~~prepare a one week (1 week)~~ Prepare a one (1) week supply of insulin syringes for a person who is blind and has diabetes and can safely self-inject the medication but cannot fill his or her own syringe. This service includes monitoring the member's continued ability to self-administer the insulin;

(II) ~~prepare~~ Prepare oral medications in divided daily compartments for a member who self-administers prescribed medications but needs assistance and monitoring due to a minimal level of disorientation or confusion;

(III) ~~monitor~~ Monitor a member's skin condition when a member is at risk for skin breakdown due to immobility or incontinence or the member has a chronic stage II decubitus ulcer requiring maintenance care and monitoring;

(IV) ~~provide~~ Provide nail care for the member with diabetes or member who has circulatory or neurological compromise; and

(V) ~~provide~~ Provide consultation and education to the member, member's family, or other informal caregivers identified in the person-centered service plan, regarding the nature of the member's chronic condition. Skills training, including return skills demonstration to establish competency, to the member, family, or other informal caregivers as specified in the person-centered service plan for preventive and rehabilitative care procedures are also provided.

(C) Nursing service includes interdisciplinary team planning and recommendations for the member's person-centered service plan development and/or assessment/evaluation or for other services within the scope of the ~~Oklahoma Nursing Practice Act~~ nurse's license, including private duty nursing. Nursing services are billed per ~~fifteen minute (15 minute)~~ fifteen (15) minute unit of service. A specific procedure code is used to bill for interdisciplinary team planning and recommendations for the member's person-centered service plan, but other procedure codes may be used to bill for all other authorized nursing services. A maximum of eight (8) units, ~~two (2) hours~~ two

(2) hours], per day of nursing for service plan development and assessment evaluation are allowed. An agreement by a provider to perform a nurse evaluation is also an agreement to provide the Medicaid in-home care services for which the provider is certified and contracted. Reimbursement for a nurse evaluation is denied when the provider that produced the nurse evaluation fails to provide the nurse assessment identified in the Medicaid in-home care services for which the provider is certified and contracted.

(8) **Skilled nursing services.**

(A) Skilled nursing services listed in the person-centered service plan that are within the scope of the state's Nurse Practice Act and are ordered by a licensed physician, osteopathic physician, physician assistant, or an advanced practice nurse and are provided by an RN, LPN, or LVN under the supervision of an RN, licensed to practice and in good standing in the state in which services are provided. Skilled nursing services provided in the member's home or other community setting are services requiring the specialized skills of a licensed nurse. The scope and nature of these services are intended for treatment of a disease or a medical condition and are beyond the scope of ADvantage nursing services. These intermittent nursing services are targeted toward a prescribed treatment or procedure that must be performed at a specific time or other predictable rate of occurrence. The RN contacts the member's physician to obtain necessary information or orders pertaining to the member's care. When the member has an ongoing need for service activities requiring more or less units than authorized, the RN must recommend, in writing, that the service plan be revised.

(B) Skilled nursing services are provided on an intermittent or part-time basis, and billed per ~~fifteen minute (15 minute) units~~ fifteen (15) minute unit of service. Skilled nursing services are provided when nursing services are not available through Medicare or other sources or when SoonerCare plan nursing services limits are exhausted. Amount, frequency, and duration of services are prior-authorized in accordance with the member's person-centered service plan.

(9) **Home-delivered meals.**

(A) Home-delivered meals provide one (1) meal per day. A home-delivered meal is a meal prepared in advance and brought to the member's home. Each meal must have a nutritional content equal to at least one-third (1/3) of the dietary reference intakes as established by the Food and Nutrition Board of the ~~National Academy of Sciences~~ Academies of Sciences, Engineering and Medicine. Home-delivered meals are only provided to members who are unable to prepare meals and lack an informal provider to do meal preparation.

(B) Home-delivered meals are billed per meal, with one (1) meal equaling one (1) unit of service.

The limit of the number of units a member is allowed to receive is in accordance with the member's person-centered service plan. The provider must obtain a signature from the member or the member's representative at the time the meal is delivered. In the event the member is temporarily unavailable, such as at a doctor's appointment and the meal is left at the member's home, the provider must document the reason a signature was not obtained. The signature logs must be available for review.

(10) **Occupational therapy services.**

(A) Occupational therapy services are services that increase functional independence by enhancing the development of adaptive skills and performance capacities of members with physical disabilities and related psychological and cognitive impairments. Services are provided in the member's home and are intended to help the member achieve greater independence enabling him or her to reside and participate in the community. Treatment involves the therapeutic use of self-care, work and play activities, and may include modification of the tasks or environment to enable the member to achieve maximum independence, prevent further disability, and maintain health. Under a physician's order, a licensed occupational therapist evaluates the member's rehabilitation potential and develops an appropriate written, therapeutic regimen. The regimen utilizes paraprofessional, occupational therapy assistant services, within the limitations of his or her practice, working under the supervision of a licensed occupational therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services when appropriate. The occupational therapist ensures monitoring and documentation of the member's rehabilitative progress and reports to the member's case manager and physician to coordinate the necessary addition or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Occupational therapy services are billed per ~~fifteen minute (15 minute) units~~ fifteen (15) minute unit of service. Payment is not allowed solely for written reports or record documentation.

(11) **Physical therapy services.**

(A) Physical therapy services are those services that maintain or improve physical disability through the evaluation and rehabilitation of members disabled by pain, disease, or injury. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Treatment involves the use of physical therapeutic means, such as massage, manipulation, therapeutic exercise, cold and/or heat therapy, hydrotherapy, electrical stimulation, and light therapy. Under a physician's order, a licensed physical therapist evaluates the member's rehabilitation potential and develops an appropriate, written, therapeutic regimen. Under the Oklahoma

Physical Therapy Practice Act, a physical therapist may evaluate a member's rehabilitation potential and develop and implement an appropriate, written, therapeutic regimen without a referral from a licensed health care practitioner for a period not to exceed ~~thirty calendar (30 calendar) thirty (30) calendar~~ days. Any treatment required after the ~~thirty calendar (30 calendar) thirty (30) calendar~~ day period requires a prescription from a physician or the physician's assistant of the licensee. The regimen utilizes paraprofessional physical therapy assistant services, within the limitations of his or her practice, working under the supervision of the licensed physical therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services when appropriate. The licensed physical therapist ensures monitoring and documentation of the member's rehabilitative progress and reports to the member's case manager and physician to coordinate the necessary addition or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Physical therapy services are authorized as ADH care therapy enhancement and are a maximum of one (1) session unit per day of service. Payment is not allowed solely for written reports or record documentation.

(12) **Speech and language therapy services.**

(A) Speech and language therapy services are those that maintain or improve speech and language communication and swallowing disorders/disability through the evaluation and rehabilitation of members disabled by pain, disease, or injury. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Services involve the use of therapeutic means, such as evaluation, specialized treatment, or development and oversight of a therapeutic maintenance program. Under a physician's order, a licensed speech and language pathologist evaluates the member's rehabilitation potential and develops an appropriate, written, therapeutic regimen. The regimen utilizes ~~Speech Language Pathology Assistant~~ speech language pathology assistant services within the limitations of his or her practice, working under the supervision of the licensed ~~Speech and Language Pathologist~~ speech and language pathologist. The regimen includes education and training for informal caregivers to assist with, and/or maintain services when appropriate. The ~~Speech and Language Pathologist~~ speech and language pathologist ensures monitoring and documentation of the member's rehabilitative progress and reports to the member's case manager and physician to coordinate the necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Speech and language therapy services are authorized as ADH care-therapy enhancement and are a maximum of one (1) session unit per day of service. Payment is not allowed solely for written reports or record documentation.

(13) **Hospice services.**

(A) Hospice services are palliative and comfort care provided to the member and his or her family when a physician certifies the member has a terminal illness, with a life expectancy of six (6) months or less, and orders hospice care. ADvantage hospice care is authorized for a ~~six month (6 month) six (6) month~~ period and requires physician certification of a terminal illness and orders of hospice care. When the member requires more than six (6) months of hospice care, a physician or nurse practitioner must have a face-to-face visit with the member ~~thirty calendar (30 calendar) thirty (30) calendar~~ days prior to the initial hospice authorization end-date, and re-certify that the member has a terminal illness, has six (6) months or less to live, and orders additional hospice care. After the initial authorization period, additional periods of ADvantage hospice may be authorized for a maximum of ~~sixty calendar (60 calendar) sixty (60) calendar~~ day increments with physician certification that the member has a terminal illness and six (6) months or less to live. A member's person-centered service plan that includes hospice care must comply with Waiver requirements to be within total person-centered service plan cost limits.

(B) A hospice program offers palliative and supportive care to meet the special needs arising out of the physical, emotional, and spiritual stresses experienced during the final stages of illness, through the end of life, and bereavement. The member signs a statement choosing hospice care instead of routine medical care with the objective to treat and cure the member's illness. Once the member has elected hospice care, the hospice medical team assumes responsibility for the member's medical care for the illness in the home environment. Hospice care services include nursing care, physician services, medical equipment and supplies, drugs for symptom and pain relief, home health aide and personal care services, physical, occupational and speech therapies, medical social services, dietary counseling, and grief and bereavement counseling to the member and/or the member's family.

(C) A hospice person-centered service plan must be developed by the hospice team in conjunction with the member's ADvantage case manager before hospice services are provided. The hospice services must be related to the palliation or management of the member's terminal illness, symptom control, or to enable the member to maintain ADL and basic functional skills. A member who is eligible for Medicare hospice provided as a Medicare Part A benefit, is not eligible to receive ADvantage hospice services.

(D) Hospice services are billed per diem of service for days covered by a hospice person-centered service plan and while the hospice provider is responsible for providing hospice services as needed by the member or member's family. The maximum total annual reimbursement for a member's hospice care within a ~~twelve-month (12-month)~~ twelve (12) month period is limited to an amount equivalent to ~~eighty-five (85) percent~~ eighty-five percent (85%) of the Medicare hospice cap payment, and must be authorized on the member's person-centered service plan.

(14) ADvantage personal care.

(A) ADvantage personal care is assistance to a member in carrying out ADLs, such as bathing, grooming, and toileting or in carrying out instrumental activities of daily living (IADLs), such as preparing meals and laundry service, to ensure the member's personal health and safety, or to prevent or minimize physical health regression or deterioration. Personal care services do not include service provision of a technical nature, such as tracheal suctioning, bladder catheterization, colostomy irrigation, or the operation and maintenance of equipment of a technical nature.

(B) ADvantage home care agency skilled nursing staff working in coordination with an ADvantage case manager is responsible for the development and monitoring of the member's personal care services.

(C) ADvantage personal care services are prior-authorized and billed per ~~fifteen-minute (15-minute)~~ fifteen (15) minute unit of service, with units of service limited to the number of units on the ADvantage approved person-centered service plan.

(15) Personal emergency response system (PERS).

(A) PERS is an electronic device that enables members at high risk of institutionalization, to secure help in an emergency. Members may also wear a portable "help" button to allow for mobility. PERS is connected to the person's phone and programmed to signal, per member preference, a friend, relative, or a response center, once the "help" button is activated. For an ADvantage member to be eligible for PERS service, the member must meet all of the service criteria in (i) through (vi). The member:

- (i) ~~member has a recent~~ Has a recent history of falls as a result of an existing medical condition that prevents the member from getting up unassisted from a fall;
- (ii) ~~member lives~~ Lives alone and without a regular caregiver, paid or unpaid, and therefore is left alone for long periods of time;
- (iii) ~~member demonstrates~~ Demonstrates the capability to comprehend the purpose of and activate the PERS;
- (iv) ~~member has~~ Has a health and safety plan detailing the interventions beyond the PERS to ensure the member's health and safety in his or her home;

(v) ~~member~~ Has has a disease management plan to implement medical and health interventions that reduce the possibility of falls by managing the member's underlying medical condition causing the falls; and

(vi) ~~PERS service avoids~~ Will likely avoid premature or unnecessary institutionalization ~~of the member as a result of PERS.~~

(B) PERS services are billed using the appropriate ~~Healthcare Common Procedure Coding System (HCPCS)~~ HCPC procedure code for installation, monthly service, or PERS purchase. All services are prior authorized per the ADvantage approved service plan.

(16) CD-PASS.

(A) CD-PASS are personal services assistance (PSA) and advanced personal services assistance (APSA) that enables a member in need of assistance to reside in his or her home and community of choice, rather than in an institution; and to carry out functions of daily living, self-care, and mobility. CD-PASS services are delivered as authorized on the person-centered service plan. The member becomes the employer of record and employs the PSA and the APSA. The member is responsible, with assistance from ADvantage ~~Program~~ Administrative program administrative Financial Management Services (FMS), for ensuring the employment complies with state and federal labor law requirements. The member/employer may designate an adult family member or friend, who is not a PSA or APSA to the member, as an "authorized representative" to assist in executing the employer functions. The member/employer:

- (i) ~~recruits~~ Recruits, hires, and, as necessary, discharges the PSA or APSA;
- (ii) ~~is solely responsible to provide instruction and training to the PSA or APSA on tasks and works with the consumer directed agent/case manager (CDA) to obtain ADvantage skilled nursing services assistance with training, when necessary~~ Ensures that the PSA or APSA has received sufficient instruction and training. If needed, the member/employer will work with the consumer-directed agent/case manager (CDA) to obtain training assistance from ADvantage skilled nurses. Prior to performing an APSA task for the first time, the APSA must demonstrate competency in the tasks in an on-the-job training session conducted by the member, and the member must document the attendant's competency in performing each task in the APSA's personnel file;
- (iii) ~~determines~~ Determines where and how the PSA or APSA works, hours of work, what is to be accomplished and, within individual budget allocation limits, wages to be paid for the work;
- (iv) ~~supervises~~ Supervises and documents employee work time; and

- (v) ~~provides~~Provides tools and materials for work to be accomplished.
- (B) The services the PSA may provide include:
 - (i) ~~assistance~~Assistance with mobility and transferring in and out of bed, wheelchair, or motor vehicle, or all;
 - (ii) ~~assistance~~Assistance with routine bodily functions, such as:
 - (I) ~~bathing~~Bathing and personal hygiene;
 - (II) ~~dressing~~Dressing and grooming; and
 - (III) ~~eating~~Eating, including meal preparation and cleanup;
 - (iii) ~~assistance~~Assistance with home services, such as shopping, laundry, cleaning, and seasonal chores;
 - (iv) ~~companion~~Companion assistance, such as letter writing, reading mail, and providing escort or transportation to participate in approved activities or events. "Approved activities or events," means community, civic participation guaranteed to all citizens including, but not limited to, exercise of religion, voting or participation in daily life activities in which exercise of choice and decision making is important to the member, and may include shopping for food, clothing, or other necessities, or for participation in other activities or events specifically approved on the person-centered service plan.
- (C) An APSA provides assistance with ADLs to a member with a stable, chronic condition, when such assistance requires devices and procedures related to altered body function if such activities, in the opinion of the attending physician or licensed nurse, may be performed if the member were physically capable, and the procedure may be safely performed in the home. Services provided by the APSA are maintenance services and are never used as therapeutic treatment. Members who develop medical complications requiring skilled nursing services while receiving APSA services are referred to his or her attending physician, who ~~when appropriate, orders~~may order home health services, ~~as appropriate~~. APSA includes assistance with health maintenance activities that may include:
 - (i) ~~routine~~Routine personal care for persons with ostomies, including tracheotomies, gastrotomies, and colostomies with well-healed stoma, external, indwelling, and suprapubic catheters that include changing bags and soap and water hygiene around the ostomy or catheter site;
 - (ii) ~~removing~~Removing external catheters, inspecting skin, and reapplication of same;
 - (iii) ~~administering~~Administering prescribed bowel program, including use of suppositories and sphincter stimulation, and enemas pre-packaged only without contraindicating rectal or intestinal conditions;
 - (iv) ~~applying~~Applying medicated prescription lotions or ointments and dry, non-sterile dressings to unbroken skin;
 - (v) ~~using~~Using a lift for transfers;
 - (vi) ~~manually~~Manually assisting with oral medications;
 - (vii) ~~providing~~Providing passive range of motion (non-resistive flexion of joint) therapy, delivered in accordance with the person-centered service plan unless contraindicated by underlying joint pathology;
 - (viii) ~~applying~~Applying non-sterile dressings to superficial skin breaks or abrasions; and
 - (ix) ~~using~~Using universal precautions as defined by the Centers for Disease Control and Prevention.
- (D) FMS are program administrative services provided to participating CD-PASS members/employers by AA. FMS are employer-related assistance that provides Internal Revenue Service (IRS) fiscal reporting agent and other financial management tasks and functions, including, but not limited to:
 - (i) ~~processing~~Processing employer payroll, after the member/employer has verified and approved the employee timesheet, at a minimum of semi-monthly, and associated withholding for taxes, or for other payroll withholdings performed on behalf of the member as employer of the PSA or APSA;
 - (ii) ~~other employer-related~~Other employer-related payment disbursements as agreed to with the member/employer and in accordance with the member/employer's individual budget allocation;
 - (iii) ~~responsibility~~Responsibility for obtaining criminal and abuse registry background checks on prospective hires for PSA or APSA on the member/employer's behalf;
 - (iv) ~~providing~~Providing orientation and training regarding employer responsibilities, as well as employer information and management guidelines, materials, tools, and staff consultant expertise to support and assist the member successfully perform employer-related functions; and
 - (v) ~~making~~Making Hepatitis B vaccine and vaccination series available to PSA and APSA employees in compliance with Occupational Safety and Health Administration (OSHA) standards.
- (E) The PSA service is billed per ~~fifteen minute~~ (15 minute) fifteen (15) minute unit of service. The number of units of PSA a member may receive is limited to the number of units approved on the person-centered service plan.
- (F) The APSA service is billed per ~~fifteen minute~~ (15 minute) fifteen (15) minute unit of service. The number of units of APSA a member may receive is limited to the number of units approved on the person-centered service plan.

(17) **Institutional transition services.**

Permanent Final Adoptions

(A) Institutional transition services are those services necessary to enable a member to leave the institution and receive necessary support through ADvantage waiver services in his or her home and community.

(B) Transitional case management services are services per OAC 317:30-5-763(1) required by the member and included on the member's person-centered service plan that are necessary to ensure the member's health, welfare, and safety, or to enable the member to function with greater independence in the home, and without which, the member would continue to require institutionalization. ADvantage transitional case management services assist institutionalized members who are eligible to receive ADvantage services in gaining access to needed ~~Waiver~~ waiver and other State ~~plan~~ Plan services, as well as needed medical, social, educational, and other services to assist in the transition, regardless of the funding source for the services to which access is gained. Transitional case management services may be authorized for periodic monitoring of an ADvantage member's progress during an institutional stay and for assisting the member transition from institution to home by updating the person-centered service plan, including necessary institutional transition services to prepare services and supports to be in place or to start on the date the member is discharged from the institution. Transitional case management services may be authorized to assist individuals that have not previously received ADvantage services, but were referred by ~~DHS~~ OKDHS AS to the case management provider for assistance in transitioning from the institution to the community with ADvantage services support.

(i) Institutional transition case management services are prior authorized and billed per ~~ff-teen minute (15 minute)~~ fifteen (15) minute unit of service using the appropriate HCPC procedure code and modifier associated with the location of residence of the member served, per OAC 317:30-5-763(1)(C).

(ii) A unique modifier code is used to distinguish transitional case management services from regular case management services.

(C) Institutional transition services may be authorized and reimbursed, per the conditions in (i) through (iv).

(i) The service is necessary to enable the member to move from the institution to his or her home.

(ii) The member is eligible to receive ADvantage services outside of the institutional setting.

(iii) Institutional transition services are provided to the member within one-hundred and eighty (180) calendar-days of discharge from the institution.

(iv) Services provided while the member is in the institution are claimed as delivered on the day of discharge from the institution.

(D) When the member receives institutional transition services but fails to enter the waiver, any institutional transition services provided are not reimbursable.

(18) Assisted living services (ALS).

(A) ALS are personal care and supportive services furnished to waiver members who reside in a homelike, non-institutional setting that includes twenty-four (24) hour on-site response capability to meet scheduled or unpredictable member needs and to provide supervision, safety, and security. Services also include social and recreational programming and medication assistance, to the extent permitted under State law. The ALS provider is responsible for coordinating services provided by third parties to ADvantage members in the assisted living center (ALC). Nursing services are incidental rather than integral to the provision of ALS. ADvantage reimbursement for ALS includes services of personal care, housekeeping, laundry, meal preparation, periodic nursing evaluations, nursing supervision during nursing intervention, intermittent or unscheduled nursing care, medication administration, assistance with cognitive orientation, assistance with transfer and ambulation, planned programs for socialization, activities, and exercise, and for arranging or coordinating transportation to and from medical appointments. Services, except for planned programs for socialization, activities, and exercise are to meet the member's specific needs as determined through the individualized assessment and documented on the member's person-centered service plan.

(B) The ADvantage ALS philosophy of service delivery promotes member choice, and to the greatest extent possible, member control. A member has control over his or her living space and his or her choice of personal amenities, furnishings, and activities in the residence. The ADvantage member must have the freedom to control his or her schedule and activities. The ALS provider's documented operating philosophy, including policies and procedures, must reflect and support the principles and values associated with the ADvantage assisted living philosophy and approach to service delivery emphasizing member dignity, privacy, individuality, and independence.

(C) ADvantage ALS required policies for admission and termination of services and definitions.

(i) ADvantage-certified assisted living centers (ALC) are required to accept all eligible ADvantage members who choose to receive services through the ALC, subject only to issues relating to, one (1) or more of the following:

(I) ~~rental~~ Rental unit availability;

(II) ~~the~~ The member's compatibility with other residents;

- (III) ~~the~~The center's ability to accommodate residents who have behavior problems, wander, or have needs that exceed the services the center provides; or
- (IV) ~~restrictions~~Restrictions initiated by statutory limitations.
- (ii) The ALC may specify the number of units the provider is making available to service ADvantage members. At minimum, the ALC must designate ten (10) residential units for ADvantage members. Residential units designated for ADvantage may be used for other residents at the ALC when there are no pending ADvantage members for those units. Exceptions may be requested in writing subject to the approval of AA.
- (iii) Mild or moderate, cognitive impairment of the applicant is not a justifiable reason to deny ALC admission. Centers are required to specify whether they are able to accommodate members who have behavior problems or wander. Denial of admission due to a determination of incompatibility must be approved by the case manager and the AA. Appropriateness of placement is not a unilateral determination by the ALC. The ADvantage case manager, the member, or member's designated representative, and the ALC in consultation determine the appropriateness of placement.
- (iv) The ALC is responsible for meeting the member's needs for privacy, dignity, respect, and freedom from coercion and restraint. The ALC must optimize the member's initiative, autonomy, and independence in making life choices. The ALC must facilitate member choices regarding services and supports, and who provides them. Inability to meet those needs is not recognized as a reason for determining an ADvantage member's placement is inappropriate. The ALC agrees to provide or arrange and coordinate all of the services listed in the Oklahoma State Department of Health (OSDH) regulations, per OAC 310:663-3-3, except for specialized services.
- (v) In addition, the ADvantage participating ALC agrees to provide or coordinate the services listed in (I) through (III).
- (I) Provide an emergency call system for each participating ADvantage member.
- (II) Provide up to three (3) meals per day plus snacks sufficient to meet nutritional requirements, including modified special diets, appropriate to the member's needs and choices; and provide members with twenty-four (24) hour access to food by giving members control in the selection of the foods they eat, by allowing the member to store personal food in his or her room, by allowing the member to prepare and eat food in his or her room, and allowing him or her to decide when to eat.
- (III) Arrange or coordinate transportation to and from medical appointments. The ALC must assist the member with accessing transportation for integration into the community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, and control his or her personal resources and receive services in the community to the same degree of access as residents not receiving ADvantage services.
- (vi) The provider may offer any specialized service or rental unit for members with Alzheimer's disease and related dementias, physical disabilities, or other special needs the facility intends to market. Heightened scrutiny, through additional monitoring of the ALC by AA, is utilized for those ALC's that also provide inpatient treatment; settings on the grounds of or adjacent to a public institution and/or other settings that tend to isolate individuals from the community. The ALC must include evidence that the ALC portion of the facility has clear administrative, financial, programmatic and environmental distinctions from the institution.
- (vii) When the provider arranges and coordinates services for members, the provider is obligated to ensure the provision of those services.
- (viii) Per OAC 310:663-1-2, "personal care" is defined as "assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general supervision of the physical and mental well-being of a person; [Title 63 of the Oklahoma Statutes (O.S.), Section (§) 1-1902.17] and includes assistance with toileting." For ADvantage ALS, assistance with "other personal needs" in this definition includes assistance with grooming and transferring. The term "assistance" is clarified to mean hands-on help, in addition to supervision.
- (ix) The specific ALS assistance provided along with amount and duration of each type of assistance is based upon the member's assessed need for service assistance and is specified in the ALC's service plan that is incorporated as supplemental detail into the ADvantage comprehensive person-centered service plan. The ADvantage case manager in cooperation with ALC professional staff, develops the person-centered service plan to meet member needs. As member needs change, the person-centered service plan is amended consistent with the assessed, documented need for change in services.
- (x) Placement, or continued placement of an ADvantage member in an ALC, is inappropriate when any one (1) or more of the conditions exist.
- (I) The member's needs exceed the level of services the center provides. Documentation must support ALC efforts to provide or arrange

for the required services to accommodate participant needs.

(II) The member exhibits ~~behaviors~~ or actions that repeatedly and substantially ~~interferes~~ interfere with the rights or well-being of other residents, and the ALC documented efforts to resolve behavior problems including medical, behavioral, and increased staffing interventions. Documentation must support the ~~ALC~~ ALC's attempted interventions to resolve behavior problems.

(III) The member has a complex, unstable, or unpredictable medical condition and treatment cannot be developed and implemented appropriately in the assisted living environment. Documentation must support the ~~ALC~~ ALC's attempts to obtain appropriate member care.

(IV) The member fails to pay room and board charges and/or ~~DHS~~ OKDHS determined vendor payment obligation.

(xi) Termination of residence when inappropriately placed. Once a determination is made that a member is inappropriately placed, the ALC must inform the member, the member's representative, ~~when~~ if applicable, the AA, and the member's ADvantage case manager. The ALC must develop a discharge plan in consultation with the member, the member's representative, the ADvantage case manager, and the AA. The ALC and case manager must ensure the discharge plan includes strategies for providing increased services, when appropriate, to minimize risk and meet the higher care needs of members transitioning out of the ALC, when the reason for discharge is inability to meet member needs. When voluntary termination of residency is not arranged, the ALC must provide written notice to the member and to the member's representative, with a copy to the member's ADvantage case manager and the AA. The written notice provides intent to terminate the residency agreement and move the member to an appropriate care provider. The thirty (30) calendar-day requirement must not apply when emergency termination of the residency agreement is mandated by the member's immediate health needs or when the termination of the residency agreement is necessary for the physical safety of the member or other ALC residents. The written involuntary termination of residency notice for reasons of inappropriate placement must include:

(I) ~~a~~ A full explanation of the reasons for the termination of residency;

(II) ~~the~~ The notice date;

(III) ~~the~~ The date notice was given to the member and the member's representative, the ADvantage case manager, and the AA;

(IV) ~~the~~ The date the member must leave ALC; and

(V) ~~notification~~ Notification of appeal rights and the process for submitting appeal of termination of Medicaid ALS to OHCA.

(D) ADvantage ALS provider standards in addition to licensure standards.

(i) **Physical environment.**

(I) The ALC must provide lockable doors on the entry door of each rental unit and an attached, lockable compartment within each member unit for valuables. Members must have exclusive rights to his or her unit with lockable doors at the entrance of the individual or shared rental unit. Keys to rooms may be held by only appropriate ALC staff as designated by the member's choice. Rental units may be shared only when a request to do so is initiated by the member. Members must be given the right to choose his or her roommate.

(II) The member has a legally enforceable agreement, or lease, with the ALC. The member must have the same responsibilities and protections from eviction as all tenants under the ~~landlord-tenant~~ landlord-tenant law of the state, county, city, or other designated entity.

(III) The ALC must provide each rental unit with a means for each member to control the temperature in the residential unit through the use of a damper, register, thermostat, or other reasonable means under the control of the member and that preserves privacy, independence, and safety, provided that the OSDH may approve an alternate means based on documentation that the design of the temperature control is appropriate to the special needs of each member who has an alternate temperature control.

(IV) For ALCs built prior to January 1, 2008, each ALC individual residential unit must have a minimum total living space, including closets and storage areas, of two-hundred and fifty (250) square feet; for ALCs built after December 31, 2007, each ALC individual residential unit must have a minimum total living space, including closets and storage areas, of three-hundred and sixty (360) square feet.

(V) The ALC must provide a private bathroom for each living unit that must be equipped with one (1) lavatory, one (1) toilet, and one (1) bathtub or shower stall.

(VI) The ALC must provide at a minimum; a kitchenette, defined as a space containing a refrigerator, adequate storage space for utensils, and a cooking appliance, ~~a~~ A microwave is an acceptable cooking appliance.

(VII) The member is responsible for furnishing the rental unit. When a member is unable to supply basic furnishings defined as a bed, dresser, nightstand, chairs, table, trash can, and lamp, or if ~~member-supplied~~ member-supplied furnishings pose a

health or safety risk, the member's ADvantage case manager in coordination with the ALC, must assist the member in obtaining basic furnishings for the rental unit. The member must have the freedom to furnish and decorate the rental unit within the scope of the lease or residency agreement.

(VIII) The ALC must meet the requirements of all applicable federal and state laws and regulations including, but not limited to, state and local sanitary codes, state building and fire safety codes, and laws and regulations governing use and access by persons with disabilities.

(IX) The ALC must ensure the design of common areas accommodates the special needs of the resident population and that the rental unit accommodates the special needs of the member in compliance with the Americans with Disabilities Act accessibility guidelines per ~~28 Code of Federal Regulations, Part 36, Appendix A~~ Nondiscrimination on the Basis of Disability By Public Accommodations and in Commercial Facilities, 28 Code of Federal Regulations, Appendix A, at no additional cost to the member.

(X) The ALC must provide adequate and appropriate social and recreational space for residents and the common space must be proportionate to the number of residents and appropriate for the resident population.

(XI) The ALC must provide appropriately monitored outdoor space for resident use.

(XII) The ALC must provide the member with the right to have visitors of his or her choosing at any time. Overnight visitation is allowed as permissible by the Landlord/Tenant Agreement.

(XIII) The ALC must be physically accessible to members.

(ii) **Sanitation.**

(I) The ALC must maintain the facility, including its individual rental units in a clean, safe, and sanitary manner ~~and be ensuring that they are~~ insect and rodent free, odorless, and in good repair at all times.

(II) The ALC must maintain buildings and grounds in a good state of repair, in a safe and sanitary condition, and in compliance with the requirements of applicable regulations, bylaws, and codes.

(III) The ALC stores clean laundry in a manner that prevents contamination and changes linens at time intervals necessary to avoid health issues.

(IV) The ALC must provide housekeeping in member rental units to maintain a safe, clean, and sanitary environment.

(V) The ALC must have policies and procedures for members' pets.

(iii) **Health and Safety.**

(I) The ALC must provide building security that protects members from intruders with security measures appropriate to building design, environmental risk factors, and the resident population.

(II) The ALC must respond immediately and appropriately to missing members, accidents, medical emergencies, or deaths.

(III) The ALC must have a plan in place to prevent, contain, and report any diseases considered to be infectious or are listed as diseases that must be reported to the OSDH.

(IV) The ALC must adopt policies for the prevention of abuse, neglect, and exploitation that include screening, training, prevention, investigation, protection during investigation, and reporting.

(V) The ALC must provide services and facilities that accommodate the needs of members to safely evacuate in the event of fires or other emergencies.

(VI) The ALC must ensure staff is trained to respond appropriately to emergencies.

(VII) The ALC must ensure that fire safety requirements are met.

(VIII) The ALC must offer meals that provide balanced and adequate nutrition for members.

(IX) The ALC must adopt safe practices for the preparation and delivery of meals.

(X) The ALC must provide a twenty-four (24) hour response to personal emergencies appropriate to the needs of the resident population.

(XI) The ALC must provide safe transportation to and from ALC sponsored social or recreational outings.

(iv) **Staff to resident ratios.**

(I) The ALC must ensure a sufficient number of trained staff are on duty, awake, and present at all times, twenty-four (24) hours a day, and seven (7) days a week, to meet the needs of residents and to carry out all of the processes listed in the ALC's written emergency and disaster preparedness plan for fires and other disasters.

(II) The ALC must ensure staffing is sufficient to meet ADvantage ~~Program~~ program members' needs in accordance with each member's ADvantage person-centered service plan.

(III) The ALC must have plans in place to address situations where there is a disruption to the ALC's regular work force.

(v) **Staff training and qualifications.**

- (I) The ALC must ensure staff has qualifications consistent with their job responsibilities.
- (II) All staff assisting in, or responsible for, food service must have attended a food service training program offered or approved by OSDH.
- (III) The ALC must provide staff orientation and ongoing training to develop and maintain staff knowledge and skills. All direct care and activity staff receive at least eight (8) hours of orientation and initial training within the first month of employment and at least four (4) hours annually thereafter. Staff providing direct care on a dementia unit must receive four (4) additional hours of dementia specific training. Annual first aid and cardiopulmonary resuscitation (CPR) certification do not count toward the four (4) hours of annual training.
- (vi) **Staff supervision.**
- (I) The ALC must ensure delegation of tasks to non-licensed staff is consistent and in compliance with all applicable state regulations including, but not limited to, the ~~Oklahoma State's~~ Nurse Practice Act and OSDH Nurse Aide Certification rules.
- (II) The ALC must ensure that, where the monitoring of food intake or therapeutic diets is provided at the prescribed services level, a registered dietitian monitors member health and nutritional status.
- (vii) **Resident rights.**
- (I) The ALC must provide to each member and each member's representative, at the time of admission, a copy of the resident statutory rights listed in ~~Section 1-1918 of Title 63 of the Oklahoma Statutes~~ 63 O.S. § 1-1918 amended to include additional rights and the clarification of rights as listed in the ADvantage ~~Member Assurance~~ member assurances. A copy of resident rights must be posted in an easily accessible, conspicuous place in the facility. The facility must ensure that staff is familiar with and observes, the resident rights.
- (II) The ALC must conspicuously post for display in an area accessible to residents, employees, and visitors, the ALC's complaint procedures and the name, address, and phone number of a person authorized to receive complaints. A copy of the complaint procedure must also be given to each member, the member's representative, or the legal guardian. The ALC must ensure all employees comply with the ALC's complaint procedure.
- (III) The ALC must provide to each member and member's representative, at the time of admission, information about Medicaid grievance and appeal rights, including a description of the process for submitting a grievance or appeal of any decision that decreases Medicaid services to the member.
- (viii) **Incident reporting.**
- (I) The ALC must maintain a record of incidents that occur and report incidents to the member's ADvantage case manager and to the AA, utilizing the AA Critical Incident Reporting form. Incident reports are also made to Adult Protective Services (APS) and to the OSDH, as appropriate, per ALC licensure rules, utilizing the specific reporting forms required.
- (II) Incidents requiring report by licensed ~~ALCALC's~~ are those defined by OSDH, per OAC 310:663-19-1 and listed on the AA Critical Incident Reporting form.
- (III) Reports of incidents must be made to the member's ADvantage case manager and to the AA via electronic submission within one (1) business day of the reportable incident's discovery utilizing the AA Critical Incident Reporting form. When required, a follow-up report of the incident must be submitted via electronic submission to the member's ADvantage case manager and to the AA. The follow-up report must be submitted within ~~five business (5 business)~~ five (5) business days of the incident. The final report must be filed with the member's ADvantage case manager and the AA when the investigation is complete, not to exceed ~~ten business (10 business)~~ ten (10) business days after the incident.
- (IV) Each ALC having reasonable cause to believe that a member is suffering from abuse, neglect, exploitation, or misappropriation of member property must make a report to APS as soon as the person is aware of the situation per ~~O.S. 43A § 10-104.A~~ 43A O.S. § 10-104.A. Reports are also made to OSDH, as appropriate, per ALC licensure rules.
- (V) The preliminary incident report must at the minimum, include who, what, when, where, and the measures taken to protect the member and resident(s) during the investigation. The follow-up report must, at the minimum, include preliminary information, the extent of the injury or damage, ~~when~~ if any, and preliminary investigation findings. The final report, at a minimum, includes preliminary and follow-up information, a summary of investigative actions representing a thorough investigation, investigative findings and conclusions ~~based on findings~~, and corrective measures to prevent future occurrences. When it is necessary to omit items, the final report must include why such items were omitted and when they will be provided.

(ix) Provision of or arrangement for necessary health services. The ALC must:

- (I) ~~arrange~~Arrange or coordinate transportation for members to and from medical appointments; and
- (II) ~~provide~~Provide or coordinate with the member and the member's ADvantage case manager for delivery of necessary health services. The ADvantage case manager is responsible for monitoring that all health-related services required by the member as identified through assessment and documented on the person-centered service plan, are provided in an appropriate and timely manner. The member has the freedom to choose any available provider qualified by licensure or certification to provide necessary health services in the ALC.

(E) ~~ALS~~ALCs are billed per diem of service for days covered by the ADvantage member's person-centered service plan and during which the ALS provider is responsible for providing ALS for the member. The per diem rate for ADvantage ~~assisted living services~~ALS for a member is one (1) of three (3) per diem rate levels based on a member's need for type of, intensity of, and frequency of service to address member ADLs, instrumental activities of the daily living (IADLs), and health care needs. The rate level is based on the Uniform Comprehensive Assessment Tool (UCAT) assessment by the member's ADvantage case manager employed by a case management agency independent of the ALS provider. The determination of the appropriate per diem rate is made by the AA clinical review staff.

(F) The ALC must notify AA ~~ninety calendar (90-calendar)~~ninety (90) calendar days before terminating or not renewing the ALC's ADvantage contract.

(i) The ALC must give notice in writing to the member, the member's representative(s), the AA, and the member's ADvantage case manager ~~ninety calendar (90-calendar)~~ninety (90) calendar days before:

- (I) ~~voluntary~~Voluntary cessation of the ALC's ADvantage contract; or
- (II) ~~closure~~Closure of all or part of the ALC.

(ii) The notice of closure must include:

- (I) ~~the~~The proposed ADvantage contract termination date;
- (II) ~~the~~The termination reason;
- (III) ~~an~~An offer to assist the member secure an alternative placement; and
- (IV) ~~available~~Available housing alternatives.

(iii) The facility must comply with all applicable laws and regulations until the closing date, including those related to resident transfer or discharge.

(iv) Following the last move to the last ADvantage member, the ALC must provide in writing to the AA:

- (I) ~~the~~The effective date of closure based on the discharge date of the last resident;
- (II) ~~a~~A list of members transferred or discharged and where they relocated; and
- (III) ~~the~~The plan for storage of resident records per OAC 310:663-19-3(g), relating to preservation of resident records and the name, address, and phone numbers of the person responsible for the records.

PART 105. RESIDENTIAL BEHAVIORAL MANAGEMENT SERVICES IN GROUP SETTINGS

317:30-5-1043. Coverage by category

(a) **Adults.** Residential Behavioral Management Services (RBMS) in group settings are not covered for adults.

(b) **Children.** RBMS in group settings are covered for children as set forth in this subsection.

(1) **Description.** RBMS are provided by Organized Health Care Delivery Systems (OHCDs) for children in the care and custody of the State who have special psychological, behavioral, emotional and social needs that require more intensive care than can be provided in a family or foster home setting. The behavior management services are provided in the least restrictive environment and within a therapeutic milieu. The group setting is restorative in nature, allowing children with emotional and psychological problems to develop the necessary control to function in a less restrictive setting. RBMS are reimbursed in accordance with established rate methodology as described in the Oklahoma Medicaid State Plan. It is expected that RBMS in group settings are an all-inclusive array of treatment services provided in one (1) day. In the case of a child who needs additional specialized services, under the Rehabilitation Option or by a psychologist, prior authorization by the OHCA or designated agent is required. Only specialized rehabilitation or psychological treatment services to address unique, unusual or severe symptoms or disorders will be authorized. If additional services are approved, the OHCDs collaborates with the provider of such services as directed by the OHCA or its agent. Any additional specialized behavioral health services provided to children in state custody are funded in the normal manner. The OHCDs must provide concurrent documentation that these services are not duplicative. The OHCDs determines the need for RBMS.

(2) **Medical necessity criteria.** The following medical necessity criteria must be met for RBMS.

(A) Any Diagnostic and Statistical Manual of Mental Disorders (DSM) primary diagnosis, with the exception of V codes, with a detailed description of the symptoms supporting the diagnosis. A detailed

description of the child's emotional, behavioral and psychological condition must be on file.

(B) The child is medically stable and not actively suicidal or homicidal and not in need of substance abuse detoxification services.

(C) It has been determined by the OHCDs that the current disabling symptoms could not have been or have not been manageable in a less intensive treatment program.

(D) Documentation that the child's presenting emotional and/or behavioral problems prevent the child from living in a traditional family home. The child requires the availability of twenty-four (24) hour crisis response/behavior management and intensive clinical interventions from professional staff.

(E) The agency which has permanent or temporary custody of the child agrees to active participation in the child's treatment needs and planning.

(F) All of the medical necessity criteria must also be met for continued stay in residential group settings.

(3) **Treatment components.**

(A) **Individual plan of care development.** A comprehensive individualized plan of care for each resident shall be formulated by the provider agency staff within thirty (30) days of admission, for intensive treatment services (ITS) level within seventy-two (72) hours, with documented input from the agency which has permanent or temporary custody of the child and when possible, the parent. This plan must be revised and updated at least every three (3) months, every seven (7) days for ITS, with documented involvement of the agency which has permanent or temporary custody of the child. Documented involvement can be written approval of the individual plan of care by the agency which has permanent or temporary custody of the child and indicated by the signature of the agency case worker or liaison on the individual plan of care. It is acceptable in circumstances where it is necessary to fax a service plan to someone for review and then have him/her fax back his/her signature; however, the provider obtains the original signature for the clinical file within thirty (30) days. No stamped or Xeroxed signatures are allowed. An individual plan of care is considered inherent in the provision of therapy and is not covered as a separate item of behavior management services. The individual plan of care is individualized taking into account the child's age, history, diagnosis, functional levels, and culture. It includes appropriate goals and time limited and measurable objectives. Each member's individual plan of care must also address the provider agency's plans with regard to the provision of services in each of the following areas:

- (i) Group therapy;
- (ii) Individual therapy;
- (iii) Family therapy;
- (iv) Alcohol and other drug counseling;
- (v) Basic living skills redevelopment;

(vi) Social skills redevelopment;

(vii) Behavior redirection; and

(viii) The provider agency's plan to access appropriate educational placement services. (Any educational costs are excluded from calculation of the daily rate for behavior management services.)

(B) **Individual therapy.** The provider agency must provide individual therapy on a weekly basis with a minimum of one (1) or more sessions totaling one (1) hour or more of treatment per week to children and youth receiving RBMS in group homes. Individual therapy must be age appropriate and the techniques and modalities employed relevant to the goals and objectives of the individual's plan of care. Individual counseling is a face-to-face, one-to-one service, and must be provided in a confidential setting.

(C) **Group therapy.** The provider agency must provide group therapy to children and youth receiving RBMS. Group therapy must be a face-to-face interaction, age appropriate and the techniques and modalities employed relevant to the goals and objectives of the individual's plan of care. The minimum expected occurrence would be one (1) hour per week in group homes. Group size should not exceed six (6) members and group therapy sessions must be provided in a confidential setting. ~~One half hour (30 min)~~ Thirty (30) minutes of individual therapy may be substituted for one (1) hour of group therapy.

(D) **Family therapy.** Family therapy is a face-to-face interaction between the therapist/counselor and family, to facilitate emotional, psychological or behavioral changes and promote successful communication and understanding. The provider agency must provide family therapy as indicated by the resident's individual plan of care. The agency must work with the caretaker to whom the resident will be discharged, as identified by the OHCDs custody worker. The agency must seek to support and enhance the child's relationships with family members (nuclear and appropriate extended), if the custody plan for the child indicates family reunification. The RBMS provider must also seek to involve the child's parents in treatment team meetings, plans and decisions and to keep them informed of the child's progress in the program. Any service provided to the family must have the child as the focus.

(E) **Alcohol and other drug abuse treatment education, prevention, therapy.** The provider agency must provide alcohol and other drug abuse treatment for residents who have emotional or behavioral problems related to substance abuse/chemical dependency, to begin, maintain and enhance recovery from alcoholism, problem drinking, drug abuse, drug dependency addiction or nicotine use and addiction. This service is considered ancillary to any other formal treatment program in which the child participates for treatment and rehabilitation. For residents who

have no identifiable alcohol or other drug use, abuse, or dependency, age appropriate education and prevention activities are appropriate. These may include self-esteem enhancement, violence alternatives, communication skills or other skill development curriculums.

(F) **Basic living skills redevelopment.** The provider agency must provide goal-directed activities designed for each resident to restore, retain, and improve those basic skills necessary to independently function in a family or community. Basic living skills redevelopment is age appropriate and relevant to the goals and objectives of the individual plan of care. This may include, but is not limited to food planning and preparation, maintenance of personal hygiene and living environment, household management, personal and household shopping, community awareness and familiarization with community resources, mobility skills, job application and retention skills.

(G) **Social skills redevelopment.** The provider agency must provide goal-directed activities designed for each resident to restore, retain and improve the self-help, communication, socialization, and adaptive skills necessary to reside successfully in home and community based settings. These are age appropriate, culturally sensitive and relevant to the goals of the individual plan of care. For ITS level of care, the minimum skill redevelopment per day is three (3) hours. Any combination of basic living skills and social skills redevelopment that is appropriate to the need and developmental abilities of the child is acceptable.

(H) **Behavior redirection.** The provider agency must be able to provide behavior redirection management by agency staff as needed twenty-four (24) hours a day, seven (7) days per week. The agency must ensure staff availability to respond in a crisis to stabilize residents' behavior and prevent placement disruption. In addition, ITS group homes will be required to provide crisis stabilization interaction and treatment for new residents twenty-four (24) hours a day, seven (7) days a week.

(4) **Providers.** For eligible RBMS agencies to bill the OHCA for services provided by their staff for behavior management therapies (individual, group, family) as of July 1, 2007, providers must have the following qualifications:

(A) Be licensed in the state in which the services are delivered as a licensed psychologist, social worker (clinical specialty only), professional counselor, marriage and family therapist, or behavioral practitioner, alcohol and drug counselor or under Board approved ~~Supervision~~ supervision to be licensed in one (1) of the above stated areas; or

(B) Be licensed as an advanced practice registered nurse (APRN) certified in a psychiatric mental health specialty, and licensed as a registered nurse (RN) with a current certification of recognition from the Board

of Nursing in the state in which services are provided; ~~AND; and~~

(C) Demonstrate a general professional or educational background in the following areas:

- (i) Case management, assessment and treatment planning;
- (ii) Treatment of victims of physical, emotional, and sexual abuse;
- (iii) Treatment of children with attachment disorders;
- (iv) Treatment of children with hyperactivity or attention deficit disorders;
- (v) Treatment methodologies for emotionally disturbed children and youth;
- (vi) Normal childhood development and the effect of abuse and/or neglect on childhood development;
- (vii) Treatment of children and families with substance abuse and chemical dependency disorders;
- (viii) Anger management; and
- (ix) Crisis intervention.

(D) Staff providing basic living skills redevelopment, social skills redevelopment, and alcohol and other substance abuse treatment, must meet one (1) of the following areas:

- (i) Bachelor's or master's degree in a behavioral health related field including but not limited to, psychology, sociology, criminal justice, school guidance and counseling, social work, occupational therapy, family studies, alcohol and drug; or
- (ii) ~~A current license as an RN in Oklahoma~~ Currently licensed and in good standing as an RN in the state in which services are provided; or
- (iii) Certification as an alcohol and drug counselor to provide substance abuse rehabilitative treatment to those with alcohol and/or other drug dependencies or addictions as a primary or secondary DSM diagnosis; or
- (iv) Current certification as a behavioral health case manager from the Oklahoma Department of Mental Health and Substance Abuse (ODMH-SAS) and meets OHCA requirements to perform case management services, as described in Oklahoma Administrative Code (OAC) 317:30-5-240 through 317:30-5-249.

(E) Staff providing behavior redirection services must have current certification and required updates in nationally recognized behavior management techniques, such as Controlling Aggressive Patient Environment (CAPE) or MANDT. Additionally, staff providing these services must receive initial and ongoing training in at least one (1) of the following areas:

- (i) Trauma-informed methodology;
- (ii) Anger management;
- (iii) Crisis intervention;

- (iv) Normal child and adolescent development and the effect of abuse;
 - (v) Neglect and/or violence on such development;
 - (vi) Grief and loss issues for children in out of home placement;
 - (vii) Interventions with victims of physical, emotional and sexual abuse;
 - (viii) Care and treatment of children with attachment disorders;
 - (ix) Care and treatment of children with hyperactive, or attention deficit, or conduct disorders;
 - (x) Care and treatment of children, youth and families with substance abuse and chemical dependency disorders;
 - (xi) Passive physical restraint procedures; or
 - (xii) Procedures for working with delinquents or the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.
- (F) In addition, behavior management staff must have access to consultation with an appropriately licensed mental health professional.

[OAR Docket #20-456; filed 6-26-20]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY

CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #20-446]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:
Subchapter 5. Individual Providers and Specialties
Part 21. Outpatient Behavioral Health Agency Services
317:30-5-241.6 [AMENDED]
(Reference APA WF # 19-16)

AUTHORITY:
The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board
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Subchapter 5. Individual Providers and Specialties
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n/a

GIST/ANALYSIS:

The proposed revisions will increase new TCM monthly limits that are reimbursable by SoonerCare, at the request of the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS). The TCM limits will be increased from sixteen (16) units per member per year to twelve (12) units per member per month. Other revisions will align case management policy with current practice and correct grammatical errors. These rules are currently in place as emergency rules.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 21. OUTPATIENT BEHAVIORAL HEALTH AGENCY SERVICES

317:30-5-241.6. Behavioral Health Case Management health targeted case management

Payment is made for behavioral health targeted case management services as set forth in this Section. The limitations set forth in this Section do not apply to case management provided in programs and service delivery models which are not reimbursed for case management on a fee-for-service basis.

(1) **Description of behavioral health case management services.** Behavioral health case management services are provided to assist eligible individuals in gaining access to needed medical, social, educational and other services essential to meeting basic human needs. Services under behavioral health targeted case management are not comparable in amount, duration and scope. The target ~~group~~groups for behavioral health case management services are persons under age twenty-one (21) who are in imminent risk of out-of-home placement for psychiatric or substance abuse reasons or are in out-of-home placement due to psychiatric or substance abuse reasons, and chronically and/or severely mentally ill adults who are institutionalized or are at risk of institutionalization. All behavioral health case management services will be authorized ~~for the target group~~ based on established medical necessity criteria.

(A) ~~Behavioral health case management services are provided to assist eligible individuals in gaining~~

~~access to needed medical, social, educational and other services essential to meeting basic human needs.~~—The behavioral health case manager provides assessment of case management needs, development of a case management care plan, referral, linkage, monitoring and advocacy on behalf of the member to gain access to appropriate community resources. The behavioral health case manager must monitor the progress in gaining access to services and continued appropriate utilization of necessary community resources. Behavioral case management is designed to promote recovery, maintain community tenure, and to assist individuals in accessing services for themselves following the case management guidelines established by ~~Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS)~~ ODMHSAS. In order to be compensable, the service must be performed utilizing the Strengths Based model of case management. This model of case management assists individuals in identifying and securing the range of resources, both environmental and personal, needed to live in a normally interdependent way in the community. The focus for the helping process is on strengths, interests, abilities, knowledge and capacities of each person, not on their diagnosis, weakness or deficits. The relationship between the service member and the behavioral health case manager is characterized by mutuality, collaboration, and partnership. Assistive activities are designed to occur primarily in the community, but may take place in the behavioral health case manager's office, if more appropriate.

(B) The provider will coordinate transition services with the member and family (if applicable) by phone or ~~face to face~~ face to face, to identify immediate needs for return to home/community no more than seventy-two (72) hours after notification that the member/family requests case management services. For members discharging from a higher level of care than outpatient, the higher level of care facility is responsible for scheduling an appointment with a case management agency for transition and post discharge services. The case manager will make contact with the member and family (if applicable) for transition from the higher level of care other than outpatient back to the community, within seventy-two (72) hours of discharge, and then conduct a follow-up appointment/contact within seven (7) days. The case manager will provide linkage/referral to physicians/medication services, psychotherapy services, rehabilitation and/or support services as described in the case management service plan.

(C) Case ~~Managers~~ managers may also provide crisis diversion (unanticipated, unscheduled situation requiring supportive assistance, ~~face to face~~ face to face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in

the community) to assist member(s) from progression to a higher level of care. During the follow-up phase of these referrals or links, the behavioral health case manager will provide aggressive outreach if appointments or contacts are missed within two (2) business days of the missed appointments. Community/home based case management to assess the needs for services will be scheduled as reflected in the case management service plan, but not less than one (1) time per month. The member/parent/guardian has the right to refuse behavioral health case management and cannot be restricted from other services because of a refusal of behavioral health case management services.

(BD) An eligible member/parent/guardian will not be restricted and will have the freedom to choose a behavioral health case management provider as well as providers of other medical care.

(CE) In order to ensure that behavioral health case management services appropriately meet the needs of the member and family and are not duplicated, behavioral health case management activities will be provided in accordance with an individualized plan of care.

(DF) The individual plan of care must include general goals and objectives pertinent to the overall recovery of the member's (and family, if applicable) needs. Progress notes must relate to the individual plan of care and describe the specific activities to be performed. The individual plan of care must be developed with participation by, as well as, reviewed and signed by the member, the parent or guardian [if the member is under eighteen (18)], the behavioral health case manager, and ~~a licensed behavioral health professional (LBHP)~~ an LBHP or licensure candidate as defined in OAC 317:30-5-240.3(a) and (b).

(EG) SoonerCare reimbursable behavioral health case management services include the following:

- (i) Gathering necessary psychological, educational, medical, and social information for the purpose of individual plan of care development.
- (ii) Face-to-face meetings with the member and/or the parent/guardian/family member for the implementation of activities delineated in the individual plan of care.
- (iii) Face-to-face meetings with treatment or service providers, necessary for the implementation of activities delineated in the individual plan of care.
- (iv) Supportive activities such as ~~non face to face~~ non face-to-face communication with the member and/or parent/guardian/family member.
- (v) Non face-to-face communication with treatment or service providers necessary for the implementation of activities delineated in the individual plan of care.

(vi) Monitoring of the individual plan of care to reassess goals and objectives and assess progress and or barriers to progress.

(vii) Crisis diversion (unanticipated, unscheduled situation requiring supportive assistance, ~~face to face~~ to face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community) to assist member(s) from progression to a higher level of care.

(viii) ~~Behavioral Health Case Management~~ health targeted case management is available to individuals transitioning from institutions to the community [except individuals ages twenty-two (22) to sixty-four (64) who reside in an institution for mental diseases (IMD) ~~IMD~~ or individuals who are inmates of public institutions]. Individuals are considered to be transitioning to the community during the last thirty (30) consecutive days of a covered institutional stay. This time is to distinguish case management services that are not within the scope of the institution's discharge planning activities from case management required for transitioning individuals with complex, chronic, medical needs to the community. Transition services provided while the individual is in the institution are to be claimed as delivered on the day of discharge from the institution.

(2) **Levels of Case Management.**

(A) ~~Resource coordination services are targeted to adults with serious mental illness and children and adolescents with mental illness or serious emotional disturbance, and their families, who need assistance in accessing, coordination, and monitoring of resources and services. Services are provided to assess an individual's strengths and meet needs in order to achieve stability in the community. Standard managers have caseloads of thirty (30) to thirty five (35) members. Basic case management/resource coordination is limited to sixteen (16) units per member per year. Additional units may be authorized up to twenty five (25) units per member per month if medical necessity criteria are met.~~

(B) ~~Intensive Case Management (ICM) is targeted to adults with serious and persistent mental illness in PACT programs and Wraparound Facilitation Case Management (WFCM) is targeted to children with serious mental illness and emotional disorders being treated in a System of Care Network who are deemed high risk and in need of more intensive CM services. It is designed to ensure access to community agencies, services, and people whose functions are to provide the support, training and assistance required for a stable, safe, and healthy community life, and decreased need for higher levels of care. To produce a high fidelity wraparound process, a facilitator can facilitate~~

~~between eight (8) and ten (10) families. To ensure that these intense needs are met, case manager caseloads are limited between ten (10) to fifteen (15) caseloads. The ICM shall be a Certified Behavioral Health Case Manager, have a minimum of two (2) years Behavioral Health Case Management experience, crisis diversion experience, must have attended the ODMH SAS six (6) hours ICM training, and twenty four (24) hour availability is required. ICM/WFCM is limited to fifty four (54) units per member per month.~~

(3) **Excluded Services.** ~~SoonerCare reimbursable behavioral health case management does not include the following activities:~~

- (A) ~~physically escorting or transporting a member or family to scheduled appointments or staying with the member during an appointment;~~
- (B) ~~managing finances;~~
- (C) ~~providing specific services such as shopping or paying bills;~~
- (D) ~~delivering bus tickets, food stamps, money, etc.;~~
- (E) ~~counseling, rehabilitative services, psychiatric assessment, or discharge planning;~~
- (F) ~~filling out forms, applications, etc., on behalf of the member when the member is not present;~~
- (G) ~~filling out SoonerCare forms, applications, etc.;~~
- (H) ~~mentoring or tutoring;~~
- (I) ~~provision of behavioral health case management services to the same family by two separate behavioral health case management agencies;~~
- (J) ~~non face to face time spent preparing the assessment document and the service plan paperwork;~~
- (K) ~~monitoring financial goals;~~
- (L) ~~services to nursing home residents;~~
- (M) ~~psychotherapeutic or rehabilitative services, psychiatric assessment, or discharge; or~~
- (N) ~~services to members residing in ICF/IID facilities.~~
- (O) ~~leaving voice or text messages for clients and other failed communication attempts.~~

(4) **Excluded Individuals.** ~~The following SoonerCare members are not eligible for behavioral health case management services:~~

- (A) ~~children/families for whom behavioral health case management services are available through Oklahoma Department of Human Services (OKDHS) and Oklahoma Office of Juvenile Affairs (OJA) staff without special arrangements with OKDHS, OJA, and the Oklahoma Health Care Authority (OHCA);~~
- (B) ~~members receiving Residential Behavior Management Services (RBMS) in a foster care or group home setting unless transitioning into the community;~~
- (C) ~~residents of Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) and nursing facilities unless transitioning into the community;~~

- (D) members receiving services under a Home and Community Based services (HCBS) waiver program; or
- (E) members receiving services in the Health Home program.

(5) **Filing Requirements.** Case management services provided to Medicare eligible members should be filed directly with the fiscal agent.

(6) **Documentation requirements.** The service plan must include general goals and objectives pertinent to the overall recovery needs of the member. Progress notes must relate to the service plan and describe the specific activities performed. Behavioral health case management service plan development is compensable time if the time is spent communicating with the member and it must be reviewed and signed by the member, the behavioral health case manager, and a licensed behavioral health professional or licensure candidate as defined at OAC 317:30-5-240.3(a) and (b). All behavioral health case management services rendered must be reflected by documentation in the records. In addition to a complete behavioral health case management service, plan documentation of each session must include but is not limited to:

- (A) date;
- (B) person(s) to whom services are rendered;
- (C) start and stop times for each service;
- (D) original signature of the service provider [original signatures for faxed items must be added to the clinical file within thirty (30) days];
- (E) credentials of the service provider;
- (F) specific service plan needs, goals and/or objectives addressed;
- (G) specific activities performed by the behavioral health case manager on behalf of the child related to advocacy, linkage, referral, or monitoring used to address needs, goals and/or objectives;
- (H) progress and barriers made towards goals, and/or objectives;
- (I) member (family when applicable) response to the service;
- (J) any new service plan needs, goals, and/or objectives identified during the service; and
- (K) member satisfaction with staff intervention.

(7) **Case Management Travel Time.** The rate for case management services assumes that the case manager will spend some amount of time traveling to the member for the face to face service. The case manager must only bill for the actual face to face time that they spend with the member and not bill for travel time. This would be considered duplicative billing since the rate assumes the travel component already.

(2) **Levels of case management.**

(A) Standard case management/resource coordination services are targeted to adults with serious mental illness or children with serious emotional disturbance, or who have or are at-risk for mental disorders, including substance use disorders (SUD), and their

families, who need assistance in accessing, coordination, and monitoring of resources and services. Services are provided to assess an individual's strengths and meet needs in order to achieve stability in the community. Standard case managers have caseloads of thirty (30) to thirty-five (35) members. Standard case management/resource coordination is limited to twelve (12) units per member per month. Additional units may be authorized up to twenty-five (25) units per member per month if medical necessity criteria for transitional case management are met.

(B) Intensive case management (ICM) is targeted to adults with serious and persistent mental illness in PACT programs. To ensure that these intense needs are met, caseloads are limited to between ten (10) to fifteen (15) members. The ICM shall: be a certified behavioral health case manager II; have a minimum of two (2) years' behavioral health case management experience; have crisis diversion experience; have attended the ODMHSAS six (6) hour ICM training and be available twenty-four (24) hours a day. ICM is limited to fifty-four (54) units per member per month.

(C) Wraparound facilitation case management (WFCM) is targeted to children with significant mental health conditions being treated in a System of Care (SOC) Network who are deemed at imminent risk of out-of-home placement due to psychiatric or SUD reasons and in need of more intensive case management services. It is designed to ensure access to community agencies, services, and people whose functions are to provide the support, training and assistance required for a stable, safe, and healthy community life, and decreased need for higher levels of care. To produce a high fidelity wraparound process, a facilitator can facilitate between eight (8) and ten (10) families. Staff providing WFCM must meet the requirements for the SOC/WFCM. WFCM is limited to fifty-four (54) units per member per month.

(3) **Excluded services.** SoonerCare reimbursable behavioral health case management does not include the following activities:

- (A) Physically escorting or transporting a member or family to scheduled appointments or staying with the member during an appointment;
- (B) Managing finances;
- (C) Providing specific services such as shopping or paying bills;
- (D) Delivering bus tickets, food stamps, money, etc.;
- (E) Counseling, rehabilitative services, psychiatric assessment, or discharge planning;
- (F) Filling out forms, applications, etc., on behalf of the member when the member is not present;
- (G) Filling out SoonerCare forms, applications, etc.;
- (H) Mentoring or tutoring;

- (I) Provision of behavioral health case management services to the same family by two (2) separate behavioral health case management agencies;
 - (J) Non-face-to-face time spent preparing the assessment document and the service plan paperwork;
 - (K) Monitoring financial goals;
 - (L) Leaving voice or text messages for clients and other failed communication attempts.
- (4) **Excluded individuals.** The following SoonerCare members who are receiving similar services through another method are not eligible for behavioral health case management services without special arrangements with the Oklahoma Department of Human Services (OKDHS), OJA, OHCA or ODMHSAS as applicable, in order to avoid duplication in payment. Services/programs include, but may not be limited to:
- (A) Members/families (when applicable) for whom at-risk case management services are available through OKDHS and OJA staff;
 - (B) Members in out-of-home placement and receiving targeted case management services through staff in a foster care or group home setting, unless transitioning into the community;
 - (C) Residents of ICF/IIDs and nursing facilities unless transitioning into the community;
 - (D) Members receiving targeted case management services under a Home and Community Based Services (HCBS) waiver program;
 - (E) Members receiving services in the health home program;
 - (F) Members receiving case management through the ADvantage waiver program;
 - (G) Members receiving targeted case management available through a Certified Community Behavioral Health Center (CCBHC);
 - (H) Members receiving case management services through Programs of All-Inclusive Care for the Elderly (PACE); or
 - (I) Members receiving Early Intervention case management (EICM);
 - (J) Members receiving case management services through certified school-based targeted case management (SBTCM) providers;
 - (K) Members receiving partial hospitalization services; or
 - (L) Members receiving MST.
- (5) **Filing requirements.** Case management services provided to Medicare eligible members should be filed directly with the fiscal agent.
- (6) **Documentation requirements.** The service plan must include general goals and objectives pertinent to the overall recovery needs of the member. Progress notes must relate to the service plan and describe the specific activities performed. Behavioral health case management service plan development is compensable time if the time is spent communicating with the member and it must be reviewed and signed by the member, the behavioral health

case manager, and an LBHP or licensure candidate as defined at OAC 317:30-5-240.3(a) and (b). All behavioral health case management services rendered must be reflected by documentation in the records. In addition to a complete behavioral health case management service, plan documentation of each session must include but is not limited to:

- (A) Date;
 - (B) Person(s) to whom services are rendered;
 - (C) Start and stop times for each service;
 - (D) Original signature or the service provider [original signatures for faxed items must be added to the clinical file within thirty (30) days];
 - (E) Credentials of the service provider;
 - (F) Specific service plan needs, goals, and/or objectives addressed;
 - (G) Specific activities performed by the behavioral health case manager on behalf of the member related to advocacy, linkage, referral, or monitoring used to address needs, goals, and/or objectives;
 - (H) Progress and barriers made towards goals, and/or objectives;
 - (I) Member/family (when applicable) response to the service;
 - (J) Any new service plan needs, goals, and/or objectives identified during the service; and
 - (K) Member satisfaction with staff intervention.
- (7) **Case management travel time.** The rate for case management services assumes that the case manager will spend some amount of time traveling to the member for the face-to-face service. The case manager must only bill for the actual face-to-face time that they spend with the member and not bill for travel time. This would be considered duplicative billing since the rate assumes the travel component already.

[OAR Docket #20-446; filed 6-26-20]

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

[OAR Docket #20-438]

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RULES:

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

(Reference APA WF # 19-02)

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Subchapter 5. Individual Providers and Specialties

Part 24. Certified Community Behavioral Health Clinics [NEW]

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The proposed revisions will sustain the Certified Community Behavioral Health Clinics (CCBHC) project beyond its demonstration period in Oklahoma. The services provided include nine types of behavioral health treatment services with an emphasis on the provision of 24-hour crisis care, utilization of evidence based practices, care coordination, and integration with physical health. The proposed new rules will outline CCBHC member eligibility, provider participation requirements, and program scope.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 24. CERTIFIED COMMUNITY BEHAVIORAL HEALTH CLINICS

317:30-5-263. Definitions

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

"Advanced practice registered nurse (APRN)" means a registered nurse in good standing with the board of nursing in the state in which services are provided, who has completed an accredited graduate level advanced practice registered nursing education program approved by the board of nursing in the state in which services are provided, and possesses a current national certification by a national certifying body recognized by the board of nursing in the state in which services are provided. APRN services are limited to the scope of their practice as defined in Title 59 of the Oklahoma Statutes (O.S.) § 567.3a and corresponding rules and regulations at Oklahoma Administrative Code (OAC) 485:10-5-1 through 485:10-16-9.

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

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

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

"Certified behavioral health case manager (CM)" means an individual who is certified by the ODMH-SAS as a behavioral health case manager pursuant to OAC, Title 450, Chapter 50. Refer to OAC 317:30-5-240.3(h).

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

"C.F.R." means the Code of Federal Regulations.

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

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

(A) Have a high school diploma or equivalent;

(B) Be twenty-one (21) years of age and have a successful experience as a family member of a child or youth with serious emotional disturbance, or have lived experience as the primary caregiver of a child or youth who has received services for substance use disorder and/or co-occurring substance use and mental health, or have lived experience being the caregiver for a child with Child Welfare/Child Protective Services involvement;

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

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

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

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

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

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

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

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

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

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

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

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

(D) A physician assistant (PA) with a current license to practice and in good standing in the state in

which services are provided and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.

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

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

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

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

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

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

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

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

"OHCA" means the Oklahoma Health Care Authority.

"O.S." means Oklahoma Statutes.

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

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

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

"Psychosocial rehabilitation services (PSR)" means face-to-face Behavioral Health Rehabilitation services which are necessary to improve the member's ability to function in the community. They are performed to improve the skills and abilities of members to live independently in the community, improve self-care and social skills, and promote lifestyle change and recovery practices.

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

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

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

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

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

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

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

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

317:30-5-264. Purpose

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

317:30-5-265. Eligible providers

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

- (1) Be certified by the ODMHSAS as a community mental health center under OAC 450:17 and have provider specific credentials from ODMHSAS for CCBHCs (OAC 450:17-5-170 et seq.);
- (2) Be under the direction of a licensed physician;
- (3) Provide mobile crisis care twenty-four (24) hours, seven (7) days a week and have a twenty-four (24) hours, seven (7) days a week walk-in crisis clinic or a psychiatric

urgent care, or have an agreement in place with a State-sanctioned alternative;

(4) Actively use an Office of National Coordinator (ONC) certified Electronic Health Record (EHR) as demonstrated on the ONC Certified Health IT Product List;

(5) Have a contract with a Health Information Exchange (HIE) and demonstrate staff use of obtaining and sending data through the HIE as well as policy stating frequency of use and security protocols; and

(6) Report on encounter, clinical outcomes, and quality improvement. This includes meeting all federal and State specifications of the required CMS quality measure reporting, as well as performance improvement reports outlining activities taken to improve outcomes.

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

(1) Teams shall at a minimum, include the following positions:

- (A) Licensed psychiatrist;
- (B) Licensed nurse care manager (RN or licensed practical nurse);
- (C) Consulting primary care physician, APRN, or physician assistant (PA);
- (D) At least one (1) LBHP and may include additional LBHPs and licensure candidates (see OAC 317:30-5-263);
- (E) Peer recovery support specialist (see OAC 317:30-5-263);
- (F) Family support provider for child members (see OAC 317:30-5-263);
- (G) Certified behavioral health case manager II or certified alcohol and drug counselor (see OAC 317:30-5-263); and
- (H) Qualified behavioral health aide.

(2) Optional team members may include the following:

- (A) Certified behavioral health case manager I (see OAC 317:30-5-263);
- (B) Licensed nutritionist;
- (C) Occupational therapist; and/or
- (D) Occupational therapist assistant under the supervision of a licensed occupational therapist.

317:30-5-266. Covered services

CCBHCs provide a comprehensive array of services that create access, stabilize people in crisis, and provide the needed treatment and recovery support services for those with

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the most serious and complex mental health and substance use disorders. CCBHCs integrate additional services to ensure an approach to health care that emphasizes recovery, wellness, trauma-informed care, and physical-behavioral health integration. Initial screening, assessment, and diagnosis must be completed in order to receive a covered service. Services must be medically necessary and recommended by an LBHP or licensure candidate (see OAC 317:30-5-263). Services are covered when provided in accordance with a person-centered and family-centered service plan. Coverage includes the following services:

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

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

- (i) Twenty-four (24) hours mobile crisis teams [see OAC 317:30-5-241.4(a) for service definition]. Reimbursement is triggered by the LBHP/licensure candidate crisis assessment;
- (ii) Emergency crisis intervention service [see OAC 317:30-5-241.4(a) for service definition]; and
- (iii) Facility-based crisis stabilization [see OAC 317:30-5-241.4(b) for service definition], provided directly by the CCBHC or by a State-sanctioned alternative.

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

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

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

- (i) Care coordination for primary health care, specialty health care, and transitional care from emergency departments, hospitals, and PRTFs;
- (ii) Ensuring integration and compatibility of mental health and physical health activities;
- (iii) Providing on-going service coordination and linking members to resources;
- (iv) Tracking completion of mental and physical health goals in member's comprehensive care plan;

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

(vi) Appointment scheduling;

(vii) Conducting referrals and follow-up monitoring;

(viii) Participating in hospital discharge processes; and

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

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

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

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

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

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

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

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

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

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

- (i) A review and educational session focused on the member's response to medication and compliance with the medication regimen and/or medication administration;
- (ii) Prescription administration and ordering of medication by appropriate medical staff;
- (iii) Assisting the member in accessing medications;
- (iv) Monitoring medication response and side effects; and
- (v) Assisting members with developing the ability to take medications with greater independence.

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

(6) **Psychosocial rehabilitation services (PSR).**

(A) **Service requirements.** PSR services are face-to-face behavioral health rehabilitation (BHR)

services which are necessary to improve the member's ability to function in the community. They are performed to improve the skills and abilities of members to live independently in the community, improve self-care and social skills, and promote lifestyle change and recovery practices. Rehabilitation services may be provided individually or in group sessions through the format of curriculum-based education and skills training. This service is generally performed with only the member and the qualified provider, but may include a member and the member's family/support system when providing educational services from a curriculum that focuses on the member's diagnosis, symptom management, and recovery. A member who, at the time of service, is not able to cognitively benefit from the treatment due to active hallucinations, substance abuse, or other impairments, is not suitable for this service. Family involvement is allowed for support of the member and education regarding his/her recovery but does not constitute family therapy, which requires a licensed provider. Eligibility requirements and billing limits found in OAC 317:30-5-241.3 do not apply.

(B) **Qualified professionals.** This service is solely restorative in nature and may be performed by a behavioral health CM II, CADC, LBHP, or licensure candidate, following development of a service plan and treatment curriculum approved by an LBHP or licensure candidate. The behavioral health CM II and CADC must have immediate access to an LBHP who can provide clinical oversight and collaborate with the qualified PSR provider in the provision of services.

(7) **Psychoeducation and counseling.**

(A) **Service requirements.** This service is designed to restore, rehabilitate, and support the individual's overall health and wellness. Services are intended for members to provide purposeful and ongoing psychoeducation and counseling that are specified in the individual's person-centered, individualized plan of care. Components include:

- (i) Delivery of manualized wellness management interventions via group and individual work such as WRAP or IMR/WMR; and
- (ii) Emotional support, education, resources during periods of crisis, and problem-solving skills.

(B) **Qualified professionals.** This service is provided by a licensed nurse, licensed nutritionist, or CM II or CADC within the scope of their licensure, certification, and/or training.

(8) **Peer recovery support services.**

(A) **Service requirements.** See OAC 317:30-5-241.5(d) for service requirements.

(B) **Qualified professionals.** PRSS must be certified through ODMHSAS pursuant to OAC 450:53.

(9) **Family support and training.**

(A) **Service requirements.** See OAC 317:30-5-241.5(c) for service requirements.

(B) **Qualified professionals.** Family support providers must be trained/credentialed through ODMHSAS.

(10) **Screening, assessment, and service planning.**

(A) **Service requirements.** See OAC 317:30-5-241.1 for service requirements. Service billing limitations found in OAC 317:30-5-241.1 do not apply.

(B) **Qualified professionals.** Screenings can be performed by any qualified team member as listed in OAC 317:30-5-265(b). Assessment and service planning can only be performed by an LBHP or licensure candidate.

(11) **Occupational therapy.**

(A) **Service requirements.** This service includes the therapeutic use of everyday life activities (occupations) with an individual or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings for the purpose of promoting health and wellness. Occupational therapy services are provided to those who have developed an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restrictions. Occupational therapy addresses the physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect health, well-being, and quality of life.

(B) **Qualified professionals.** This service is solely restorative in nature and provided by a qualified occupational therapist who is contracted with the OHCA or an occupational therapist assistant who is working under the supervision of a licensed occupational therapist (see OAC 317:30-5-295).

(C) **Coverage limitations.** In order to be eligible for SoonerCare reimbursement, occupational therapy services must be prior authorized and/or prescribed by a physician or other licensed practitioner of the healing arts, in accordance with State and federal law, including, but not limited to, OAC 317:30-5-296, OAC 317:30-5-1020, and 42 C.F.R. § 440.110.

317:30-5-267. Reimbursement

(a) In order to be eligible for payment, CCBHCs must have an approved provider agreement on file with the OHCA. Through this agreement, the CCBHC assures that OHCA's requirements are met and assures compliance with all applicable federal and state Medicaid law, including, but not limited to, OHCA administrative rules, ODMHSAS administrative rules, the Code of Federal Regulations, and the Oklahoma State Medicaid Plan. These agreements are renewed annually with each provider.

(b) Reimbursement is made using a provider-specific prospective payment system (PPS) rate developed based on provider-specific cost report data. The PPS rate varies by category and level of service intensity and is paid when a CCBH program delivers at least one (1) CCBHC covered service, and when a valid individual procedure code is reported for

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the calendar month. Care coordination services do not trigger a PPS payment when billed alone in a calendar month. For reimbursement purposes, members are categorized as follows, and are assigned to special populations by the State:

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

317:30-5-268. Limitations

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

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Part 35. Rural Health Clinics

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The proposed revisions will comply with the Benefits Improvement and Protection Act of 2000. Policy changes will reflect a revised payment methodology for RHCs. Further revisions will update policy to reflect current business practices.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 35. RURAL HEALTH CLINICS

317:30-5-359.1. Cost reports

(a) Provider-based ~~RHCs~~Rural Health Clinics (RHC) are required to report each RHC on a separate clinic line cost center on the Medicare Cost Report (HCFA 2552). A copy of the HCFA 2552, including the Medicaid Supplemental Worksheet S-2, is submitted to the ~~OHCA~~Oklahoma Health Care Authority (OHCA) as part of the year-end cost report process of the parent hospital. ~~(Refer to OAC 317:30-5-48).~~

(b) Independent RHCs are required to submit to the OHCA a completed copy of the Medicare Cost Report for the annual cost reporting period (HCFA 222-92) within the due date for filing the cost report to the fiscal intermediary. Preventive services, i.e., prenatal, EPSDT and family planning visits, should not be counted in total visits in the Medicare cost report. The associated cost for the ~~rural health clinic~~RHC services covered by Medicaid only should be reported as a non-reimbursable cost on the clinic's Medicare cost report.

~~(c) If the clinic does not submit an adequate annual report on time, the OHCA may reduce or suspend payments to preclude excess payment to the clinic.~~

317:30-5-359.2. Reimbursement

(a) **Provider-based clinics.** ~~Interim payments for provider-based clinics will be made for RHC "core" services based on an all-inclusive visit fee established by reference to payments to other Rural Health Clinics in the same or adjacent areas or by cost reporting methods. The interim rate for core services will be reviewed and revised as appropriate, based on cost data from an initial cost report. Costs will be determined from the parent hospital's cost to charge ratios per the HCFA 2552 Medicare (or Medicaid, when filed) Worksheet C, Part 1, Computation of Ratio of Costs to Charges. Lower of cost or charge provision will be calculated using the lesser of costs or two times charges (as determined by averaged cost to charge ratios based on FY 95 cost reports). After the initial year and the per visit rate are established, the rate will be updated annually by the increase in the MEI. Payments for provider-based clinics will be made for RHC "core" services based on an all-inclusive visit fee established by one of the following:~~

- (1) An interim rate established by calculating a statewide average rate for RHCs in the state; and
- (2) The statewide average rate will be updated annually by the increase in the Medicare Economic Index (MEI); or
- (3) An Alternative Payment Methodology (APM) established by the RHC periodic rate notification from the Medicare Fiscal Intermediary. In order to receive this rate, the RHC must submit a copy of the periodic rate notification letter for its most recent full cost reporting year received from the fiscal intermediary to the state. The APM rate cannot be lower than mentioned above in (a)(1) or (a)(2).

(b) **Independent clinics.** ~~Interim payments for independent clinics will be made for RHC "core" services based on the all-inclusive rate established by reference to payments to other Rural Health Clinics in the same or adjacent areas or by cost reporting methods. The interim rate for core services will be reviewed and revised as appropriate, based on cost data from~~

~~an initial 12-month cost report and payments may be subject to adjustment at the end of the reporting period. After the initial year and the per visit rate are established, the rate will be updated annually by the increase in the MEI. For clinics that offer "other ambulatory" services and preventive services, payment will be made on a reasonable charge basis in accordance with Medicaid fee schedule guidelines. Payments for independent clinics will be made for RHC "core" services based on an all-inclusive visit fee established by one of the following:~~

- (1) An interim rate established by calculating a statewide average rate for RHCs in the state; and
- (2) The statewide average rate will be updated annually by the increase in the MEI; or
- (3) An APM established by the RHCs periodic rate notification from the Medicare Fiscal Intermediary. In order to receive this rate, the RHC must submit a copy of the periodic rate notification letter for its most recent full cost reporting year received from the fiscal intermediary to the state. The APM rate cannot be lower than mentioned above in (b)(1) or (b)(2).

[OAR Docket #20-445; filed 6-26-20]

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

[OAR Docket #20-441]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Individual Providers and Specialties
Part 3. Hospitals
317:30-5-42.1 [AMENDED]
Part 109. Diabetes Self-Management Training [NEW]
317:30-5-1080 [NEW]
317:30-5-1081 [NEW]
317:30-5-1082 [NEW]
317:30-5-1083 [NEW]
317:30-5-1084 [NEW]
(Reference APA WF # 19-06)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board

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n/a

GIST/ANALYSIS:

The proposed revisions will establish diabetes self-management training (DSMT) as a new benefit in the SoonerCare program for members with diabetes. DSMT is an educational disease management benefit designed to teach members how to successfully manage and control his/her diabetes. The proposed revisions will outline member eligibility, program coverage and limitations, provider requirements, and reimbursement. These rules are currently in place as emergency rules.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 3. HOSPITALS

317:30-5-42.1. Outpatient hospital services

(a) Hospitals providing outpatient hospital services are required to meet the same requirements that apply to ~~OHCA~~ the Oklahoma Health Care Authority (OHCA) contracted, non-hospital providers performing the same services. Outpatient services performed outside the hospital facility are not reimbursed as hospital outpatient services.

(b) Covered outpatient hospital services must meet all of the criteria listed in (1) through (4) of this subsection.

- (1) The care is directed by a physician or dentist.
- (2) The care is medically necessary.
- (3) The member is not an inpatient ~~(see — OAC 317:30-5-41)~~ [refer to Oklahoma Administrative Code (OAC) 317:30-5-41].
- (4) The service is provided in an approved hospital facility.

(c) Covered outpatient hospital services are those services provided for a member who is not a hospital inpatient. A member in a hospital may be either an inpatient or an outpatient, but not both (see OAC 317:30-5-41).

(d) In the event a member is admitted as an inpatient, but is determined to not qualify for an inpatient payment based on OHCA criteria, the hospital may bill on an outpatient claim for the ancillary services provided during that time.

(e) Separate payment is made for prosthetic devices inserted during the course of surgery when the prosthetic devices are not integral to the procedure and are not included in the reimbursement for the procedure itself.

(f) Physical, occupational, and speech therapy services are covered when performed in an outpatient ~~hospital based~~ hospital-based setting. Coverage is limited to one (1) evaluation/re-evaluation visit (unit) per discipline per calendar year and ~~15~~ fifteen (15) visits (units) per discipline per date of service per calendar year. Claims for these services must include the appropriate revenue code(s).

(g) Diabetes self-management training (DSMT) is provided to members diagnosed with diabetes. DSMT services are comprised of one (1) hour of individual instruction (face-to-face encounters between the certified diabetes educator and the member) and nine (9) hours of group instruction on diabetes self-management. Members shall receive up to ten (10) hours of services during the first twelve (12) month period beginning with the initial training date. After the first twelve (12) month period has ended, members shall only be eligible for two (2) hours of individual instruction on DSMT per calendar year. Refer to OAC 317:30-5-1080 through 317:30-5-1084 for specific provider and program requirements, and reimbursement methodology.

PART 109. DIABETES SELF-MANAGEMENT TRAINING

317:30-5-1080. Definitions

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

"AADE" means American Association of Diabetes Educators.

"ADA" means American Diabetes Association.

"CDE" means certified diabetes educator.

"DSMT" means diabetes self-management training.

"OAC" means Oklahoma Administrative Code.

"OHCA" means Oklahoma Health Care Authority.

"Qualified non-physician provider" means a physician assistant or advanced practice registered nurse.

317:30-5-1081. Eligible providers and requirements

(a) Eligible DSMT providers include any of the following professionals:

(1) A registered dietitian (RD) who is licensed and in good standing in the state in which s/he practices, and who is:

(A) Certified as a CDE; and

- (B) Fully contracted with SoonerCare as a CDE provider.
- (2) A registered nurse (RN) who is licensed and in good standing in the state in which s/he practices, and who is:
 - (A) Certified as a CDE; and
 - (B) Fully contracted with SoonerCare as a CDE provider.
- (3) A pharmacist who is licensed and in good standing in the state in which s/he practices, and who is:
 - (A) Certified as a CDE; and
 - (B) Fully contracted with SoonerCare as a CDE provider.
- (b) In order to receive Medicaid reimbursement for DSMT services, professional service groups, outpatient hospitals, Indian Health Services, Tribal Programs and Urban Indian Clinics (I/T/Us), Rural Health Clinics (RHCs), and Federally Qualified Health Centers (FQHCs) must have a DSMT program that meets the quality standards of one (1) of the following accreditation organizations:
 - (1) The ADA; or
 - (2) The AADE.
- (c) All DSMT programs must adhere to the national standards for diabetes self-management education.
 - (1) Each member of the instructional team must:
 - (A) Be a CDE; or
 - (B) Have documentation of at least fifteen (15) hours of recent diabetes education or diabetes management experience.
 - (2) At a minimum, every instructional team must consist of at least one (1) of the CDE professionals listed in subsection a, above.
- (d) All members of the instructional team must obtain the nationally recommended annual continuing education hours for diabetes management.

317:30-5-1082. Scope of services

- (a) **General provisions.** The OHCA covers medically necessary DSMT services when all the following criteria are met:
 - (1) The member has been diagnosed with diabetes by a physician or qualified non-physician provider working within the scope of his/her licensure;
 - (2) The services have been ordered by a physician or qualified non-physician provider who is actively managing the member's diabetes;
 - (3) The services are provided by a qualified DSMT provider [Refer to OAC 317:30-5-1081(b)(2)]; and
 - (4) The program meets the current ADA or ADE training standards.
- (b) **Training.** DSMT services shall provide one (1) initial assessment per lifetime. Initial DSMT shall be comprised of up to ten (10) hours [can be performed in any combination of thirty (30) minute increments] of diabetes training within a consecutive twelve (12) month period beginning with the initial training date, including:
 - (1) One (1) hour of individual instruction, consisting of face-to-face encounters between the CDE and the member; and
 - (2) Nine (9) hours of group instruction.

- (c) **Follow-up DSMT.** After the first twelve (12) month period has concluded, members shall only be eligible for two (2) hours of individual or group DSMT instruction per calendar year.

317:30-5-1083. Coverage by category

The purpose of DSMT services must be to provide the member with the knowledge, skill, and ability necessary for diabetes self-care.

- (1) **Adults.** Payment is made for medically necessary DSMT provided by a registered nurse (RN), registered dietitian (RD), or pharmacist certified as a diabetes educator, as described in OAC 317:30-5-1081. Refer to OAC 317:30-5-1082 for units of DSMT training allowed.
- (2) **Children/adolescents.** Payment is made for medically necessary DSMT for members under twenty-one (21) years of age provided by a RN, RD, or pharmacist certified as a diabetes educator, as described in OAC 317:30-5-1081. DSMT coverage for children is the same as for adults. Additional DSMT services may be covered under EPSDT provisions if determined to be medically necessary.

317:30-5-1084. Reimbursement methodology

SoonerCare shall provide reimbursement for DSMT services as follow:

- (1) Payment shall be made to fully-contracted providers. If the rendering provider operates through an enrolled SoonerCare provider, or is contracted to provide services by an enrolled SoonerCare provider, payment may be made to that enrolled SoonerCare provider.
- (2) Reimbursement for DSMT services is only made on a fee-for-service basis. The maximum allowable fee for a unit of service has been determined by OHCA to be a reasonable fee, consistent with efficiency, economy, and quality of care. Payment for covered services is the lower of the provider's actual billed charges, consistent with the provider's usual and customary charge to the general public for the service, or the maximum allowable per unit of service.

[OAR Docket #20-441; filed 6-26-20]

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

[OAR Docket #20-447]

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Subchapter 5. Individual Providers and Specialties
Part 5. Pharmacies
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The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; 42 USC § 1396a(o)

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n/a

GIST/ANALYSIS:

The proposed revisions will comply with 42 United States Code (U.S.C.) § 1396a(o), which requires state Medicaid agencies to implement newly-required DUR activities to better monitor opioid prescribing and dispensing patterns. Opioid safety edits will be implemented to alert pharmacists of potential concerns with a medication prescribed for a member, that have to be resolved before it can be dispensed and safely taken by the member. Additionally, a claims review automated process will be in place to identify refills in excess of state limits and monitor concurrent prescribing of opioids and benzodiazepines and/or antipsychotics. Furthermore, the OHCA will implement a program to monitor the use of antipsychotic medications by members aged eighteen (18) and younger, including foster children. Lastly, the OHCA will implement a process to identify potential fraud and abuse of controlled substances by members, health care professionals prescribing drugs to members, and pharmacies dispensing drugs to members. Other revisions will align and reorganize DUR policy section with current practice. These rules are currently in place as emergency rules.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 5. PHARMACIES

317:30-5-86. Drug Utilization Review (DUR) Program

(a) ~~OHCA is authorized by federal statute to conduct prospective and retrospective review of pharmacy claims to insure that prescriptions are:~~

- ~~(1) appropriate,~~
- ~~(2) medically necessary, and~~
- ~~(3) not likely to result in adverse medical results.~~

(b) ~~OHCA is authorized to use this program to educate physicians, other prescribers, pharmacists, and patients and also to conserve program funds and personal expenditures and prevent fraud, abuse and misuse of prescriptions.~~

(c) ~~OHCA utilizes a DUR Board managed by an outside contractor to review and analyze clinical and economic data available. The DUR Board reviews and makes recommendations based on predetermined standards submitted to them by the OHCA contractor(s) and, in concert with the retrospective review of claims data, makes recommendations for educational interventions, prospective DUR and the prior authorization process.~~

(a) The Oklahoma Health Care Authority (OHCA) Drug Utilization Review (DUR) program is authorized by regulations contained in the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) to conduct prospective and retrospective review of pharmacy claims to ensure that prescriptions are:

- (1) Appropriate;
- (2) Medically necessary; and
- (3) Not likely to result in adverse medical results.

(b) The OHCA is authorized to use this program to educate physicians, other prescribers, pharmacists, and patients and also to conserve program funds and personal expenditures and prevent fraud, abuse, and misuse of prescriptions.

(c) The OHCA utilizes a DUR Board managed by an outside contractor to review and analyze clinical and economic data available. The DUR Board reviews and makes recommendations based on predetermined standards submitted to it by the OHCA contractor(s) and, in concert with the retrospective review of claims data, makes recommendations for educational interventions, prospective DUR, and the prior authorization process.

(d) The DUR Board assesses data on drug use in accordance with predetermined standards, including, but not limited to:

- (1) Monitoring for therapeutic appropriateness;
- (2) Overutilization and underutilization;
- (3) Appropriate use of generic products;
- (4) Therapeutic duplication;
- (5) Drug-disease contraindications;
- (6) Drug-drug interaction;
- (7) Incorrect drug dosage or duration of drug treatment;
- and
- (8) Clinical abuse or misuse.

(e) The DUR Board is comprised of ten (10) members that are appointed according to 63 O.S. § 5030.1. DUR Board members with a conflict of interest with respect to OHCA, Medicaid members, and/or pharmaceutical manufacturers must recuse themselves/abstain from voting on any DUR actions related to the conflict of interest.

(f) The DUR program shall adhere to the provisions of Section 1396a(o) of Title 42 of the United States Code.

(1) The OHCA has implemented the following claims review requirements:

(A) Opioid safety edits at the point-of-sale, including, but not limited to, day supply, early refills, duplicate fills, quantity limitations, and maximum daily morphine milligram equivalent (MME) safety edits. MME safety edits will automatically decline reimbursement of prescription drugs that exceed an established daily MME limit.

(B) Claims review automated process that monitors concurrent use of opioid(s) with benzodiazepine(s) and/or antipsychotic(s).

(C) The prescriptions in (A) and (B) may be reimbursed upon a showing of medical necessity, as evidenced by a prior authorization approved by OHCA or its designee or contractor.

(2) The OHCA has implemented a program to monitor the appropriate use of antipsychotic prescribing for children. The OHCA, or its contractor or designee, regularly reviews a sample of all antipsychotics prescribed to members aged eighteen (18) and younger, including, but not limited to, foster children, that were reimbursed by Medicaid, for safety and appropriate utilization.

(3) The OHCA has implemented a process to identify potential fraud or abuse of controlled substances by members, pharmacies, and prescribing clinicians.

(g) All prescribing clinicians and/or pharmacists shall adhere to appropriate prescribing practices that are consistent with state and federal regulations or may be subject to agency review processes, audits, recoupment, and/or termination of Medicaid contracts [refer to the Oklahoma Administrative Code (OAC), including, but not limited to, 317:30-3-2.1, 317:30-3-19.5, 317:30-3-33, and 317:30-5-70.1].

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Subchapter 5. Individual Providers and Specialties
Part 33. Transportation by Ambulance
317:30-5-344 [NEW]
(Reference APA WF # 19-27)

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The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; 42 C.F.R. Section 414.605; and 63 O.S. Section 3242

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Not applicable

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n/a

GIST/ANALYSIS:

he proposed revisions will establish consistency with the Oklahoma Medicaid State Plan which outlines the Ground Emergency Medical Transportation (GEMT) Supplemental Payment Program. The GEMT program is a voluntary program which provides supplemental payments to eligible providers for specific allowable and uncompensated costs incurred for providing ground ambulance services to SoonerCare recipients and certified on an annual cost report. Payments are made in the form of an interim payment and a later reconciliation payment (i.e. settle-up payment).

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
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DATE OF SEPTEMBER 14, 2020:**

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 33. TRANSPORTATION BY AMBULANCE

317:30-5-344. Ground Emergency Medical Transportation (GEMT) supplemental payment program

(a) Definitions. The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

- (1) "Advanced life support" means emergency medical care and services which are provided by a licensed ground ambulance services provider in accordance with Oklahoma Administrative Code (OAC) 310:641, to include, but not limited to, advanced airway management, intravenous therapy, administration of drugs and other medicinal preparations, and other invasive medical procedures and specified techniques that are limited to the Intermediate, Advanced EMT, and Paramedic scope of practice in accordance with OAC 310:641, Subchapter 5.
- (2) "Allowable costs" means an expenditure that complies with the regulatory principles as listed in Title 2 of the Code of Federal Regulations (C.F.R.), Section 200.
- (3) "Basic life support" means emergency medical care and services which are provided by a licensed ground

ambulance service in accordance with OAC 310:641 to include, but not limited to, cardiopulmonary resuscitation procedures (CPR), hemorrhage control, stabilization of actual or possible skeletal injuries, spinal immobilization, extrication, transportation, and other non-invasive medical care.

(4) "Contracts with a local government" means contracts pursuant to a county plan for ambulance and emergency medical services with a:

(A) City, county, or an Indian tribe as defined in Section 4 of the Indian Self-Determination and Education Assistance Act; or

(B) Local service district, including, but not limited to, a rural fire protection district, or all administrative subdivisions of such city, county, or local service district.

(5) "Eligible GEMT provider" means a GEMT provider that meets all eligibility requirements in OAC 317:30-5-344 and the Oklahoma Medicaid State Plan (State Plan).

(6) "Federal financial participation (FFP)" means the portion of medical assistance expenditures for emergency medical services that are paid or reimbursed by the Centers for Medicare and Medicaid Services (CMS) in accordance with the State Plan.

(7) "GEMT services" means the act of transporting an individual by ground from any point of origin to the nearest medical facility capable of meeting the emergency medical needs of the patient, as well as the advanced, limited-advanced, and basic life support services provided to an individual by eligible GEMT providers before or during the act of transportation.

(8) "Governmental unit" means the entire state, local, or federally-recognized Indian tribal government, including any component thereof.

(9) "Publically owned or operated" means a unit of government that is a state, a city, a county, a special purpose district, or other governmental unit in a state that has taxing authority, has direct access to tax revenues, or is an Indian tribe as defined in Section 4 of the Indian Self-Determination and Education Assistance Act.

(b) Purpose. In accordance with 63 Oklahoma Statutes (O.S.) § 3242, the GEMT Supplemental Payment Program is a voluntary program which makes supplemental payments above the Medicaid fee schedule reimbursement rate to eligible GEMT providers for specific allowable, certified, and uncompensated costs incurred for providing GEMT Services to SoonerCare members.

(c) Provider eligibility. To be eligible for supplemental payments, a GEMT provider must meet all of the following requirements:

(1) Be enrolled as an Oklahoma SoonerCare provider for the time period claimed on its annual cost report;

(2) Provide ground ambulance transportation services to SoonerCare members;

(3) Be classified as a governmental unit provider in accordance with 2 C.F.R. 200;

(4) Comply with all applicable state and federal law;

(5) Be an organization that:

(A) Is publicly owned or operated; or

(B) Is under contract with a local government unit. A copy of any such contract must be submitted to the Oklahoma Health Care Authority (OHCA) simultaneous with the submission of the GEMT provider's annual cost report; and

(6) Timely submit all relevant information requested by the OHCA, in the format as prescribed by the OHCA, including, but not limited to, a certification that conforms with 42 C.F.R. § 433.51 that certifies that the claimed expenditures for GEMT Services are eligible for FFP.

(d) Allowable costs.

(1) Supplemental payments provided by this program are available only for the specific allowable costs per medical transport of a SoonerCare member that are in excess of the reimbursement paid by Medicaid and all other insurers and/or third-party resources.

(2) Total reimbursement from SoonerCare, including the supplemental payment, when combined with all other sources of reimbursement, must not exceed one-hundred percent (100%) of actual costs of providing services to SoonerCare members.

(e) Payments and recoupment.

(1) The OHCA will make annual supplemental payments after the conclusion of each state fiscal year (SFY) and in accordance with the methodology outlined in the State Plan. The payments will be made in the form of an interim payment and a later reconciliation payment (i.e., settle-up payment). The payments are not an increase to current fee-for-service (FFS) reimbursement rates.

(2) The interim supplemental payment will be equal to seventy-five percent (75%) of the total allowable costs as indicated on the annual approved cost report.

(3) The reconciliation payment will be computed by the OHCA based on the difference between the interim supplemental payment and total allowable costs from the approved cost report.

(4) Any excess payments determined in the reconciliation process are recouped and the federal share is returned to CMS.

(5) Cost reconciliation and cost settlement processes will be completed within twelve (12) months of the end of the cost reporting period.

(f) Reporting requirements.

(1) Eligible GEMT providers will:

(A) Submit a CMS-approved cost report annually, no later than ninety (90) days after the close of the SFY, on a form approved by the OHCA, unless a provider has made a written request for an extension and such request is granted by the OHCA;

(i) After the ninety (90) day deadline, an extension of no more than fifteen (15) calendar days can be granted; and

(ii) Extensions of time shall be requested by a letter addressed to the Finance Division. Any such request must be received by October 1, and must explain the good faith reason for the extension.

OHCA shall provide a written notice of any denial of a request for an extension, which shall become effective on the date it is mailed.

(B) Provide supporting documentation simultaneous with the cost report, as required by the OHCA;

(C) Keep, maintain, and have readily retrievable, such records as specified by the OHCA to fully disclose reimbursement amounts to which the eligible governmental entity is entitled, and any other records required by CMS; and

(D) Comply with the allowable cost requirements provided in 42 C.F.R. Part 413, 2 C.F.R. Part 200, and federal Medicaid non-institutional reimbursement policy.

(2) Penalties for false statements or misrepresentations made by or on behalf of the provider are established by 42 U.S.C. Section 1320a-7b which states, in part, "Whoever... (2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to such benefit or payment...shall (i) in the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing (by that person) of items or services for which payment is or may be under the program, be guilty of a felony and upon conviction thereof fined not more than \$100,000 or imprisoned for not more than 10 years or both, or (ii) in the case of such a statement, representation, concealment, failure, conversion, or provision of counsel or assistance by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than \$20,000 or imprisoned for not more than one (1) year, or both."

(g) **Agency responsibilities.** The OHCA will:

(1) Submit claims to CMS based on total computable certified expenditures for GEMT services provided, that are allowable and in compliance with federal laws and regulations and Medicaid non-institutional reimbursement policy;

(2) Submit on an annual basis, any necessary materials to the federal government to provide assurances that claims will include only those expenditures that are allowable under federal law; and

(3) Complete the audit and final reconciliation process of the interim cost settlement payments for the services provided within twelve (12) months of the postmark date of the cost report and conduct on-site audits as necessary.

[OAR Docket #20-454; filed 6-26-20]

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Part 83. ~~Residential Behavior Management Services~~Therapeutic Foster Care

317:30-5-740 [AMENDED]

317:30-5-740.1 [AMENDED]

317:30-5-740.2 [AMENDED]

317:30-5-741 [AMENDED]

317:30-5-742 [AMENDED]

317:30-5-742.1 [AMENDED]

317:30-5-742.2 [AMENDED]

317:30-5-743.1 [AMENDED]

317:30-5-744 [AMENDED]

317:30-5-745 [AMENDED]

317:30-5-746 [AMENDED]

Part 84. Intensive Treatment Family Care [NEW]

317:30-5-750 [NEW]

317:30-5-750.1 [NEW]

317:30-5-750.2 [NEW]

317:30-5-751 [NEW]

317:30-5-752 [NEW]

317:30-5-753 [NEW]

317:30-5-754 [NEW]

317:30-5-755 [NEW]

317:30-5-756 [NEW]

317:30-5-757 [NEW]

(Reference APA WF # 19-05)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board

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Superseded rules:

Subchapter 5. Individual Providers and Specialties

Part 83. ~~Residential Behavior Management Services~~Therapeutic Foster Care

317:30-5-740 [AMENDED]

317:30-5-740.1 [AMENDED]

317:30-5-740.2 [AMENDED]

317:30-5-741 [AMENDED]

317:30-5-742 [AMENDED]

317:30-5-742.1 [AMENDED]

317:30-5-742.2 [AMENDED]

317:30-5-743.1 [AMENDED]

317:30-5-744 [AMENDED]

317:30-5-745 [AMENDED]

317:30-5-746 [AMENDED]

Part 84. Intensive Treatment Family Care [NEW]

317:30-5-750 [NEW]

317:30-5-750.1 [NEW]

317:30-5-750.2 [NEW]

317:30-5-751 [NEW]

317:30-5-752 [NEW]

317:30-5-753 [NEW]

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317:30-5-756 [NEW]

Permanent Final Adoptions

317:30-5-757 [NEW]

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n/a

GIST/ANALYSIS:

The proposed revisions will align therapeutic foster care (TFC) policy with current business practice. Revisions will also add new language establishing a more intensive treatment program for children in Oklahoma Department of Human Services (OKDHS) and Office of Juvenile Affairs (OJA) custody known as Intensive Treatment Family Care (ITFC). ITFC is a TFC model that addresses children's complex/severe behavioral and emotional health needs and/or disorders. ITFC utilizes a team approach of professionals including therapists, care coordinators, and foster parents to provide the intensive treatment services in a family care setting. The proposed revisions will define ITFC, member criteria for the provision of ITFC services, provider participation and credentialing requirements, program coverage, and program limitations. Lastly, the proposed revisions will establish reimbursement methodology and applicable rates for ITFC services. These rules are currently in place as emergency rules.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 83. RESIDENTIAL BEHAVIOR MANAGEMENT SERVICES THERAPEUTIC FOSTER CARE

317:30-5-740. Eligible providers Definitions

(a) **Definitions.** The following words or terms used in this Part shall have the following meaning, unless the context clearly indicates otherwise:

- (1) **Therapeutic foster care (TFC) agencies.** A foster care agency is an agency that provides foster care as defined in the Code of Federal Regulations (CFR) as "24-hour substitute care for children outside their own homes." Therapeutic foster care settings are foster family homes.
- (2) **Therapeutic foster care homes.** Agency supervised private family homes in which foster parents have been trained to provide individualized, structured services in a safe, nurturing family living environment for children and adolescents with significant emotional or behavioral problems who require a higher level of care than is found in a conventional foster home but do not require placement in a more restrictive setting. Therapeutic foster care homes are considered the least restrictive out of home placement for children with severe emotional disorders.

(b) **TFC Agency Requirements.** Eligible TFC agencies must have:

- (1) ~~current certification from the Oklahoma Department of Human Services (OKDHS) as a child placing agency;~~
- (2) ~~a contract with the Division of Children and Family Services of the Oklahoma Department of Human Services, or OJA;~~
- (3) ~~a contract with the Oklahoma Health Care Authority; and~~
- (4) ~~a current accreditation status appropriate to provide behavioral health services in a foster care setting from:~~
 - (A) ~~The Joint Commission formerly the Joint Commission on Accreditation (JCAHO), or~~
 - (B) ~~the Rehabilitation Accreditation Commission (CARF), or~~
 - (C) ~~the Council on Accreditation (COA), or~~
 - (D) ~~the American Osteopathic Association (AOA).~~

"Therapeutic foster" care (TFC) agency means a foster care agency that provides foster care as defined in Section 1355.20 of Title 45 of the Code of Federal Regulation as twenty-four (24) hour substitute care for children placed away from their parents or guardians and for whom the title IV-E agency has placement and care responsibility. TFC settings are foster family homes.

"TFC home" means an agency-supervised, private family home in which foster parents have been trained to provide individualized, structured services in a safe, nurturing family-living environment. The children receiving services in this setting have moderate behavioral and emotional health needs, and may also present secondary physical, developmental, intellectual, and/or social disorder that is supported alongside the mental health needs. TFC homes are considered the least restrictive out-of-home placement for these children.

"Therapeutic foster care (TFC) model" means a model in which children in the TFC environment receive increased individualized behavioral health and other support services from qualified staff. Because TFC members require exceptional levels of skill, time, and supervision, the number of unrelated children placed per home is limited; no more than two (2) TFC members may be placed in a home at any one (1) time unless additional cases are specifically authorized by Child Welfare Services (CWS) of the Oklahoma Department of Human Services (OKDHS), or Oklahoma Office of Juvenile Affairs (OJA).

317:30-5-740.1. Provider qualifications and requirements Eligible providers and requirements

(a) **Therapeutic foster care model.** Children in the TFC environment receive intensive individualized behavioral health and other support services from qualified staff. Because TFC children require exceptional levels of skill, time and supervision, the number of unrelated children placed per home is limited; no more than two TFC children in a home at any one time unless additional cases are specifically authorized by OKDHS, Division of Children and Family Services or OJA.

(b) **Treatment team.** TFC agencies are primarily responsible for treatment planning and coordination of the child's treatment team. This team is typically composed of an OKDHS or OJA caseworker, the child, the child's parents, others closely involved with the child and family. It also includes the following:

(1) **Certified Behavioral Health Case Manager II (CM).** A bachelors level team member that may provide support services and case management. In addition to the minimum requirements at OAC 317:30-5-240.3 (c), the CM must have:

- (A) a minimum of one year of experience in providing direct care and/or treatment to children and/or families; and
- (B) have access to weekly consultation with a licensed behavioral health professional or Licensure Candidate.
- (C) CM must also follow requirements at OAC 317:30-5-241.3 for providing psychosocial rehabilitation services.

(2) **Licensed Behavioral Health Professional (LBHP).** A masters level professional that provides treatment and supervision for the treatment staff to maintain clinical standards of care and provide direct clinical services. In addition to the requirements at OAC 317:30-5-240.3(a) and (b), the LBHP or Licensure Candidate in a TFC setting must demonstrate a general professional or educational background in the following areas:

- (A) case management, assessment and treatment planning;
- (B) treatment of victims of physical, emotional, and sexual abuse;
- (C) treatment of children with attachment disorders;
- (D) treatment of children with hyperactivity or attention deficit disorders;
- (E) treatment methodologies for emotionally disturbed children and youth;
- (F) normal childhood development and the effect of abuse and/or neglect on childhood development;
- (G) anger management;
- (H) crisis intervention; and
- (I) trauma informed methodology.

(3) **Licensed Psychiatrist and/or psychologist.** TFC agencies must provide staff with access to professional psychiatric or psychological consultation as deemed necessary for the planning, implementation and appropriate management of the resident's treatment. See OAC 317:30-5-240.3(a) and OAC 317:25-275.

(4) **Treatment Parent Specialist (TPS).** The TPS serve as integral members of the team of professionals providing services for the child. The TPS receives special training in mental health issues, behavior management and parenting techniques; and implements the in-home portion of the treatment plan with close supervision and support. They provide services for the child, get the child to therapy and other treatment appointments, write

daily notes about interventions and attend treatment team meetings. The TPS must be under the supervision of a licensed behavioral health professional of the foster care agency and meet the following criteria:

- (A) have a high school diploma or equivalent;
- (B) have an employment relationship with the foster care agency as a foster parent complete with OSBI and OKDHS background screening;
- (C) completion of therapeutic foster parent training outlined in this section;
- (D) have a minimum of twice monthly face to face supervision with the licensed, or under supervision for licensure, LBHP, independent of the child's family therapy;
- (E) have weekly contact with the foster care agency professional staff; and
- (F) complete required annual trainings.

(e) **Agency assurances.** The TFC agency must ensure that each individual that renders treatment services (whether employed by or contracted by the agency) meets the minimum provider qualifications for the service. Individuals eligible for direct enrollment must have a contract on file with the Oklahoma Health Care Authority.

(d) **Policies and Procedures.** Eligible TFC agency providers that are defined in section OAC 317:30-5-740(a) shall have written policies and procedures for the orientation of new staff and foster parents which is reviewed and updated annually, for the following:

- (1) pre service training of foster parents in treatment methodologies and service needs of emotionally and behaviorally disturbed children;
- (2) treatment of victims of physical, emotional, and sexual abuse;
- (3) treatment of children with attachment disorders;
- (4) treatment of children with hyperactive or attention deficit disorders;
- (5) normal childhood development and the effect of abuse and/or neglect on childhood development;
- (6) treatment of children and families with substance use disorders;
- (7) the Inpatient Mental Health and Substance Abuse Treatment of Minors Act;
- (8) anger management;
- (9) inpatient authorization procedures;
- (10) crisis intervention;
- (11) grief and loss issues for children in foster care;
- (12) the significance/value of birth families to children receiving behavioral health services in a foster care setting; and
- (13) trauma informed methodology.

(a) **TFC Agency.** Eligible TFC agencies must have:

- (1) Current certification from the Oklahoma Department of Human Services (OKDHS) as a child placing agency;
- (2) A contract with the Child Welfare Division of OKDHS, or Oklahoma Office of Juvenile Affairs (OJA);
- (3) A contract with the Oklahoma Health Care Authority (OHCA); and

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(4) A current accreditation status appropriate to provide behavioral health services in a foster care setting from:

- (A) The Joint Commission; or
- (B) The Commission on Accreditation of Rehabilitative Facilities (CARF); or
- (C) The Council on Accreditation (COA).

(b) **Treatment team.** TFC agencies are primarily responsible for treatment planning and coordination of the member's treatment team. This team is typically composed of an OKDHS or OJA caseworker, the member, the member's foster parent(s), as well as others closely involved with the member and family, including the biological parents when applicable.

(1) The team must include the following providers:

(A) **Licensed behavioral health professional (LBHP) and/or licensure candidate.** An LBHP is a master's level professional that provides treatment and supervises other treatment staff in maintaining clinical standards of care and providing direct clinical services. A licensure candidate is a practitioner actively and regularly receiving board-approved supervision, or extended supervision by a fully-licensed clinician if the board's supervision requirement is met but the individual is not yet licensed. In addition to the requirements at OAC 317:30-5-240.3(a) and (b), the LBHP or licensure candidate in a TFC setting must demonstrate a general professional or educational background in the following areas:

- (i) Case management, assessment, and treatment planning;
- (ii) Treatment of victims of physical, emotional, and sexual abuse;
- (iii) Treatment of children with attachment disorders;
- (iv) Treatment of children with hyperactivity or attention deficit disorders;
- (v) Treatment methodologies for emotionally disturbed children;
- (vi) Normal childhood development and the effect of abuse and/or neglect on childhood development;
- (vii) Anger management;
- (viii) Crisis intervention; and
- (ix) Trauma-informed methodology.

(B) **Treatment parent specialist (TPS).** The TPS serves as an integral member of the team of professionals providing services for the member. The TPS receives extensive training in diagnosed mental health issues, and behavior management/modification and skill-based parenting techniques; and implements the in-home portion of the treatment plan with close supervision and support. The TPS renders services for the member, provides or arranges suitable transportation for therapy and other treatment appointments, writes daily detailed notes regarding interventions and practical applications of learned skills, and attends treatment team meetings. The TPS must be under the supervision of an LBHP

or licensure candidate of the foster care agency and meet the following criteria:

(i) **Qualifications.**

- (I) Have a high school diploma or equivalent;
- (II) Have an employment and/or contractual relationship with the foster care agency as a foster parent, and have successfully met all required background screening requirements, including, but not limited to, fingerprint screenings conducted by the Oklahoma State Bureau of Investigation (OSBI) and Federal Bureau of Investigation (FBI), and OKDHS background screenings;
- (III) Complete the initial thirty-six (36) hours of pre-service training, prior to becoming a TFC parent;

(ii) **Responsibilities.**

- (I) Have a minimum of twice monthly face-to-face supervision with the licensed, or under-supervision for licensure, LBHP, independent of the member's family therapy;
- (II) Have weekly contact with the foster care agency professional staff;
- (III) Complete the required eighteen (18) hours of in-service training per calendar year; and
- (IV) Work with the multidisciplinary team and the member's biological family toward reunification, if appropriate, or other permanency plan.

(2) The team may also include the following providers:

(A) **Certified alcohol and drug counselor (CADC).** A bachelor's level team member with a current certification as a CADC in the state in which services are provided.

(B) **Certified behavioral health case manager (CM II).** A bachelor's level team member that may provide support services and case management. In addition to the minimum requirements at Oklahoma Administrative Code (OAC) 317:30-5-240.3(h)(1), the CM II must:

- (i) Have a minimum of one (1) year of experience in providing direct care and/or treatment to children and/or families; and
- (ii) Have access to weekly consultation with a licensed behavioral health professional (LBHP) or licensure candidate.
- (iii) The CM II must also follow requirements at OAC 317:30-5-241.3 for providing psychosocial rehabilitation (PSR) services.

(C) **Licensed psychiatrist and/or psychologist.** TFC agencies must provide staff with access to professional psychiatric or psychological consultation as deemed necessary for the planning, implementation, and appropriate management of the member's treatment. See OAC 317:30-5-240.3(a) and 317:25-7-5.

(c) **Agency assurances.** The TFC agency must ensure that each individual who renders treatment services meets the minimum provider qualifications for the service and, if eligible for direct enrollment, is fully contracted with the OHCA. Additionally, the TFC agency must comply with all state and federal Medicaid law, including, but not limited to, OHCA administrative rules, the Code of Federal Regulations (C.F.R.), and the Oklahoma State Medicaid Plan.

(d) **Policies and procedures.** Eligible TFC agency providers shall have written policies and procedures for the orientation of new staff and foster parents which is reviewed and updated annually, for the following:

- (1) Pre-service training of foster parents in treatment methodologies and service needs of emotionally and behaviorally disturbed children;
- (2) Treatment of victims of physical, emotional, and sexual abuse;
- (3) Treatment of children with attachment disorders;
- (4) Treatment of children with hyperactive or attention deficit disorders;
- (5) Normal childhood development and the effect of abuse and/or neglect on childhood development;
- (6) Treatment of children and families with substance use disorders;
- (7) The Inpatient Mental Health and Substance Abuse Treatment of Minors Act;
- (8) Anger management;
- (9) Inpatient authorization procedures;
- (10) Crisis intervention;
- (11) Grief and loss issues for children in foster care;
- (12) The significance/value of birth families to children receiving behavioral health services in a foster care setting; and
- (13) Trauma-informed methodology.

317:30-5-740.2. Provider selection

Parents who retain legal custody of a client may select any eligible contractor as the provider of services. In the case of children in the custody of the State of Oklahoma, the State, acting in its custodial role, selects the provider agency. Parents who retain legal custody of a TFC child may select any eligible TFC agency as the provider of services. In the case of members in the custody of the State of Oklahoma, the State, acting in its custodial role, selects the TFC agency.

317:30-5-741. Coverage by category

- (a) **Adults.** Behavioral health services in therapeutic foster care settings are not covered for adults.
- (b) **Children.** Behavioral health services are allowed in therapeutic foster care settings for certain children and youth as medically necessary. The children and youth receiving services in this setting have special psychological, social and emotional needs, requiring more intensive, therapeutic care than can be found in the traditional foster care setting. The designated children and youth must continually meet medical necessity criteria to be eligible for coverage in this setting.

(e) **Medical necessity criteria.** Medical necessity criteria is delineated as follows:

- (1) A diagnosis from the most recent edition of "The Diagnostic and Statistical Manual of Mental Disorders" (DSM), with the exception of V codes and adjustment disorders, with a detailed description of the symptoms supporting the diagnosis. Children with a provisional diagnosis may be admitted for a maximum of 30 days. An assessment must be completed by a Licensed Behavioral Health Professional (LBHP) or Licensure Candidate as defined in OAC 317:30-5-240.3(a) and (b) within the 30-day period resulting in a diagnosis from the most recent edition of "the Diagnostic and Statistical Manual of Mental Disorders" (DSM) with the exception of V codes and adjustments disorders, with a detailed description of the symptoms supporting the diagnosis to continue RBMS in a foster care setting.
- (2) Conditions are directly attributed to a mental illness/serious emotional disturbance as the primary need for professional attention.
- (3) It has been determined by the inpatient authorization reviewer that the current disabling symptoms could not have been or have not been manageable in a less intensive treatment program.
- (4) Evidence that the child's presenting emotional and/or behavioral problems prohibit full integration in a family/home setting without the availability of 24 hour crisis response/behavior management and intensive clinical interventions from professional staff, preventing the child from living in a traditional family home.
- (5) The child is medically stable and not actively suicidal or homicidal and not in need of substance abuse detoxification services.
- (6) The legal guardian/parent of the child (OKDHS/OJA if custody child) agrees to actively participate in the child's treatment needs and planning.

(a) **Adults.** Behavioral health services in TFC settings are not covered for adults.

(b) **Children.** Behavioral health services are allowed in TFC settings for children under twenty-one (21) as medically necessary. Members receiving services in this setting have moderate behavioral and emotional health needs, and may also present secondary physical, developmental, intellectual, and/or social disorder that is supported alongside the mental health needs. The designated members must continually meet medical necessity criteria to be eligible for coverage in this setting. Requests for behavioral health services in a TFC setting must be prior authorized and may be approved up to a maximum of six (6) month extensions.

(c) **Medical necessity criteria.** In order to satisfy medical necessity criteria, all of the following conditions must be met:

- (1) The member must have a diagnosis from the Diagnostic and Statistical Manual of Mental Disorders (DSM-V), with the exception of V codes and adjustment disorders, with a detailed description of the symptoms supporting the diagnosis. Members with a provisional diagnosis may receive TFC services for a maximum of thirty (30) days.

(2) An assessment must be completed by a licensed behavioral health professional (LBHP) or licensure candidate as defined in Oklahoma Administrative Code (OAC) 317:30-5-240.3(a) and (b) within the thirty (30) day provisional period described above, that confirms a diagnosis from the DSM-V with the exception of V codes and adjustments disorders, and that includes a detailed description of the symptoms supporting the diagnosis to continue treatment in a TFC setting.

(3) Conditions are directly attributed to moderate behavioral and emotional needs as the primary need for professional attention.

(4) The current disabling symptoms could not have been/have not been manageable in a less intensive treatment program, or the level of care is warranted in order to reduce the risk of regression of symptoms and/or sustain the gains made at a higher level of care.

(5) Evidence that the members' needs prohibit full integration in a family/home setting without the availability of twenty-four (24) hour crisis response/behavior management and clinical interventions from professional staff, preventing the member from living in a traditional family home.

(6) The member is medically stable and not actively suicidal or homicidal and not in need of substance abuse detoxification services.

(7) The legal guardian [Oklahoma Department of Human Services (OKDHS)/Oklahoma Office of Juvenile Affairs (OJA) if custody member] or parent of the member agrees to actively participate in the member's treatment needs and planning.

317:30-5-742. Description of services

~~(a) Treatment services must be provided in the least restrictive, non-institutional therapeutic milieu. The foster care setting is restorative in nature, allowing children with emotional and psychological problems to develop the necessary control to function in a less restrictive setting.~~

~~(b) Behavioral health services must include an individual plan of care for each member served. The individual plan of care requirements are set out in OAC 317:30-5-742.2(b)(1). Treatment services in a therapeutic foster care setting may include an array of services listed in (1)–(6) of this subsection as provided in the individual plan of care. Services include, but may not be limited to:~~

- ~~(1) Individual, family and group therapy;~~
- ~~(2) Substance abuse/chemical dependency education, prevention, and therapy;~~
- ~~(3) Psychosocial rehabilitation and support services;~~
- ~~(4) Behavior management~~
- ~~(5) Crisis intervention; and~~
- ~~(6) Case Management.~~

(a) Treatment services must be provided in the least restrictive, non-institutional therapeutic environment. The TFC setting is restorative in nature, allowing members with moderate behavioral and emotional health needs who may also have a secondary physical, developmental, intellectual, and/or social disorder that is supported alongside the mental health needs to

develop the necessary control to function in a less restrictive setting.

(b) Behavioral health services must include an individual plan of care (IPC) for each member served. The IPC requirements are set out in Oklahoma Administrative Code (OAC) 317:30-5-742.2.

(c) Treatment services in a TFC setting must include at least one (1) hour of individual, family, and/or group therapy per week, as set forth in OAC 317:30-5-742.2(3). Treatment may also include, but is not limited to, an array of the following services:

- (1) Substance abuse/chemical dependency education, prevention, and therapy;
- (2) Psychosocial rehabilitation and support services;
- (3) Behavior management;
- (4) Crisis intervention; and
- (5) Case management.

317:30-5-742.1. Reimbursement

~~Services provided to a member without a written individual plan of care as described in OAC 317:30-5-742.2(b)(1) will not be reimbursed.~~

(a) TFC services will be paid at the current fee-for-service (FFS) rate. Services provided to a member without a written individual plan of care (IPC) as described in Oklahoma Administrative Code (OAC) 317:30-5-742.2 will not be reimbursed.

(b) Additional services may require prior authorization by the OHCA, or its designated agent. Refer to OAC 317:30-3-31. Documentation must be provided to ensure that services are not duplicative. If additional services are approved for a member in state custody, the Oklahoma Department of Human Services (OKDHS), or Oklahoma Office of Juvenile Affairs (OJA) will collaborate with the provider of such services as directed by the OHCA.

(c) Reimbursement for TFC services is not available for the following:

- (1) Room and board;
- (2) Educational costs;
- (3) Supported employment;
- (4) Inpatient psychiatric services;
- (5) Respite care;
- (6) Day treatment services;
- (7) Partial hospitalization services; and
- (8) Intensive outpatient services.

(d) Case management services are reimbursed to government providers as per the methodology in the approved Oklahoma Medicaid State Plan.

317:30-5-742.2. Individual plan of care (IPC) and prior authorization of services

~~(a) All behavioral health services must be prior authorized by the designated agent of the Oklahoma Health Care Authority (OHCA) before the service is rendered by an eligible service provider. Without prior authorization, payment is not authorized. Requests for behavioral health services in a foster care setting may be approved for a maximum of three (3) months per extension request.~~

(b) All behavioral health services in a foster care setting are provided as a result of an individual assessment of the members needs and documented in the individual plan of care.

(1) **Assessment.**

(A) **Definition.** Gathering and assessment of historical and current bio psycho social information which includes face to face contact with the person and/or the person's family or other persons resulting in a written summary report, diagnosis and recommendations. All agencies must assess the medical necessity of each individual to determine the appropriate level of care.

(B) **Qualified professional.** This service is performed by an LBHP or Licensure Candidate.

(C) **Limitations.** Assessments are compensable on behalf of a member who is seeking services for the first time from the therapeutic foster care agency. This service is not compensable if the member has previously received or is currently receiving services from the agency unless there has been a gap in service of more than six (6) months and it has been more than one (1) year since the previous assessment.

(D) **Documentation requirements.** The assessment must include all elements and tools required by the OHCA. In the case of children under the age of eighteen (18), it is performed with the direct, active face to face participation of the child and parent or guardian. The child's level of participation is based on age, developmental and clinical appropriateness. The assessment must include all related diagnoses from the most recent DSM edition. The assessment must contain but is not limited to the following:

- (i) Date, to include month, day and year of the assessment session(s);
- (ii) Source of information;
- (iii) Member's first name, middle initial and last name;
- (iv) Gender;
- (v) Birth date;
- (vi) Home address;
- (vii) Telephone number;
- (viii) Referral source;
- (ix) Reason for referral;
- (x) Person to be notified in case of emergency;
- (xi) Presenting reason for seeking services;
- (xii) Start and stop time for each unit billed;
- (xiii) Dated signature of parent or guardian participating in the face to face assessment. Signatures are required for members over the age of fourteen (14);
- (xiv) Bio Psychosocial information which must include:
 - (I) Identification of the member's strengths, needs, abilities and preferences;
 - (II) History of the presenting problem;
 - (III) Previous psychiatric treatment history, include treatment for psychiatric; substance

use; drug and alcohol addiction; and other addictions;

(IV) Health history and current biomedical conditions and complications;

(V) Alcohol, drug, and/or other addictions history;

(VI) Trauma, abuse, neglect, violence, and/or sexual assault history of self and/or others, including Department of Human Services (DHS) involvement;

(VII) Family and social history including psychiatric, substance use, drug and alcohol addiction, other addictions, and trauma/abuse/neglect;

(VIII) Educational attainment, difficulties and history;

(IX) Cultural and religious orientation;

(X) Vocational, occupational and military history;

(XI) Sexual history, including HIV, AIDS, and STD at risk behaviors;

(XII) Marital or significant other relationship history;

(XIII) Recreation and leisure history;

(XIV) Legal or criminal record, including the identification of key contacts, (e.g. attorneys, probation officers);

(XV) Present living arrangements;

(XVI) Economic resources; and

(XVII) Current support system, including peer and other recovery supports.

(xv) Mental status and Level of Functioning information, including questions regarding but not limited to the following:

(I) Physical presentation, such as general appearance, motor activity, attention and alertness;

(II) Affective process, such as mood, affect, manner and attitude;

(III) Cognitive process, such as intellectual ability, social adaptive behavior, thought processes, thought content, and memory; and

(IV) All related diagnoses from the most recent addition of the DSM.

(xvi) Pharmaceutical information to include the following for both current and past medications;

(I) Name of medication;

(II) Strength and dosage of medication;

(III) Length of time on the medication; and

(IV) Benefit(s) and side effects of medication.

(xvii) LBHP's interpretation of findings and diagnosis;

(xviii) Dated signature and credentials of the qualified practitioner who performed the face to face behavioral assessment. If performed by a licensure candidate, it must be countersigned

by the licensed behavioral health professional who is responsible for the member's care.

(2) **Individual plan of care requirement.**

(A) **Signature Requirement.** A written individual plan of care following a comprehensive evaluation for each member must be formulated by the provider agency staff within thirty (30) days of admission with documented input from the member, legal guardian (OKDHS/Office of Juvenile Affairs (OJA) staff), the foster parent (when applicable) and the treatment provider(s). An individual plan of care is not valid until all dated signatures are present, including signatures from the member (if fourteen (14) or over), the legal guardian, the foster parent (when applicable) and the treatment provider(s). If necessary, an individual plan of care may be faxed to a required signatory to have them review, sign and fax it back to the provider before its implementation; however, the provider must obtain the original signature for the clinical file within thirty (30) days. No stamped or photocopied signatures are allowed. This plan must be revised and updated every three (3) months with documented involvement of the legal guardian and resident.

(B) **Individualization.** The individual plan of care must be individualized and take into account the member's age, history, diagnosis, assessed functional levels, culture, and the effect of past and current traumatic experiences in the life of the member. It includes the member's documented diagnosis, appropriate goals, and corresponding reasonable and attainable objectives and action steps within the expected time lines. Each member's individual plan of care is to also address the provider agency's plans with regard to the provision of services. Each plan of care must clearly identify the type of services required to meet the child's treatment needs and frequency over a given period of time.

(C) **Qualified professional.** This service is performed by an LBHP or Licensure Candidate.

(D) **Time requirements.** Individual plan of care updates must be conducted face to face and are required every three (3) months during active treatment. However, updates can be conducted whenever it is clinically needed as determined by the qualified practitioner and member.

(E) **Documentation requirements.** Comprehensive and integrated service plan content must address the following:

- (i) member strengths, needs, abilities, and preferences (SNAP);
- (ii) identified presenting challenges, problems, needs and diagnosis;
- (iii) specific goals for the member;
- (iv) objectives that are specific, attainable, realistic, and time limited;
- (v) each type of service and estimated frequency to be received;

(vi) the practitioner(s) name and credentials that will be providing and responsible for each service;

(vii) any needed referrals for service;

(viii) specific discharge criteria; and

(ix) description of the member's involvement in, and responses to, the treatment plan, and his/her signature and date.

(F) **Amendments.** Amendment of an existing individual plan of care to revise or add goals, objectives, service provider, service type, and service frequency, must be documented in either a scheduled three (3) month plan update or within the existing individual plan of care through an addendum until the review/update is due. Any changes must, prior to implementation, be signed and dated by the member (if fourteen (14) or over), the legal guardian, the foster parent (if applicable), as well as the primary LBHP and any new provider(s). Individual plan of care updates must address the following:

(i) update to the bio psychosocial assessment, re-evaluation of diagnosis, individual plan of care goals and/or objectives;

(ii) progress, or lack of, on previous individual plan of care goals and/or objectives;

(iii) a statement documenting a review of the current individual plan of care and an explanation if no changes are to be made to the individual plan of care and a statement addressing the status of identified problem behaviors that lead to placement must be included;

(iv) change in goals and/or objectives (including target dates) based upon member's progress or identification of new need, challenges and problems;

(v) change in frequency and/or type of services provided;

(vi) change in practitioner(s) who will be responsible for providing services on the plan;

(vii) change in discharge criteria;

(viii) description of the member's involvement in, and responses to, the treatment plan, and his/her signature and date.

(3) **Description of Services.** Agency services include:

(A) **Individual, family and group therapy.** See OAC 317:30-5-241.2(a), (b), and (c).

(B) **Crisis/behavior management and redirection.** The provider agency must provide crisis/behavior redirection by agency staff as needed twenty four (24) hours per day, seven (7) days per week. The agency must ensure staff availability to respond to the residential foster parents in a crisis to stabilize members' behavior and prevent placement disruption. This service is to be provided to the member by an LBHP.

(C) **Discharge planning.** The provider agency must develop a discharge plan for each member. The discharge plan must be individualized, child specific

and include an after care plan that is appropriate to the member's needs, identifies the member's needs, includes specific recommendations for follow up care and outlines plans that are in place at the time of discharge. The plan for children in parental custody must include, when appropriate, reunification plans with the parent(s)/legal guardian. The plan for children who remain in the custody of the OKDHS or the OJA must be developed in collaboration with the case worker and in place at the time of discharge. The discharge plan is to include at a minimum, recommendations for continued treatment services, educational services, and other appropriate community resources. Discharge planning provides a transition from foster care placement into a lesser restrictive setting within the community.

(D) Substance use/chemical dependency use therapy. Substance use/chemical dependency therapy can be provided if a member is identified by diagnosis or documented social history as having emotional or behavioral problems directly related to substance use and/or chemical dependency. The modalities employed are provided in order to begin, maintain and enhance recovery from alcoholism, problem drinking, addiction or nicotine use and addiction. This service is to be provided to the member by an LBHP or Licensure Candidate.

(E) Substance Use Rehabilitation Services. Covered substance use rehabilitation services are provided in non-residential settings in regularly scheduled sessions intended for individuals not requiring a more intensive level of care or those who require continuing services following more intensive treatment regimes. The purpose of substance use rehabilitation services is to begin, maintain, and/or enhance recovery from alcoholism, problem drinking, drug use, drug dependency addiction or nicotine use and addiction. Rehabilitation services may be provided individually or in group sessions, and they take the format of an agency approved curriculum based education and skills training. This service is to be provided to the member by a CM II.

(F) Psychosocial rehabilitation (PSR).

(i) Definition. PSR services are face to face Behavioral Health Rehabilitation services which are necessary to improve the member's ability to function in the community. They are performed to improve the skills and abilities of members to live interdependently in the community, improve self care and social skills, and promote lifestyle change and recovery practices. Rehabilitation services may be provided individually or in group sessions, and they take the format of an agency approved curriculum based education and skills training.

(ii) Clinical Restrictions. This service is generally performed with only the members and the qualified provider, but may include a member and

the member's family/support system group that focuses on the member's diagnosis, symptom management, and recovery based curriculum. A member who at the time of service is not able to cognitively benefit from the treatment due to active hallucinations, substance use, or other impairments is not suitable for this service. Family involvement is allowed for support of the member and education regarding his/her recovery, but does not constitute family therapy, which requires a licensed provider.

(iii) Qualified Practitioners. CM II, LBHP or a Licensure Candidate and LBHP may perform PSR, following development of an individual plan of care curriculum approved by an LBHP or Licensure Candidate. PSR staff must be appropriately and currently trained in a recognized behavioral/management intervention program such as MANDT or Controlling Aggressive Patient Environment (CAPE) or trauma informed methodology. The CM II must have immediate access to an LBHP who can provide clinical oversight of the CM II and collaborate with the CM II in the provision of services. A minimum of one (1) monthly face to face consultation with an LBHP is required.

(iv) Group Sizes. The maximum staffing ratio is eight (8) to one (1) for children under the age of eighteen (18).

(v) Limitations.

(I) In order to develop and improve the member's community and interpersonal functioning and self care abilities, PSR services may take place in settings away from the behavioral health agency site as long as the setting protects and assures confidentiality. When this occurs, the qualified provider must be present and interacting, teaching, or supporting the defined learning objectives of the member for the entire claimed time.

(II) PSR services are intended for children with Serious Emotional Disturbance (SED), and children with other emotional or behavioral disorders. Children under age six (6), unless a prior authorization for children ages four (4) and five (5) has been granted by OHCA or its designated agent based on a finding of medical necessity, are not eligible for PSR services.

(III) PSR services are time limited services designed to be provided over the briefest and most effective period possible and as adjunct (enhancing) interventions to complement more intensive behavioral health therapies. Service limits are based on the member's needs according to the Client Assessment Record (CAR) or other approved tool, the requested placement based on the level of functioning rating, medical necessity, and best practice. Service limitations are designed to help prevent rehabilitation

diminishing return by remaining within reasonable age and developmentally appropriate daily limits.

(vi) **Progress Notes.** In accordance with OAC 317:30-5-241.1, the behavioral health individual plan of care developed by the LBHP must include the member's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time limited, and defines the services to be performed by the practitioners and others who comprise the treatment team. When PSR services are prescribed, the plan must address objectives that are specific, attainable, realistic, measurable, and time limited. The plan must include the appropriate treatment coordination to achieve the maximum reduction of the mental and/or behavioral health disability and to restore the member to their best possible functional level.

(I) Start and stop times for each day attended and the physical location in which the service was rendered;

(II) Specific goal(s) and objectives addressed during the session/group;

(III) Type of Skills Training provided each day and/or during the week including the specific curriculum used with member;

(IV) Member satisfaction with staff intervention(s);

(V) Progress, or barriers made towards goals, objectives;

(VI) New goal(s) or objective(s) identified;

(VII) Dated signature of the qualified provider; and

(VIII) Credentials of the qualified provider;

(vii) **Additional documentation requirements.** Documentation of ongoing consultation and/or collaboration with an LBHP or Licensure Candidate related to the provision of PSR services.

(viii) **Non-Covered Services.** The following services are not considered PSR and are not reimbursable:

(I) room and board;

(II) educational costs;

(III) supported employment; and

(IV) respite.

(G) **Social skills redevelopment.** Goal directed activities for each member to restore, retain and improve the self help, communication, socialization, and adaptive skills necessary to reside successfully in home and community based settings. These will be daily activities that are age appropriate, culturally sensitive and relevant to the goals of the individual plan of care. These may include self esteem enhancement, violence alternatives, communication skills or other related skill development. This service is to be provided to the member by the Treatment

Parent Specialist (TPS). Services rendered by the TPS are limited to one and one half (1.5) hours daily.

All behavioral health services in a TFC setting are provided as a result of an individual assessment of the member's needs and documented in the IPC.

(1) **Assessment.**

(A) **Definition.** Gathering and assessment of historical and current bio-psycho-social information which includes face-to-face contact with the member and the member's foster parent(s) or legal guardian or other person, including biological parent(s) when applicable, who have pertinent information about the member resulting in a written summary report, diagnosis, and recommendations. All TFC agencies must assess each individual to determine whether he or she could be an appropriate candidate for TFC services.

(B) **Qualified professional.** This service is performed by a licensed behavioral health professional (LBHP) or licensure candidate.

(C) **Limitations.** Assessments are compensable on behalf of a member who is seeking services for the first time from the TFC agency. This service is not compensable if the member has previously received or is currently receiving services from the agency, unless there has been a gap in service of more than six (6) months and it has been more than one (1) year since the previous assessment.

(D) **Documentation requirements.** The assessment must include all elements and tools required by the OHCA. In the case of members under the age of eighteen (18), it is performed with the direct, active, face-to-face participation of the member and foster parent(s) or legal guardian or other persons, including biological parent(s) when applicable. The member's level of participation is based on age, developmental, and clinical appropriateness. The assessment must include all related diagnoses from the Diagnostic and Statistical Manual of Mental Disorders (DSM-V). The assessment must contain, but is not limited to, the following:

(i) Date, to include month, day, and year of the assessment session(s);

(ii) Source of information;

(iii) Member's first name, middle initial, and last name;

(iv) Gender;

(v) Birth date;

(vi) Home address;

(vii) Telephone number;

(viii) Referral source;

(ix) Reason for referral;

(x) Person to be notified in case of emergency;

(xi) Presenting reason for seeking services;

(xii) Start and stop time for each unit billed;

(xiii) Dated signature of foster parent(s) or legal guardian [Oklahoma Department of Human Services (OKDHS) or Oklahoma Office of Juvenile

Affairs (OJA)] or other persons, including biological parents(s) (when applicable) participating in the face-to-face assessment. Signatures are required for members fourteen (14) years of age and over;

(xiv) Bio-psychosocial information which must include:

- (I) Identification of the member's strengths, needs, abilities, and preferences;
- (II) History of the presenting problem;
- (III) Previous psychiatric treatment history, including treatment of psychiatric issues, substance use, drug and alcohol addiction, and other addictions;
- (IV) Health history and current biomedical conditions and complications;
- (V) Alcohol, drug, and/or other addictions history;
- (VI) Trauma, abuse, neglect, violence, and/or sexual assault history of self and/or others, including OKDHS involvement;
- (VII) Family and social history, including psychiatric, substance use, drug and alcohol addiction, other addictions, and trauma/abuse/neglect;
- (VIII) Educational attainment, difficulties, and history;
- (IX) Cultural and religious orientation;
- (X) Vocational, occupational, and military history;
- (XI) Sexual history, including human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), other sexually transmitted diseases (STDs), and at-risk behaviors;
- (XII) Marital or significant other relationship history;
- (XIII) Recreation and leisure history;
- (XIV) Legal or criminal record, including the identification of key contacts (e.g. attorneys, probation officers);
- (XV) Present living arrangements;
- (XVI) Economic resources; and
- (XVII) Current support system, including peer and other recovery supports.

(xv) Mental status and level of functioning information, including, but not limited to, questions regarding the following:

- (I) Physical presentation, such as general appearance, motor activity, attention, and alertness;
- (II) Affective process, such as mood, affect, manner, and attitude;
- (III) Cognitive process, such as intellectual ability, social-adaptive behavior, thought processes, thought content, and memory; and
- (IV) All related diagnoses from the DSM-V.

(xvi) Pharmaceutical information for both current and past medications, to include the following:

- (I) Name of medication;
- (II) Strength and dosage of medication;
- (III) Length of time on the medication; and
- (IV) Benefit(s) and side effects of medication.

(xvii) LBHP's interpretation of findings and diagnosis; and

(xviii) Dated signature and credentials of the qualified practitioner who performed the face-to-face behavioral assessment. If performed by a licensure candidate, it must be countersigned by the LBHP who is responsible for the member's care.

(2) **IPC requirements.**

(A) **Signature requirement.** A written IPC following a comprehensive evaluation for each member must be formulated by the TFC agency staff within thirty (30) days of admission to the program with documented input from the member, the legal guardian (OKDHS/ OJA), the foster parent(s), the treatment provider(s), and the biological parent(s) when applicable. An IPC is not valid until all dated signatures are present, including signatures from the member [if fourteen (14) years of age and over], the legal guardian, the foster parent, and the treatment provider (s). If the service is performed by a licensure candidate, it must be countersigned by the LBHP who is responsible for the member's care. This plan must be revised and updated every three (3) months with documented involvement of the legal guardian and member.

(B) **Individualization.** The IPC must be individualized and take into account the member's age, history, diagnosis, assessed functional levels, culture, and the effect of past and current traumatic experiences in the life of the member. It includes the member's documented diagnosis, appropriate goals, and corresponding reasonable and attainable treatment objectives, and action steps within the expected timelines. Each member's IPC needs to address the TFC agency's plans with regard to the provision of services. Each plan of care must clearly identify the type of services required to meet the member's treatment needs and frequency over a given period of time.

(C) **Qualified professional.** This service is performed by an LBHP or licensure candidate.

(D) **Time requirements.** IPC updates must be conducted face-to-face and are required at least every ninety (90) days during active treatment. However, updates can be conducted whenever it is clinically needed, as determined by the qualified practitioner and member.

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(E) **Documentation requirements.** Comprehensive and integrated service plan content must identify:

- (i) Member strengths, needs, abilities, and preferences (SNAP);
- (ii) Identified presenting challenges, problems, needs, and diagnosis;
- (iii) Specific goals for the member;
- (iv) Objectives that are specific, attainable, realistic, and time-limited;
- (v) Each type of service and estimated frequency to be received;
- (vi) The name and credentials of all the practitioners who will be providing and responsible for each service;
- (vii) Any needed referrals for service;
- (viii) Specific discharge criteria; and
- (ix) Member's involvement in, and responses to, the treatment plan, and his/her signature and date [if fourteen (14) years of age and over].

(F) **Amendments and updates.** Amendment of an existing IPC to revise or add goals, objectives, service provider(s), service type, and service frequency, must be documented in either a scheduled three (3) month plan update or within the existing IPC through an addendum until the review/update is due. Any changes must, prior to implementation, be signed and dated by the member [if fourteen (14) years of age and over], the legal guardian, the foster parent, as well as the primary LBHP and any new provider(s). If the service is performed by a licensure candidate, it must be countersigned by the LBHP who is responsible for the member's care. IPC updates must address the following:

- (i) Update to the bio-psychosocial assessment, re-evaluation of diagnosis, and IPC goals and/or objectives;
- (ii) Progress, or lack of, on previous IPC goals and/or objectives;
- (iii) A statement documenting a review of the current IPC, and, if no changes are needed, an explanation and a statement addressing the status of the identified problem behavior that led to TFC placement must be included;
- (iv) Change in goals and/or objectives (including target dates) based upon member's progress or identification of new needs, challenges, and problems;
- (v) Change in frequency and/or type of services provided;
- (vi) Change in practitioner(s) who will be responsible for providing services on the plan;
- (vii) Change in discharge criteria; and
- (viii) Description of the member's involvement in, and responses to, the treatment plan, and his/her signature and date [if fourteen (14) years of age and over] Refer to Oklahoma Administrative Code (OAC) 317:30-5-742.2. (2)(A).

(3) **Description of services.** Agency services include:

(A) **Individual, family, and/or group therapy.** See Oklahoma Administrative Code (OAC) 317:30-5-241.2(a), (b), and (c). A member must receive one (1) hour of individual, family, and/or group therapy each week that is provided by an LBHP or licensure candidate, and may receive up to two (2) hours each week, if medically needed.

(B) **Crisis intervention.** The provider agency must provide crisis intervention by agency staff as needed twenty-four (24) hours per day, seven (7) days per week. The agency must ensure staff availability to respond to the residential foster parent(s) in a crisis to stabilize a member's behavior and prevent placement disruption. This service is to be provided to the member by an LBHP or a licensure candidate. The licensure candidate must have immediate access to an LBHP who can provide oversight of the licensure candidate and conduct an emergency detention evaluation.

(C) **Discharge planning.** The TFC agency must develop a discharge plan for each member. The discharge plan must be individualized, member-specific, and include an after care plan that is appropriate to the member's needs, identifies the member's needs, includes specific recommendations for follow-up care, and outlines plans that are in place at the time of discharge. The plan for members in parental custody must include, when appropriate, reunification plans with the parent(s)/legal guardian. The plan for members who remain in the custody of OKDHS or OJA must be developed in collaboration with the case worker and finalized at the time of discharge. The discharge plan is to include, at a minimum, recommendations for continued treatment services, educational services, and other appropriate community resources. Appointments for outpatient therapy and medication management (when applicable) should be scheduled prior to discharge. Discharge planning provides a transition from TFC placement into a less restrictive setting within the community. Discharge planning is performed in partnership between Child Welfare Services (CWS) of the OKDHS and an LBHP within the TFC agency.

(D) **Substance use/chemical dependency use therapy.** Substance use/chemical dependency therapy can be provided if a member is identified by diagnosis or documented social history as having emotional or behavioral problems directly related to substance use and/or chemical dependency. The modalities employed are provided in order to begin, maintain, and enhance recovery from problem drinking, alcoholism, nicotine use and addiction, and/or drug use, drug dependency, and/or drug addiction. This service is to be provided to the member by an LBHP or licensure candidate.

(E) **Substance use rehabilitation services.** Covered substance use rehabilitation services are

provided in non-residential settings in regularly scheduled sessions intended for individuals not requiring a more intensive level of care or those who require continuing services following more intensive treatment regimes. The purpose of substance use rehabilitation services is to begin, maintain, and/or enhance recovery from problem drinking, alcoholism, nicotine use and addiction, and/or drug use, drug dependency, and/or drug addiction. Rehabilitation services may be provided individually or in group sessions, and they take the format of an agency-approved, curriculum-based education and skills training. This service is to be provided to the member by a certified behavioral health case manager (CM) II, certified alcohol drug counselor (CADC) or LBHP.

(F) Psychosocial rehabilitation (PSR).

(i) Definition. PSR services are face-to-face behavioral health rehabilitation services which are necessary to improve the member's ability to function in the community. They are performed to improve the skills and abilities of members to live independently in the community, improve self-care and social skills, and promote lifestyle change and recovery practices. Rehabilitation services may be provided individually or in group sessions, and they take the format of an agency-approved, curriculum-based education, and skills training.

(ii) Clinical restrictions. This service is generally performed with only the member and the qualified provider, but may also include a member and the member's family/support system group that focuses on the member's diagnosis, symptom management, and recovery based curriculum. A member who, at the time of service, is not able to cognitively benefit from the treatment due to active hallucinations and/or substance use, or other impairments is not suitable for this service. Family involvement is allowed for support of the member and education regarding his/her recovery, but does not constitute family therapy, which requires an LBHP or licensure candidate.

(iii) Qualified practitioners. A CM II, an LBHP, or a licensure candidate may perform PSR, following development of an IPC curriculum approved by an LBHP or licensure candidate. The CM II must have immediate access to an LBHP who can provide clinical oversight of the CM II and collaborate with the CM II in the provision of services. A minimum of one (1) monthly face-to-face consultation with an LBHP is required.

(iv) Group sizes. The maximum staffing ratio is eight (8) members to one (1) practitioner for members under the age of twenty-one (21).

(v) Limitations.

(I) In order to develop and improve the member's community and interpersonal functioning and self-care abilities, PSR services may take place in settings away from the behavioral health agency site as long as the setting protects and assures confidentiality. When this occurs, the qualified provider must be present and interacting, teaching, or supporting the defined learning objectives of the member for the entire claimed time.

(II) PSR services are intended for children with Serious Emotional Disturbance (SED), and children with moderate behavioral and emotional health needs who may also have a secondary physical, developmental, intellectual, and/or social disorder that is supported alongside the mental health needs. Members, ages four (4) and five (5), are not eligible for PSR services unless a prior authorization has been granted by OHCA or its designated agent based on a finding of medical necessity.

(III) PSR services are time-limited services designed to be provided over the briefest and most effective period possible and as adjunct (enhancing) interventions to complement more intensive behavioral health therapies. Service limits are based on the member's needs according to the Client Assessment Record (CAR) or other approved tools. Service limitations are designed to maximize efficacy by remaining within reasonable age and developmentally appropriate daily limits.

(vi) Progress notes. In accordance with OAC 317:30-5-241.1, the behavioral health IPC developed by the LBHP or licensure candidate must include the member's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives, and methodologies that are specific and time-limited, and defines the services to be performed by the practitioners and others who comprise the treatment team. When PSR services are prescribed, the plan must address objectives that are specific, attainable, realistic, measurable, and time-limited. The plan must include the appropriate treatment coordination to achieve the maximum reduction of the moderate behavioral and emotional health conditions, and any other secondary physical, developmental, intellectual, and/or social disorder and to restore the member to his or her best possible functional level. Progress notes for PSR services must include:

(I) Start and stop times for each day attended and the physical location in which the service was rendered;

(II) Specific goal(s) and objectives addressed during the session/group;

- (III) Type of skills training provided each day and/or during the week including the specific curriculum used with the member;
 - (IV) Member satisfaction with staff intervention(s);
 - (V) Progress, towards attaining, or barriers affecting the attainment of, goals and objectives;
 - (VI) New goal(s) or objective(s) identified;
 - (VII) Dated signature of the qualified provider; and
 - (VIII) Credentials of the qualified provider.
- (vii) **Additional documentation requirements.** Documentation of ongoing consultation and/or collaboration with an LBHP or licensure candidate related to the provision of PSR services.
- (G) **Therapeutic behavioral services (TBS).** Goal directed social skills redevelopment activities for each member to restore, retain, and improve the self-help, communication, socialization, and adaptive skills necessary to reside successfully in home and community based settings. These will be daily activities that are age appropriate, culturally sensitive, and relevant to the goals of the IPC. These may include self-esteem enhancement, violence alternatives, communication skills, or other related skill development. This service is to be provided to the member by the treatment parent specialist (TPS). Services rendered by the TPS are limited to one and one half (1.5) hours daily.

317:30-5-743.1. Service Quality Reviewquality review (SQR)

There will be an ~~on-site~~ Service Quality Review (SQR) performed by the ~~OHCA~~Oklahoma Health Care Authority (OHCA) or its designated agent of each ~~Therapeutic Foster Care (TFC)~~TFC agency that provides care to members. The OHCA will designate the members of the ~~SQR Team~~team. This team will consist of at least two ~~(2)~~ team members and will be comprised of ~~Licensed Behavioral Health Professionals and/or Registered Nurses~~licensed behavioral health professionals (LBHPs) and/or registered nurses (RNs). The SQR will consist of a survey of current members receiving services, as well as members for which claims have been filed with OHCA for TFC services. Observation and contact with members may be incorporated. The review includes validation of certain factors, all of which must be met for the services to be compensable. Following the ~~on-site inspection~~review, the ~~SQR Team~~team will report its findings to the ~~TFC~~ agency. The ~~TFC~~ agency will be provided with written notification if the findings of the SQR have resulted in any deficiencies. A copy of the final report will be sent to the ~~TFC~~ agency's accrediting body. Deficiencies found during the SQR may result in a recoupment of the compensation received for that service. The individual plan of care (IPC) is considered to be critical to the integrity of care and treatment and must be completed within the ~~time lines~~timelines designated at ~~OAC~~Oklahoma Administrative Code (OAC) 317:30-5-742.2. If the individual

~~plan of care~~IPC is missing, or it is found that the ~~child~~member did not meet medical necessity criteria at any time, all paid services will be recouped for each day the ~~individual plan of care~~IPC was missing from the date the plan of care was due for completion or the date from which medical necessity criteria was no longer met.

317:30-5-744. Billing

- (a) Claims must be submitted in accordance with guidelines found at ~~OAC~~Oklahoma Administrative Code (OAC) 317:30-3-11 and, 317:30-3-11.1, and 317:30-3-20.
- (b) Claims for dually eligible individuals (Medicare/Medicaid) should be filed directly with the ~~OHCA~~Oklahoma Health Care Authority (OHCA).

317:30-5-745. Documentation of records

~~All services must be reflected by documentation in the records including the date the service was provided, the beginning and ending time the service was provided, the location in which the service was provided, a description of the resident's response to the service and whether the service provided was an individual, group or family session, group rehabilitative treatment, social skills (re)development, basic living skills (re)development, crisis behavior management and redirection, or discharge planning, and the dated signature with credentials of the person providing the service.~~

Providers must maintain an appropriate records system. Current individual plans of care, case files, and progress notes are maintained in the provider's files during the time the member is receiving services. All services must be reflected by documentation in the records. Documentation of services must include all of the following:

- (1) The date the service was provided;
- (2) The beginning and ending time the service was provided;
- (3) A description of the member's response to the service;
- (4) The type of service provided (individual, group, or family session; group rehabilitative treatment; social skills (re)development; basic living skills (re)development; crisis behavior management and redirection; or discharge planning); and
- (5) The dated signature with credentials of the person providing the service. If the service is performed by a licensure candidate, it must be countersigned by the licensed behavioral health professional (LBHP) who is responsible for the member's care. Refer to Oklahoma Administrative Code (OAC) 317:30-5-742.2. (2)(A).

317:30-5-746. Appeal of Prior Authorization DecisionPrior authorization and appeal of prior authorization decision

If a denial decision is made, an appeal may be initiated by the member or the member's legal guardian. The denial can be appealed to the Oklahoma Health Care Authority within thirty (30) calendar days of the receipt of the notification of the denial by the OHCA or its designated agent.

(a) All behavioral health services must be prior authorized by the Oklahoma Health Care Authority (OHCA) or its designated agent before the service is rendered by an eligible provider. Without prior authorization, payment is not authorized.

(b) If a denial decision is made, an appeal may be initiated by the member or the member's legal guardian. The denial can be appealed to the OHCA within thirty (30) calendar days of the receipt of the notification of the denial by the OHCA or its designated agent.

PART 84. INTENSIVE TREATMENT FAMILY CARE

317:30-5-750. Definitions

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

"Intensive treatment family care (ITFC) agency" means an agency that provides foster care as defined in Section 1355.20 of Title 45 of the Code of Federal Regulation, as twenty-four (24) hour substitute care for children placed away from their parents or guardians and for whom the title IV-E agency has placement and care responsibility. ITFC settings are foster family homes.

"Intensive treatment family care (ITFC) home" means an agency-supervised, private family home in which foster parents [at least one (1) parent must be a stay-at home parent] have been trained to provide individualized, structured services in a safe, nurturing family-living environment. These services are provided to children with severe behavioral and emotional health needs. They may also present a secondary physical, developmental, intellectual, and/or social disorder that is supported alongside the mental health needs of the member. These members require a higher level of care that cannot be provided in the traditional foster care or TFC home. ITFC homes provide the higher level of care needed for these children and help prevent placement in a more restrictive setting, including an inpatient setting.

"Intensivetreatment family care (ITFC) model" means a model in which children in the ITFC environment receive intensive individualized behavioral health and other support services from qualified staff. Because ITFC members require exceptional levels of skill, time, and supervision, the number of unrelated children placed per home is limited; no more than one (1) ITFC member may be placed in a home at any one (1) time unless additional cases are specifically authorized by Child Welfare Services (CWS) of the Oklahoma Department of Human Services (OKDHS), or Oklahoma Office of Juvenile Affairs (OJA).

317:30-5-750.1. Eligible providers and requirements

(a) **ITFC agency.** Eligible ITFC agencies must have:

(1) Current certification from the Oklahoma Department of Human Services (OKDHS) as a child placing agency;

(2) A contract with the Child Welfare Division of OKDHS, or Oklahoma Office of Juvenile Affairs (OJA);

(3) A contract with the Oklahoma Health Care Authority (OHCA); and

(4) A current accreditation status appropriate to provide behavioral health services in a foster care setting from:

(A) The Joint Commission; or

(B) The Commission on Accreditation of Rehabilitative Facilities (CARF); or

(C) The Council on Accreditation (COA).

(b) **Treatment team.** ITFC agencies are primarily responsible for treatment planning and coordination of the member's treatment team. This team is typically composed of an OKDHS or OJA caseworker, the member, the member's foster parent(s), as well as others closely involved with the member and family, including the biological parents when applicable.

(1) The team must include the following providers:

(A) **Licensed behavioral health professional (LBHP).** A master's level professional who provides treatment and supervises other treatment staff in maintaining clinical standards of care and providing direct clinical services. In addition to the requirements at OAC 317:30-5-240.3(a), the LBHP in an ITFC setting must demonstrate a general professional or educational background in the following areas:

(i) Case management, assessment, and treatment planning;

(ii) Treatment of victims of physical, emotional, and sexual abuse;

(iii) Treatment of children with attachment disorders;

(iv) Treatment of children with hyperactivity or attention deficit disorders;

(v) Treatment methodologies for emotionally disturbed children;

(vi) Normal childhood development and the effect of abuse and/or neglect on childhood development;

(vii) Anger management;

(viii) Crisis intervention; and

(ix) Trauma-informed methodology.

(B) **Treatment parent specialist (TPS).** The TPS serves as an integral member of the team of professionals providing services for the members. The TPS receives extensive training in diagnosed mental health issues, and behavior management/modification and skill-based parenting techniques; and implements the in-home portion of the treatment plan with close supervision and support. The TPS renders services for the member, provides or arranges suitable transportation for therapy and other treatment appointments, writes daily detailed notes regarding interventions and practical applications of learned skills, and attends treatment team meetings. The TPS must be under the supervision of an LBHP of the ITFC agency and meet the following criteria:

(i) **Qualifications.**

(I) Have a high school diploma or equivalent, and either some post-secondary education and/or a combination of at least two (2) years of personal/professional experience working with children with significant needs;

(II) Have an employment and/or contractual relationship with the ITFC agency as a foster parent, and have successfully met all required background screening requirements, including, but not limited to, fingerprint screenings conducted by the Oklahoma State Bureau of Investigation (OSBI) and Federal Bureau of Investigation (FBI), and OKDHS background screenings;

(III) Completed all evidence-informed ITFC foster parent training, as outlined in this Section;

(IV) Complete a minimum of twenty (20) hours of required annual continuing education trainings. Six (6) hours of the twenty (20) training hours must be clinical in nature;

(V) Agree to have at least one (1) parent in the ITFC home serve as a full-time, stay-at-home parent in order to sufficiently meet the significant needs of the member placed in the ITFC home; and

(ii) **Responsibilities.**

(I) Have a minimum of twice monthly face-to-face supervision with the LBHP, independent of the member's family therapy;

(II) Have weekly contact with the ITFC agency professional staff;

(III) Utilize individualized curriculum-based education and support materials with the member to support the member's skill development outside of the clinical setting;

(IV) Agree, by contract with the ITFC agency, to serve the member in his or her ITFC home through completion of the treatment designated on his or her individual plan of care (IPC), and without disruption to the service array; and

(V) Work with the multidisciplinary team and the member's biological family toward reunification, if appropriate, or other permanency plan.

(2) The team may also include the following providers:

(A) **Certified alcohol and drug counselor (CADC).** A bachelor's level team member with a current certification as a CADC in the state in which services are provided.

(B) **Certified behavioral health case manager (CM) II.** A bachelor's level team member who may provide support services and case management. In addition to the minimum requirements at Oklahoma Administrative Code (OAC) 317:30-5-240.3(h)(1), the CM II must:

(i) Have a minimum of one (1) year of experience in providing direct care and/or treatment to children and/or families; and

(ii) Have access to weekly consultation with a licensed behavioral health professional (LBHP).

(iii) The CM II must also follow requirements at OAC 317:30-5-241.3 for providing psychosocial rehabilitation (PSR) services.

(C) **Licensed psychiatrist and/or psychologist.** ITFC agencies must provide staff with access to professional psychiatric or psychological consultation as deemed necessary for the planning, implementation, and appropriate management of the member's treatment. See OAC 317:30-5-240.3(a) and 317:25-7-5.

(c) **Agency assurances.** The ITFC agency must ensure that each individual who renders treatment services meets the minimum provider qualifications for the service and is fully contracted with the OHCA. Additionally, the ITFC agency must comply with all state and federal Medicaid law, including, but not limited to, OHCA administrative rules, the Code of Federal Regulations (C.F.R.), and the Oklahoma State Medicaid Plan.

(d) **Policies and procedures.** Eligible ITFC agencies shall have written policies and procedures for the orientation of new staff and foster parents which is reviewed and updated annually, for the following:

(1) Pre-service training of foster parents in treatment methodologies and service needs of emotionally and behaviorally disturbed children;

(2) Treatment of victims of physical, emotional, and sexual abuse;

(3) Treatment of children with attachment disorders;

(4) Treatment of children with hyperactive or attention deficit disorders;

(5) Normal childhood development and the effect of abuse and/or neglect on childhood development;

(6) Treatment of children and families with substance use disorders;

(7) The Inpatient Mental Health and Substance Abuse Treatment of Minors Act;

(8) Anger management;

(9) Inpatient authorization procedures;

(10) Crisis intervention;

(11) Grief and loss issues for children in foster care;

(12) The significance/value of birth families to children receiving behavioral health services in a foster care setting; and

(13) Trauma-informed methodology.

317:30-5-750.2. Provider selection

Parents who retain legal custody of an ITFC member may select any eligible ITFC agency as the provider of services. In the case of members in the custody of the State of Oklahoma, the State, acting in its custodial role, selects the ITFC agency.

317:30-5-751. Coverage by category

(a) **Adults.** Behavioral health services in ITFC settings are not covered for adults.

(b) **Children.** Behavioral health services are allowed in ITFC settings for children under twenty-one (21) as medically necessary. Members receiving services in this setting have severe behavioral and emotional health needs and may also present a secondary physical, developmental, intellectual, and/or social disorder that is supported alongside the mental health needs. ITFC homes provide the higher level of care needed for these children and help prevent placement in an inpatient or more restrictive setting. The designated members must continually meet medical necessity criteria to be eligible for coverage in this setting. Requests for behavioral health services in an ITFC setting must be prior authorized and may be approved up to a maximum of three (3) month extensions.

(c) **Medical necessity criteria.** In order to satisfy medical necessity criteria, all of the following conditions must be met:

(1) The member must have a diagnosis from the Diagnostic and Statistical Manual of Mental Disorders (DSM-V), with the exception of V codes and adjustment disorders, with a detailed description of the symptoms supporting the diagnosis. Members with a provisional diagnosis may receive ITFC services for a maximum of thirty (30) days.

(2) An assessment must be completed by a licensed behavioral health professional (LBHP) as defined in Oklahoma Administrative Code (OAC) 317:30-5-240.3(a) within the thirty (30) day provisional period described above, that confirms a diagnosis from the DSM-V with the exception of V codes and adjustments disorders, and that includes a detailed description of the symptoms supporting the diagnosis to continue treatment in an ITFC setting.

(3) Conditions are directly attributed to a primary medical diagnosis of a severe behavioral and emotional health need, and may also be attributed to a secondary medical diagnosis of a physical, developmental, intellectual and/or social disorder that is supported alongside the mental health needs.

(4) The current disabling symptoms could not have been/have not been manageable in a less intensive treatment program, or the level of care is warranted in order to reduce the risk of regression of symptoms and/or sustain the gains made at a higher level of care.

(5) Evidence that the members' needs prohibit full integration in a family/home setting without the availability of twenty-four (24) hour crisis response/behavior management and intensive clinical interventions from professional staff, preventing the member from living in a traditional or therapeutic foster home.

(6) The member is medically stable and not actively suicidal or homicidal and not in need of substance abuse detoxification services.

(7) The legal guardian [Oklahoma Department of Human Services (OKDHS)/Oklahoma Office of Juvenile Affairs (OJA) if custody member] or parent of the member agrees to actively participate in the member's treatment needs and planning.

317:30-5-752. Description of services

(a) Treatment services must be provided in the least restrictive, non-institutional therapeutic environment. The ITFC setting is restorative in nature, allowing members with severe behavioral and emotional health needs, who may also present a secondary physical, developmental, intellectual, and/or social disorder that is supported alongside the mental health needs, to develop the necessary control to function in a less restrictive setting.

(b) Behavioral health services must include an individual plan of care (IPC) for each member served. The IPC requirements are set out in Oklahoma Administrative Code (OAC) 317:30-5-753.

(c) Treatment services in an ITFC must include at least two (2) hours of individual, family, and/or group therapy per week, as set forth in OAC 317:30-5-753(3). Treatment may also include, but is not limited to, an array of the following services:

- (1) Substance abuse/chemical dependency education, prevention, and therapy;
- (2) Psychosocial rehabilitation and support services;
- (3) Behavior management;
- (4) Crisis intervention; and
- (5) Case management.

317:30-5-753. Individual plan of care (IPC) requirements

All behavioral health services in an ITFC setting are provided as a result of an individual assessment of the member's needs and documented in the IPC.

(1) Assessment.

(A) **Definition.** Gathering and assessment of historical and current bio-psychosocial information which includes face-to-face contact with the member and the member's foster parent(s) or legal guardian or other person, including biological parent(s) when applicable, who have pertinent information about the member resulting in a written summary report, diagnosis, and recommendations. All ITFC agencies must assess each individual to determine whether they could be an appropriate candidate for ITFC services.

(B) **Qualified professional.** This service is performed by a licensed behavioral health professional (LBHP).

(C) **Limitations.** Assessments are compensable on behalf of a member who is seeking services for the first time from the ITFC agency. This service is not compensable if the member has previously received or is currently receiving services from the agency, unless there has been a gap in service of more than six (6) months and it has been more than one (1) year since the previous assessment.

(D) **Documentation requirements.** The assessment must include all elements and tools required by the Oklahoma Health Care Authority (OHCA). In the case of members under the age of eighteen (18), it is performed with the direct, active, face-to-face participation of the member and foster parent(s) or

legal guardian or other persons, including biological parent(s) when applicable. The member's level of participation is based on age, developmental, and clinical appropriateness. The assessment must include all related diagnoses from the Diagnostic and Statistical Manual of Mental Disorders (DSM-V). The assessment must contain, but is not limited to, the following:

- (i) Date, including month, day, and year of the assessment session(s);
- (ii) Source of information;
- (iii) Member's first name, middle initial, and last name;
- (iv) Gender;
- (v) Birth date;
- (vi) Home address;
- (vii) Telephone number;
- (viii) Referral source;
- (ix) Reason for referral;
- (x) Person to be notified in case of emergency;
- (xi) Presenting reason for seeking services;
- (xii) Start and stop time for each unit billed;
- (xiii) Dated signature of foster parent(s) or legal guardian [Oklahoma Department of Human Services (OKDHS) or Oklahoma Office of Juvenile Affairs (OJA)] or other persons, including biological parent(s) (when applicable) participating in the face-to-face assessment. Signatures are required for members fourteen (14) years of age and over;
- (xiv) Bio-psychosocial information, which must include:

- (I) Identification of the member's strengths, needs, abilities, and preferences;
- (II) History of the presenting problem;
- (III) Previous psychiatric treatment history, including treatment of psychiatric issues, substance use, drug and alcohol addiction, and other addictions;
- (IV) Health history and current biomedical conditions and complications;
- (V) Trauma, abuse, neglect, violence, and/or sexual assault history of self and/or others, including OKDHS involvement;
- (VI) Family and social history, including psychiatric, substance use, drug and alcohol addiction, other addictions, and trauma/abuse/neglect;
- (VII) Educational attainment, difficulties, and history;
- (VIII) Cultural and religious orientation;
- (IX) Vocational, occupational, and military history;
- (X) Sexual history, including human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), other sexually transmitted diseases (STDs), and at-risk behaviors;

(XI) Marital or significant other relationship history;

(XII) Recreation and leisure history;

(XIII) Legal or criminal record, including the identification of key contacts (e.g. attorneys, probation officers);

(XIV) Present living arrangements;

(XV) Economic resources; and

(XVI) Current support system, including peer and other recovery supports.

(xv) Mental status and level of functioning information, including, but not limited to, questions regarding the following:

(I) Physical presentation, such as general appearance, motor activity, attention, and alertness;

(II) Affective process, such as mood, affect, manner, and attitude;

(III) Cognitive process, such as intellectual ability, social-adaptive behavior, thought processes, thought content, and memory; and

(IV) All related diagnoses from the DSM-V.

(xvi) Pharmaceutical information for both current and past medications, to include the following:

(I) Name of medication;

(II) Strength and dosage of medication;

(III) Length of time on the medication; and

(IV) Benefit(s) and side effects of medication.

(xvii) LBHP's interpretation of findings and diagnosis; and

(xviii) Dated signature and credentials of the LBHP who performed the face-to-face behavioral assessment.

(2) IPC requirements.

(A) Signature requirement. A written IPC following a comprehensive evaluation for each member must be formulated by the ITFC agency staff within thirty (30) days of admission to the program with documented input from the member, the legal guardian (OKDHS/OJA), the foster parent(s), the treatment provider(s), and the biological parent(s) when applicable. An IPC is not valid until all dated signatures are present, including signatures from the member [if fourteen (14) years of age and over], the legal guardian, the foster parent, and the treatment provider(s). This plan must be reviewed every thirty (30) days with documented involvement of the legal guardian and member. The review includes an evaluation of the member's progress in the treatment setting, as well as in other environments, such as home, school, social engagements, etc.

(B) Individualization. The IPC must be individualized and take into account the member's age, history, diagnosis, functional levels, culture, and the effect of past and current traumatic experiences in

the life of the member. It includes the member's documented diagnosis, appropriate goals, corresponding reasonable and attainable treatment objectives, and action steps within the expected timelines. Each member's IPC needs to address the ITFC agency's plans with regard to the provision of services. Each plan of care must clearly identify the type of services required to meet the member's treatment needs and frequency over a given period of time.

(C) **Qualified professional.** This service is performed by an LBHP.

(D) **Time requirements.** IPC updates must be conducted face-to-face and are required at least every ninety (90) days during active treatment. However, updates can be conducted whenever it is clinically needed, as determined by an LBHP. Updates should reflect changes to treatment based on the members' progress or lack thereof.

(E) **Documentation requirements.** Comprehensive and integrated service plan content must address the following:

- (i) Member strengths, needs, abilities, and preferences (SNAP);
- (ii) Identified presenting challenges, problems, needs and diagnosis;
- (iii) Specific goals for the member;
- (iv) Objectives that are specific, attainable, realistic, and time-limited;
- (v) Each type of service and estimated frequency to be received;
- (vi) The name and credentials of all the practitioners who will be providing and responsible for each service;
- (vii) Any needed referrals for service;
- (viii) Specific discharge criteria; and
- (ix) Description of the member's involvement in, and responses to, the treatment plan, and his/her signature and date [if fourteen (14) years of age and older].

(F) **Amendments and updates.** Amendment of an existing IPC to revise or add goals, objectives, service provider(s), service type, and service frequency must be documented in the existing IPC through an addendum until the review/update is due. Any changes must, prior to implementation, be signed and dated by the member [if fourteen (14) years of age and over], the legal guardian, the foster parent, as well as the primary LBHP and any new provider(s). IPC updates must address the following:

- (i) Update to the bio-psychosocial assessment, re-evaluation of diagnosis, and IPC goals and/or objectives;
- (ii) Progress, or lack of, on previous IPC goals and/or objectives;
- (iii) A statement documenting a review of the current IPC, and, if no changes are needed, an explanation and a statement addressing the status

of identified problem behaviors that led to ITFC placement must be included;

(iv) Change in goals and/or objectives (including target dates) based upon member's progress or identification of new needs, challenges, and problems;

(v) Change in frequency and/or type of services provided;

(vi) Change in practitioner(s) who will be responsible for providing services on the plan;

(vii) Change in discharge criteria; and

(viii) Description of the member's involvement in, and responses to, the treatment plan, and his/her signature and date [if fourteen (14) years of age and older].

(3) **Description of services.** Agency services include:

(A) **Individual, family, and/or group therapy.** See OAC 317:30-5-241.2(a), (b), and (c). The number of units of individual, family, and/or group therapy within the ITFC setting differ from the number of units available in the outpatient setting. A member must receive two (2) hours of individual, family, and/or group therapy each week that is provided by an LBHP, and may receive up to three (3) hours each week, if medically needed.

(B) **Crisis intervention.** The provider agency must provide crisis intervention by ITFC agency staff as needed twenty-four (24) hours per day, seven (7) days per week. The agency must ensure staff is available to respond to the ITFC foster parent(s) in a crisis to stabilize a member's behavior and prevent placement disruption. This service is to be provided to the member by an LBHP.

(C) **Discharge planning.** The ITFC agency must develop a discharge plan for each member. The discharge plan must be individualized, member-specific, and include an after-care plan that is appropriate to the member's needs, identifies the member's needs, includes specific recommendations for follow-up care, and outlines plans that are in place at the time of discharge. The plan for members in parental custody must include, when appropriate, reunification plans with the parent(s)/legal guardian. The plan for members who remain in the custody of OKDHS or OJA must be developed in collaboration with the case worker and be finalized at the time of discharge. The discharge plan is to include, at a minimum, recommendations for continued treatment services, educational services, and other appropriate community resources. Appointments for outpatient therapy and medication management (when applicable) should be scheduled prior to discharge. Discharge planning provides a transition from ITFC placement into a lesser restrictive setting within the community. Discharge planning is performed in partnership between Child Welfare Services (CWS) of the Oklahoma Department of Human Services (OKDHS) and an LBHP within the ITFC agency.

(D) **Substance use/chemical dependency use therapy.** Substance use/chemical dependency therapy can be provided if a member is identified by diagnosis or documented social history as having emotional or behavioral problems directly related to substance use and/or chemical dependency. The modalities employed are provided in order to begin, maintain, and/or enhance recovery from problem drinking, alcoholism, nicotine use and addiction, and/or drug use, drug dependency, and/or drug addiction. This service is provided to the member by an LBHP.

(E) **Substance use rehabilitation services.** Covered substance use rehabilitation services are provided in non-residential settings in regularly scheduled sessions intended for individuals not requiring a more intensive level of care or those who require continuing services following more intensive treatment regimes. The purpose of substance use rehabilitation services is to begin, maintain, and/or enhance recovery from problem drinking, alcoholism, nicotine use and addiction, and/or drug use, drug dependency, and/or drug addiction. Rehabilitation services may be provided individually or in group sessions, and they take the format of an agency-approved, curriculum-based education and skills training. This service is provided to the member by a certified behavioral health case manager (CM) II, a certified alcohol drug counselor (CADC), or an LBHP.

(F) **Psychosocial rehabilitation (PSR).**

(i) **Definition.** PSR services are face-to-face behavioral health rehabilitation services which are necessary to improve the member's ability to function in the community. They are performed to improve the skills and abilities of members to live independently in the community, improve self-care and social skills, and promote lifestyle change and recovery practices. Rehabilitation services may be provided individually or in group sessions, and they take the format of an agency-approved, curriculum-based education and skills training.

(ii) **Clinical restrictions.** This service is generally performed with only the member and the qualified provider, but may also include the member's family/support system group that focuses on the member's diagnosis, symptom management, and recovery-based curriculum. A member who, at the time of service, is not able to benefit from the treatment due to active hallucinations and/or substance use, or other impairment, is not suitable for this service. Family involvement is allowed for support of the member and education regarding his/her recovery, but does not constitute family therapy, which requires an LBHP.

(iii) **Qualified practitioners.** A CM II or an LBHP may perform PSR, following development

of an IPC curriculum. The CM II must have immediate access to an LBHP who can provide clinical oversight of the CM II and collaborate with the CM II in the provision of services. A minimum of one (1) monthly face-to-face consultation with an LBHP is required.

(iv) **Group sizes.** The maximum staffing ratio is eight (8) members to one (1) service provider for members under the age of twenty-one (21).

(v) **Limitations.**

(I) In order to develop and improve the member's community and interpersonal functioning and self-care abilities, PSR services may take place in settings away from the behavioral health agency site as long as the setting protects and assures confidentiality. When this occurs, the qualified provider must be present and interacting, teaching, or supporting the defined learning objectives of the member for the entire claimed time.

(II) PSR services are intended for members with Serious Emotional Disturbance (SED), and members with severe behavioral and emotional health needs who may also have a secondary physical, developmental, intellectual, and/or social disorder that is supported alongside the mental health needs. Members, ages four (4) and five (5), are not eligible for PSR services unless a prior authorization has been granted by OHCA or its designated agent, based on a finding of medical necessity.

(III) PSR services are time-limited services designed to be provided over the briefest and most effective period possible and as adjunct (enhancing) interventions to complement more intensive behavioral health therapies. Service limits are based on the member's needs according to the Client Assessment Record (CAR) or other approved tools. Service limitations are designed to maximize efficacy by remaining within reasonable age and developmentally appropriate daily limits.

(vi) **Progress notes.** In accordance with OAC 317:30-5-241.1, the behavioral health IPC developed by the LBHP must include the member's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives, and methodologies that are specific and time-limited, and defines the services to be performed by the practitioners and others who comprise the treatment team. When PSR services are prescribed, the plan must address objectives that are specific, attainable, realistic, measurable, and time-limited. The plan must include the appropriate treatment coordination to achieve the maximum reduction of the severe behavioral and emotional health conditions, and any other secondary physical, developmental, intellectual, and/or social disorders and to restore

the member to his or her best possible functional level. Progress notes for PSR services must include:

- (I) Start and stop times for each day attended and the physical location in which the service was rendered;
 - (II) Specific goal(s) and objectives addressed during the session/group;
 - (III) Type of skills training provided each day and/or during the week including the specific curriculum used with the member;
 - (IV) Member satisfaction with staff intervention(s);
 - (V) Progress towards attaining, or barriers affecting the attainment of, goals and objectives;
 - (VI) New goal(s) or objective(s) identified;
 - (VII) Dated signature of the qualified provider; and
 - (VIII) Credentials of the qualified provider.
- (vii) **Additional documentation requirements.** Documentation of ongoing consultation and/or collaboration with an LBHP related to the provision of PSR services.

(G) **Therapeutic behavioral services (TBS).** Goal-directed social skills redevelopment activities for each member to restore, retain, and improve the self-help, communication, socialization, and adaptive skills necessary to reside successfully in home and community based settings. These will be daily activities that are age appropriate, culturally sensitive, and relevant to the goals of the IPC. These may include self-esteem enhancement, violence alternatives, communication skills, or other related skill development. This service is to be provided to the member by the treatment parent specialist (TPS). Services rendered by the TPS are limited to one and a half (1.5) hours daily.

317:30-5-754. Service quality review (SQR)

(a) Providers must maintain an appropriate records system. Current individual plans of care, case files, and progress notes are maintained in the provider's files during the time the member is receiving services. All services must be reflected by documentation in the records. Documentation of services must include all of the following:

- (1) The date the service was provided;
- (2) The beginning and ending time the service was provided;
- (3) A description of the member's response to the service;
- (4) The type of service provided (individual, group, or family session; group rehabilitative treatment; social skills (re)development; basic living skills (re)development; crisis behavior management and redirection; or discharge planning); and
- (5) The dated signature with credentials of the person providing the service.

(b) There will be an SQR review performed by the Oklahoma Health Care Authority (OHCA) or its designated agent of each ITFC agency that provides care to members. The OHCA will designate the members of the SQR team. This team will consist of at least two (2) team members and will be comprised of licensed behavioral health professionals (LBHPs) and/or registered nurses (RNs). The SQR will consist of a survey of current members receiving services, as well as members for which claims have been filed with OHCA for ITFC services. Observation and contact with members may be incorporated. The review includes validation of certain factors, all of which must be met for the services to be compensable. Following the review, the SQR team will report its findings to the ITFC agency. The ITFC agency will be provided with written notification if the findings of the SQR have resulted in any deficiencies. A copy of the final report will be sent to the ITFC agency's accrediting body. Deficiencies found during the SQR may result in a recoupment of the compensation received for that service. The individual plan of care (IPC) is considered to be critical to the integrity of care and treatment and must be completed within the timelines designated at Oklahoma Administrative Code (OAC) 317:30-5-753. If the IPC is missing, or it is found that the member did not meet medical necessity criteria at any time, all paid services will be recouped for each day the IPC was missing from the date the plan of care was due for completion or the date from which medical necessity criteria was no longer met.

317:30-5-755. Billing

- (a) Claims must be submitted in accordance with guidelines found at Oklahoma Administrative Code (OAC) 317:30-3-11, 317:30-3-11.1 and 317:30-3-20.
- (b) Claims for dually eligible individuals (Medicare/Medicaid) should be filed directly with the Oklahoma Health Care Authority (OHCA).

317:30-5-756. Reimbursement

- (a) ITFC services will be paid at the current fee-for-service (FFS) rate. Services provided to a member without a written individual plan of care (IPC) as described in Oklahoma Administrative Code (OAC) 317:30-5-753 will not be reimbursed.
- (b) Additional services may require prior authorization by the OHCA, or its designated agent. Refer to OAC 317:30-3-31. Documentation must be provided to ensure that services are not duplicative. If additional services are approved for a member in state custody, the Oklahoma Department of Human Services (OKDHS), or Oklahoma Office of Juvenile Affairs (OJA) will collaborate with the provider of such services as directed by the OHCA.
- (c) Reimbursement for ITFC services is not available for the following:
 - (1) Room and board;
 - (2) Educational costs;
 - (3) Supported employment;
 - (4) Inpatient psychiatric services;
 - (5) Respite care;
 - (6) Day treatment services;

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(7) Partial hospitalization services; and

(8) Intensive outpatient services.

(d) Case management services are reimbursed to government providers as per the methodology in the approved Medicaid State Plan.

317:30-5-757. Prior authorization and appeal of prior authorization decision

(a) All behavioral health services must be prior authorized by the Oklahoma Health Care Authority (OHCA) or its designated agent before the service is rendered by an eligible provider. Without prior authorization, payment is not authorized.

(b) If a denial decision is made, an appeal may be initiated by the member or the member's legal guardian. The denial can be appealed to the OHCA within thirty (30) calendar days of the receipt of the notification of the denial by the OHCA or its designated agent.

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Part 5. Pharmacies

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n/a

GIST/ANALYSIS:

The proposed revisions will comply with Senate Bill (SB) 509, which was signed into law on April 16, 2019. SB 509 directed the OHCA to revise current step therapy protocols for medications approved by the Drug Utilization Review (DUR) Board and provide for exceptions to the drug step therapy protocol. The exception applies to cases when: the required prescribed drug will likely cause an adverse reaction or harm; the prescription drug will likely be ineffective; the patient has already tried the prescription drug and discontinued use; the prescription drug is not in the best interest of the patient; or the patient is stable on another prescription drug. Further, revisions will establish an appeals process for step therapy exception requests that have been denied. Other revisions are needed to correct outdated language. These rules are currently in place as emergency rules.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 14, 2020:**

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 5. PHARMACIES

317:30-5-77.2. Prior authorization

(a) **Definition.** The term prior authorization in pharmacy means an approval for payment by ~~OHCA~~the Oklahoma Health Care Authority (OHCA) to the pharmacy before a prescription is dispensed by the pharmacy. An updated list of all products requiring prior authorization is available at the agency's website.

(b) **Process.** Because of the required interaction between a prescribing provider (such as a physician) and a pharmacist to receive a prior authorization, OHCA allows a pharmacist up to thirty (30) calendar days from the point of sale notification to provide the data necessary for OHCA to make a decision regarding prior authorization. Should a pharmacist fill a prescription prior to the actual authorization he/she takes a business risk that payment for filling the prescription will be denied. In the case that information regarding the prior authorization is not provided within the thirty (30) days, claims will be denied.

(c) **Documentation.** Prior authorization petitions with clinical exceptions must be mailed or faxed to the Medication Authorization Unit of OHCA's contracted prior authorization processor. Other authorization petitions, claims processing questions and questions pertaining to ~~DUR~~Drug Utilization

Review (DUR) alerts must be addressed by contacting the pharmacy help desk. Authorization petitions with complete information are reviewed and a response returned to the dispensing pharmacy within twenty-four (24) hours. Petitions and other claim forms are available on the OHCA public website.

(d) **Emergencies.** In an emergency situation, the OHCA will authorize a seventy-two (72) hour supply of medications to a member. The authorization for a seventy-two (72) hour emergency supply of medications does not count against the SoonerCare limit described in OAC 317:30-5-72(a)(1).

(e) **Utilization and scope.** There are three (3) reasons for the use of prior authorization: utilization controls, scope controls and product based controls. ~~Product based prior authorizations is~~ Product-based prior authorizations, including step therapy protocols as defined by Section 7310(A)(4) of Title 63 of the Oklahoma Statutes, are covered in OAC 317:30-5-77.3. The ~~Drug Utilization Review~~DUR Board recommends the approved clinical criteria and any restrictions or limitations.

(1) **Utilization controls.** Prior authorizations that fall under this category generally apply to the quantity of medication or duration of therapy approved.

(2) **Scope controls.** Scope controls are used to ensure a drug is used for an approved indication and is clinically appropriate, medically necessary and cost effective.

(A) Medications which have been approved by the ~~FDA~~Food and Drug Administration (FDA) for multiple indications may be subject to a scope-based prior authorization when at least one (1) of the approved indications places that drug into a therapeutic category or treatment class for which a prior authorization is required. Prior authorizations for these drugs may be structured as step therapy or a tiered approach as recommended by the ~~Drug Utilization Review~~DUR Board and approved by the OHCA ~~Board of Directors~~.

(B) Prior authorization may be required to assure compliance with FDA approved and/or medically accepted indications, dosage, duration of therapy, quantity, or other appropriate use criteria including pharmacoeconomic consideration.

(C) Prior authorization may be required for certain non-standard dosage forms of medications when the drug is available in standard dosage forms.

(D) Prior authorization may be required for certain compounded prescriptions if the allowable cost exceeds a predetermined limit as published on the agency's website.

317:30-5-77.3. ~~Product Based Prior Authorization~~Product-based prior authorization (PBPA)

~~The Oklahoma Health Care Authority utilizes a prior authorization system subject to their authority under 42 U.S.C. 1396r 8 and 63 O.S. 5030.3(B). The prior authorization program is not a drug formulary which is separately authorized in 42 U.S.C 1396r 8. Drugs are placed into two or more tiers~~

~~based on similarities in clinical efficacy, side effect profile and cost effectiveness after recommendation by the Drug Utilization Review Board and approved by the OHCA Board of Directors. Drugs placed in tier number one generally require no prior authorization. Drugs placed in any tier other than tier number one may require prior authorization.~~

~~(1) Three general exceptions exist to the requirement of prior authorization:~~

~~(A) inadequate response to one or more tier one products;~~

~~(B) a clinical exception for a certain product in the particular therapeutic category; or~~

~~(C) the manufacturer or labeler of a product may opt to participate in the state supplemental drug rebate program to move a product from a higher tier to a lower tier which will remove or reduce the prior authorization requirement for that product.~~

~~(i) After a drug or drug category has been added to the Prior Authorization program, OHCA or its contractor may establish a cost effective benchmark value for each therapeutic category or individual drug. The benchmark value may be calculated based on an average cost, an average cost per day, a weighted average cost per day or any other generally accepted economic formula. A single formula for all drugs or drug categories is not required. Supplemental rebate offers from manufacturers which are greater than the minimum required supplemental rebate will be accepted and may establish a new benchmark rebate value for the category.~~

~~(ii) Manufacturers of products assigned to tiers number two and higher may choose to pay a supplemental rebate to the state in order to remove or reduce a prior authorization requirement on their product or products assigned to the higher tier.~~

~~(iii) Supplemental rebate agreements shall be in effect for one year and may be terminated at the option of either party with a 60 day notice. Supplemental rebate agreements are subject to the approval of CMS. Termination of a Supplemental Rebate agreement will result in the specific product reverting to the previously assigned higher tier in the PBPA program.~~

~~(iv) The supplemental unit rebate amount for a tier two or higher product will be calculated by subtracting the federal rebate amount per unit from the benchmark rebate amount per unit.~~

~~(v) Supplemental rebates will be invoiced concurrent with the federal rebates and are subject to the same terms with respect to payment due dates, interest, and penalties for non payment as specified at 42 U.S.C. Section 1396r 8. All terms and conditions not specifically listed in federal or state law shall be included in the supplemental rebate agreement as approved by CMS.~~

~~(vi) Drugs or drug categories which are not part of the Product Based Prior Authorization program~~

as outlined in 63 O.S. Section 5030.5 may be eligible for supplemental rebate participation. The OHCA Drug Utilization Review Board shall recommend supplemental rebate eligibility for drugs or drug categories after considering clinical efficacy, side effect profile, cost effectiveness and other applicable criteria.

(2) All clinical exceptions are recommended by the Drug Utilization Review Board and demonstrated by documentation sent by the prescribing physician and/or pharmacist.

The Oklahoma Health Care Authority (OHCA) utilizes a PBPA system pursuant to its authority under Section 1396r-8 of Title 42 of the United States Code and Section 5030.3(A) of Title 63 of the Oklahoma Statutes. The PBPA program, which includes step therapy protocols as defined in 63 O.S. § 7310(A)(4), is not a drug formulary, which is separately authorized in 42 U.S.C. § 1396r-8. In the PBPA system, drugs are placed into two (2) or more tiers based on similarities in clinical efficacy, side-effect profile, and cost-effectiveness, after recommendation by the Drug Utilization Review (DUR) Board and approval by the OHCA Board. Drugs placed in tier one (1) generally require no prior authorization; however, drugs placed in any tier may be subject to prior authorization.

(1) Exceptions to the requirement of prior authorization shall be granted based upon a properly-supported justification submitted by the prescribing provider demonstrating one (1) or more of the bases for exception identified in Oklahoma Administrative Code (OAC) 317:30-5-77.4(b)(3).

(2) The manufacturer or labeler of a product may opt to participate in the state supplemental drug rebate program to move a product from a higher tier to a lower tier which will remove or reduce the prior authorization requirement for that product. Supplemental rebate negotiations are done through Sovereign States Drug Consortium (SSDC); a multi-state purchasing pool.

(A) Supplemental rebate agreements shall be in effect for one (1) year and may be terminated at the option of either party with a sixty (60) day notice. Supplemental rebate agreements are subject to the approval of the Centers for Medicare and Medicaid Services (CMS). Termination of a supplemental rebate agreement will result in the specific product reverting to the previously assigned higher tier in the PBPA program.

(B) Drugs or drug categories which are not part of the PBPA program as outlined in 63 O.S. § 5030.5 may be eligible for supplemental rebate participation. The OHCA DUR Board may recommend supplemental rebate eligibility for drugs or drug categories after considering clinical efficacy, side effect profile, cost-effectiveness, and other applicable criteria.

317:30-5-77.4. Step therapy exception process

(a) Definitions.

(1) **"Exigent circumstances"** means circumstances in which a delay in receiving a prescription drug will jeopardize the member's life or health or ability to attain, maintain, or regain maximum function.

(2) **"Step therapy" or "step therapy protocol"** means a protocol or program that establishes a specific sequence in which prescription drugs for a specified medical condition that are medically appropriate for a particular patient are covered by Medicaid. Step therapy protocols are based upon the recommendation of the Drug Utilization Review (DUR) Board, as approved by the Oklahoma Health Care Authority (OHCA) Board.

(3) A **"step therapy exception"** means the process by which a step therapy protocol is overridden in favor of immediate coverage of a SoonerCare provider's selected prescription drug.

(b) **Process.** The step therapy exception process shall be initiated by a SoonerCare provider on behalf of a SoonerCare member. An exception can be requested following a denial of a prior authorization request for the specified prescription drug(s), or can be requested at the outset. In either case, the provider shall:

(1) Submit the exception request using the step therapy exception request form, which is available on the OHCA website and/or provider portal; and

(2) Submit with the step therapy exception request form, documentation or other information adequate to support the medical necessity for overriding the otherwise-applicable step therapy protocol for the particular prescription drug.

(3) A properly-supported step therapy exception request will be granted if it demonstrates that any of the following circumstances exists:

(A) The required prescription drug is contraindicated or will likely cause an adverse reaction or physical or mental harm to the patient;

(B) The required prescription drug is expected to be ineffective based on the known clinical characteristics of the patient and the known characteristics of the prescription drug;

(C) The patient has tried the required prescription drug while under the patient's current or a previous health insurance plan and such prescription drug was discontinued due to lack of efficacy or effectiveness, diminished effect, or an adverse event;

(D) The required prescription drug is not in the best interest of the patient, based on medical necessity; or

(E) The patient is stable on a prescription drug selected by the patient's healthcare provider for the medical condition under consideration while on the patient's current or a previous health insurance plan.

(4) The OHCA or its contractor or designee may request additional information that is reasonably necessary to determine whether a step therapy exception request should be granted, as provided by Oklahoma law.

(c) **Notification.**

(1) The OHCA or its contractor or designee shall respond to any step therapy exception request within seventy-two (72) hours of the submission of a completed and properly-supported request. For exigent circumstances, the OHCA shall respond to the exception request within twenty-four (24) hours of receipt. Provided, however, that if the timeframe for response ends on a weekend, or on any other day the OHCA is closed or closes early, including, but not limited to, legal holidays as defined by 25 O.S. § 82.1, the timeframe for response shall run until the close of the next full business day. Any exception request not responded to within this timeframe shall be deemed granted.

(2) The OHCA shall respond to a request for a step therapy exception by:

- (A) Notifying the provider that the request is approved;
- (B) Notifying the provider that the request is not approved based on medical necessity;
- (C) Notifying the provider that the medical necessity of the requested exception cannot be approved or denied as a result of missing or incomplete documentation or information necessary to approve or disapprove the request;
- (D) Notifying the provider that the member is no longer eligible for coverage; or
- (E) Notifying the provider that the step therapy exemption request cannot be processed because it was not properly submitted using the required form.

(3) The rejection of a step therapy exception request based upon missing or incomplete documentation or other information, or because it was not properly submitted using the required form is not a denial, and shall not be subject to further appeal. It must, instead, be resubmitted as a new request for exception pursuant to this rule before it will be considered for approval.

(d) **Appeal.** If a step therapy exception request is denied, an appeal may be initiated by the member within thirty (30) days of the denial pursuant to Oklahoma Administrative Code (OAC) 317:2-1-18.

[OAR Docket #20-448; filed 6-26-20]

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

[OAR Docket #20-457]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Individual Providers and Specialties
Part 6. Inpatient Psychiatric Services
317:30-5-94 [NEW]
317:30-5-95 [AMENDED]
317:30-5-95.4 [AMENDED]
317:30-5-95.14 [AMENDED]

317:30-5-95.22 [AMENDED]
317:30-5-95.24 [AMENDED]
317:30-5-95.29 [AMENDED]
317:30-5-95.30 [AMENDED]
317:30-5-95.31 [AMENDED]
317:30-5-95.33 [AMENDED]
317:30-5-95.34 [AMENDED]
317:30-5-95.35 [AMENDED]
317:30-5-95.37 [AMENDED]
317:30-5-95.38 [AMENDED]
317:30-5-95.40 [AMENDED]
317:30-5-95.41 [AMENDED]
317:30-5-95.42 [AMENDED]
317:30-5-96.2 [AMENDED]
317:30-5-96.3 [AMENDED]
(Reference APA WF # 19-32)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 18, 2019

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Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 14, 2020

SUPERSEDED EMERGENCY ACTIONS:

Not applicable

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will revise policy for members under twenty-one (21) to reflect current practice, update obsolete references, and reorganize sections for consistent application of policy. The proposed rule changes will also address Service Quality Review (SQR) findings of deficiency regarding inpatient psychiatric facilities' compliance with federal regulations and OHCA administrative rules. Additionally, the proposed rule changes will create a general specialty add-on payment for children and adolescents with specialized treatment needs who are being served in a psychiatric residential treatment facility (PRTF), Acute II unit of a psychiatric hospital and general hospital with an Acute II psychiatric.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 6. INPATIENT PSYCHIATRIC SERVICES

Permanent Final Adoptions

317:30-5-94. Definitions

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

"Adult" means an individual twenty-one (21) and over, unless otherwise specified. Refer to Oklahoma Administrative Code (OAC) 317:30-1-4.

"C.F.R." means Code of Federal Regulations.

"Child" means an individual under the age of twenty (21) in an inpatient psychiatric setting as per 42 C.F.R. § 441.151(a)(3). If an individual is receiving services before he or she reaches twenty-one (21), then the individual can continue to receive services until the individual no longer requires the services or the date the individual turns twenty-two (22), whichever comes first. For services other than inpatient psychiatric services or otherwise specified by statute, regulation, and/or policy adopted by the Oklahoma Health Care Authority (OHCA), refer to OAC 317:30-1-4.

"C.M.S" means Centers for Medicare and Medicaid Services.

"General hospital" means a general medical surgical hospital, as defined by Section 1-701 (2) of Title 63 of the Oklahoma Statutes.

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

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

(A) An allopathic or osteopathic physician with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry practicing as described in OAC 317:30-5-2.

(B) A practitioner with a current license to practice in the state in which services are provided, within one (1) of the areas of practice listed in (i) through (vi).

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

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

(D) A physician assistant who is licensed and in good standing in the state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.

"Licensure candidate" means a practitioner actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision

requirement is met but the individual is not yet licensed, to become licensed by one (1) of the areas of practice listed in (B)(i) through (vi) above. The supervising LBHP responsible for the member's care must:

- (A) Staff the member's case with the candidate;
- (B) Be personally available, or ensure the availability of an LBHP to the candidate for consultation while they are providing services;
- (C) Agree with the current plan for the member;
- (D) Confirm that the service provided by the candidate was appropriate; and
- (E) The member's medical record must show that the requirements for reimbursement were met and the LBHP responsible for the member's care has reviewed, countersigned, and dated the service plan and any updates thereto so that it is documented that the licensed professional is responsible for the member's care.

"OHCA" means Oklahoma Health Care Authority.

"OAC" means Oklahoma Administrative Code.

"O.S." means Oklahoma Statutes.

"Psychiatric hospital" means an institution which is primarily engaged in providing, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons, as defined by Section 1395x(f) of Title 42 of the United States Code.

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

"U.S.C." means United States Code.

317:30-5-95. General provisions and eligible providers

(a) **Definitions.** The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:

- (1) **"C.F.R."** means Code of Federal Regulations.
- (2) **"CMS"** means Centers for Medicare and Medicaid Services.
- (3) **"General Hospital"** means a general medical surgical hospital, as defined by 63 Oklahoma Statutes, Sec. 1-701(2).
- (4) **"Institution for Mental Diseases (IMD)"** means a hospital, nursing facility, or other institution of more than sixteen (16) beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services, as defined by 42 C.F.R. § 435.1010.
- (5) **"OHCA"** means Oklahoma Health Care Authority.
- (6) **"O.S."** means Oklahoma Statutes.
- (7) **"Psychiatric Hospital"** means an institution which is primarily engaged in providing, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons, as defined by 42 United States Code, Sec. 1395x(f).

- (8) **"Psychiatric Residential Treatment Facility (PRTF)"** means a non hospital facility contracted with the OHCA to provide inpatient psychiatric services to SoonerCare eligible members under the age of twenty one (21), as defined by 42 C.F.R. § 483.352.
- (9) **"U.S.C."** means United States Code.
- (b) **Eligible settings for inpatient psychiatric services.** The following individuals may receive SoonerCare reimbursable inpatient psychiatric services in the following eligible settings:
- (1) Individuals twenty one (21) to sixty four (64) years of age may receive SoonerCare reimbursable inpatient psychiatric and/or chemical dependency/substance use/detoxification services in a psychiatric unit of a general hospital, provided that such hospital is not an IMD.
 - (2) Individuals sixty five (65) years of age or older may receive SoonerCare reimbursable inpatient psychiatric services in a psychiatric unit of a general hospital, or in a psychiatric hospital.
 - (3) Individuals under twenty one (21) years of age, in accordance with OAC 317:30-5-95.23, may receive SoonerCare reimbursable inpatient psychiatric services in a psychiatric unit of a general hospital, a psychiatric hospital, or a PRTF.
- (c) **Psychiatric hospitals and psychiatric units of general hospitals.** To be eligible for payment under this Part, inpatient psychiatric programs must be provided to eligible SoonerCare members in a hospital that:
- (1) is a psychiatric hospital that:
 - (A) successfully underwent a State survey to determine whether the hospital meets the requirements for participation in Medicare as a psychiatric hospital per 42 C.F.R. § 482.60; or
 - (B) is accredited by a national organization whose psychiatric accrediting program has been approved by CMS; or
 - (2) is a general hospital with a psychiatric unit that:
 - (A) successfully underwent a State survey to determine whether the hospital meets the requirements for participation in Medicare as a hospital as specified in 42 C.F.R. Part 482; or
 - (B) is accredited by a national accrediting organization whose accrediting program has been approved by CMS; and
 - (3) meets all applicable federal regulations, including, but not limited to:
 - (A) Medicare Conditions of Participation for Hospitals (42 C.F.R. Part 482), including special provisions applying to psychiatric hospitals (42 C.F.R. §§ 482.60-.62);
 - (B) Medicaid for Individuals Age 65 or over in Institutions for Mental Diseases (42 C.F.R. Part 441, Subpart C);
 - (C) Inpatient Psychiatric Services for Individuals under Age 21 in Psychiatric Facilities or Programs (42 C.F.R. Part 441, Subpart D); and/or
- (D) Utilization Control [42 C.F.R. Part 456, Subpart C (Utilization Control: Hospitals) or Subpart D (Utilization Control: Mental Hospitals)]; and
- (4) is contracted with the OHCA; and
 - (5) if located within Oklahoma and serving members under eighteen (18) years of age, is appropriately licensed by the Oklahoma Department of Human Services (DHS) as a residential child care facility (10 O.S. §§ 401 to 402) that is providing services as a residential treatment facility in accordance with OAC 340:110-3-168.
- (d) **PRTF.** Every PRTF must:
- (1) be individually contracted with OHCA as a PRTF;
 - (2) meet all of the state and federal participation requirements for SoonerCare reimbursement, including, but not limited to, 42 C.F.R. § 483.354, as well as all requirements in 42 C.F.R. 483 Subpart G governing the use of restraint and seclusion;
 - (3) be appropriately licensed by DHS as a residential child care facility (10 O.S. §§ 401 to 402) that is providing services as a residential treatment facility in accordance with OAC 340:110-3-168; and
 - (4) be accredited by TJC, the Council on Accreditation of Rehabilitation Facilities (CARF), or the Council on Accreditation (COA).
- (e) **Out-of-state PRTF.** Any out of state PRTF must be appropriately licensed and/or certified in the state in which it does business, and must provide an attestation to OHCA that the PRTF is in compliance with the condition of participation for restraint and seclusion, as is required by federal law. Any out of state PRTF must also be accredited in conformance with OAC 317:30-5-95(d)(4).
- (f) **Required documents.** The required documents for enrollment for each participating provider can be downloaded from the OHCA's website.
- (a) **Eligible settings for inpatient psychiatric services.** The following individuals may receive SoonerCare-reimbursable inpatient psychiatric services in the following eligible settings:
- (1) Individuals twenty-one (21) to sixty-four (64) years of age may receive SoonerCare-reimbursable inpatient psychiatric and/or chemical dependency/substance use/detoxification services in a psychiatric unit of a general hospital, provided that such hospital is not an IMD.
 - (2) Individuals sixty-five (65) years of age or older may receive SoonerCare-reimbursable inpatient psychiatric services in a psychiatric unit of a general hospital, or in a psychiatric hospital.
 - (3) Individuals under twenty-one (21) years of age, in accordance with OAC 317:30-5-95.23, may receive SoonerCare-reimbursable inpatient psychiatric services in a psychiatric unit of a general hospital, a psychiatric hospital, or a PRTF.
- (b) **Psychiatric hospitals and psychiatric units of general hospitals.** To be eligible for payment under this Part, inpatient psychiatric programs must be provided to eligible SoonerCare members in a hospital that:
- (1) Is a psychiatric hospital that:

- (A) Successfully underwent a State survey to determine whether the hospital meets the requirements for participation in Medicare as a psychiatric hospital per 42 C.F.R. § 482.60; or
- (B) Is accredited by a national organization whose psychiatric accrediting program has been approved by CMS; or
- (2) Is a general hospital with a psychiatric unit that:
 - (A) Successfully underwent a State survey to determine whether the hospital meets the requirements for participation in Medicare as a hospital as specified in 42 C.F.R. Part 482; or
 - (B) Is accredited by a national accrediting organization whose accrediting program has been approved by CMS; and
- (3) Meets all applicable federal regulations, including, but not limited to:
 - (A) Medicare Conditions of Participation for Hospitals (42 C.F.R. Part 482), including special provisions applying to psychiatric hospitals (42 C.F.R. § 482.60-.62);
 - (B) Medicaid for Individuals Age 65 or over in Institutions for Mental Diseases (42 C.F.R. Part 441, Subpart C);
 - (C) Inpatient Psychiatric Services for Individuals under Age 21 in Psychiatric Facilities or Programs (42 C.F.R. Part 441, Subpart D); and/or
 - (D) Utilization Control [42 C.F.R. Part 456, Subpart C (Utilization Control: Hospitals) or Subpart D (Utilization Control: Mental Hospitals)]; and
- (4) Is contracted with the OHCA; and
- (5) If located within Oklahoma and serving members under eighteen (18) years of age, is appropriately licensed by the Oklahoma Department of Human Services (OKDHS) as a residential child care facility (10 O.S. §§ 401 to 402) that is providing services as a residential treatment facility in accordance with OAC 340:110-3-168.
- (c) **PRTF.** Every PRTF must:
 - (1) Be individually contracted with OHCA as a PRTF;
 - (2) Meet all of the state and federal participation requirements for SoonerCare reimbursement, including, but not limited to, 42 C.F.R. § 483.354, as well as all requirements in 42 C.F.R. 483 Subpart G governing the use of restraint and seclusion;
 - (3) Be appropriately licensed by OKDHS as a residential child care facility (10 O.S. § 401 to 402) that is providing services as a residential treatment facility in accordance with OAC 340:110-3-168;
 - (4) Be appropriately certified by the State Survey Agency, the Oklahoma State Department of Health (OSDH) as meeting Medicare Conditions of Participation; and
 - (5) Be accredited by TJC, the Council on Accreditation of Rehabilitation Facilities (CARF), or the Council on Accreditation (COA).
- (d) **Out-of-state PRTF.** Any out-of-state PRTF must be appropriately licensed and/or certified in the state in which it does business, and must provide an attestation to OHCA that

the PRTF is in compliance with the condition of participation for restraint and seclusion, as is required by federal law. Any out-of-state PRTF must also be accredited in conformance with OAC 317:30-5-95(c)(5).

(e) **Required documents.** The required documents for enrollment for each participating provider can be downloaded from the OHCA's website.

317:30-5-95.4. Individual plan of care for adults aged twenty-one (21) to sixty-four (64)

(a) Before admission to a psychiatric unit of a general hospital or immediately after admission, the attending physician or staff physician must establish a written plan of care for each member aged twenty-one (21) to sixty-four (64). The plan of care must include:

- (1) Diagnoses, symptoms, complaints, and complications indicating the need for admission;
 - (2) A description of the functional level of the individual;
 - (3) Objectives;
 - (4) Any order for medication, treatments, restorative and rehabilitative services, activities, therapies, social services, diet, and special procedures recommended for the health and safety of the member;
 - (5) Plans for continuing care, including review and modification to the plan of care; and
 - (6) Plans for discharge.
- (b) The attending or staff physician and other treatment team personnel involved in the member's care must review each plan of care at least every seven (7) days.
- (c) All plans of care and plan of care reviews must be clearly identified as such in the member's medical records. All must be signed and dated by the physician, RN, LBHP or licensure candidate, member, and other treatment team members that provide individual, family, and group therapy in the required review interval. Licensure candidate signatures must be co-signed. All plans of care and plan of care reviews must be signed by the member upon completion, except when a member is too physically ill or his or her acuity level precludes him or her from signing. If the member has designated an advocate, the advocate's signature is also required on all plans of care and plan of care reviews. If the member was too physically ill or his or her acuity level precluded him or her from signing the plan of care and/or the plan of care review at the time of completion, the member must sign the plan when his or her condition improves, but before discharge.
- (d) The plan of care must document appropriate member participation in the development and implementation of the treatment plan.

317:30-5-95.14. Individual plan of care for persons sixty-five (65) years of age or older receiving inpatient acute psychiatric services

(a) Before admission to a psychiatric hospital or psychiatric unit of a general hospital or immediately after admission, the attending physician or staff physician must establish a written

plan of care for each applicant or member. The plan of care must include:

- (1) Diagnoses, symptoms, complaints, and complications indicating the need for admission;
 - (2) A description of the functional level of the individual;
 - (3) Objectives;
 - (4) Any order for medication, treatments, restorative and rehabilitative services, activities, therapies, social services, diet, and special procedures recommended for the health and safety of the member;
 - (5) Plans for continuing care, including review and modification to the plan of care; and
 - (6) Plans for discharge.
- (b) The attending or staff physician and other treatment team personnel involved in the member's care must review each plan of care at least every seven (7) days.
- (c) All plans of care and plan of care reviews must be clearly identified as such in the member's medical records. All must be signed and dated by the physician, RN, LBHP or licensure candidate, member, and other treatment team members that provide individual, family, and group therapy in the required review interval. Licensure candidate signatures must be co-signed. All plans of care and plan of care reviews must be signed by the member upon completion, except when a member is too physically ill or his or her acuity level precludes him or her from signing. If the member has designated an advocate, the advocate's signature is also required on all plans of care and plan of care reviews. If the member was too physically ill or his or her acuity level precluded him or her from signing the plan of care and/or the plan of care review at the time of completion, the member must sign the plan when his or her condition improves, but before discharge.
- (d) The plan of care must document appropriate member participation in the development and implementation of the treatment plan.

317:30-5-95.22. Coverage for children

(a) ~~In order for services to be covered, services in acute hospitals, free standing hospitals, and Psychiatric Residential Treatment Facilities must meet the requirements in OAC 317:30-5-95.25 through 317:30-5-95.30. OHCA rules that apply to inpatient psychiatric coverage for children are found in Sections OAC 317:30-5-95.24 through 317:30-5-95.42.~~

(b) **Definitions.** The following words and terms, when used in Sections OAC 317:30-5-95.22 through 317:30-5-95.42, shall have the following meaning, unless the context clearly indicates otherwise:

- (1) **"Acute care"** means care delivered in a psychiatric unit of a general hospital or free standing psychiatric hospital that provides assessment, medical management and monitoring, and short term intensive treatment and stabilization to individuals experiencing acute episodes of behavioral health disorders.
- (2) **"Border Placement"** means a placement in a facility that is in one of the states that borders Oklahoma (Arkansas, Colorado, Kansas, Missouri, New Mexico, and

Texas). Border "status" may include other states that routinely provide PRTF services. Providers are subject to the same OHCA rules and program requirements as in state providers, including claims submission procedures and are paid the same daily per diem as Oklahoma providers.

(3) ~~"Chemical Dependency/Substance Abuse services/ Detoxification"~~ means services offered to individuals with a substance related disorder whose biomedical and emotional/behavioral problems are sufficiently severe to require inpatient care.

(4) **"Community Based Extended"** means a PRTF with 16 beds or more but less than 30 beds. The typical facility is not a locked facility.

(5) ~~"Community based transitional residential treatment"~~ means a level of care designed for children that require the continued structure, psychiatric intervention of 24 hour care but are ready to begin transitioning from more intense residential treatment into the community. It is the intent that members admitted to this level of care should be able to attend public school. Community based transitional are non-secure PRTFs with 16 beds or less.

(6) **"Designated Agent"** means the entity contracted with the OHCA to provide certain services to meet federal and state statutory obligations of the OHCA.

(7) ~~"Enhanced Treatment Unit or Specialized Treatment Unit"~~ means an intensive residential treatment unit that provides a program of care to a population with a special need or issues requiring increased staffing requirements, co-morbidities, environmental accommodations, specialized treatment programs, and longer lengths of stay.

(8) **"Evidenced Based Practice (EBP)"** according to the Substance Abuse and Mental Health Services Administration (SAMHSA) means programs or practices that are supported by research methodology and have produced consistently positive patterns of results.

(9) **"Freestanding PRTFs"** are generally for profit secure facilities which range from 50 to over 100 beds and are generally staffed higher with RN personnel.

(10) **"Out-of-State Placement"** means a placement for intensive or specialized services not available in Oklahoma requiring additional authorization procedures and approval by the OHCA Behavioral Health Unit.

(11) **"Provider Based"** facilities are secure residential treatment facilities that are affiliated with private medical/surgical hospitals. The RN hours per day average 2.4 hours.

(12) ~~"Public facilities"~~ are Oklahoma government owned or operated facilities.

(13) **"Residential Treatment services"** means psychiatric services that are designed to serve children who need longer term, more intensive treatment, and a more highly structured environment than they can receive in family and other community-based alternatives to hospitalization.

(14) **"Trauma Informed"** means the recognition and responsiveness to the presence of the effects of past and current traumatic experiences in the lives of members.

(a) In order for services to be covered, services in psychiatric units of general hospitals, psychiatric hospitals, and PRTF programs must meet the requirements in OAC 317:30-5-95.25 through 317:30-5-95.30. OHCA rules that apply to inpatient psychiatric coverage for individuals aged twenty-one (21) and under are found in Sections OAC 317:30-5-95.22 through 317:30-5-95.42.

(b) The following words and terms, when used in OAC 317:30-5-95.22 through 317:30-5-95.42, shall have the following meaning, unless the context clearly indicates otherwise:

(1) "Acute" means care delivered in a psychiatric unit of a general hospital or psychiatric hospital that provides assessment, medical management and monitoring, and short-term intensive treatment and stabilization to individuals experiencing acute episodes of behavioral health disorders.

(2) "Acute II" means care delivered in a psychiatric unit of a general hospital or psychiatric hospital; however, services at this level of care are designed to serve individuals under twenty-one (21) who need longer-term, more intensive treatment, and a more highly-structured environment than they can receive in family and other community-based alternatives to hospitalization. However, care delivered in this setting is less intense than the care provided in Acute.

(3) "Border placement" means placement in an inpatient psychiatric facility that is in one (1) of the states that borders Oklahoma (Arkansas, Colorado, Kansas, Missouri, New Mexico, and Texas).

(4) "Border status" means placement in a facility in a state that does not border Oklahoma, but which facility routinely provides inpatient psychiatric services to SoonerCare members.

(5) "Chemical dependency/substance abuse services/detoxification" means services offered to individuals with a substance-related disorder whose biomedical and emotional/behavioral problems are sufficiently severe to require inpatient care.

(6) "Community-based extended" means a PRTF with sixteen (16) beds or more but less than thirty (30) beds. The typical facility is not a locked facility.

(7) "Community-based transitional (CBT)" means a PRTF level of care designed for individuals under twenty-one (21) who require the continued structure and psychiatric intervention of twenty-four (24) hour care, but are ready to begin transitioning from more intense residential treatment into the community. It is the intent that members admitted to this level of care should be able to attend public school. Community-based transitional facilities are non-secure PRTFs with sixteen (16) beds or less.

(8) "Enhanced treatment unit or specialized treatment" means an intensive residential treatment unit that provides a program of care to a population with special needs or issues requiring increased staffing requirements, co-morbidities, environmental accommodations, specialized treatment programs, and longer lengths of stay.

(9) "Evidence-based practice (EBP)" means programs or practices that are supported by research methodology and have produced consistently positive patterns of results in accordance with the Substance Abuse and Mental Health Services Administration (SAMHSA).

(10) "Out-of-state placement" means a placement for intensive or specialized services not available in Oklahoma requiring additional authorization procedures and approval by the OHCA Behavioral Health Unit.

(11) "Public facilities" means Oklahoma government owned or operated facilities.

(12) "Trauma-informed" means the recognition and responsiveness to the presence of the effects of past and current traumatic experiences in the lives of members.

317:30-5-95.24. Prior authorization of inpatient psychiatric services for children/individuals under twenty-one (21)

(a) ~~All inpatient psychiatric services for members under twenty one (21) years of age must be prior authorized by the Oklahoma Health Care Authority (OHCA) or its designated agent. All inpatient acute and residential psychiatric services will be prior authorized for an approved length of stay. Admission requirements for services must be provided in accordance with Code of Federal Regulations, Title 42 Public Health, Part 441 and 456. Additional information will be required for a SoonerCare compensable approval on enhanced treatment units or in special population programs.~~

(b) ~~Staffing ratios shall always be present for each individual unit not by facility or program. Patients shall be grouped for accommodation by gender, age, and treatment needs. At a minimum, children, adolescent, and adult treatment programs shall be separate with distinct units for each population. A unit is determined by separate and distinct sleeping, living, and treatment areas often separated by walls and/or doors. A unit that does not allow clear line of sight due to the presence of walls or doors is considered a separate unit. Each individual unit shall have assigned staff to allow for appropriate and safe monitoring of patients and to provide active treatment.~~

(c) ~~In an acute care setting, at least one Registered Nurse (RN) must be on duty per unit at all times, with additional RNs to meet program needs. RNs must adhere to Oklahoma Department of Health policy at Oklahoma Administrative Code (OAC) 310:667-15-3 and OAC 310:667-33-2(a)(3).~~

(d) ~~Regular residential treatment programs require a staffing ratio of 1:6 during routine waking hours and 1:8 during time residents are asleep with twenty four (24) hour nursing care supervised by an RN for management of behaviors and medical complications. At a minimum, the supervising RN must be available by phone and on site within one (1) hour. If the supervising RN is off site, then an RN or LPN must be on site to adhere to a twenty four (24) hour nursing care coverage ratio of 1:30 during routine waking hours and 1:40 during time residents are asleep.~~

(e) Specialty residential treatment at this level is a longer term treatment that requires a higher staff to member ratio because of the need for constant, intense, and immediate reinforcement of new behaviors to develop an understanding of the behaviors. The environment of specialized residential treatment centers requires special structure and configuration (e.g., sensory centers for autistic members) and specialized training for the staff in the area of the identified specialty. The physician will see the child at least one (1) time a week.

(f) A Psychiatric Residential Treatment Facility (PRTF) will not be considered a specialty treatment program for SoonerCare without prior approval of the OHCA behavioral health unit.

(g) A treatment program that has been approved as a specialized treatment program must maintain medical records that document the degree and intensity of the psychiatric care delivered to the children.

(h) Criteria for classification as a specialized PRTF will require a staffing ratio of 1:3 at a minimum during routine waking hours and 1:6 during time residents are asleep with twenty-four (24) hour nursing care supervised by a RN for management of behaviors and medical complications. The PRTF will be a secure unit, due to the complexity of needs and safety considerations. Admissions will be restricted to children that meet the medical necessity criteria for Residential Treatment Center (RTC) and also meet at least two or more of the following:

- (1) Have failed at other levels of care or have not been accepted at other levels of care;
- (2) Behavioral, emotional, and cognitive problems requiring secure residential treatment that includes 1:1, 1:2, or 1:3 staffing due to the member being a danger to themselves and others, for impairments in socialization problems, communication problems, and restricted, repetitive and stereotyped behaviors. These symptoms are severe and intrusive enough that management and treatment in a less restrictive environment places the child and others in danger but, do not meet acute medical necessity criteria. These symptoms which are exhibited across multiple environments must include at least two or more of the following:

- (A) Marked impairments in the use of multiple nonverbal behaviors such as eye to eye gaze, facial expression, body postures, and gestures to regulate social interaction;
- (B) Inability to regulate impulse control with frequent displays of aggression or other dangerous behavior toward self and/or others regularly;
- (C) Failure to develop peer relationships appropriate to developmental level;
- (D) Lack of spontaneously seeking to share enjoyment, interests, or achievements with other people;
- (E) Lack of social or emotional reciprocity;
- (F) Lack of attachment to caretakers;
- (G) Require a higher level of assistance with activities of daily living requiring multiple verbal cues 50 percent of the time to complete tasks;
- (H) Delay, or total lack of, the development of spoken language which is not accompanied by an attempt

to compensate through alternative modes of communication such as gesture or mime;

(I) Marked impairment in individuals with adequate speech in the ability to initiate or sustain a conversation with others;

(J) Stereotyped and repetitive use of language or idiosyncratic language;

(K) Lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level;

(L) Encompassing preoccupation with one or more stereotyped and restricted pattern and interest that is abnormal in intensity of focus;

(M) Inflexible adherence to specific, nonfunctional routines or rituals;

(N) Stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting or complex whole body movements);

(O) Persistent occupation with parts of objects;

(3) Member is medically stable, but has co-morbid medical conditions which require specialized medical care during treatment;

(4) Full scale IQ below 40 (profound mental retardation intellectual disability).

(i) Non-authorized inpatient psychiatric services will not be SoonerCare compensable.

(j) The designated agent will prior authorize all services for an approved length of stay based on the medical necessity criteria described in OAC 317:30-5-95.25 through 317:30-5-95.31.

(k) For out of state placement policy, refer to OAC 317:30-3-89 through 317:30-3-92. A prime consideration for placements will be proximity to the family or guardian in order to involve the family or guardian in Active Treatment, including discharge and reintegration planning. Out of state facilities are responsible for insuring appropriate medical care as needed under SoonerCare provisions as part of the per diem rate.

(l) Inpatient psychiatric services in all acute hospitals and psychiatric residential treatment facilities are limited to the approved length of stay. OHCA, or its designated agent, will approve lengths of stay using the current OHCA Behavioral Health medical necessity criteria as described in OAC 317:30-5-95.25 through OAC 317:30-5-95.31. The approved length of stay applies to both hospital and physician services. The Child and Adolescent Level of Care Utilization System (CALOCUS®) is a level of care assessment that will be used as a tool to determine the most appropriate level of care treatment for a member by LBHPs in the community.

(a) All inpatient psychiatric services for members under twenty-one (21) years of age must be prior authorized by the OHCA or its designated agent. All inpatient Acute, Acute II, and PRTF services will be prior authorized for an approved length of stay. Admission requirements for services must be provided in accordance with 42 C.F.R. Part 441 and 456. Additional information will be required for SoonerCare-compensable approval on enhanced treatment units or in special population programs.

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(b) Unit staffing ratios shall always meet the requirements in OAC 317:30-5-95.24 (c), (d) and (h). The facility cannot use staff that is also on duty in other units of the facility in order to meet the unit staffing ratios. Patients shall be grouped for accommodation by gender, age, and treatment needs. At a minimum, children, adolescent, and adult treatment programs shall be separate with distinct units for each population. A unit is determined by separate and distinct sleeping, living, and treatment areas often separated by walls and/or doors. A unit that does not allow clear line of sight due to the presence of walls or doors is considered a separate unit. Each individual unit shall have assigned staff to allow for appropriate and safe monitoring of patients and to provide active treatment.

(c) In Acute and Acute II settings, at least one (1) registered nurse (RN) must be on duty per unit at all times, with additional RNs to meet program needs. RNs must adhere to Oklahoma State Department of Health (OSDH) policy at OAC 310:667-15-3 and 310:667-33-2(a)(3).

(d) Acute, non-specialty Acute II, and non-specialty PRTF programs require a staffing ratio of one (1) staff: six (6) patients during routine waking hours and one (1) staff: eight (8) patients during time residents are asleep with twenty-four (24) hour nursing care supervised by an RN for management of behaviors and medical complications. For PRTF programs, at a minimum, a supervising RN must be available by phone and on-site within one (1) hour. If the supervising RN is off-site, then an RN or licensed practical nurse (LPN) must be on-site to adhere to a twenty-four (24) hour nursing care coverage ratio of one (1) staff: thirty (30) patients during routine waking hours and one (1) staff: forty (40) patients during time residents are asleep.

(e) Specialty treatment at Acute II or PRTF is a longer-term treatment that requires a higher staff-to-member ratio because of the need for constant, intense, and immediate reinforcement of new behaviors to develop an understanding of the behaviors. The environment of specialized residential treatment centers requires special structure and configuration (e.g., sensory centers for autistic members) and specialized training for the staff in the area of the identified specialty. The physician will see the child at least one (1) time a week.

(f) An Acute II or PRTF will not be considered a specialty treatment program for SoonerCare without prior approval of the OHCA behavioral health unit.

(g) A treatment program that has been approved as a specialized treatment program must maintain medical records that document the degree and intensity of the psychiatric care delivered to the members.

(h) Criteria for classification as a specialty Acute II or PRTF will require a staffing ratio of one (1) staff: three (3) patients at a minimum during routine waking hours and one (1) staff: six (6) patients during time residents are asleep with twenty-four (24) hour nursing care supervised by a RN for management of behaviors and medical complications. The specialty Acute II or PRTF will be a secure unit, due to the complexity of needs and safety considerations. Admissions will be restricted to members who meet the medical necessity criteria for the respective level of care and also meet at least two (2) or more of the following:

(1) Have failed at other levels of care or have not been accepted by other non-specialty levels of care;

(2) Have behavioral, emotional, and cognitive problems requiring secure treatment that includes one (1) staff: one (1) patient, one (1) staff: two (2) patients, or one (1) staff: three (3) patients staffing due to the member being a danger to themselves and others, for impairments in socialization problems, communication problems, and restricted, repetitive, and stereotyped behaviors. These symptoms must be severe and intrusive enough that management and treatment in a less restrictive environment places the member and others in danger but, do not meet acute medical necessity criteria. These symptoms must be exhibited across multiple environments and must include at least two (2) or more of the following:

(A) Marked impairments in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction;

(B) Inability to regulate impulse control with frequent displays of aggression or other dangerous behavior toward self and/or others regularly;

(C) Failure to develop peer relationships appropriate to developmental level;

(D) Lack of spontaneously seeking to share enjoyment, interests, or achievements with other people;

(E) Lack of social or emotional reciprocity;

(F) Lack of attachment to caretakers;

(G) Require a higher level of assistance with activities of daily living requiring multiple verbal cues at least fifty (50) percent of the time to complete tasks;

(H) Delay, or total lack of, the development of spoken language which is not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime;

(I) Marked impairment in individuals with adequate speech in the ability to initiate or sustain a conversation with others;

(J) Stereotyped and repetitive use of language or idiosyncratic language;

(K) Lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level;

(L) Encompassing preoccupation with one (1) or more stereotyped and restricted pattern and interest that is abnormal in intensity of focus;

(M) Inflexible adherence to specific, nonfunctional routines or rituals;

(N) Stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting or complex whole body movements); and/or

(O) Persistent occupation with parts of objects;

(3) Member is medically stable, but has co-morbid medical conditions which require specialized medical care during treatment; and/or

(4) Has full-scale IQ below forty (40) (profound intellectual disability).

(i) Non-authorized inpatient psychiatric services will not be SoonerCare compensable.

(j) The OHCA, or its designated agent, will prior authorize all services for an approved length of stay based on the medical necessity criteria described in OAC 317:30-5-95.25 through 317:30-5-95.30.

(k) For out-of-state placement policy, refer to OAC 317:30-3-89 through 317:30-3-92. A prime consideration for placements will be proximity to the family or guardian in order to involve the family or guardian in active treatment, including discharge and reintegration planning. Out-of-state facilities are responsible for insuring appropriate medical care, as needed under SoonerCare provisions, as part of the per-diem rate.

(l) Inpatient psychiatric services in all psychiatric units of general hospitals, psychiatric hospitals, and PRTFs are limited to the approved length of stay. OHCA, or its designated agent, will approve lengths of stay using the current OHCA Behavioral Health medical necessity criteria as described in OAC 317:30-5-95.25 through OAC 317:30-5-95.30. The approved length of stay applies to both facility and physician services.

317:30-5-95.29. Medical necessity criteria for admission ~~psychiatric residential treatment~~ Acute II and PRTF admissions for children

(a) Psychiatric Residential Treatment facility admissions for children must meet the terms and conditions in (1), (2), (3), (4), (6) and one of (5)(A) through (5)(D) of this subsection.

(1) A primary diagnosis from the most recent edition of "The Diagnostic and Statistical Manual of Mental Disorders" (DSM) with the exception of V codes, adjustment disorders, and substance related disorders, accompanied by detailed symptoms supporting the diagnosis. Children 18-20 years of age may have a diagnosis of any personality disorder. Adjustment or substance related disorders may be a secondary diagnosis.

(2) Conditions are directly attributed to a mental disorder as the primary reason for professional attention (this does not include placement issues, criminal behavior or status offenses).

(3) Patient has either received treatment in an acute care setting or it has been determined by the OHCA designated agent that the current disabling symptoms could not or have not been manageable in a less intensive treatment program.

(4) Child must be medically stable.

(5) Within the past 14 calendar days, the patient has demonstrated an escalating pattern of self injurious or assaultive behaviors as evidenced by any of (A) through (D) below. Exceptions to the 14 day requirement may be made in instances when evidence of the behavior could not have reasonably been discovered within 14 days (e.g., sexual offenses).

(A) Suicidal ideation and/or threat.

(B) History of or current self injurious behavior.

(C) Serious threats or evidence of physical aggression.

(D) Current incapacitating psychosis or depression.

(6) Requires 24 hour observation and treatment as evidenced by:

(A) Intensive behavioral management.

(B) Intensive treatment with the family/guardian and child in a structured milieu.

(C) Intensive treatment in preparation for re-entry into community.

(b) Community Based Transitional Residential Treatment (CBT) facility admissions for children must meet the terms and conditions in (1) through (6) of this subsection.

(1) A primary diagnosis from the most recent edition of the DSM with the exception of V codes, adjustment disorders, and substance related disorders, accompanied by detailed symptoms supporting the diagnosis. Children 18-20 years of age may have a diagnosis of any personality disorder.

(2) Conditions are directly attributed to a mental disorder as the primary reason for professional attention (this does not include placement issues, criminal behavioral or status offenses).

(3) Patient has either received treatment in an acute, RTC or children's crisis unit care setting or it has been determined by OHCA or its designated agent that the current disabling symptoms could not or have not been manageable in a less intensive treatment program.

(A) Patient must have tried and failed a lower level of care or is stepping down from a higher level of care.

(B) Clinical documentation must support need for CBT, rather than facility based crisis stabilization, therapeutic foster care, or intensive outpatient services.

(C) There is clear evidence to support a reasonable expectation that stepping down to a lower level of care would result in rapid and marked deterioration of functioning in at least 2 of the 5 critical areas, listed below, placing the member at risk of need for acute stabilization/inpatient care.

(i) Personal safety.

(ii) Cognitive functioning.

(iii) Family relations.

(iv) Interpersonal relations.

(v) Educational/vocational performance.

(4) Child must be medically stable and not require 24 hour on-site nursing or medical care.

(5) Within the past 14 calendar days, the patient must have demonstrated an escalating pattern of self injurious or assaultive behavior as evidenced by any of (a)(5)(A) through (D) above. Exceptions to the 14 day requirement may be made in instances when evidence of the behavior could not have reasonably been discovered within 14 days (e.g., sexual offenses).

(6) Within the past 14 calendar days, the patient's behaviors have created significant functional impairment.

(a) Acute II and PRTF admissions for individuals under twenty-one (21) must meet the terms and conditions in (1).

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(2), (3), (4), (5) and one (1) of the terms and conditions of (6)(A) through (D) of this subsection.

(1) A primary diagnosis from the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) with the exception of V-codes, adjustment disorders, and substance-related disorders, accompanied by detailed symptoms supporting the diagnosis. Members eighteen (18) to twenty (20) years of age may have a diagnosis of any personality disorder. Adjustment or substance-related disorders may be a secondary diagnosis.

(2) Conditions are directly attributed to a mental disorder as the primary reason for professional attention (this does not include placement issues, criminal behavior, or status offenses).

(3) Patient has either received treatment in an acute setting or it has been determined by the OHCA or its designated agent that the current disabling symptoms could not or have not been manageable in a less-intensive treatment program.

(4) Member must be medically stable.

(5) Requires twenty-four (24) hour observation and treatment as evidenced by:

(A) Intensive behavioral management;

(B) Intensive treatment with the family/guardian and child in a structured milieu; and

(C) Intensive treatment in preparation for re-entry into community.

(6) Within the past fourteen (14) calendar days, the patient has demonstrated an escalating pattern of self-injurious or assaultive behaviors as evidenced by any of (A) through (D) below. Exceptions to the fourteen (14) day requirement may be made in instances when evidence of the behavior could not have reasonably been discovered within fourteen (14) days (e.g., sexual offenses).

(A) Suicidal ideation and/or threat.

(B) History of/or current self-injurious behavior.

(C) Serious threats or evidence of physical aggression.

(D) Current incapacitating psychosis or depression.

(b) CBT admissions for children must meet the terms and conditions in (1) through (6) of this subsection.

(1) A primary diagnosis from the DSM-V with the exception of V-codes, adjustment disorders, and substance-related disorders, accompanied by detailed symptoms supporting the diagnosis. Members eighteen (18) to twenty (20) years of age may have a diagnosis of any personality disorder.

(2) Conditions are directly attributed to a mental disorder as the primary reason for professional attention (this does not include placement issues, criminal behavior, or status offenses).

(3) Patient has either received treatment in Acute, Acute II, PRTF or children's crisis unit setting (refer to OAC 317:30-5-241.4), or it has been determined by OHCA or its designated agent that the current disabling symptoms could not or have not been manageable in a less-intensive treatment program.

(A) Patient must have tried and failed a lower level of care or is stepping down from a higher level of care.

(B) Clinical documentation must support need for CBT, rather than facility-based crisis stabilization, therapeutic foster care, intensive treatment foster care, or intensive outpatient services.

(C) There is clear evidence to support a reasonable expectation that stepping down to a lower level of care would result in rapid and marked deterioration of functioning in at least two (2) of the five (5) critical areas, listed below, placing the member at risk of need for acute stabilization/inpatient care.

(i) Personal safety;

(ii) Cognitive functioning;

(iii) Family relations;

(iv) Interpersonal relations; or

(v) Educational/vocational performance.

(4) Child must be medically stable.

(5) Within the past fourteen (14) calendar days, the patient must have demonstrated an escalating pattern of self-injurious or assaultive behavior as evidenced by any of (a)(5)(A) through (D) above. Exceptions to the fourteen (14) day requirement may be made in instances when evidence of the behavior could not have reasonably been discovered within fourteen (14) days (e.g., sexual offenses).

(6) Within the past fourteen (14) calendar days, the patient's behaviors have created significant functional impairment.

317:30-5-95.30. Medical necessity criteria for ~~continued stay—psychiatric residential treatment center for children~~Acute II and PRTF continued stay for children

(a) For continued stay Psychiatric Residential Treatment Facilities for children, admissions must meet the terms and conditions contained in (1), (2), (5), (6), and either (3) or (4) of this subsection.

(1) A primary diagnosis from the most recent edition of "The Diagnostic and Statistical Manual of Mental Disorders" (DSM) with the exception of V codes, adjustment disorders, and substance abuse related disorders, accompanied by detailed symptoms supporting the diagnosis. In lieu of a qualifying primary diagnosis, children 18-20 years of age may have a secondary diagnosis of any personality disorder.

(2) Conditions are directly attributed to a psychiatric disorder as the primary reason for continued stay (this does not include placement issues, criminal behavior, status offenses).

(3) Patient is making measurable progress toward the treatment objectives specified in the treatment plan.

(A) Progress is measured in behavioral terms and reflected in the patient's treatment and discharge plans.

(B) Patient has made gains toward social responsibility and independence.

- (C) ~~There is active, ongoing psychiatric treatment and documented progress toward the treatment objective and discharge.~~
- (D) ~~There are documented efforts and evidence of active involvement with the family, guardian, child welfare worker, extended family, etc.~~
- (4) ~~Child's condition has remained unchanged or worsened.~~
 - (A) ~~Documentation of regression is measured in behavioral terms.~~
 - (B) ~~If condition is unchanged, there is evidence of re-evaluation of the treatment objectives and therapeutic interventions.~~
- (5) ~~There is documented continuing need for 24 hour observation and treatment as evidenced by:~~
 - (A) ~~Intensive behavioral management.~~
 - (B) ~~Intensive treatment with the family/guardian and child in a structured milieu.~~
 - (C) ~~Intensive treatment in preparation for re-entry into community.~~
- (6) ~~Documented efforts of working with child's family, legal guardian and/or custodian and other human service agencies toward a tentative discharge date.~~
- (b) ~~For continued stay Community Based Transitional Residential Treatment (CBT), children must meet the terms and conditions found in (1) through (5) of this subsection.~~
 - (1) ~~A primary diagnosis from the most recent DSM with the exception of V codes, adjustment disorders, and substance use disorders, accompanied by detailed symptoms supporting the diagnosis. Children 18-20 years of age may have a diagnosis of any personality disorder.~~
 - (2) ~~Conditions are directly attributed to a psychiatric disorder as the primary reason for continued stay (this does not include placement issues, criminal behavior, status offenses, etc.).~~
 - (3) ~~There is documented continued need for 24 hour observation and treatment as evidenced by:~~
 - (A) ~~Patient making measurable progress toward the treatment objectives specified in the treatment plan.~~
 - (B) ~~Clinical documentation clearly indicates continued significant functional impairment in two of the following five critical areas, as evidenced by specific clinically relevant behavior descriptors:~~
 - (i) ~~Personal safety.~~
 - (ii) ~~Cognitive functioning.~~
 - (iii) ~~Family relations.~~
 - (iv) ~~Interpersonal relations.~~
 - (v) ~~Educational/vocational performance.~~
 - (4) ~~Clinical documentation includes behavioral descriptors indicating patient's response to treatment and supporting patient's ability to benefit from continued treatment at this level of care.~~
 - (5) ~~Documented, clear evidence of consistent, active involvement by patient's primary caregiver(s) in the treatment process.~~
- (a) For continued stay in Acute II and PRTF programs, members must meet the terms and conditions contained in (1), (2), (3), (4), and either (5) or (6) of this subsection:
 - (1) A primary diagnosis from the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) with the exception of V codes, adjustment disorders, and substance abuse-related disorders, accompanied by detailed symptoms supporting the diagnosis. In lieu of a qualifying primary diagnosis, members eighteen (18) to twenty (20) years of age may have a secondary diagnosis of any personality disorder.
 - (2) Conditions are directly attributed to a psychiatric disorder as the primary reason for continued stay (this does not include placement issues, criminal behavior, or status offenses).
 - (3) There is documented continuing need for twenty-four (24) hour observation and treatment as evidenced by:
 - (A) Intensive behavioral management.
 - (B) Intensive treatment with the family/guardian and child in a structured milieu.
 - (C) Intensive treatment in preparation for re-entry into community.
 - (4) Documented efforts of working with child's family, legal guardian and/or custodian and other human service agencies toward a tentative discharge date.
 - (5) Patient is making measurable progress toward the treatment objectives specified in the treatment plan.
 - (A) Progress is measured in behavioral terms and reflected in the patient's treatment and discharge plans.
 - (B) Patient has made gains toward social responsibility and independence.
 - (C) There is active, ongoing psychiatric treatment and documented progress toward the treatment objective and discharge.
 - (D) There are documented efforts and evidence of active involvement with the family, guardian, child welfare worker, extended family, etc.
 - (6) Child's condition has remained unchanged or worsened.
 - (A) Documentation of regression is measured in behavioral terms.
 - (B) If condition is unchanged, there is evidence of re-evaluation of the treatment objectives and therapeutic interventions.
- (b) For continued stay in a CBT, members must meet the terms and conditions found in (1) through (5) of this subsection.
 - (1) A primary diagnosis from the DSM-V with the exception of V codes, adjustment disorders, and substance use disorders, accompanied by detailed symptoms supporting the diagnosis. Members eighteen (18) to twenty (20) years of age may have a diagnosis of any personality disorder.
 - (2) Conditions are directly attributed to a psychiatric disorder as the primary reason for continued stay (this does not include placement issues, criminal behavior, or status offenses).
 - (3) There is documented continued need for twenty-four (24) hour observation and treatment as evidenced by:

(A) Patient making measurable progress toward the treatment objectives specified in the treatment plan.

(B) Clinical documentation clearly indicates continued significant functional impairment in two (2) of the following five (5) critical areas, as evidenced by specific clinically relevant behavior descriptors:

(i) Personal safety;

(ii) Cognitive functioning;

(iii) Family relations;

(iv) Interpersonal relations; or

(v) Educational/vocational performance.

(4) Clinical documentation includes behavioral descriptors indicating patient's response to treatment and supporting patient's ability to benefit from continued treatment at this level of care.

(5) Documented, clear evidence of consistent, active involvement by patient's primary caregiver(s) in the treatment process.

317:30-5-95.31. Prior ~~Authorization~~authorization and extension procedures for children

(a) Prior authorization for inpatient psychiatric services for children must be requested from the Oklahoma Health Care Authority (OHCA) or its designated agent. The OHCA or its designated agent will evaluate and render a decision within twenty-four (24) hours of receiving the request. A prior authorization will be issued by the OHCA or its designated agent, if the member meets medical necessity criteria. For the safety of SoonerCare members, additional approval from OHCA, or its designated agent is required for placement on specialty units or in special population programs or for members with special needs such as very low intellectual functioning.

(b) Extension requests (psychiatric) must be made through OHCA, or its designated agent. All requests are made prior to the expiration of the approved extension. Requests for the continued stay of a child who has been in an acute psychiatric program for a period of fifteen (15) days and in a psychiatric residential treatment facility for three (3) months will require a review of all treatment documentation completed by the OHCA designated agent to determine the efficiency of treatment.

(c) Providers seeking prior authorization will follow OHCA's, or its designated agent's, prior authorization process guidelines for submitting behavioral health case management requests on behalf of the SoonerCare member.

(d) In the event a member disagrees with the decision by OHCA, or its designated agent, the member receives an evidentiary hearing under Oklahoma Administrative Code 317:2-1-2(b). The member's request for such an appeal must be received within thirty (30) calendar days of the initial decision.

(a) Prior authorization for inpatient psychiatric services for members must be requested from the OHCA or its designated agent. The OHCA or its designated agent will evaluate and render a decision within twenty-four (24) hours of receiving the request. A prior authorization will be issued by the OHCA or its designated agent, if the member meets medical necessity criteria. For the safety of SoonerCare members, additional approval from OHCA, or its designated agent, is required for placement on specialty units or in special population programs

or for members with special needs such as very low intellectual functioning.

(b) Extension requests (psychiatric) must be made through OHCA or its designated agent. All requests are made prior to the expiration of the approved extension. Requests for the continued stay of a member who has been in an Acute psychiatric program for a period of fifteen (15) days and an Acute II or PRTF program for three (3) months will require a review of all treatment documentation completed by the OHCA, or its designated agent, to determine the efficiency of treatment.

(c) Providers seeking prior authorization will follow OHCA's, or its designated agent's, prior authorization process guidelines for submitting behavioral health case management requests on behalf of the SoonerCare member.

(d) In the event a member disagrees with the decision by OHCA, or its designated agent, the member may request an evidentiary hearing under OAC 317:2-1-2(b). The member's request for such an appeal must be received within thirty (30) calendar days of the date of the notice of the initial decision.

317:30-5-95.33. Individual plan of care for members under the age of twenty-one (21)children

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

(1) "~~Licensed behavioral health professional (LBHP)~~" means licensed psychologists, licensed clinical social workers (LCSW), licensed marital and family therapists (LMFT), licensed professional counselors (LPC), licensed behavioral practitioners (LBP), licensed alcohol and drug counselors (LADC), and advanced practice registered nurses (APRN).

(2) "~~Licensure candidate~~" means practitioners actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

(A) Psychology,

(B) Social Work (clinical specialty only),

(C) Professional Counselor,

(D) Marriage and Family Therapist,

(E) Behavioral Practitioner, or

(F) Alcohol and Drug Counselor.

(3) "~~Individual plan of care (IPC)~~" means a written plan developed for each member within four (4) calendar days of admission to an acute psychiatric facility or a PRTF that directs the care and treatment of that member. The IPC must be recovery focused, trauma informed, and specific to culture, age, and gender and include:

(A) A primary diagnosis from the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) with the exception of V Codes, adjustment disorders, and substance abuse related disorders, accompanied by a detailed description of the symptoms supporting the diagnosis. Members eighteen (18) to twenty (20) years of age may have a diagnosis of any personality disorder. Adjustment or

substance related disorders may be a secondary diagnosis;

(B) The current functional level of the individual;

(C) Treatment goals and measurable, time limited objectives;

(D) Any orders for psychotropic medications, treatments, restorative and rehabilitative services, activities, therapies, social services, diet, and special procedures recommended for the health and safety of the member;

(E) Plans for continuing care, including review and modification to the IPC; and

(F) Plan for discharge, all of which is developed to improve the member's condition to the extent that the inpatient care is no longer necessary.

(b) The IPC:

(1) Must be based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral, and developmental aspects of the individual member and reflects the need for inpatient psychiatric care;

(2) Must be developed by a team of professionals in consultation with the member, his or her parents or legal guardians [for members under the age of eighteen (18)], or others in whose care he or she will be released after discharge. This team must consist of professionals as specified below:

(A) For a member admitted to a psychiatric hospital or PRTE, by the "interdisciplinary team" as defined by Oklahoma Administrative Code (OAC) 317:30-5-95.35(b)(2), per 42 C.F.R. §§ 441.155 and 483.354; or

(B) For a member admitted to a psychiatric unit of a general hospital, by a team comprised of at least:

(i) An allopathic or osteopathic physician with a current license and a board certification/eligible in psychiatry, or a current resident in psychiatry practicing as described in OAC 317:30-5-2(a)(1)(U); and

(ii) A registered nurse (RN) with a minimum of two (2) years of experience in a mental health treatment setting; and

(iii) An LBHP.

(3) Must establish treatment goals that are general outcome statements and reflective of informed choices of the member served. Additionally, the treatment goals must be appropriate to the member's age, culture, strengths, needs, abilities, preferences, and limitations;

(4) Must establish measurable and time limited treatment objectives that reflect the expectations of the member served and parents/legal guardians (when applicable), as well as being age, developmentally, and culturally appropriate. When modifications are being made to accommodate age, developmental level, or a cultural issue, the documentation must be reflected on the IPC. The treatment objectives must be achievable and understandable to the member and the parents/legal guardians (when applicable). The treatment objectives also must be appropriate

to the treatment setting and list the frequency of the service;

(5) Must prescribe an integrated program of therapies, activities, and experiences designed to meet the objectives;

(6) Must include specific discharge and after care plans that are appropriate to the member's needs and effective on the day of discharge. At the time of discharge, after care plans will include referral to medication management, outpatient behavioral health counseling, and case management, to include the specific appointment date(s), names, and addresses of service provider(s) and related community services to ensure continuity of care and reintegration for the member into his or her family, school, and community;

(7) Must be reviewed, at a minimum, every five (5) to nine (9) calendar days for members admitted to an acute care setting; every fourteen (14) calendar days for members admitted to a regular PRTE; every twenty one (21) calendar days for members admitted to an OHCA approved longer term treatment program or specialty PRTE; and every thirty (30) calendar days for members admitted to a Community Based Transitional PRTE. Review must be undertaken by the appropriate team specified in OAC 317:30-5-95.33(b)(2), above, to determine that services being provided are or were required on an inpatient basis, and to recommend changes in the IPC as indicated by the member's overall adjustment, progress, symptoms, behavior, and response to treatment;

(8) Development and review must satisfy the utilization control requirements for recertification [42 C.F.R. §§ 456.60(b), 456.160(b), and 456.360(b)], and establishment and periodic review of the IPC (42 C.F.R. §§ 456.80, 456.180, and 456.380); and,

(9) Each IPC and IPC review must be clearly identified as such and be signed and dated individually by the member, parents/legal guardians [for members under the age of eighteen (18)], and required team members. All IPCs and IPC reviews must be signed by the member upon completion, except when a member is too physically ill or the member's acuity level precludes him or her from signing. If the member is too physically ill or the member's acuity level precludes him or her from signing the IPC and/or the IPC review at the time of completion, the member must sign the plan when his or her condition improves, but before discharge. The documentation should indicate the reason the member was unable to sign and when the next review will occur to obtain the signature. IPCs and IPC reviews are not valid until completed and appropriately signed and dated. All requirements for the IPCs and IPC reviews must be met; otherwise, a partial per diem recoupment will be merited. If the member's parent/legal guardian is unable to sign the IPC or IPC review on the date it is completed, then within seventy two (72) hours the provider must in good faith and with due diligence attempt to telephonically notify the parent/legal guardian of the document's completion and review it with them. Documentation of reasonable efforts to make contact with the member's parent/legal guardian must be included in the

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clinical file. In those instances where it is necessary to mail or fax an IPC or IPC review to a parent/legal guardian or Oklahoma Department of Human Services/Oklahoma Office of Juvenile Affairs (DHS/OJA) worker for review, the parent/legal guardian and/or DHS/OJA worker may fax back his or her signature. The provider must obtain the original signature for the clinical file within thirty (30) days. Stamped or photocopied signatures are not allowed for any parent/legal guardian or member of the treatment team.

(10) Medically necessary Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services shall be provided to members, under the age of twenty one (21), who are residing in an inpatient psychiatric facility, regardless of whether such services are listed on the IPC. Reimbursement for the provision of medically necessary EPSDT services to individuals under age twenty one (21), while the member is residing in an inpatient psychiatric facility, will be provided in accordance with the Oklahoma Medicaid State Plan.

(a) An individual plan of care (IPC) is a written plan developed for each member within four (4) calendar days of admission to an Acute, Acute II, or a PRTF that directs the care and treatment of that member. The IPC must be recovery-focused, trauma-informed, and specific to culture, age, and gender and include:

- (1) A primary diagnosis from the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) with the exception of V-codes, adjustment disorders, and substance abuse-related disorders, accompanied by a detailed description of the symptoms supporting the diagnosis. Members eighteen (18) to twenty (20) years of age may have a diagnosis of any personality disorder. Adjustment or substance-related disorders may be a secondary diagnosis;
- (2) The current functional level of the individual;
- (3) Treatment goals and measurable, time-limited objectives;
- (4) Any orders for psychotropic medications, treatments, restorative and rehabilitative services, activities, therapies, social services, diet, and special procedures recommended for the health and safety of the member;
- (5) Plans for continuing care, including review and modification to the IPC; and
- (6) Plan for discharge, all of which is developed to improve the member's condition to the extent that the inpatient care is no longer necessary.

(b) The IPC:

- (1) Must be based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral, and developmental aspects of the individual member and reflects the need for inpatient psychiatric care;
- (2) Must be developed by a team of professionals in consultation with the member, his or her parents or legal guardians [for members under the age of eighteen (18)], or others in whose care he or she will be released after discharge. This team must consist of professionals as specified below:

(A) For a member admitted to a psychiatric hospital or PRTF, by the "interdisciplinary team" as defined by OAC 317:30-5-95.35(b)(2), per 42 C.F.R. §§ 441.155 and 483.354; or

(B) For a member admitted to a psychiatric unit of a general hospital, by a team comprised of at least:

(i) An allopathic or osteopathic physician with a current license and a board certification/eligible in psychiatry, or a current resident in psychiatry practicing as described in OAC 317:30-5-2(a)(1)(U); and

(ii) A registered nurse (RN) with a minimum of two (2) years of experience in a mental health treatment setting; and

(iii) An LBHP.

(3) Must establish treatment goals that are general outcome statements and reflective of informed choices of the member served. Additionally, the treatment goals must be appropriate to the member's age, culture, strengths, needs, abilities, preferences, and limitations;

(4) Must establish measurable and time-limited treatment objectives that reflect the expectations of the member served and parents/legal guardians (when applicable), as well as being age, developmentally, and culturally appropriate. When modifications are being made to accommodate age, developmental level, or a cultural issue, the documentation must be reflected on the IPC. The treatment objectives must be achievable and understandable to the member and the parents/legal guardians (when applicable). The treatment objectives also must be appropriate to the treatment setting and list the frequency of the service;

(5) Must prescribe an integrated program of therapies, activities, and experiences designed to meet the objectives;

(6) Must include specific discharge and aftercare plans that are appropriate to the member's needs and effective on the day of discharge. At the time of discharge, aftercare plans will include referral to medication management, outpatient behavioral health counseling, and case management, to include the specific appointment date(s), names, and addresses of service provider(s) and related community services to ensure continuity of care and reintegration for the member into his or her family, school, and community;

(7) Must be reviewed, at a minimum, every nine (9) calendar days for members admitted to Acute; every fourteen (14) calendar days for members admitted to Acute II or non-specialty PRTF; every twenty-one (21) calendar days for members admitted to an OHCA-approved longer-term treatment program or specialty Acute II or PRTF; and every thirty (30) calendar days for members admitted to a CBT PRTF. Review must be undertaken by the appropriate team specified in OAC 317:30-5-95.33(b)(2), above, to determine that services being provided are or were required on an inpatient basis, and to recommend changes in the IPC as indicated by the member's overall adjustment, progress, symptoms, behavior, and response to treatment;

(8) Development and review must satisfy the utilization control requirements for recertification [42 C.F.R. §§ 456.60(b), 456.160(b), and 456.360(b)], and establishment and periodic review of the IPC (42 C.F.R. §§ 456.80, 456.180, and 456.380); and,

(9) Each IPC and IPC review must be clearly identified as such and be signed and dated individually by the member, parents/legal guardians [for members under the age of eighteen (18)], and required team members. All IPCs and IPC reviews must be signed by the member upon completion, except when a member is too physically ill or the member's acuity level precludes him or her from signing. If the member is too physically ill or the member's acuity level precludes him or her from signing the IPC and/or the IPC review at the time of completion, the member must sign the plan when his or her condition improves, but before discharge. The documentation should indicate the reason the member was unable to sign and when the next review will occur to obtain the signature. IPCs and IPC reviews are not valid until completed and appropriately signed and dated. All requirements for the IPCs and IPC reviews must be met; otherwise, a partial per diem recoupment will be merited. If the member's parent/legal guardian is unable to sign the IPC or IPC review on the date it is completed, then within seventy-two (72) hours the provider must in good faith and with due diligence attempt to telephonically notify the parent/legal guardian of the document's completion and review it with them. Documentation of reasonable efforts to make contact with the member's parent/legal guardian must be included in the clinical file. In those instances where it is necessary to mail or fax an IPC or IPC review to a parent/legal guardian or Oklahoma Department of Human Services/Oklahoma Office of Juvenile Affairs (OKDHS/OJA) worker for review, the parent/legal guardian and/or OKDHS/OJA worker may fax back his or her signature. The provider must obtain the original signature for the clinical file within thirty (30) days. Stamped or photocopied signatures are not allowed for any parent/legal guardian or member of the treatment team.

(10) Medically necessary Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services shall be provided to members, under the age of twenty-one (21), who are residing in an inpatient psychiatric facility, regardless of whether such services are listed on the IPC. Reimbursement for the provision of medically necessary EPSDT services to individuals under age twenty-one (21), while the member is residing in an inpatient psychiatric facility, will be provided in accordance with the Oklahoma Medicaid State Plan.

317:30-5-95.34. Active treatment for children

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

(1) **"Discharge/transition planning"** means a patient-centered, interdisciplinary process that begins with an initial assessment of the patient's potential needs at

the time of admission and continues throughout the patient's stay. Active collaboration with the patient, family and all involved outpatient practitioners and agencies should be ongoing throughout treatment so that effective connections remain intact. Needed services may consist of the wraparound process through Systems of Care, counseling, case management and other supports in their community. The linkages with these supports should be made prior to discharge to allow for a smooth transition.

(2) **"Expressive group therapy"** means art, music, dance, movement, poetry, drama, psychodrama, structured therapeutic physical activities, experiential (e.g. ropes course), recreational, or occupational therapies that encourage the member to express themselves emotionally and psychologically.

(3) **"Family therapy"** means interaction between a licensed behavioral health providers (LBHP) or licensure candidate, member and family member(s) to facilitate emotional, psychological or behavioral changes and promote successful communication and understanding.

(4) **"Group rehabilitative treatment"** means behavioral health remedial services, as specified in the individual care plan, which are necessary for the treatment of the existing primary behavioral health disorders and/or any secondary alcohol and other drug (AOD) disorders in order to increase the skills necessary to perform activities of daily living (ADL).

(5) **"Individual rehabilitative treatment"** means a face to face, one on one interaction which is performed to assist members who are experiencing significant functional impairment due to the existing primary behavioral health disorder and/or any secondary AOD disorder in order to increase the skills necessary to perform ADL.

(6) **"Individual therapy"** means a method of treating existing primary behavioral health disorders and/or any secondary AOD disorders using face to face, one on one interaction between an LBHP or licensure candidate and a member to promote emotional or psychological change to alleviate disorders.

(7) **"Process group therapy"** means a method of treating existing primary behavioral health disorders and/or secondary AOD disorders using the interaction between an LBHP or licensure candidate as defined in OAC 317:30-5-240.3, and two (2) or more members to promote positive emotional and/or behavioral change.

(b) Inpatient psychiatric programs must provide "active treatment." Active treatment involves the member and their family or guardian from the time of an admission throughout the treatment and discharge process. Families and/or guardians must be notified of the dates and times of treatment team meetings and be welcomed to attend. Family members must attend family therapy weekly for continued SoonerCare reimbursement. Reasons for exceptions to this requirement must be well documented in the member's treatment plan. For individuals in the age range of eighteen (18) up to twenty-one (21), it is understood that family members and guardians will not always be involved in the member's treatment. Active treatment also includes an ongoing program of assessment,

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diagnosis, intervention, evaluation of care and treatment, and planning for discharge and aftercare under the direction of a physician. Evidence based practices such as trauma informed methodology should be utilized to minimize the use of restraint and seclusion.

(c) For individuals age eighteen (18) up to twenty one (21), the active treatment program must be appropriate to the needs of the member and be directed toward restoring and maintaining optimal levels of physical and psychiatric social functioning. The services and individual plan of care must be recovery focused, trauma informed, specific to culture, age and gender, and provided face to face. Services, including type and frequency, will be specified in the individual plan of care.

(d) For individuals under age eighteen (18), the components of active treatment consist of face to face integrated therapies that are provided on a regular basis and will remain consistent with the member's ongoing need for care. The services and individual plan of care must be recovery focused, trauma informed, and specific to culture, age, and gender. Individuals in acute care must receive seventeen (17) hours of documented active treatment services each week, with seven (7) of those hours being dedicated to core services as described in (1) below. Individuals in PRTFs must receive fourteen (14) hours of documented active treatment services each week, with four and a half (4.5) of those hours being dedicated to core services as described in (1) below. Individuals in Community Based Transitional (CBT) treatment must receive ten (10) hours of documented active treatment services each week, with four and a half (4.5) of those hours being dedicated to core services as described in (1) below. The remainder of the active treatment services may include any or all of the elective services listed in (2) below or additional hours of any of the core services. Sixty (60) minutes is the expectation to equal one (1) hour of treatment. When appropriate to meet the needs of the child, the sixty (60) minute timeframe may be split into sessions of no less than fifteen (15) minutes each on the condition that the active treatment requirements are fully met by the end of the treatment week. The following components meet the minimum standards required for active treatment, although an individual child's needs for treatment may exceed this minimum standard:

(1) Core Services.

(A) **Individual treatment provided by the physician.** Individual treatment provided by the physician is required three (3) times per week for acute care and one (1) time a week in PRTFs. Individual treatment provided by the physician will never exceed ten (10) calendar days between sessions in PRTFs, never exceed seven (7) calendar days in a specialty PRTF and never exceed thirty (30) calendar days in CBTs. Individual treatment provided by the physician may consist of therapy or medication management intervention for acute and residential programs.

(B) **Individual therapy.** LBHPs or licensure candidates performing this service must use and document an approach to treatment such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted

theoretical framework for treatment. Ongoing assessment of the member's status and response to treatment as well as psycho-educational intervention are appropriate components of individual therapy. Individual therapy must be provided in a confidential setting. The therapy must be goal directed utilizing techniques appropriate to the individual member's plan of care and the member's developmental and cognitive abilities. Individual therapy must be provided two (2) hours per week in acute care and one (1) hour per week in residential treatment by an LBHP or licensure candidate as described in OAC 317:30-5-240.3. One (1) hour of family therapy may be substituted for one (1) hour of individual therapy at the treatment team's discretion.

(C) **Family therapy.** The focus of family therapy must be directly related to the goals and objectives on the individual member's plan of care. Family therapy must be provided one (1) hour per week for acute care and residential. One (1) hour of individual therapy addressing relevant family issues may be substituted for a family session in an instance in which the family is unable to attend a scheduled session by an LBHP or licensure candidate as described in OAC 317:30-5-240.3.

(D) **Process group therapy.** The focus of process group therapy must be directly related to goals and objectives on the individual member's plan of care. The individual member's behavior and the focus of the group must be included in each member's medical record. This service does not include social skills development or daily living skills activities and must take place in an appropriate confidential setting, limited to the therapist, appropriate hospital staff, and group members. Group therapy must be provided three (3) hours per week in acute care and two (2) hours per week in residential treatment by an LBHP or licensure candidate as defined in OAC 317:30-5-240.3. In lieu of one (1) hour of process group therapy, one (1) hour of expressive group therapy provided by an LBHP, licensure candidate, or licensed therapeutic recreation specialist may be substituted.

(E) **Transition/discharge—planning.** Transition/discharge planning must be provided one (1) hour per week in acute care and thirty (30) minutes per week in residential and CBT. Transition/discharge planning can be provided by any level of inpatient staff.

(2) Elective services.

(A) **Expressive group therapy.** Through active expression, inner strengths are discovered that can help the member deal with past experiences and cope with present life situations in more beneficial ways. The focus of the group must be directly related to goals and objectives on the individual member's plan of care. Documentation must include how the member is processing emotions/feelings. Expressive therapy must be a planned therapeutic activity,

facilitated by staff with a relevant bachelor's degree and/or staff with relevant training, experience, or certification to facilitate the therapy.

(B) Group rehabilitative treatment. Examples of educational and supportive services, which may be covered under the definition of group rehabilitative treatment services, are basic living skills, social skills (re)development, interdependent living, self care, lifestyle changes and recovery principles. Each service provided under group rehabilitative treatment services must have goals and objectives, directly related to the individual plan of care.

(C) Individual rehabilitative treatment. Services will be for the reduction of psychiatric and behavioral impairment and the restoration of functioning consistent with the requirements of independent living and enhanced self sufficiency. This service includes educational and supportive services regarding independent living, self care, social skills (re)development, lifestyle changes and recovery principles and practices. Each individual rehabilitative treatment service provided must have goals and objectives directly related to the individualized plan of care and the member's diagnosis.

(D) Recreation therapy. Services will be provided to reduce psychiatric and behavioral impairment as well as to restore, remediate and rehabilitate an individual's level of functioning and independence in life activities. Services will also be provided in such a way as to promote health and wellness as well as reduce or eliminate the activity limitations and restrictions to participation in life situations caused by an illness or disabling condition. Recreational therapy can be provided in an individual or group setting. If the only activities prescribed for the individual are primarily diversional in nature, (i.e. to provide some social or recreational outlet for the individual), it will not be regarded as active treatment. If provided, recreational therapy must be a planned therapeutic activity, facilitated by a licensed therapeutic recreation specialist.

(E) Occupational therapy. Services will be provided to address developmental and/or functional needs related to the performance of self help skills, adaptive behavioral, and/or sensory, motor and postural development. Services include therapeutic goal directing activities and/or exercises used to improve mobility and ADL functions when such functions have been impaired due to illness or injury. Services must be provided by an occupational therapist appropriately licensed in the state in which they practice.

(F) Wellness resource skills development. Services include providing direction and coordinating support activities that promote good physical health. The focus of these activities should include areas such

as nutrition, exercise, support with averting or managing physical health concerns like heart disease, diabetes, and cholesterol, and support regarding the effects of medications have on physical health. Services can include support groups, exercise groups, and individual physical wellness plan development, implementation assistance and support.

(3) Modifications to active treatment. When a member is too physically ill or their acuity level precludes them from active behavioral health treatment, documentation must demonstrate that alternative clinically appropriate services were provided.

(e) The expectation is that active treatment will occur regularly throughout the treatment week. A treatment week in acute is based on the number of days of acute service, beginning the day of admission (day 1). Required active treatment components will be based upon the length of stay as described below. A treatment week in a residential treatment center (RTC), PRTE and CBT is considered to be a calendar week (i.e. Sunday through Saturday). When a child is admitted to RTC, PRTE or CBT level of care on a day other than Sunday, or discharges on a day other than Saturday, the week will be considered a partial week and services will be required as described below. Active treatment components may include assessments/evaluations to serve as the initial individual or family session if completed by an LBHP or licensure candidate. Start and stop time must be documented. Active treatment begins the day of admission. Days noted are calendar days.

(1) Individual treatment provided by the physician.

(A) In acute, by day two (2), one (1) visit is required. By day four (4), two (2) visits are required. By day seven (7), three (3) visits are required.

(B) In RTC, PRTE or CBT, one (1) visit during admission week is required. In RTCs, one (1) visit during the admission week is required, then once a week thereafter. In PRTEs, one (1) visit during the admission week is required, then once a week thereafter. In CBT, one (1) visit is required within seven (7) days of admission. Individual treatment provided by the physician will never exceed ten (10) days between sessions in PRTEs, never exceed seven (7) days in a specialty PRTE and never exceed thirty (30) days in CBTs. The completion of a psychiatric evaluation or a combined psychiatric evaluation and a history and physical (H&P) evaluation may count as the first visit by the physician if the evaluation was personally rendered by the psychiatrist. If the member is admitted on the last day of the admission week, then the member must be seen by a physician within sixty (60) hours of admission time.

(2) Individual therapy.

(A) In acute, by day three (3), thirty (30) minutes of treatment are required. By day five (5), one (1) hour of treatment is required. Beginning on day seven (7), two (2) hours of treatment are required each week. This does not include admission assessments/evaluations or psychosocial evaluations unless personally

(face to face) rendered by the LBHP or licensure candidate.

(B) In residential treatment (including PRTE and CBT), by day six (6), thirty (30) minutes of treatment must be documented. Beginning on day seven (7), one (1) hour of treatment is required each week. The treatment week is defined as Sunday through Saturday. Individual therapy may not exceed a total of ten (10) days between sessions. This does not include admission assessment/evaluation or psychosocial evaluations unless personally (face to face) rendered by the LBHP or licensure candidate.

(3) **Family therapy.**

(A) In acute, by day six (6), thirty (30) minutes of treatment must be documented. Beginning on day seven (7), one (1) hour of treatment is required each week. This does not include admission assessments/evaluation or psychosocial evaluations unless personally (face to face) rendered by the LBHP or licensure candidate and the assessments/evaluation or psychosocial evaluation has not been used to substitute the initial individual therapy requirement.

(B) In residential treatment (including PRTE and CBT), by day six (6), thirty (30) minutes of treatment must be documented. Beginning on day seven (7), one (1) hour of treatment is required each week. This does not include admissions assessment/evaluation or psychosocial evaluation unless personally (face to face) rendered by the LBHP or licensure candidate and the assessment/evaluation or psychosocial evaluation has not been used to substitute the initial individual therapy requirement. Family therapy provided by the LBHP or licensure candidate should not exceed ten (10) days in between sessions.

(4) **Process group therapy.**

(A) In acute, by day three (3), one (1) hour of treatment is required. By day five (5), two (2) hours of treatment are required. Beginning on day seven (7), three (3) hours of treatment are required each week.

(B) In residential treatment (including PRTE and CBT), by day five (5), one (1) hour of treatment is required. Beginning on day seven (7), two (2) hours of treatment are required each week.

(f) When an individual is determined to be too ill to participate in treatment, as determined by medical/nursing staff (registered nurse (RN)/licensed practical nurse (LPN)), documentation must be in the record clearly indicating the reason, limitations, and timeframe for those services to be excused without penalty.

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

(1) **"Active treatment"** means implementation of a professionally developed and supervised individual plan of care (IPC) that involves the member and his or her family or guardian from the time of an admission, and through the treatment and discharge process.

(2) **"Discharge/transition planning"** means a patient-centered, interdisciplinary process that begins with an initial assessment of the member's needs at the time of admission and continues throughout the member's stay. Active collaboration with the member, family, and all involved outpatient practitioners and agencies should be ongoing throughout treatment so that effective connections remain intact. Needed services may consist of the wraparound process through Systems of Care, counseling, case management, and other supports in the member's community. The linkages with these supports should be made prior to discharge to allow for a smooth transition.

(3) **"Expressive group therapy"** means art, music, dance, movement, poetry, drama, psychodrama, structured therapeutic physical activities, and experiential (e.g. ropes course), recreational, or occupational therapies that encourage the member to express themselves emotionally and psychologically.

(4) **"Family therapy"** means interaction between an LBHP or licensure candidate, member, and family member(s) to facilitate emotional, psychological, or behavioral changes and promote successful communication and understanding.

(5) **"Group rehabilitative treatment"** means behavioral health remedial services, as specified in the individual care plan, which are necessary for the treatment of the existing primary behavioral health disorders and/or any secondary alcohol and other drug (AOD) disorders in order to increase the skills necessary to perform activities of daily living (ADL).

(6) **"Individual rehabilitative treatment"** means a face-to-face, one-on-one interaction which is performed to assist a member who is experiencing significant functional impairment due to the existing primary behavioral health disorder and/or any secondary AOD disorder, in order to increase the skills necessary to perform ADL.

(7) **"Individual therapy"** means a method of treating existing primary behavioral health disorders and/or any secondary AOD disorders using face-to-face, one-on-one interaction between an LBHP or licensure candidate and a member to promote emotional or psychological change to alleviate disorders.

(8) **"Process group therapy"** means a method of treating existing primary behavioral health disorders and/or secondary AOD disorders using the interaction between an LBHP or licensure candidate, and two (2) or more members to promote positive emotional and/or behavioral change.

(b) Inpatient psychiatric programs must provide "active treatment". Families and/or guardians must be notified of the dates and times of treatment team meetings and be welcomed to attend. Family members must attend family therapy weekly for continued SoonerCare reimbursement. Reasons for exceptions to this requirement must be well-documented in the member's treatment plan. Family therapy attendance by family members is not a requirement for individuals in the age range of eighteen (18) up to twenty-one (21). Active treatment

also includes ongoing assessment, diagnosis, intervention, evaluation of care and treatment, and planning for discharge and aftercare under the direction of a physician.

(c) For individuals age eighteen (18) up to twenty-one (21), the active treatment program must be appropriate to the needs of the member and be directed toward restoring and maintaining optimal levels of physical and psychiatric-social functioning. The services and the IPC must be recovery-focused, trauma-informed, specific to culture, age, and gender, and provided face to face. Services, including type and frequency, will be specified in the IPC.

(d) A treatment week consists of seven (7) calendar days. In an Acute setting, the treatment week begins the day of admission. In Acute II and PRTF, the treatment week starts on Sunday and ends on Saturday. Active treatment service components are provided as per item (e) below if the services are provided within a seven (7) day treatment week. A chart outlining active treatment component requirements and timelines may also be found at www.okhca.org. If a member has a length of stay of less than seven (7) days, the treatment week is considered a partial treatment week. Active treatment requirements, when provided during a partial treatment week, are delivered as per item (f) below. An hour of treatment must be sixty (60) minutes. When appropriate to meet the needs of the child, the sixty (60) minute timeframe may be split into sessions of no less than fifteen (15) minutes each, on the condition that the active treatment requirements are fully met by the end of the treatment week.

(e) For individuals under age eighteen (18), the components of active treatment consist of face-to-face integrated therapies that are provided on a regular basis and will remain consistent with the member's ongoing need for care. The services and IPC must be recovery-focused, trauma-informed, and specific to culture, age, and gender. Individuals in Acute must receive seventeen (17) hours of documented active treatment services each week, with seven (7) of those hours dedicated to core services as described in (1) below. Individuals in Acute II and PRTFs must receive fourteen (14) hours of documented active treatment services each week, with four and a half (4.5) of those hours dedicated to core services as described in (1) below. Individuals in CBT PRTFs must receive ten (10) hours of documented active treatment services each week, with four and a half (4.5) of those hours dedicated to core services as described in (1) below. Upon fulfilling the core service hours requirement, the member may receive either the elective services listed in (2) below or additional core services to complete the total required hours of active treatment. The following components meet the minimum standards required for active treatment, although an individual child's needs for treatment may exceed this minimum standard:

(1) **Core services.**

(A) **Individual treatment provided by the physician.** Individual treatment provided by the physician is required three (3) times per week for Acute and one (1) time a week in Acute II and PRTFs. Individual treatment provided by the physician will never exceed ten (10) calendar days between sessions in Acute II and PRTFs, never exceed seven (7) calendar days in a

specialty Acute II and specialty PRTF, and never exceed thirty (30) calendar days in CBTs. Individual treatment provided by the physician may consist of therapy or medication management intervention for Acute, Acute II, and PRTF programs.

(B) **Individual therapy.** LBHPs or licensure candidates performing this service must use and document an approach to treatment such as cognitive behavioral treatment, narrative therapy, solution-focused brief therapy, or another widely accepted theoretical framework for treatment. Ongoing assessment of the member's status and response to treatment, as well as psycho-educational intervention, are appropriate components of individual therapy. Individual therapy must be provided in a confidential setting. The therapy must be goal-directed, utilizing techniques appropriate to the member's plan of care and the member's developmental and cognitive abilities. Individual therapy must be provided two (2) hours per week in Acute and one (1) hour per week in Acute II and PRTFs by an LBHP or licensure candidate. One (1) hour of family therapy may be substituted for one (1) hour of individual therapy at the treatment team's discretion.

(C) **Family therapy.** The focus of family therapy must be directly related to the goals and objectives on the individual member's plan of care. Family therapy must be provided one (1) hour per week in Acute, Acute II, and PRTFs. One (1) hour of individual therapy addressing relevant family issues may be substituted for a family session in an instance in which the family is unable to attend a scheduled session by an LBHP or licensure candidate.

(D) **Process group therapy.** The focus of process group therapy must be directly related to goals and objectives on the individual member's plan of care. The individual member's behavior and the focus of the group must be included in each member's medical record. This service does not include social skills development or daily living skills activities and must take place in an appropriate confidential setting, limited to the therapist, appropriate hospital staff, and group members. Group therapy must be provided three (3) hours per week in Acute and two (2) hours per week in Acute II and PRTFs by an LBHP or licensure candidate. In lieu of one (1) hour of process group therapy, one (1) hour of expressive group therapy provided by an LBHP, licensure candidate, or licensed therapeutic recreation specialist may be substituted.

(E) **Transition/discharge planning.** Transition/discharge planning must be provided one (1) hour per week in Acute and thirty (30) minutes per week in Acute II and PRTFs. Transition/discharge planning can be provided by any level of inpatient staff.

(2) **Elective services.**

(A) **Expressive group therapy.** Through active expression, inner-strengths are discovered that can help the member deal with past experiences and cope with present life situations in more beneficial ways. The focus of the group must be directly related to goals and objectives on the individual member's plan of care. Documentation must include how the member is processing emotions/feelings. Expressive therapy must be a planned therapeutic activity, facilitated by staff with a relevant bachelor's degree and/or staff with relevant training, experience, or certification to facilitate the therapy.

(B) **Group rehabilitative treatment.** Examples of educational and supportive services, which may be covered under the definition of group rehabilitative treatment services, are basic living skills, social skills (re)development, interdependent living, self-care, lifestyle changes, and recovery principles. Each service provided under group rehabilitative treatment services must have goals and objectives directly related to the IPC.

(C) **Individual rehabilitative treatment.** Services are provided to reduce psychiatric and behavioral impairment and to restore functioning consistent with the requirements of independent living and enhanced self-sufficiency. This service includes educational and supportive services regarding independent living, self-care, social skills (re)development, lifestyle changes, and recovery principles and practices. Each individual rehabilitative treatment service provided must have goals and objectives directly related to the IPC and the member's diagnosis.

(D) **Recreation therapy.** Services are provided to reduce psychiatric and behavioral impairment and to restore, remediate, and rehabilitate an individual's level of functioning and independence in life activities. Services are provided to promote health and wellness, as well as reduce or eliminate barriers caused by illness or disabling conditions that limit or restrict a member from participating in life activities. Recreational therapy can be provided in an individual or group setting. If the only activities prescribed for the individual are primarily diversional in nature, (i.e., to provide some social or recreational outlet for the individual), it will not be regarded as active treatment. If provided, recreational therapy must be a planned therapeutic activity, facilitated by a licensed therapeutic recreation specialist.

(E) **Occupational therapy.** Services are provided to address developmental and/or functional needs related to the performance of self-help skills, adaptive behavioral, and/or sensory, motor, and postural development. Services include therapeutic goal-directed activities and/or exercises used to improve mobility and ADL functions when such functions have been impaired due to illness or injury. Services must be

provided by an occupational therapist appropriately licensed in the state in which he or she practices.

(F) **Wellness resource skills development.** Services include providing direction and coordinating support activities that promote physical health. The focus of these activities should include areas such as nutrition, exercise, support to avert and manage physical health concerns like heart disease, diabetes, and cholesterol, and guidance on the effects that medications have on physical health. Services can include individual/ group support, exercise groups, and individual physical wellness plan development, implementation, and assistance.

(3) **Modifications to active treatment.** When a member is too physically ill, or his or her acuity level precludes him or her from active behavioral health treatment, documentation must demonstrate that alternative clinically-appropriate services were provided.

(f) Active treatment components, furnished during a partial treatment week, are provided as per item (1) through (4) below. A chart outlining active treatment component requirements and timelines may also be found at www.okhca.org. Assessments/evaluations may serve as the initial individual or family session if completed by an LBHP or licensure candidate. Start and stop time must be documented. Active treatment begins the day of admission. Days noted are calendar days.

(1) **Individual treatment provided by the physician.**

(A) In Acute, by day two (2), one (1) visit is required. By day four (4), two (2) visits are required. By day seven (7), three (3) visits are required.

(B) In Acute II and PRTFs, one (1) visit during admission week is required. In PRTFs, not including CBTs, one (1) visit during the admission week is required, then once a week thereafter. In CBT, one (1) visit is required within seven (7) days of admission, then once a month thereafter. Individual treatment provided by the physician will never exceed ten (10) days between sessions in Acute II and PRTFs, never exceed seven (7) days in specialty Acute II and specialty PRTFs and never exceed thirty (30) days in CBTs. The completion of a psychiatric evaluation or a combined psychiatric evaluation and a history and physical (H&P) evaluation may count as the first visit by the physician if the evaluation was personally rendered by the psychiatrist. If the member is admitted on the last day of the admission week, then the member must be seen by a physician within sixty (60) hours of admission time.

(2) **Individual therapy.**

(A) In Acute, by day three (3), thirty (30) minutes of treatment are required. By day five (5), one (1) hour of treatment is required. Beginning on day seven (7), two (2) hours of treatment are required each week. This does not include admission assessments/evaluations or psychosocial evaluations unless personally (face to face) rendered by the LBHP or licensure candidate.

(B) In Acute II and PRTFs, by day six (6), thirty (30) minutes of treatment must be documented. Beginning on day seven (7), one (1) hour of treatment is required each week. The treatment week is defined as Sunday through Saturday. Individual therapy may not exceed a total of ten (10) days between sessions. This does not include admission assessment/evaluation or psychosocial evaluations unless personally (face to face) rendered by the LBHP or licensure candidate.

(3) **Family therapy.**

(A) In Acute, by day six (6), thirty (30) minutes of treatment must be documented. Beginning on day seven (7), one (1) hour of treatment is required each week. This does not include admission assessments/evaluation or psychosocial evaluations unless personally (face to face) rendered by the LBHP or licensure candidate and the assessments/evaluation or psychosocial evaluation has not been used to substitute the initial individual therapy requirement.

(B) In Acute II and PRTFs, by day six (6), thirty (30) minutes of treatment must be documented. Beginning on day seven (7), one (1) hour of treatment is required each week. This does not include admissions assessment/evaluation or psychosocial evaluation unless personally (face to face) rendered by the LBHP or licensure candidate and the assessment/evaluation or psychosocial evaluation has not been used to substitute the initial individual therapy requirement. Family therapy provided by the LBHP or licensure candidate should not exceed ten (10) days in between sessions.

(4) **Process group therapy.**

(A) In Acute, by day three (3), one (1) hour of treatment is required. By day five (5), two (2) hours of treatment are required. Beginning on day seven (7), three (3) hours of treatment are required each week.

(B) In Acute II and PRTFs, by day five (5), one (1) hour of treatment is required. Beginning on day seven (7), two (2) hours of treatment are required each week.

(g) When an individual is determined to be too ill to participate in treatment, as determined by medical/nursing staff [registered nurse (RN)/licensed practical nurse (LPN)], documentation must be in the record clearly indicating the reason, limitations, and timeframe for those services to be excused without penalty.

317:30-5-95.35. Certificate of need requirements for members under the age of twenty-one (21) children in psychiatric hospital/hospitals and PRTFs

(a) **General requirements.** This Section establishes the requirements for certification of the need for inpatient psychiatric services provided to members under twenty-one (21) years of age in psychiatric hospitals, in accordance with Section 1905(a) 16 and (h) of the Social Security Act, and in PRTFs, in accordance with 42 C.F.R. § 483.354. Pursuant to this federal law, a team, consisting of physicians and other qualified personnel, shall determine that inpatient services are necessary and can reasonably be expected to improve the

member's condition. These requirements do not apply to an admission to a psychiatric unit of a general hospital.

(b) **Definitions.** The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) **"Independent team"** means a team that is not associated with the facility, such that no team member has an employment or consultant relationship with the admitting facility. The independent team shall include a licensed physician who has competence in diagnosis and treatment of mental illness, preferably child psychiatry, and who has knowledge of the member's clinical condition and situation. The independent team shall also include at least one other licensed behavioral health professional, as defined by OAC 317:30-5-240.3.

(2) **"Interdisciplinary team"** as defined by 42 C.F.R. § 441.156, means a team of physicians and other personnel who are employed by, or who provide services to, SoonerCare members in the facility or program. The interdisciplinary team must include, at a minimum, either a board eligible or board certified psychiatrist; or, a licensed physician and a psychologist licensed by the Oklahoma State Board of Examiners of Psychologists (OSBED) who has a doctoral degree in clinical psychology; or, a licensed physician with specialized training and experience in the diagnosis and treatment of mental diseases; and a psychologist licensed by the OSBED. The interdisciplinary team must also include one of the following:

(A) a licensed clinical social worker;

(B) a Registered Nurse with specialized training or one (1) year of experience in treating mentally ill individuals;

(C) and a psychologist licensed by the OSBED who has a doctoral degree in clinical psychology; or,

(D) an occupational therapist who is licensed by the state in which the individual is practicing, if applicable, and who has specialized training or one (1) year of experience in treating mentally ill individuals.

(e) **Certification of the need for services.** As described in 42 C.F.R. § 441.152, the certification shall be made by a team, either independent or interdisciplinary, as specified in (d), below, and shall certify that:

(1) Ambulatory care resources available in the community do not meet the treatment needs of the member;

(2) Proper treatment of the member's psychiatric condition requires services on an inpatient basis under the direction of a physician; and

(3) Services can reasonably be expected to improve the member's condition or prevent further regression so that inpatient services would no longer be needed.

(d) **Certification for admission.** The certification of the need for services, as stated in (c), above, shall be made by the appropriate team, in accordance with 42 C.F.R. § 441.153 and as specified as follows:

(1) Certification for the admission of an individual who is a member when admitted to a facility or program shall be made by an independent team, as described in (b)(1), above.

- (2) Certification for an inpatient applying for SoonerCare while in the facility or program shall be made by an interdisciplinary team responsible for the plan of care and as described in (b)(2), above.
- (3) Certification of an emergency admission of a member shall be made by the interdisciplinary team responsible for the plan of care within fourteen (14) days after admission, in accordance with 42 C.F.R. § 441.156.
- (e) Services provided by treatment team members not meeting the above credentialing requirements are not SoonerCare compensable and can not be billed to the SoonerCare member.
- (a) **General requirements.** This Section establishes the requirements for certification of the need for inpatient psychiatric services provided to individuals under twenty-one (21) years of age in psychiatric hospitals, in accordance with Section 1905(a) 16 and (h) of the Social Security Act, and in PRTFs, in accordance with 42 C.F.R. § 483.354. Pursuant to this federal law, a team, consisting of physicians and other qualified personnel, shall determine that inpatient services are necessary and can reasonably be expected to improve the member's condition. These requirements do not apply to an admission to a psychiatric unit of a general hospital.
- (b) **Definitions.** The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.
- (1) **"Independent team"** means a team that is not associated with the facility, such that no team member has an employment or consultant relationship with the admitting facility. The independent team shall include a licensed physician who has competence in diagnosis and treatment of mental illness, preferably child psychiatry, and who has knowledge of the member's clinical condition and situation. The independent team shall also include at least one (1) other LBHP.
- (2) **"Interdisciplinary team"** means, as defined by 42 C.F.R. § 441.156, a team of physicians and other personnel who are employed by, or who provide services to, SoonerCare members in the facility or program. The interdisciplinary team must include, at a minimum, either a board-eligible or board-certified psychiatrist; or, a licensed physician and a psychologist licensed by the Oklahoma State Board of Examiners of Psychologists (OSBEP) who has a doctoral degree in clinical psychology; or, a licensed physician with specialized training and experience in the diagnosis and treatment of mental diseases, and a psychologist licensed by the OSBEP. The interdisciplinary team must also include one (1) of the following:
- (A) A licensed clinical social worker;
- (B) A registered nurse (RN) with specialized training or one (1) year of experience in treating mentally ill individuals;
- (C) A psychologist licensed by the OSBEP who has a doctoral degree in clinical psychology; or
- (D) An occupational therapist who is licensed by the state in which the individual is practicing, if applicable, and who has specialized training or one (1) year of experience in treating mentally ill individuals.

(c) **Certification of the need for services.** As described in 42 C.F.R. § 441.152, the certification shall be made by a team, either independent or interdisciplinary, as specified in (d), below, and shall certify that:

- (1) Ambulatory care resources available in the community do not meet the treatment needs of the member;
- (2) Proper treatment of the member's psychiatric condition requires services on an inpatient basis under the direction of a physician; and
- (3) Services can reasonably be expected to improve the member's condition or prevent further regression so that inpatient services would no longer be needed.
- (d) **Certification for admission.** The certification of the need for services, as stated in (c), above, shall be made by the appropriate team, in accordance with 42 C.F.R. § 441.153 and as specified as follows:

- (1) Certification for the admission of an individual who is a member when admitted to a facility or program shall be made by an independent team, as described in (b)(1), above.
- (2) Certification for an inpatient applying for SoonerCare while in the facility or program shall be made by an interdisciplinary team responsible for the plan of care and as described in (b)(2), above.
- (3) Certification of an emergency admission of a member shall be made by the interdisciplinary team responsible for the plan of care within fourteen (14) days after admission, in accordance with 42 C.F.R. § 441.156.

317:30-5-95.37. Medical, psychiatric and social evaluations for inpatient services for children

The member's medical record must contain complete medical, psychiatric and social evaluations.

- (1) These evaluations are considered critical documents to the integrity of care and treatment and must be completed as follows:
- (A) History and physical evaluation must be completed within 24 hours of admission by a licensed independent practitioner (M.D., D.O., A.P.N., or P.A.) and within 7 days in a CBT.
- (B) Psychiatric evaluation must be completed within 60 hours of admission by an allopathic or osteopathic physician with a current license and a board certification/eligible in psychiatry and within 7 calendar days in a CBT.
- (C) Psychosocial evaluation must be completed within 72 hours of an acute admission, within seven calendar days of admission to a PRTF and within 7 calendar days in a CBT by a licensed independent practitioner (M.D., D.O., A.P.N., or P.A.), a licensed behavioral health professional (LBHP), or Licensure Candidate as defined in OAC 317:30-5-240.3.
- (2) Each of the evaluations must be clearly identified as such and must be signed and dated by the evaluators.
- (3) Each of the evaluations must be completed when the member changes levels of care if the existing evaluation is more than 30 calendar days from admission. For

continued stays at the same level of care, evaluations remain current for 12 months from the date of admission and must be updated annually within seven calendar days of that anniversary date.

(4) Existing evaluations of 30 days or less may be used when a member changes provider or level of care. The evaluation(s) must be reviewed, updated as necessary and signed and dated by the appropriate level of professional as defined by the type of evaluation.

The member's medical record must contain complete medical, psychiatric, and social evaluations.

(1) These evaluations are considered critical documents to the integrity of care and treatment and must be completed as follows:

(A) History and physical evaluation must be completed within twenty-four (24) hours of admission by a licensed independent practitioner (M.D., D.O., A.P.N., or P.A.) in Acute, Acute II, and PRTFs, excluding CBTs, and within seven (7) calendar days of admission in a CBT.

(B) Psychiatric evaluation must be completed within sixty (60) hours of admission by an allopathic or osteopathic physician with a current license and a board certification/eligible in psychiatry in Acute, Acute II, and PRTFs, excluding CBTs, and within seven (7) calendar days of admission in a CBT.

(C) Psychosocial evaluation must be completed within seventy-two (72) hours of an Acute admission, and within seven (7) calendar days of admission to Acute II and PRTFs, including CBTs, by a licensed independent practitioner (M.D., D.O., A.P.N., or P.A.), LBHP, or licensure candidate.

(2) Each of the evaluations must be clearly identified as such and must be signed and dated by the evaluators.

(3) Each of the evaluations must be completed when the member changes levels of care if the existing evaluation is more than thirty (30) calendar days from admission. For continued stays at the same level of care, evaluations remain current for twelve (12) months from the date of admission and must be updated annually within seven (7) calendar days of that anniversary date.

(4) Existing evaluations of thirty (30) days or less may be used when a member changes provider or level of care. The evaluation(s) must be reviewed, updated as necessary, and signed and dated by the appropriate level of professional as defined by the type of evaluation.

317:30-5-95.38. Nursing services for children

Each facility must have a qualified Director of Psychiatric Nursing. In addition to the Director of Nursing, there must be adequate numbers of registered nurses, licensed practical nurses, and mental health workers to provide nursing care necessary under the active treatment program and to maintain progress notes on each member. In a Community Based Transitional RTC, an RN must be on site at least one hour each day and be available 24 hours a day when not on site. A registered nurse must document member progress at least weekly except in a CBT where the requirement will be twice a month. The

progress note must contain recommendations for revisions in the individual plan of care, as needed, as well as an assessment of the member's progress as it relates to the individual plan of care goals and objectives.

Each facility must have a qualified director of psychiatric nursing. In addition to the director of nursing, there must be adequate numbers of registered nurses (RNs), licensed practical nurses (LPNs), and mental health workers to provide nursing care necessary under the active treatment program and to maintain progress notes on each member. In a CBT, an RN must be on site at least one (1) hour each day and be available twenty-four (24) hours a day when not on site. An RN must document member progress at least weekly, except in a CBT where the requirement will be twice a month. The progress note must contain recommendations for revisions in the individual plan of care (IPC), as needed, as well as an assessment of the member's progress as it relates to the IPC goals and objectives.

317:30-5-95.40. Other required standards

The provider is required to maintain all programs and services according to applicable Code of Federal Regulations (CFR) requirements, TJC/AOA standards for Behavioral Health care, State Department of Health's Hospital Standards for Psychiatric Care, and State of Oklahoma Department of Human Services Licensing Standards for Residential Treatment Facilities. Psychiatric Residential Treatment Facilities may substitute CARF accreditation in lieu of TJC or AOA accreditation.

The provider is required to maintain all programs and services according to applicable C.F.R. requirements, the Joint Commission' (TJC) and American Osteopathic Association' (AOA) standards for behavioral health care, Oklahoma State Department of Health's (OSDH) hospital standards for psychiatric care, and Oklahoma Department of Human Services' (OKDHS) licensing standards for residential treatment facilities. PRTFs may substitute the Commission on Accreditation of Rehabilitation Facilities (CARF) accreditation in lieu of TJC or AOA accreditation.

317:30-5-95.41. Documentation of records for ~~children's~~ children receiving inpatient services

(a) All documentation for services provided under active treatment must be documented in an individual note and reflect the content of each session provided. Individual, Family, Process Group, Expressive Group, Individual Rehabilitative and Group Rehabilitative Services documentation must include, at a minimum, the following:

- (1) date;
- (2) start and stop time for each session;
- (3) dated signature of the therapist and/or staff that provided the service;
- (4) credentials of the therapist;
- (5) specific problem(s) addressed (problems must be identified on the plan of care);
- (6) method(s) used to address problems;

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- (7) progress made towards goals;
- (8) member's response to the session or intervention;
- and
- (9) any new problem(s) identified during the session.
- (b) Signatures of the member, parent/guardian for members under the age of 18, doctor, Licensed Behavioral Health Professional (LBHP), and RN are required on the individual plan of care and all plan of care reviews. The individual plan of care and plan of care review are not valid until signed and separately dated by the member, parent/legal guardian for members under the age of 18, doctor, RN, LBHP, and all other requirements are met. All treatment team staff providing individual therapy, family therapy and process group therapy must sign the individual plan of care and all plan of care reviews. All plans of care and plan of care reviews must be signed by the member upon completion, except when a member is too physically ill, or the member's acuity level precludes him/her from signing. If the member is too physically ill or the member's acuity level precludes him/her from signing the plan of care and/or the plan of care review at the time of completion, the member must sign the plan when his/her condition improves but before discharge. Documentation should indicate the reason the member was unable to sign and when the next review will occur to obtain the signature.
- (a) All documentation for services provided under active treatment must be documented in an individual note and reflect the content of each session provided. Individual, family, process group, expressive group, individual rehabilitative, and group rehabilitative services documentation must include, at a minimum, the following:
 - (1) Date;
 - (2) Start and stop time for each session;
 - (3) Dated signature of the therapist and/or staff that provided the service;
 - (4) Credentials of the therapist;
 - (5) Specific problem(s) addressed (problems must be identified on the plan of care);
 - (6) Method(s) used to address problems;
 - (7) Progress made towards goals;
 - (8) Member's response to the session or intervention;
 - and
 - (9) Any new problem(s) identified during the session.
- (b) Signatures of the member, parent/guardian for members under the age of eighteen (18), physician, LBHP, and registered nurse (RN) are required on the individual plan of care (IPC) and all plan of care reviews. The IPC and plan of care review are not valid until signed and separately dated by the member, parent/legal guardian for members under the age of eighteen (18), physician, RN, LBHP, and all other requirements are met. All treatment team staff providing individual therapy, family therapy, and process group therapy must sign the IPC and all plan of care reviews. All plans of care and plan of care reviews must be signed by the member upon completion, except when a member is too physically ill, or the member's acuity level precludes him/her from signing. If the member is too physically ill or the member's acuity level precludes him/her from signing the plan of care and/or the plan of care review at the time of

completion, the member must sign the plan when his/her condition improves but before discharge. Documentation should indicate the reason the member was unable to sign and when the next review will occur to obtain the signature.

(c) Candidates for licensure for licensed professional counselor, social work (clinical specialty only), licensed marital and family therapist, licensed behavioral practitioner, licensed alcohol and drug counselor, and psychology (mental health specialty only) can provide assessments, psychosocial evaluations, individual therapy, family therapy, and process group therapy as long as they are involved in supervision that complies with their respective, approved licensing regulations and licensing boards. Additionally, their work must be co-signed and dated by a fully-licensed LBHP in good standing, who is a member on the treatment team. Individuals who have met their supervision requirements and are waiting to be licensed in one (1) of the areas of practice in OAC 317:30-5-240.3(a)(2) must have their work co-signed by a fully-licensed LBHP in good standing, who is a member on the treatment team. All co-signatures by fully-licensed LBHPs in good standing, must be accompanied by the date that the co-signature was made. Documentation of the service is not considered complete until it is signed and dated by a fully-licensed LBHP in good standing.

317:30-5-95.42. Service quality review (SQR) of psychiatric facilities providing services to children

- (a) The Service Quality Review conducted by OHCA or its designated agent meets the utilization control requirements as set forth in 42 CFR 456.
- (b) There will be an on-site Service Quality Review (SQR) of each in-state psychiatric facility that provides care to SoonerCare eligible children which will be performed by the OHCA or its designated agent. Out of state psychiatric facilities that provide care to SoonerCare eligible children will be reviewed according to the procedures outlined in the Medical Necessity Manual. OHCA or its designated agent may conduct ad hoc reviews. Ad hoc reviews may be conducted at the discretion of the agency.
- (c) The Oklahoma Health Care Authority will designate the members of the Service Quality Review team. The SQR team will consist of one to three team members and will be comprised of Licensed Behavioral Health Professionals (LBHP) or Registered Nurses.
- (d) The review will include observation and contact with members. The Service Quality Review will consist of members present or listed as facility residents at the beginning of the Service Quality Review visit as well as members on which claims have been filed with OHCA for acute or PRTF levels of care. The review includes validation of certain factors, all of which must be met for the services to be compensable.
- (e) Following the on-site inspection, the SQR Team will report its findings to the facility. The facility will be provided with written notification if the findings of the review have resulted in any deficiencies. A copy of the final report will be sent to the facility's accrediting agency.

(f) Deficiencies found during the SQR may result in a partial per diem recoupment or a full per diem recoupment of the compensation received. The following documents are considered to be critical to the integrity of care and treatment, must be completed within the time lines designated in OAC 317:30-5-95.37, and cannot be substituted with any other evaluation/assessments not specifically mentioned:

- (1) History and physical evaluation;
- (2) Psychiatric evaluation;
- (3) Psychosocial evaluation; and
- (4) Individual Plan of Care.

(g) For each day that the History and Physical evaluation, Psychiatric evaluation, Psychosocial evaluation and/or Individual Plan of Care are not contained within the member's records, those days will warrant a partial per diem recoupment.

(h) If the review findings have resulted in a partial per diem recoupment of \$50.00 per event, the days of service involved will be reported in the notification. If the review findings have resulted in full per diem recoupment status, the non-compensable days of service will be reported in the notification. In the case of non-compensable days full per diem or partial per diem, the facility will be required to refund the amount.

(i) In the event that CMS recoups from OHCA an amount that exceeds the provider's liability for findings described in this Section, the provider will not be held harmless and will be required to reimburse OHCA the total federal amount identified by CMS and/or its designated audit contractor.

(j) Penalties of non-compensable days which are the result of the facility's failure to appropriately provide and document the services described herein, or adhere to applicable accreditation, certification, and/or state licensing standards, are not compensable or billable to the member or the member's family.

(a) The service quality review (SQR) conducted by the OHCA or its designated agent meets the utilization control requirements as set forth in 42 C.F.R. Part 456.

(b) There will be an SQR of each in-state psychiatric facility that provides services to SoonerCare members which will be performed by the OHCA or its designated agent. Out-of-state psychiatric facilities that provide services to SoonerCare members will be reviewed according to the procedures outlined in the Medical Necessity Manual. Ad hoc reviews may be conducted at the discretion of the agency.

(c) The OHCA will designate the members of the SQR team. The SQR team will consist of one (1) to three (3) team members and will be comprised of LBHPs or registered nurses (RNs).

(d) The SQR will include, but not be limited to, review of facility and clinical record documentation as well as observation and contact with members. The clinical record review will consist of those records of members present or listed as facility residents at the beginning of the visit as well as members on which claims have been filed with OHCA for acute or PRTE levels of care. The SQR includes validation of compliance with policy, which must be met for the services to be compensable.

(e) Following the SQR, the SQR team will report its findings to the facility. The facility will be provided with written notification if the findings of the review have resulted in any

deficiencies. A copy of the final report will be sent to the facility's accrediting agency, as well as the State Survey Agency and any licensing agencies.

(f) Deficiencies identified during the SQR may result in full or partial recoupment of paid claims. The determination of whether to assess full or partial recoupment shall be at the discretion of the OHCA based on the severity of the deficiencies.

(g) Any days during which the facility is determined to be out of compliance with Federal Conditions of Participation or in which a member does not meet medical necessity criteria will result in full recoupment. Full recoupment may also result from a facility's failure to provide requested documentation within the timeframes indicated on requests for such documents or if the SQR team is denied timely admittance to a facility and/or access to facility records during the on-site portion of the SQR.

(h) Items which may result in full or partial recoupment of paid claims shall include, but not be limited to:

(1) **Assessments and evaluations.** Assessments and evaluations must be completed, with dated signature(s), by qualified staff within the timeframes outlined in Oklahoma Administrative Code (OAC) 317:30-5-95.6 and 317:30-5-95.37.

(2) **Plan of care.** Plans of care must be completed, with all required dated signatures within the timeframes described in OAC 317:30-5-95.4 and 317:30-5-96.33.

(3) **Certification of need (CON).** CONs must be completed by the appropriate team and in the chart within the timeframes outlined in 42 C.F.R. §§ 441.152, 456.160, and 456.481.

(4) **Active treatment.** Treatment must be documented in the chart at the required frequency by appropriately qualified staff as described in OAC 317:30-5-95.5, 317:30-5-95.7, 317:30-5-95.8, 317:30-5-95.9, 317:30-5-95.10 and 317:30-5-95.34.

(5) **Documentation of services.** Services must be documented in accordance with OAC 317:30-5-95.5, 317:30-5-95.8, 317:30-5-95.10, 317:30-5-95.41 and 42 C.F.R. §§ 412.27(c)(4) and 482.61. Documentation with missing elements or documentation that does not clearly demonstrate the therapeutic appropriateness and benefit of the service may result in recoupment.

(6) **Staffing.** Staffing must meet the ratios described in OAC 317:30-5-95.24(b)-(d) & (h) and OAC 317:30-5-95.38 per unit/per shift; and credentialing requirements as outlined in OAC 317:30-5-95.8, 317:30-5-95.9, 317:30-5-95.35, 317:30-5-95.36, and 42 C.F.R. §§ 412.27(d), 441.153, 441.156, and 482.62.

(7) **Restraint/seclusion.** Orders for restraint and seclusion must be completely and thoroughly documented with all required elements as described in OAC 317:30-5-95.39 and 42 C.F.R. §482.13(e) & (f) and 42 C.F.R. Part 483. Documentation must support the appropriateness and necessity for the use of restraint/seclusion. For PRTFs, documentation must include evidence that staff and resident debriefings occurred as required by OAC 317:30-5-95.39 and 42 C.F.R. Part 483.

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(i) If the review findings have resulted in a recoupment, the days and/or services involved will be reported in the notification.

(j) In the event that CMS recoups from OHCA an amount that exceeds the provider's liability for findings described in this Section, the provider will not be held harmless and will be required to reimburse OHCA the total federal amount identified by CMS and/or its designated audit contractor, limited to the amount of the original paid claim less any previously recouped amounts.

(k) Penalties of non-compensable days which are the result of the facility's failure to appropriately provide and document the services described herein, or adhere to applicable accreditation, certification, and/or state licensing standards, are not compensable or billable to the member or the member's family.

(l) Facilities that are determined to owe recoupment of paid claims will have the ability to request a reconsideration of the findings. Details and instructions on how to request a reconsideration will be part of the report documentation sent to the facility.

(m) Facilities that are determined by the SQR process to be out of compliance in significant areas will be required to submit a Corrective Action Plan (CAP) detailing steps being taken to bring performance in line with requirements. Facilities that are required to submit a CAP may be further assessed through a formal, targeted post-CAP review process.

317:30-5-96.2. Payments definitions

The following words and terms, when used in Sections OAC 317:30-5-96.3 through 317:30-5-96.7, shall have the following meaning, unless the context clearly indicates otherwise:

"Allowable costs" means costs necessary for the efficient delivery of member care.

"Ancillary Services" means the services for which charges are customarily made in addition to routine services. Ancillary services include, but are not limited to, physical therapy, speech therapy, laboratory, radiology and prescription drugs.

"Border Status" means a placement in a state that does not border Oklahoma but agrees to the same terms and conditions of in-state or border facilities.

"Developmentally disabled child" means a child with deficits in adaptive behavior originating during the developmental period. This condition may exist concurrently with a significantly subaverage general intellectual functioning.

"Eating Disorders Programs" means acute or intensive residential behavioral, psychiatric and medical services provided in a discreet unit to individuals experiencing an eating disorder.

"Professional services" means services of a physician, psychologist or dentist legally authorized to practice medicine and/or surgery by the state in which the function is performed.

"Psychiatric Residential Treatment Facility (PRTF)" means a non-hospital with an agreement to provide inpatient psychiatric services to individuals under the age of 21.

"Routine Services" means services that are considered routine in the freestanding PRTF setting. Routine services include, but are not limited to:

- (A) room and board;
- (B) treatment program components;
- (C) psychiatric treatment;
- (D) professional consultation;
- (E) medical management;
- (F) crisis intervention;
- (G) transportation;
- (H) rehabilitative services;
- (I) case management;
- (J) interpreter services (if applicable);
- (K) routine health care for individuals in good physical health; and
- (L) laboratory services for a substance abuse/detoxification program.

"Specialty treatment program/specialty unit" means acute or intensive residential behavioral, psychiatric and medical services that provide care to a population with a special need or issues such as developmentally disabled, intellectually disabled, autistic/Asperger's, eating disorders, sexual offenders, or reactive attachment disorders. These members require a higher level of care and staffing ratio than a standard PRTF and typically have multiple problems.

"Treatment Program Components" means therapies, activities of daily living and rehabilitative services furnished by physician/psychologist or other licensed mental health professionals.

"Usual and customary charges" refers to the uniform charges listed in a provider's established charge schedule which is in effect and applied consistently to most members and recognized for program reimbursement. To be considered "customary" for reimbursement, a provider's charges for like services must be imposed on most members regardless of the type of member treated or the party responsible for payment of such services.

The following words and terms, when used in OAC 317:30-5-96.3 through 317:30-5-96.7, shall have the following meaning, unless the context clearly indicates otherwise:

"Add-on payment" means an additional payment added to the per diem to recognize the increased cost of serving members with complex needs in a PRTF or Acute II.

"Allowable costs" means costs necessary for the efficient delivery of member care.

"Ancillary services" means the services for which charges are customarily made in addition to routine services. Ancillary services include, but are not limited to, physical therapy, speech therapy, laboratory, radiology, and prescription drugs.

"Border status" means a placement in a state that does not border Oklahoma. Reimbursement for out-of-state services is made in accordance with OAC 317:30-3-89 through 317:30-3-92 and the Oklahoma Medicaid State Plan.

"Developmentally disabled child" means a child with deficits in adaptive behavior originating during the developmental period. This condition may exist concurrently with a significantly subaverage general intellectual functioning.

"Eating disorder programs" means acute or intensive residential behavioral, psychiatric, and medical services provided in a discreet unit to individuals experiencing an eating disorder.

"Professional services" means services of a physician, psychologist, or dentist legally authorized to practice medicine and/or surgery by the state in which the function is performed.

"Routine services" means services that are considered routine in the Acute II and PRTF levels of care setting. Routine services include, but are not limited to:

- (A) Room and board;
- (B) Treatment program components;
- (C) Psychiatric treatment;
- (D) Professional consultation;
- (E) Medical management;
- (F) Crisis intervention;
- (G) Transportation;
- (H) Rehabilitative services;
- (I) Case management;
- (J) Interpreter services (if applicable);
- (K) Routine health care for individuals in good physical health; and
- (L) Laboratory services for a substance abuse/detoxification program.

"Specialty treatment program/specialty unit" means Acute or other intensive behavioral, psychiatric, and medical services that provide care to a population with special needs or issues such as developmentally disabled, intellectually disabled, autistic/Asperger's, eating disorders, sexual offenders, or reactive attachment disorders. These members require a higher level of care and staffing ratio than a standard PRTF and typically have multiple problems.

"Treatment program components" means therapies, activities of daily living, and rehabilitative services furnished by physician/psychologist or other licensed mental health professionals.

"Usual and customary charges" means the uniform charges listed in a provider's established charge schedule which is in effect and applied consistently to most members and recognized for program reimbursement. To be considered "customary" for reimbursement, a provider's charges for like services must be imposed on most members regardless of the type of member treated or the party responsible for payment of such services.

317:30-5-96.3. Methods of payment

(a) **Reimbursement.** Covered inpatient psychiatric and/or substance abuse services will be reimbursed using one of the following methodologies:

- (1) Diagnosis Related Group (DRG);
- (2) cost-based; or
- (3) a predetermined per diem payment.

(b) **Acute Level of Care.**

- (1) Psychiatric units within general medical-surgical hospitals and Critical Access hospitals. Payment will be made utilizing a DRG methodology. [See OAC 317:30-5-41(b)]. Psychiatric professional (physicians and psychologists) services provided in conjunction with the inpatient

stay are separately payable from the DRG paid to the hospital;

(2) Freestanding Psychiatric Hospitals. A predetermined statewide per diem payment will be made for all facility services provided during the inpatient stay. Psychiatric professional (physicians and psychologists) services provided in conjunction with the inpatient stay are separately payable from the per diem paid to the hospital. Rates vary for public and private providers.

(e) **Residential Level of Care**

(1) **Instate Services.**

(A) Psychiatric Hospitals or Inpatient Psychiatric Programs. A pre-determined all inclusive per diem payment will be made for routine, ancillary and professional services. Public facilities will be reimbursed using either the statewide or facility specific interim rates and settled to total allowable costs as determined by analyses of the cost reports (Form CMS 2552) filed with the OHCA.

(B) Psychiatric Residential Treatment Facilities. A pre-determined per diem payment will be made to private PRTFs with 16 beds or less for routine services. All other services are separately billable. A predetermined all inclusive per diem payment will be made for routine, ancillary and professional services to private facilities with more than 16 beds. Public facilities will be reimbursed using either the statewide or facility specific interim rates and settled to total allowable costs as determined by analyses of the cost reports (Form 2552) filed with the OHCA.

(2) **Out-of-state services.**

(A) Border and "border status" placements. Facilities are reimbursed in the same manner as in-state hospitals or PRTFs.

(B) Out-of-state placements. In the event comparable services cannot be purchased from an Oklahoma facility and the current payment levels are insufficient to obtain access for the member, the OHCA may negotiate a predetermined, all inclusive per diem rate for specialty programs/units. An incremental payment adjustment may be made for 1:1 staffing (if clinically appropriate and prior authorized). Payment may be up to, but no greater, than usual and customary charges. The 1:1 staffing adjustment is limited to 60 days annually.

(d) **Health Home Transitioning Services.** Health Home services for the provision of comprehensive transitional care to existing members are considered to be inpatient psychiatric services, when services exceed and do not duplicate ordinary inpatient discharge planning during the last 30 days of a covered acute or residential stay. Payment for Health Home transitioning services provided under arrangement with the inpatient provider will be directly reimbursed to the Health Home outside of the facility's per diem or DRG rate.

(a) **Reimbursement.**

(1) Covered inpatient psychiatric and/or substance use disorder services will be reimbursed using one (1) of the following methodologies:

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- (A) Diagnosis related group (DRG);
 - (B) Cost-based; or
 - (C) A predetermined per diem payment.
 - (2) For members twenty-one (21) to sixty-four (64) years of age, payment shall not be made to any inpatient psychiatric facility that qualifies as an IMD, except as provided by OAC 317:30-5-95.23 and 317:30-5-95.11.
- (b) **Levels of care.**
- (1) **Acute.**
 - (A) Payment will be made to psychiatric units within general medical surgical hospitals and critical access hospitals utilizing a DRG methodology. [See OAC 317:30-5-41]. Psychiatric professional (physicians and psychologists) services provided in conjunction with the inpatient stay are separately payable from the DRG paid to the hospital;
 - (B) Payment will be made to psychiatric hospitals utilizing a predetermined statewide per diem payment for all facility services provided during the inpatient stay. Psychiatric professional (physicians and psychologists) services provided in conjunction with the inpatient stay are separately payable from the per diem paid to the hospital. Rates vary for public and private providers.
 - (2) **Acute II.**
 - (A) Payment will be made to in-state psychiatric hospitals or inpatient psychiatric programs utilizing a predetermined all-inclusive per diem payment for routine, ancillary, and professional services.
 - (B) Public facilities will be reimbursed using either the statewide or facility-specific interim rates and settled to total allowable costs as determined by analyses of the cost reports (Form CMS 2552) filed with the OHCA.
 - (3) **PRTFs.**
 - (A) A pre-determined per diem payment will be made to private PRTFs with sixteen (16) beds or less for routine services. All other services are separately billable.
 - (B) A predetermined all-inclusive per diem payment will be made for routine, ancillary, and professional services to private facilities with more than sixteen (16) beds.
 - (C) Public facilities will be reimbursed using either the statewide or facility-specific interim rates and settled to total allowable costs as determined by analyses of the cost reports (Form CMS 2552) filed with the OHCA.
- (c) **Out-of-state services.**
- (1) **Border and "border status" placements.** Facilities are reimbursed in the same manner as in-state hospitals or PRTFs. Refer to OAC 317:30-3-90 and 317:30-3-91.
 - (2) **Out-of-state placements.** In the event comparable services cannot be purchased from an Oklahoma facility and the current payment levels are insufficient to obtain
- access for the member, the OHCA may negotiate a pre-determined, all-inclusive per diem rate for specialty programs/units. An incremental payment adjustment may be made for one (1): one (1) staffing (if clinically appropriate and prior authorized). Payment may be up to, but no greater, than usual and customary charges. The one (1): one (1) staffing adjustment is limited to sixty (60) days annually. Refer to OAC 317:30-3-90 and 317:30-3-91.
- (d) **Add-on payments.**
- (1) Additional payment shall only be made for services that have been prior authorized by OHCA or its designee and determined to be medically necessary. For medical necessity criteria applicable for the add-on payment(s), refer to the SoonerCare Medical Necessity Criteria Manual for Inpatient Behavioral Health Services found on the OHCA website.
 - (2) SoonerCare shall provide additional payment for the following services rendered in an Acute II and PRTE, as per the Oklahoma Medicaid State Plan.
 - (A) **Intensive treatment services (ITS) add-on.** Payment shall be made for members requiring intensive staffing supports.
 - (B) **Prospective complexity add-on.** Payment shall be made to recognize the increased cost of serving members with a mental health diagnosis complicated with non-verbal communication.
 - (C) **Specialty add-on.** Payment shall be made to recognize the increased cost of serving members with complex needs.
- (e) **Services provided under arrangement.**
- (1) **Health home transitioning services.**
 - (A) Services for the provision of comprehensive transitional care to existing members are considered to be inpatient psychiatric services, when services exceed and do not duplicate ordinary inpatient discharge planning during the last thirty (30) days of a covered acute or residential stay.
 - (B) Payment for health home transitioning services provided under arrangement with the inpatient provider will be directly reimbursed to the health home outside of the facility's per diem or DRG rate.
 - (2) **Case management transitioning services.**
 - (A) Services for the provision of case management transitioning services to existing members are considered to be inpatient psychiatric services, when services exceed and do not duplicate ordinary inpatient discharge planning during the last thirty (30) days of a covered acute or residential stay.
 - (B) Payment for case management transitioning services provided under arrangement with the inpatient provider will be directly reimbursed to a qualified community-based provider.
 - (3) **Evaluation and psychological testing by a licensed psychologist.**
 - (A) Services for the provision of evaluation and psychological testing by a licensed psychologist to

existing members are considered to be inpatient psychiatric services, when services exceed and do not duplicate ordinary inpatient discharge planning during the last thirty (30) days of a covered acute or residential stay.

(B) Payment for evaluation and psychological testing by a licensed psychologist for services provided under arrangement with the inpatient provider will be directly reimbursed to a qualified provider in accordance with the Oklahoma Medicaid State Plan.

[OAR Docket #20-457; filed 6-26-20]

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

[OAR Docket #20-462]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 8. Rehabilitation Hospitals

317:30-5-111 [AMENDED]

(Reference APA WF # 19-42)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Approved by Governor's declaration on June 25, 2020

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will increase the number of covered inpatient rehabilitation hospital days for adult SoonerCare members from twenty-four (24) days per state fiscal year to ninety (90) days per state fiscal year. These changes are necessary to meet the health care needs of SoonerCare members by increasing access to stabilization services in an inpatient rehabilitation setting.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

**SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 14, 2020:**

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 8. REHABILITATION HOSPITALS

317:30-5-111. Coverage for adults

For persons ~~21~~twenty-one (21) years of age or older, payment is made to hospitals for inpatient services as described in this section.

(1) All general inpatient hospital services which are not provided under the Diagnosis Related Group (DRG) payment methodology for all persons ~~21~~twenty-one (21) years of age or older is limited to ~~24~~ninety (90) days per person per state fiscal year (July 1 through June 30). The ~~24~~ninety (90) day limitation applies to both hospital and physician services. No exceptions or extensions will be made to the ~~24~~ninety (90) day inpatient services limitation.

(2) All inpatient stays are subject to post-payment utilization review by the ~~OHCA's~~Oklahoma Health Care Authority's (OHCA) designated Quality Improvement Organization (QIO). These reviews are based on severity of illness and intensity of treatment.

(A) It is the policy and intent of OHCA to allow hospitals and physicians the opportunity to present any and all documentation available to support the medical necessity of an admission and/or extended stay of a SoonerCare member. If the QIO, upon their initial review determines the admission should be denied, a notice is issued to the facility and the attending physician advising them of the decision. This notice also advises that a reconsideration request may be submitted within the specified time frame on the notice and consistent with the Medicare guidelines. Additional information submitted with the reconsideration request is reviewed by the QIO that utilizes an independent physician advisor. If the denial decision is upheld through this review of additional information, the QIO sends written notification of the denial decision to the hospital, attending physician and the OHCA. Once the OHCA has been notified, the overpayment is processed as per the final denial determination.

(B) If the hospital or attending physician did not request reconsideration from the QIO, the QIO informs OHCA there has been no request for reconsideration and as a result their initial denial decision is final. OHCA, in turn, processes the overpayment as per the denial notice sent to the OHCA by the QIO.

(C) If an OHCA, or its designated agent, review results in denial and the denial is upheld throughout the appeal process and refund from the hospital and

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physician is required, the member cannot be billed for the denied services.

(3) If a hospital or physician believes that a hospital admission or continued stay is not medically necessary and thus not compensable but the member insists on treatment, the member should be informed that he/she will be personally responsible for all charges. If a claim is filed and paid and the service is later denied, the patient is not responsible.

(4) Payment is made to a participating hospital for hospital based physician's services. The hospital must have a Hospital-Based Physician's contract with OHCA for this method of billing.

(5) Outpatient services for adults are covered as listed in ~~OAC~~Oklahoma Administrative Code 317:30-5-42.1.

[OAR Docket #20-462; filed 6-26-20]

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

[OAR Docket #20-460]

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RULES:

Subchapter 5. Individual Providers and Specialties

Part 9. Long-Term Care Facilities

317:30-5-136 [REVOKED]

(Reference APA WF # 19-39B)

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The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; and the Oklahoma Health Care Authority Board

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September 14, 2020

SUPERSEDED EMERGENCY ACTIONS:

Not applicable

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will remove rule sections that were created for the nursing home supplemental payment program, a program that was never implemented; the Centers for Medicare and Medicaid Services (CMS) did not ultimately approve the proposal.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 9. LONG-TERM CARE FACILITIES

317:30-5-136. Nursing Facility Supplemental Payment Program [REVOKED]

(a) **Purpose.** The Nursing Facility Supplemental Payment Program (NFSPP) is a supplemental payment, up to the Medicare upper payment limit (UPL), made to a non-state government owned entity that owns and as applicable has operating responsibility for a nursing facility(ies).

(b) **Definitions.** The following words and terms, when used in this Section have the following meaning, unless the context clearly indicates otherwise:

(1) **"Funds"** means a sum of money or other resources, as outlined in Public Funds as the State Share of Financial Participation, 42 Code of Federal Regulation (C.F.R.), Sec.433.51, appropriated directly to the State or local Medicaid agency, or funds that are transferred from other public agencies (including Indian tribes) to the State or local agency and under its administrative control, or funds certified by the contributing public agency as representing expenditures eligible for Federal Financial Participation (FFP).

(2) **"Intergovernmental transfer (IGT)"** means a transfer of state share funds from a non state government owned entity to the Oklahoma Health Care Authority (OHCA).

(3) **"Non-state government owned (NSGO)"** means an entity owned and/or operated by a unit of government other than the state and the application packet is accepted and determined complete by OHCA as a qualified NSGO.

(4) **"Resource Utilization Groups (RUGs)"** means the system used to set Medicare per diem payments for skilled nursing facilities, as the basis to demonstrate a Medicare payment estimate for use in the UPL calculation.

(5) **"Supplemental payment calculation period"** means the State Fiscal Year for which supplemental payment amounts are calculated based on Medicaid paid claims (less leave days) compiled from the state's Medicaid Management Information System (MMIS) at a minimum yearly to a maximum quarterly.

(6) **"Upper payment limit (UPL)"** means a reasonable estimate of the amount that would be paid for the services furnished by a facility under Medicare equivalent payment.

(e) **Eligible nursing facilities.** A nursing facility that is owned and as applicable under the operational responsibility

of an NSGO, is eligible for participation when the following conditions are met:

- (1) the nursing facility is licensed and certified by the Oklahoma State Department of Health;
 - (2) the participating NSGO has provided proof that it holds the facility's license and has complete operational responsibility for the facility;
 - (3) the participating NSGO has completed and submitted the Agreement of Participation application at minimum thirty (30) days prior to the start of the participation quarter and received the application packet is accepted and determined complete by OHCA;
 - (4) the facility is an active participant in the Focus on Excellence program and has earned at minimum one hundred (100) points; does not receive an immediate jeopardy (IJ) scope and severity tag for abuse or neglect on three (3) separate surveys within a twelve (12) month period; and
 - (5) the facility and NSGO comply with care criteria requirements. All facilities shall provide supporting documentation (e.g., baselines, written plan, improvement summary, data sources) for the care criteria metrics.
- (d) **NSGO participation requirements.** The following conditions are required of the NSGO:
- (1) shall provide proof of ownership, if applicable (i.e. Change of Ownership) as licensed operator of the nursing facility;
 - (2) shall provide proof of proximity requirements of no greater than one hundred fifty (150) miles of NSGO. Exceptions may be made at the sole discretion of OHCA;
 - (3) shall execute a nursing facility provider contract as well as an agreement of participation with the OHCA;
 - (4) shall provide OHCA with an executed Management Agreement between the NSGO and the facility manager;
 - (5) shall provide and identify the state share dollars' source of the IGT;
 - (6) shall pay the calculated IGT to OHCA by the required deadline;
 - (7) shall utilize program dollars for health care related expenditures; and
 - (8) shall provide per facility, the per patient per Medicare day (PPMD) IGT within specified timeframe of receipt of the Notice of Program Reimbursement (NPR) as indicated below:
 - (A) For the first year \$6.50 PPMD.
 - (B) For the second year \$7.50 PPMD.
 - (C) For the third year \$8.50 PPMD, or the equivalent of ten percent (10%) of nursing facility budget of the current fiscal year, whichever is less. This amount excludes any IGT for actual administration cost associated with the nursing home UPL supplemental program. Any remaining IGT after administration cost shall be distributed through the rate setting methodology process. Distribution shall occur once escrowed funds reach an amount sufficient to distribute as determined by OHCA.
- (e) **Change in ownership.**
- (1) A nursing facility participating in the supplemental payment program shall notify the OHCA of changes

in ownership (CHOW) that may affect the nursing facility's continued eligibility within thirty (30) days after such change.

(2) For a nursing facility that changes ownership on or after the first day of the SoonerCare supplemental payment limit calculation period, the data used for the calculations will include data from the facility for the entire upper payment limit calculation period relating to payments for days of service provided under the prior owner, pro-rated to reflect only the number of calendar days during the calculation period that the facility is owned by the new owner.

(f) **Care Criteria.** Each facility shall be required to participate in the following care criteria components to receive UPL financial reimbursement.

(1) **Component 1—Quality Improvement Plan.** A facility shall hold monthly Quality Improvement Plan meetings. The meetings shall be tailored to identify an improvement plan for quality enhancement focused on nursing facility safety, quality of resident life, personal rights, choice and respect. Consistent with 42 CFR 483.75. Quality indicators shall be identified during the meetings and include the following:

(A) A written plan to include but not limited to the development, implementation and evaluation of the quality enhancement indicator. The plan shall be reviewed monthly for ongoing quality indicator progress, completion of the quality indicator and/or routine updates on the sustainability of current and/or prior indicators achieved.

(B) The design and scope of the plan should include the specific system and service that will be utilized to monitor and track performance improvement, the staff included to improve the quality indicator, resident choice, subjective/objective evidence and ongoing measures taken to ensure stability and enhancement. This may include but not be limited to a written policy, a procedure manual, data collections systems, management practices, resident/staff interviews, and trainings.

(C) Outcomes shall include evidence of improvement, cost expenditures toward improvement goal, how the facility shall continue to monitor the effectiveness of its quality enhancement and how it shall have ongoing sustainability.

(D) Facility shall submit program documentation monthly. The information shall include A-D as well as OHCA required form LTC-19.

(E) The quality improvement plan shall be reviewed monthly by the OHCA quality review team. Payment shall be assessed in increments of 20 percent (20%) per month for a total of 60 percent (60%) per quarter if approved.

(2) **Component 2—Health Improvement Plan.**

(A) A facility shall hold quarterly Health Improvement Plan meetings. The meetings shall be tailored to identify an improvement plan for the quality indicators of urinary tract infection, unintended weight

loss, developing or worsening pressure ulcers, and received antipsychotic medication. Meetings include the following:

(i) A written plan to include but not limited to the development, implementation and evaluation of the quality enhancement indicator. The plan shall be reviewed quarterly for ongoing quality indicator progress, completion of the quality indicator and/or routine updates on the sustainability of current and/or prior indicators achieved.

(ii) The design and scope of the plan should include the specific system and service that shall be utilized to monitor and track performance improvement, the staff included to improve the quality indicator, resident choice, subjective/objective evidence and ongoing measures taken to ensure stability and enhancement. This may include but not be limited to a written policy, a procedure manual, data collections systems, management practices, resident/staff interviews, and trainings.

(iii) Outcomes shall include evidence of improvement, cost expenditures toward improvement, how the facility will continue to monitor the effectiveness of its quality enhancement and how it shall have ongoing sustainability.

(iv) Facility shall submit program documentation quarterly. The information will include i-iii as well as OHCA required form LTC 18.

(B) The health improvement plan shall be reviewed quarterly by the OHCA quality review team. Payment shall be assessed in increments of ten percent (10%) by achieving five percent (5%) relative improvement or by achieving the national average benchmark per each of the four (4) components quarterly for a total of forty percent (40%) per quarter if approved.

(3) **Care Criteria Evaluation and Audit.** The care criteria measures may be evaluated at the discretion of OHCA on an annual basis after each fiscal year, following implementation of the program. However, OHCA reserves the right to conduct intermittent evaluations within any given year based on the quality, care and safety of SoonerCare members. The evaluation may be conducted by an independent evaluator. In addition, care criteria metrics may be internally evaluated after each fiscal year at the discretion of OHCA. The OHCA may make adjustments to the care criteria measures based on findings and recommendations as a result of the independent or internal evaluation.

(g) **Supplemental Payments.**

(1) The nursing facility supplemental payments to a NSGO under this program shall not exceed Medicare payment principles pursuant to Inpatient Services: Application of Upper Payment Limits, 42 C.F.R., Sec. 447.272. Payments are made in accordance with the following criteria:

(A) The methodology utilized to calculate the upper payment limit is the RUGs.

(B) The eligible supplemental amount is the difference/gap between the SoonerCare payment and the Medicare equivalent payment as determined based on compliance with the care criteria metrics.

(2) The amount of the eligible supplemental payment is associated with improvement of care of SoonerCare nursing facility residents as demonstrated through the care criteria. The quality components are evaluated monthly with a quarterly payout. Component 1 is assessed at twenty percent (20%) per month with a possible total achievement of sixty percent (60%) per quarter. Component 2 is assessed at ten percent (10%) per each of the four (4) components with a possible total achievement of 40 percent (40%) per quarter. Facilities will be reimbursed accordingly based on the percentage of care criteria earned.

(h) **Disbursement of payment.** NSGOs shall secure allowable IGT funds from a NSGO to fund the non federal share amount. The method is as follows:

(1) The OHCA or its designee will notify the NSGO of the non federal share amount to be transferred by an IGT, via electronic communications and NPR, for purposes of seeking federal financial participation (FFP) for the UPL supplemental payment, within twenty five (25) business days after the end of the quarter. This amount will take into account the percentage of metrics achieved under the care criteria requirement. The NSGO will have five (5) business days to sign the participant agreement and make payment of the state share in the form of an IGT either in person or via mail. The date the NPR is sent by OHCA or its designee to the provider (NSGO) is the official date the clock starts to measure the five (5) business days. In addition, the NSGO shall also be required to remit, upon receipt of the NPR, the applicable PPMD IGT in full, pursuant to (d) (7) above.

(2) If the full IGT and the PPMD IGT are received within five (5) business days, the UPL payment will then be disbursed to the NSGO by OHCA within ten (10) business days in accordance with established payment cycles.

(i) **Penalties.**

(1) Receipt of the total IGT(s) within five (5) business days is not subject to any penalty.

(2) Any total IGT received after the fifth (5th) business day, but with an OHCA date stamp or mailing postal mark on or prior to five (5) business days from the official date of the receipt of the NPR will not be subject to penalty.

(3) Any total IGT with an OHCA date stamp or mailing postal mark received with a date after five (5) business days of receipt of the NPR, but not exceeding eight (8) business days of receipt of the NPR shall be deemed late and subject to a penalty in accordance with (3)(A) below.

(A) A five percent (5%) penalty will be assessed for the total IGT payments received after five (5) business days, but within eight (8) business days of receipt of the NPR. The five percent (5%) penalty will be assessed on the total eligible supplemental payment for the quarter in which the IGT is late and assessed to the specific NSGO as applicable.

(B) OHCA will notify the NSGO of the assessed penalty via invoice. If the NSGO fails to pay OHCA the assessed penalty within the time frame noted on the invoice to the NSGO, the assessed penalty will be deducted from the nursing facility's Medicaid payment. The penalty shall be paid regardless of any appeals action requested by the NSGO. Should an appeals decision result in a disallowance of a portion or the entire assessed penalty, reimbursement to the NSGO will be made to future nursing facility Medicaid payments.

(C) An NSGO that remits payment of the total IGT under the circumstances listed in (i) (2) or (i) (3) above will receive payment during the next available OHCA payment cycle.

(4) The first violation by an NSGO to remit the full IGT as indicated on the NPR by OHCA or its designee within the defined timeframes shall subject the NSGO to a penalty. The second violation by an NSGO to remit the full IGT indicated on the NPR by OHCA or its designee within the defined timeframes shall subject the NSGO to a penalty and a suspension for two (2) consecutive quarters. The NSGO will not be eligible to participate in the program during suspended quarters. A third violation by an NSGO to remit the full IGT indicated on the NPR by OHCA or its designee within the defined timeframes shall subject the NSGO to termination from the NFSPP. If the NSGO desires to participate again, it will be required to reapply. Reentry into the program is at the sole discretion of the OHCA. If the NSGO is readmitted to the program, terms of participation may include a probationary period with defined requirements.

(5) If OHCA receives a partial IGT or receives a full IGT after eight (8) business days of the receipt of the NPR, the NSGO shall be deemed to have voluntarily elected to withdraw participation in the NFSPP.

(6) If a nursing facility fails to meet the benchmarks of component 1 and/or component 2 of the care criteria for two (2) consecutive quarters, the facility shall be suspended for two (2) subsequent quarters and will not be eligible to participate in the program during suspended quarters. A facility that has been suspended for a total of four (4) quarters within a two (2) year period due to non-compliance with the Care Criteria shall be terminated from the program, and if the facility wishes to participate again, it will be required to reapply. Reentry into the program is at the sole discretion of the OHCA. If the facility is readmitted to the program, terms of participation may include a probationary period with defined requirements as it relates to care.

(j) **Appeals.** Applicant and participant appeals may be filed in accordance with grievance procedures found at Oklahoma Administrative Code 317:2-1-2(c) and 317:2-1-16.

[OAR Docket #20-460; filed 6-26-20]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY

CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #20-464]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 62. Private Duty Nursing

317:30-5-555 [AMENDED]

317:30-5-556 [AMENDED]

317:30-5-558 [AMENDED]

(Reference APA WF # 19-45)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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n/a

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n/a

GIST/ANALYSIS:

The proposed revisions will update and strengthen PDN policy by defining the place of services where/that PDN is allowed. Additional revisions will include adding language to allow for medically necessary PDN services outside of the home if certain requirements are met. Further revisions will clarify which PDN services will and will not be authorized. Finally, the proposed revisions will involve limited rewriting aimed at clarifying text, fixing any grammatical errors, and aligning rules with the current business practice.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 62. PRIVATE DUTY NURSING

Permanent Final Adoptions

317:30-5-555. ~~Eligible providers~~Private Duty Nursing (PDN)

~~(a) An organization who desires to be paid by SoonerCare for private duty nursing must meet the following requirements prior to providing services to eligible SoonerCare members:~~

- ~~(1) an executed contract with OHCA, and~~
- ~~(2) the organization must meet the requirements of OAC 317:30-5-545 or it must be licensed by the State Health Department as a Home Care Agency.~~

~~(b) The provider of services within the organization must be a licensed practical nurse or a registered nurse. PDN is medically necessary care provided on a regular basis by a licensed practical nurse or registered nurse. PDN is the level of care that would routinely be provided by the nursing staff of a hospital or skilled nursing facility. PDN services are provided:~~

- ~~(1) In the member's primary residence, unless it is medically necessary for a nurse to accompany the individual in the community.~~

~~(A) The individual's place of residence is wherever the individual lives, whether the residence is the individual's own dwelling, a relative's home, or other type of living arrangement. The place of residence cannot include a hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities (ICF/IID).~~

~~(B) The place of service in the community cannot include the residence or business location of the provider of PDN services unless the provider of PDN is a live-in caregiver.~~

- ~~(2) To assist during transportation to routine, Medicaid-compensable health care appointments and/or to the nearest appropriate emergency room, but only when SoonerRide is unavailable, and a lack of PDN services during transportation would require transportation by ambulance pursuant to Oklahoma Administrative Code (OAC) 317:30-5-336.~~

~~(A) The private duty nurse may not drive the vehicle during transportation.~~

~~(B) PDN services are not available for non-routine extended home absences unrelated to medically necessary treatment or medical care. [Refer to Oklahoma Administrative Code 317:30-5-558(4)and(13)].~~

317:30-5-556. ~~Definitions~~Eligible providers

~~Private duty nursing is medically necessary care provided on a regular basis by a Licensed Practical Nurse or Registered Nurse in the member's primary residence or to assist outside the home during transport to medical appointments and emergency room visits in lieu of transport by ambulance.~~

~~(a) A home health agency that desires to be reimbursed by SoonerCare for private duty nursing (PDN) must meet the following requirements prior to providing services to eligible SoonerCare members:~~

- ~~(1) The agency must be fully contracted with OHCA as a provider; and~~
- ~~(2) The agency must meet the requirements of Oklahoma Administrative Code (OAC) 317:30-5-545, and it~~

~~must be licensed by the Oklahoma State Health Department (OSDH) as a home care agency.~~

~~(b) The provider of PDN services, within the agency, must be a licensed practical nurse or a registered nurse who is currently licensed and in good standing in the state in which services are provided.~~

317:30-5-558. Private duty nursing (PDN) coverage limitations

The following ~~regulations~~provisions apply to all ~~private duty nursing~~PDN services and provide coverage limitations:

- (1) All services must be prior authorized to receive payment from the Oklahoma Health Care Authority (OHCA). Prior authorization means authorization in advance of services provided in accordance with Oklahoma Administrative Code (OAC) 317:30-3-31 and 317:30-5-560.1;

(2) A treatment plan must be completed by the ~~Nursing~~home health agency before requesting prior authorization and must be updated at least annually and signed by the physician;

(3) A telephonic interview and/or personal visit by an OHCA care management nurse is required prior to the authorization for services;

(4) Care in excess of the designated hours per day granted in the prior authorization is not SoonerCare compensable. Prior-authorized but unused service hours cannot be "banked," "saved," or otherwise "accumulated" for use at a future date or time. If such hours or services are provided, they are not SoonerCare compensable.

(5) Any medically necessary PDN care provided outside of the home ~~is limited to~~must be counted in and cannot exceed ~~assisting during transport to medical appointments and emergency room visits in lieu of transport by ambulance and is limited to~~ the number of hours requested on the treatment plan and approved by OHCA.

(6) ~~Private duty nursing~~PDN services do not include office time or administrative time in providing the service. The time billed is for direct nursing services only.

(7) Staff must be engaged in purposeful activity that directly benefits the member receiving services. Staff must be physically able and mentally alert to carry out the duties of the job. At no time will OHCA compensate an organization for nursing staff time when sleeping.

(8) OHCA will not approve ~~Private Duty Nursing~~PDN services if all health and safety issues cannot be met in the ~~home~~setting in which services are provided.

(9) A provider must not misrepresent or omit facts in a treatment plan.

(10) It is outside the scope of coverage to deliver care in a manner outside of the treatment plan or to deliver units over the authorized units of care.

(11) ~~Private duty nursing~~PDN is not authorized in excess of ~~16~~sixteen (16) hours per day ~~except immediately following a hospital stay or the temporary incapacitation of the primary caregiver. Under these two exceptions, care in excess of 16 hours is authorized for a period up to 30 days. As expressed in this subsection, incapacity~~

means an involuntary ability to provide care. There may be approval for additional hours for a period not to exceed thirty (30) days, if:

(A) The member has an acute episode that would otherwise require hospitalization or immediately following a hospital stay; or

(B) The primary caregiver is temporarily and involuntarily unable to provide care.

(C) The OHCA has discretion and the final authority to approve or deny any additional PDN hours and will take into consideration that the additional hours are not to be a substitute for institutionalized care.

(12) Family and/or caregivers and/or guardians (hereinafter, "caregivers") are required to provide some of the nursing care to the member without compensation. PDN services shall not be provided solely to allow the member's caregiver to work or go to school, nor solely to allow respite for the caregiver.

(13) PDN services will not be approved for overnight trips away from the member's primary residence that are unrelated to medically necessary treatment or medical care.

(A) For a member to receive Medicaid-reimbursable PDN services on an overnight trip that is related to medically necessary treatment or medical care, all provisions of this Part must be met. If said trip occurs out of state, OAC 317:30-3-89 through 317:30-3-92 must also be met.

(B) In instances in which the member's family is temporarily absent due to vacations, any additional PDN hours must be paid for by the family, or provided by other trained family members without SoonerCare reimbursement.

(14) PDN services will not be approved when services are reimbursed or reimbursable by other insurance, other governmental programs, or Medicaid program services that the member receives or is eligible to receive. For example, if a member receives Medicaid-reimbursable PDN services pursuant to an Individualized Education Program (IEP) in a public school, then those PDN school hours will be counted in the member's daily allotment of PDN services.

[OAR Docket #20-464; filed 6-26-20]

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

[OAR Docket #20-466]

RULEMAKING ACTION:

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RULES:

Subchapter 5. Individual Providers and Specialties
Part 79. Dentists
317:30-5-695 [AMENDED]

317:30-5-696 [AMENDED]
317:30-5-698 [AMENDED]
317:30-5-700 [AMENDED]
317:30-5-700.1 [AMENDED]
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Not applicable

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will amend the rule that limits dental services for adults to "emergency" extractions only by changing it to "medically necessary" extractions. Additionally, the proposed rule revisions will add definitions for medically necessary oral healthcare and medically necessary extractions. Finally, the proposed revisions will involve limited rewriting aimed at clarifying text; fixing any grammatical errors; and aligning rules with the current business practice.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 79. DENTISTS

317:30-5-695. Eligible dental providers and definitions

(a) Eligible dental providers in Oklahoma's SoonerCare program are:

(1) ~~individuals~~ Individuals licensed as dentists under Title 59 of Oklahoma Statutes (O.S.), Sections (§§) 328.21, 328.22, and 328.23 (licensed dentists, specialty dentists and out of state dentists);

(2) ~~individuals~~ Individuals issued permits as dental interns under 59 O.S. § 328.26;

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- (3) ~~individuals~~Individuals who are third and fourth year dental students at an accredited Oklahoma dental college; and
- (4) ~~any~~Any individual issued a license in another state as a dentist.
- (b) All eligible providers must be in good standing with regard to their license. Any revocation or suspension status of a provider referenced in subsection (a) above renders the provider ineligible for payment or subject to recoupment under SoonerCare.
- (c) Eligible providers must document and sign records of services rendered in accordance with guidelines found at Oklahoma Administrative Code (OAC) 317:30-3-15.
- (d) The American Dental Association's version of Code on Dental Procedures and Nomenclature (CDT) is used by the Oklahoma Health Care Authority (OHCA) to communicate information related to codes, and procedures for administration. Definitions, nomenclature, and descriptors as listed in the CDT will apply, with the exception of more specific definitions or limitations set forth.
- (1) **"Decay"** means carious lesions in a tooth; decomposition and/or dissolution of the calcified and organic components of the tooth structure.
- (2) **"Emergency Dental Care"** means, but is not limited to, the immediate service that must be provided to relieve the member from pain due to an acute infection, swelling, trismus or trauma.
- (3) **"Emergency Extraction"** means, but is not limited to, an extraction of a tooth due to presence of pathology, trauma, severe periodontal involvement, significant caries or to relieve pain or infection.
- (4) **"Images"** means radiographs and diagnostic imaging that are part of the clinical record. Images should only be taken for clinical reasons as determined by the dentist and must be of diagnostic quality, properly identified, and dated.
- (5) **"Medically necessary extractions"** means, but is not limited to, an extraction of a tooth that has met medically necessary criteria due to the presence of pathology, trauma, severe periodontal involvement, significant caries, pain or infection.
- (6) **"Medically necessary oral healthcare"** means treatment deemed necessary by a physician or dentist when a patient's medical condition or treatment is or will be likely complicated by an untreated oral health problem.
- (7) **"Palliative Treatment"**~~"treatment"~~ means action that relieves pain but is not curative. Palliative ~~Treatment~~treatment is an all-inclusive service. No other codes are reimbursable on the same date of service.
- (8) **"Radiographic Caries"**"caries" means dissolution of the calcified and organic components of tooth tissue that has penetrated the enamel and is approaching the dentin-enamel junction.
- (9) **"Unbundling"** means billing separately for several individual procedures that are included within one (1) CDT or Current Procedural Terminology (CPT) code.
- (10) **"Upcoding"** means reporting a more complex and/or higher cost procedure than actually performed.

317:30-5-696. Coverage by category

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

(1) Adults.

(A) Dental coverage for adults is limited to:

- (i) ~~Emergency~~Medically necessary extractions, as defined in Oklahoma Administrative Code (OAC) 317:30-5-695. Tooth extraction must have medical need documented;
- (ii) ~~limited~~Limited oral examinations and medically necessary images, as defined in OAC 317:30-5-695, associated with the ~~emergency~~ extraction or with a clinical presentation with reasonable expectation that an ~~emergency~~ extraction will be needed;
- (iii) Smoking and ~~Tobacco Use Cessation Counseling~~tobacco use cessation counseling; and
- (iv) ~~medical~~Medical and surgical services performed by a dentist or physician to the extent such services may be performed under State law when those services would be covered if performed by a physician.

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

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

- (i) ~~comprehensive~~Comprehensive oral evaluation;
- (ii) ~~two image bitewings~~Two (2) bitewing images;
- (iii) ~~prophylaxis~~Prophylaxis;
- (iv) ~~fluoride~~Fluoride application;
- (v) ~~limited~~Limited restorative procedures;
- (vi) ~~periodontal~~Periodontal scaling/root planing.

(2) **Home and community-based services (HCBS) waiver for the intellectually disabled.** All providers participating in the HCBS must have a separate contract

with the OHCA to provide services under the HCBS. Dental services are defined in each waiver and must be prior authorized.

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

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

(B) **Periodic oral evaluation.** This procedure may be provided for a member of record ~~if not seen by the dentist for more than once every six (6) months.~~ An examination should precede any images, and chart documentation must include image interpretations, caries risk assessment, and both medical and dental health history of member. The comprehensive treatment plan should be the final ~~results~~ result of this procedure.

(C) **Limited oral evaluation.** This procedure is only compensable to the same dentist or practice for two (2) visits prior to a comprehensive or periodic evaluation examination being completed.

(D) **Images.** To be SoonerCare compensable, images must be of diagnostic quality and medically necessary. A clinical examination must precede any images, and chart documentation must include member history, prior images, caries risk assessment, the six-point periodontal charting, and both dental and general health needs of the member. The referring dentist is responsible for providing properly identified images of acceptable quality with a referral, if that provider chooses to expose and submit for reimbursement prior to referral. Periapical images must include at least three (3) millimeters beyond the apex of the tooth being imaged. Panoramic films and two (2) bitewings are considered full mouth images. Full mouth images as noted above or traditional ~~(minimum of twelve (12) periapical films and two (2) posterior bitewings)~~ minimum of twelve (12) periapical films and two (2) posterior bitewings are allowable once in a three (3) year period and must be of diagnostic quality. Individually listed intraoral images by the same dentist/dental office are considered a complete series if the number of individual images equals or exceeds the traditional number for a complete series. Panoramic films are only compensable when chart documentation clearly indicates reasons for the exposure based on clinical findings. This type of exposure

is not to rule out or evaluate caries. Prior authorization and a detailed medical need narrative are required for additional panoramic films taken within three (3) years of the original set.

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

(F) **Interim caries arresting medicament application.** This service is available for primary and permanent teeth once every one hundred eighty-four (184) days for two (2) occurrences per tooth in a lifetime. The following criteria must be met for reimbursement:

- (i) A member is documented to be unable to receive restorative services in the typical office environment within a reasonable amount of time;
- (ii) A tooth that has been treated should not have any non-carious structure removed;
- (iii) A tooth that has been treated should not receive any other definitive restorative care for three (3) months following an application;
- (iv) Reimbursement for extraction of a tooth that has been treated will not be allowed for three (3) months following an application; and
- (v) The specific teeth treated and number and location of lesions must be documented.

~~(F)~~ **Dental prophylaxis.** This procedure is provided once every ~~184~~ one hundred eighty-four (184) days along with topical application of fluoride.

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

- (i) Stainless steel crowns are allowed if:
 - (I) ~~the~~ The child is five (5) years of age or under;
 - (II) ~~70~~ Seventy percent (70%) or more of the root structure remains; or
 - (III) ~~the~~ The procedure is provided more than twelve (12) months prior to normal exfoliation.
- (ii) Stainless steel crowns are treatment of choice for:
 - (I) ~~primary~~ Primary teeth treated with pulpal therapy, if the above conditions exist;
 - (II) ~~primary~~ Primary teeth where three (3) surfaces of extensive decay exist; or
 - (III) ~~primary~~ Primary teeth where cuspal occlusion is lost due to decay or accident.
- (iii) Preoperative periapical images and/or written documentation explaining the extent of decay must be available for review, if requested.
- (iv) Placement of a stainless steel crown is allowed once for a minimum period of twenty-four (24) months. No other restoration on that tooth is

compensable during that period of time. A stainless steel crown is not a temporizing treatment to be used while a permanent crown is being fabricated.

(H) Stainless steel crowns for permanent teeth.

The use of any stainless steel crowns is allowed as follows:

- (i) Stainless steel crowns are the treatment of choice for:
 - (I) ~~posterior~~ Posterior permanent teeth that have completed endodontic therapy if three (3) or more surfaces of tooth is destroyed;
 - (II) ~~posterior~~ Posterior permanent teeth that have three (3) or more surfaces of extensive decay; or
 - (III) ~~where~~ Where cuspal occlusion is lost due to decay prior to age sixteen (16) years.
- (ii) Preoperative periapical images and/or written documentation explaining the extent of decay must be available for review, if requested.
- (iii) Placement of a stainless steel crown excludes placement of any other type of crown for a period of twenty-four (24) months. No other restoration on that tooth is compensable during that period of time.

(I) Pulpotomies and pulpectomies.

- (i) Therapeutic pulpotomies and pulpal debridement are allowable once per lifetime. Pre- and post-operative periapical images must be available for review, if requested. Therapeutic pulpotomies and pulpal debridement is available for the following:
 - (I) Primary molars having at least ~~70~~ seventy percent (70%) or more of their root structure remaining or more than twelve (12) months prior to normal exfoliation;
 - (II) Tooth numbers O and P before age five (5) years;
 - (III) Tooth numbers E and F before six (6) years;
 - (IV) Tooth numbers N and Q before five (5) years;
 - (V) Tooth numbers D and G before five (5) years.
- (ii) Therapeutic pulpotomies and pulpal debridement are allowed for primary teeth if exfoliation of the teeth is not expected to occur for at least one (1) year or if ~~70~~ seventy percent (70%) or more of root structure is remaining.

(J) Endodontics. Payment is made for the services provided in accordance with the following:

- (i) This procedure is allowed when there are no other missing anterior teeth in the same arch requiring replacement.
- (ii) The provider documents history of member's improved oral hygiene and flossing ability in records.

(iii) Prior authorization is required for members who have a treatment plan requiring more than two (2) anterior and/or ~~two (2)~~ any posterior root canals.

(iv) Pre and post-operative periapical images must be available for review.

(v) Pulpal debridement may be performed for the relief of pain while waiting for the decision from the OHCA.

(vi) Providers are responsible for any follow-up treatment required due to a failed root canal therapy for twenty-four (24) month post completion.

(vii) Endodontically treated teeth should be restored to limited occlusal function and all contours should be replaced. These teeth are not automatically approved for any type of crown.

(K) Space maintainers. Certain limitations apply with regard to this procedure. Providers are responsible for recementation of any maintainer placed by them for six (6) months post insertion.

(i) **Band and loop type space maintenance.** This procedure must be provided in accordance with the following guidelines:

- (I) This procedure is compensable for all primary molars where permanent successor is missing or where succedaneous tooth is more than 5mm below the crest of the alveolar ridge.
- (II) First primary molars are not allowed space maintenance if the second primary and first permanent molars are present and in cuspal interlocking occlusion regardless of the presence or absence of normal relationship.
- (III) If there are missing posterior teeth bilaterally in the same arch, under the above guidelines, bilateral space maintainer is the treatment of choice.
- (IV) The teeth numbers shown on the claim should be those of the missing teeth.
- (V) Post-operative bitewing images must be available for review.
- (VI) Bilateral band and loop space maintainer is allowed if member does not have eruption of the four (4) mandibular anterior teeth in position or if sedation case that presents limitations to fabricate other space maintenance appliances.

(ii) **Lingual arch bar.** Payment is made for the services provided in accordance with the following:

- (I) Lingual arch bar is used when permanent incisors are erupted and the second primary molar (K or T) is missing in the same arch.
- (II) The requirements are the same as for band and loop space maintainer.
- (III) Pre and post-operative images must be available.

~~(LM)~~ **Analgesia.** Analgesia services are reimbursable in accordance with the following:

(i) **Inhalation of nitrous oxide.** Use of nitrous oxide is compensable for four (4) occurrences per year and is not separately reimbursable, if provided on the same date by the same provider as IV sedation, non-intravenous conscious sedation, or general anesthesia. The medical need for this service must be documented in the member's record.

(ii) **Non-intravenous conscious sedation.** Non-intravenous conscious sedation is not separately reimbursable, if provided on the same date by the same provider as analgesia, anxiolysis, inhalation of nitrous oxide, IV sedation, or general anesthesia. Non-intravenous conscious sedation is reimbursable when determined to be medically necessary for documented handicapped members, uncontrollable members or justifiable medical or dental conditions. The report must detail the member's condition. No services are reimbursable when provided primarily for the convenience of the member and/or the dentist, it must be medically necessary.

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

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

~~(OP)~~ **Smoking and Tobacco Use Cessation Counseling** ~~tobacco use cessation counseling.~~ Smoking and Tobacco Use Cessation Counseling ~~tobacco use cessation counseling~~ is covered when performed utilizing the five (5) intervention steps of asking the member to describe his/her smoking, advising the member to quit, assessing the willingness of the member to quit, assisting with referrals and plans to quit, and arranging for follow-up. Up to eight (8) sessions are covered per year per individual who has documented tobacco use. It is a covered service when provided by physicians, physician assistants, nurse practitioners, certified nurse midwives, ~~Oklahoma State Health Department and FOHC nursing, and Maternal/Child Health Licensed Clinical Social Workers with a certification as a Tobacco Treatment~~

~~Specialist Certification (CTTS) staff in addition to other appropriate services rendered~~ Oklahoma State Health Department (OSDH) and Federally Qualified Health Center (FOHC) nurses, and maternal/child health licensed clinical social workers with a Tobacco Treatment Specialist Certification (TTS-C). Chart documentation must include a separate note that addresses the 5A's, separate signature, and the member specific information addressed in the five (5) steps and the time spent by the practitioner performing the counseling. Anything under three (3) minutes is considered part of a routine visit.

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

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

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

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

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

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

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

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

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

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

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317:30-5-698. Services requiring prior authorization

(a) Providers must have prior authorization for certain specified services before delivery of that service, unless the service is provided on an emergency basis [See ~~OAC~~Oklahoma Administrative Code (OAC) 317:30-5-695(d)(2)]. Requests for dental services requiring prior authorization must be accompanied by sufficient documentation. ~~Images with an indication of the left side of member, six point periodontal charting and copy of the comprehensive treatment plans are required.~~

(b) Requests for prior authorization are filed on the currently approved ~~ADA~~American Dental Association (ADA) form. ~~OHCA notifies the provider on the determination of prior authorization using OHCA Prior Authorization Request Decision form.~~ Prior authorized services must be billed exactly as they appear on the prior authorization. Payment is not made for any services provided prior to receiving authorization except for the relief of pain.

(c) Prosthodontic services provided to members who have become ineligible mid-treatment are covered if the member was eligible for SoonerCare on the date the final impressions were made.

(d) Listed below are examples of services requiring prior authorization for members under ~~21~~twenty-one (21) and eligible ~~ICF/IID~~intermediate care facilities for individuals with intellectual disabilities (ICF/IID) residents. Minimum required records to be submitted with each request are right and left mounted bitewings and periapical films or images of tooth/teeth involved or the edentulous areas if not visible in the bitewings. ~~Images must be submitted with film mounts and each film or print must be of diagnostic quality.~~ Images must be identified by the tooth number and include date of exposure, member name, member ID, provider name, and provider ID. All images, regardless of the media, must be submitted together with a completed and signed comprehensive treatment plan that details all needed treatment at the time of examination, and a completed current ADA form requesting all treatments requiring prior authorization. The images, digital media, photographs, or printouts must be of sufficient quality to clearly demonstrate for the reviewer, the pathology which is the basis for the authorization request. If radiographs are not taken, provider must include in narrative sufficient information to confirm diagnosis and treatment plan.

(1) **Endodontics.** Root canal therapy is not considered an emergency procedure unless due to trauma to an anterior tooth. The provider must document the member's oral hygiene and flossing ability in the member's records. Pulpal debridement may be performed for the relief of pain while waiting for the decision from the ~~OHCA~~Oklahoma Health Care Authority (OHCA) on request for endodontics.

(A) **Anterior endodontics.** Prior authorization is required for members who have a treatment plan requiring more than two (2) anterior root canals. All rampant, active caries ~~must~~should be removed prior to requesting anterior endodontics. Payment is made for services provided in accordance with the following:

- (i) Permanent teeth only;
- (ii) Accepted ADA materials must be used;

(iii) Pre and post-operative periapical images must be available for review;

(iv) Providers are responsible for any follow-up treatment required by a failed endodontically treated tooth within ~~24~~twenty-four (24) months post completion;

(v) A tooth will not be approved if it appears there is not adequate natural tooth structure remaining to establish good tooth/restorative margins or if crown to root ratio is poor; and

(vi) An endodontic procedure may not be approved if the tooth requires a post and core to retain a crown.

(B) **Posterior endodontics.** The guidelines for this procedure are as follows:

(i) The provider must document the member's oral hygiene and flossing ability in the member's records.

(ii) Teeth that require pre-fabricated post and cores to retain a restoration due to lack of natural tooth structure should not be treatment planned for root canal therapy.

(iii) Pre and post-operative periapical images must be available for review.

(iv) Providers are responsible for any follow-up treatment required by a failed endodontically treated tooth within ~~24~~twenty-four (24) months post completion.

(v) A tooth will not be approved if it appears there is not adequate natural tooth structure remaining to establish good tooth/restorative margins or if there is a poor crown to root ratio or weakened root furcation area. Approval of second molars is contingent upon proof of medical necessity.

(vi) Only ADA accepted materials are acceptable under the OHCA policy.

(vii) Posterior endodontic procedure may not be approved if the tooth requires a post and core in order to present adequate structure to retain a crown.

(viii) Endodontics will not be considered if:

(I) ~~an~~An opposing tooth has super erupted;

(II) ~~loss~~Loss of tooth space is one third or greater;

(III) ~~opposing~~Opposing second molars are involved unless prior authorized; ~~or~~

(IV) ~~the~~The member has multiple teeth failing due to previous inadequate root canal therapy or follow-up; or

(V) ~~all~~All rampant, active caries must be removed prior to requesting posterior endodontics.

(ix) Endodontically treated teeth must be restored to limited occlusal function and all contours must be replaced. Core build-up code is only available for use if other restorative codes are not sufficient. These teeth will not be approved for

a crown if it appears the apex is not adequately sealed.

(2) **Crowns for permanent teeth.** Crowns are compensable for restoration of natural teeth for members who are ~~16~~sixteen (16) years of age or older and adults residing in private ~~Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)~~ICF/IID and who have been approved for ~~(ICF/IID)~~ICF/IID level of care. Certain criteria and limitations apply.

(A) The following conditions must exist for approval of this procedure:

- (i) All rampant, active caries must be removed prior to requesting any type of crown;
- (ii) The tooth must be decayed to such an extent to prevent proper cuspal or incisal function;
- (iii) The clinical crown is fractured or destroyed by one-half or more; and
- (iv) Endodontically treated teeth must have ~~three~~three (3) or more surfaces restored or lost due to carious activity to be considered for a crown.

(B) The conditions listed above in (A)(i) through ~~(A)(iv) of this paragraph~~ should be clearly visible on the submitted images when a request is made for any type of crown.

(C) Routine build-up(s) for authorized crowns are included in the fee for the crown. Non authorized restorative codes may be used if available.

(D) A crown will not be approved if adequate tooth structure does not remain to establish cleanable margins, there is invasion of the biologic width, poor crown to root ratio, or the tooth appears to retain insufficient amounts of natural tooth structure. Cast dowel cores are not allowed for molar or pre-molar teeth.

(E) Preformed post(s) and core build-up(s) are not routinely provided with crowns for endodontically treated teeth.

(F) The provider must document the member's oral hygiene and flossing ability in the member's records including improved oral hygiene for at least twelve (12) months.

~~(FG)~~ Provider is responsible for replacement or repair of all crowns if failure is caused by poor laboratory processes or procedure by provider for ~~48~~forty-eight (48) months post insertion.

(3) **Cast frame partial dentures.** This appliance is the treatment of choice for replacement of missing anterior permanent teeth or two (2) or more missing posterior teeth in the same arch for members ~~16~~sixteen (16) through ~~20~~twenty (20) years of age. Provider must indicate which teeth will be replaced. Members must have improved oral hygiene documented for at least ~~12~~twelve (12) months in the provider's records and submitted with prior authorization request to be considered. Provider is responsible for any needed follow up for a period of two (2) years post insertion.

(4) **Acrylic partial.** This appliance is the treatment of choice for replacement of three (3) or more missing

teeth in the same arch for members ~~12~~twelve (12) through ~~16~~sixteen (16) years of age. Provider must indicate tooth numbers to be replaced. This appliance includes all necessary clasps and rests.

(5) **Occlusal guard.** Narrative of medical necessity must be sent with prior authorization. Model should not be made or sent unless requested.

(6) **Fixed cast non-precious metal or porcelain/metal bridges.** Only members ~~17~~seventeen (17) through ~~20~~twenty (20) years of age will be considered for this treatment. Destruction of healthy teeth to replace a single missing tooth is not considered medically necessary. Members must have excellent oral hygiene documented for at least ~~18~~eighteen (18) months in the requesting provider's records and submitted with prior authorization request to be considered. Provider is responsible for any needed follow up until member loses eligibility.

(7) **Periodontal scaling and root planing.** Procedure is designed for the removal of calculus or tissue that is contaminated and ~~requires~~may require anesthesia and some soft tissue removal. This procedure requires that each tooth have three (3) or more of the six point measurements five (5) millimeters or greater, ~~or~~and have multiple areas of image supported bone loss, subgingival calculus and must involve two (2) or more teeth per quadrant for consideration. ~~This procedure is not allowed on members under the age 12.~~ This procedure is not allowed in conjunction with any other periodontal surgery.

317:30-5-700. Orthodontic services

(a) In order to be eligible for SoonerCare ~~Orthodontic~~orthodontic services, members must be referred through a primary care dentist using the DEN-2 form found on the Oklahoma Health Care Authority (OHCA) website; a member can receive a referral from a primary care dentist to the orthodontist only after meeting the following:

- (1) ~~the~~The member has had a caries free initial visit; or
- (2) ~~has~~Has all decayed areas restored and has remained caries free for twelve (12) months; and
- (3) ~~has~~Has demonstrated competency in maintaining an appropriate level of oral hygiene.

(b) Member with cleft palate can be referred directly by their treating physician without a dental referral and are exempt from above requirements.

(c) The ~~Oklahoma~~—SoonerCare Orthodontic Program limits orthodontic services to handicapping malocclusions determined to be severe enough to warrant medically necessary treatment. The orthodontic provider has the ability to determine if members may qualify with a visual screening. Diagnostic record accumulation and/or submission should only occur for members with high potential for acceptance. These orthodontic services include the following:

- (1) ~~a~~A handicapping malocclusion, as measured on the Handicapping Labio-Lingual Deviation Index (HL-D)Oklahoma Health Care Authority (OHCA) Handicapping Labio-Lingual Deviation Index of Malocclusion (DEN-6) form, with a minimum score of ~~30~~thirty (30);

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- (2) ~~any~~Any classification secondary to cleft palate or other maxillofacial deformity;
 - (3) ~~if~~If a single tooth or anterior crossbite is the only medical need finding, service will be limited to interceptive treatment;
 - (4) ~~fixed~~Fixed appliances only; and
 - (5) ~~permanent~~Permanent dentition with the exception of cleft defects.
- (d) Reimbursement for ~~Orthodontic~~orthodontic services is limited to:
- (1) Orthodontists, or
 - (2) General or Pediatric dental practitioners who have completed at least ~~200~~two-hundred (200) certified hours of continuing education in the field of orthodontics practice and submit for review at least ~~25~~twenty-five successfully completed comprehensive cases. Of these ~~25~~twenty-five comprehensive cases, ten or more must be extraction cases. An applicant for this certification must practice in an OHCA deemed under-served area. The comprehensive cases submitted should be of a complexity consistent with type of handicapping malocclusion likely to be treated in the SoonerCare program.
- (A) Cases submitted must include at least one (1) of each of the following types:
- (i) ~~deep~~Deep overbite where multiple teeth are impinging upon the soft tissue of the palate;
 - (ii) ~~impacted~~Impacted canine or molar requiring surgical exposure;
 - (iii) ~~bilateral~~Bilateral posterior crossbite requiring fixed rapid palatal expansion; and
 - (iv) ~~skeletal~~Skeletal class II or III requiring orthognathic surgery.
- (B) As with all dental or orthodontia treatment performed and reimbursed by SoonerCare, all pre and post orthodontic records must be available for review.
- (C) The OHCA requires all general dentists providing comprehensive orthodontic care to submit a copy of the Oklahoma Board of Dentistry continuing education report and verification that at least ~~20~~twenty (20) continuing education hours in the field of orthodontics has been completed per reporting period. All verification reports must be submitted to OHCA Dental ~~unit~~Unit every three (3) years, no later than August 30. In addition, verification of adequate progress for all active orthodontic cases will be reviewed by the OHCA Dental Unit upon completion of ~~24~~twenty-four (24) months of therapy.
- (e) The following limitations apply to orthodontic services:
- (1) Cosmetic orthodontic services are not a covered benefit of the SoonerCare ~~Program~~program and no requests should be submitted;
 - (2) All orthodontic procedures require prior authorization for payment;
 - (3) Prior authorization for orthodontic treatment is not a notification of the member's eligibility and does not guarantee payment. Payment for authorized services depends on the member's eligibility at the beginning of

each treatment year. Treatment year is determined by date of banding; and

- (4) The member must be SoonerCare-eligible and under ~~18~~eighteen (18) years of age at the time the request for prior authorization for treatment is received by the OHCA. Services cannot be added or approved after eligibility has expired. It is the orthodontist's responsibility to verify that the member has current SoonerCare eligibility and the date of birth indicates the member is under age ~~18~~eighteen (18).
 - (f) Orthodontic services are an elective procedure. The orthodontist must interview the prospective member as to his/her understanding of and willingness to cooperate fully in a lengthy treatment program.
 - (g) The interview information is unavailable to OHCA except through the provider's recommendation of treatment. The interview process for OHCA members is equivalent to that of private pay patients.
 - (h) Providers are not obligated to accept a member when it appears that the member will not cooperate in the orthodontic hygiene treatment program, does not return to the general dentist for preventive visits or is not willing to keep eligibility for SoonerCare current.
- 317:30-5-700.1. Orthodontic prior authorization**
- (a) The following records and documentation, plainly labeled with the member's full name, recipient identification number (RID), and the orthodontist's name are required for prior authorization of orthodontic services and must be submitted to the Dental Unit of the ~~OHCA~~Oklahoma Health Care Authority (OHCA) Dental Program when the member has a total score of not less than ~~30~~thirty (30) points or meets other eligibility criteria in paragraph (d).
- (1) Completed currently approved ~~ADA~~American Dental Association (ADA) dental claim form;
 - (2) Complete and scored Handicapping Labio-Lingual ~~Deviations~~Deviation (HDL) Index with Diagnosis of Angle's classification;
 - (3) Detailed description of any oral maxillofacial anomaly;
 - (4) Estimated length of treatment;
 - (5) Intraoral photographs showing teeth in centric occlusion and/or photographs of trimmed anatomically occluded diagnostic casts. A lingual view of casts may be included to verify impinging overbites;
 - (6) Cephalometric images with tracing, and panoramic film, with a request for prior authorization of comprehensive orthodontic treatment;
 - (7) Completed OHCA caries risk assessment form;
 - (~~78~~) If diagnosed as a surgical case, submit an oral surgeon's written opinion that orthognathic surgery is indicated and the surgeon is willing to provide this service; and
 - (~~82~~) Additional pertinent information as determined necessary by the orthodontist or as requested by the OHCA.

(b) All images and required documentation must be submitted in one (1) package. OHCA is not responsible for lost or damaged materials.

(c) All records and documentation submitted in a request for prior authorization for orthodontic treatment are reviewed by the OHCA ~~Orthodontic Consultant~~ orthodontic consultant for compensability and length of treatment. Any documentation on which a decision is made will not be returned.

(d) Some children not receiving a minimum score of ~~30~~ thirty (30) on the ~~Handicapping Labio Lingual Deviation Index (HLD)~~ HDL Index may have other conditions to be considered. In the event an orthodontist believes there are other medical, social, or emotional conditions impacting the general health of the child, he/she refers to the conditions listed on the Early and Periodic Screening, ~~Diagnosis~~ Diagnostic and Treatment (EPSDT) exception section found on the HLD. The following guidelines and restrictions apply to other conditions:

(1) Other medical, social, or emotional conditions are limited to those conditions that affect the medical, social or emotional function of the child;

(2) Other medical, social, or emotional conditions are not scored if the sole condition sought to be improved is the cosmetic appearance of the child;

(3) Such other medical, social, or emotional conditions must be demonstrated by objective evidence such as supported documentation outside the child's immediate family (e.g., a child's teacher, primary care physician, behavioral health provider, school counselor);

(4) Objective evidence must be submitted with the HLD;

(5) When such other medical, social, or emotional conditions are reflected on the HLD, the OHCA ~~Orthodontic Consultant~~ orthodontic consultant must review the data and use his or her professional judgment to score the value of the conditions; and

(6) The OHCA ~~Orthodontic Consultant~~ orthodontic consultant may consult with and utilize the opinion of the orthodontist who completes the form.

(e) If it is determined that the malocclusion is not severe enough to warrant medically necessary orthodontic services or the member's age precludes approval, a computer generated notice is issued to the provider and member with notice of the denial, the reason for the denial, and appeal rights (~~see OAC 317:2-1 for grievance procedures and process~~) [see Oklahoma Administrative Code (OAC) 317:2-1 for grievance procedures and processes].

(f) Orthodontic treatment and payment for the services are approved within the scope of the SoonerCare program. If orthodontic treatment is approved, a computer generated notice is issued authorizing the first year of treatment.

(1) Approval of orthodontic treatment is given in accordance with the following:

(A) Authorization for the first year begins on the date of banding and includes the placement of appliances, arch wires, and a minimum of six (6) adjustments. It is expected that orthodontic members be seen every four (4) to eight (8) weeks for the duration of active treatment.

(B) Subsequent adjustments will be authorized in one (1) year intervals and the treating orthodontist must provide a comprehensive progress report at the ~~24~~ twenty-four (24) month interval.

(C) All approved treatment is included on the original prior authorization and will include the total payment for that treatment year.

(2) Claim and payment are made as follows:

(A) Payment for comprehensive treatment includes the banding, wires, adjustments as well as all ancillary services, including the removal of appliances, and the construction and placing of retainers.

(B) Payment is not made for comprehensive treatment beyond ~~36~~ thirty-six (36) months.

(g) If the member moves from the geographic area or shows a need to change their provider, then the provider who received the yearly payment is financially responsible until completion of that member's orthodontic treatment for the current year.

(h) If the provider who received yearly payment does not agree to be financially responsible, then the ~~Oklahoma Health Care Authority will~~ OHCA may recoup funds paid for the member's orthodontic treatment.

(i) All orthodontic services are subject to post-utilization review. This review may include a request by the OHCA to submit medical documentation necessary to complete the review. After review is completed, these materials are returned to the orthodontist.

(j) Study models or oral/facial images must be diagnostic and meet the following requirements:

(1) Study models must be properly poured and adequately trimmed without large voids or positive bubbles present.

(2) Centric occlusion must be clearly indicated by pencil lines on the study models, making it possible to occlude the teeth on the models in centric occlusion.

(3) 3-D model images are preferred.

(4) All measurements are made or judged on the basis of greater than or more than the minimal criteria. Measurement, counting, recording, or consideration is performed only on teeth that have erupted and may be seen on the study models.

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

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

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

317:30-5-704. Billing instructions

(a) **HCPCS Codes.** The Oklahoma Health Care Authority (OHCA) utilizes the Medicare Level II ~~HCPCS Codes~~ Healthcare Common Procedure Coding System

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(HCPCS) codes. All claim submissions must be in compliance with this coding system.

(b) **Prior authorization.** Where applicable, the appropriate arch, quadrant, or tooth surface and tooth number must be included on the claim. Diagnosis codes are requested to be listed in box 34 of ADA the current American Dental Association (ADA) dental claim form—2012. For mailed prior authorizations, a completed HCA-13D form is required.

(c) **Images.** Any type of film or prints submitted will not be returned. All images must be dated, mounted and have patient's name, recipient identification number (RID), provider name and provider number.

317:30-5-705. Billing

Billing for dental services may be submitted on the currently approved version of the American Dental Association (ADA) claim form. Diagnosis codes are requested to be listed in box 34 of the current ADA dental claim form—2012. Electronic submission must be made on the HIPPA compliant Form 837D.

[OAR Docket #20-466; filed 6-26-20]

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

[OAR Docket #20-459]

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RULES:

Subchapter 5. Individual Providers and Specialties

Part 80. Mobile and/or Portable Dental Treatment Facilities [NEW]

317:30-5-706 [NEW]

317:30-5-707 [NEW]

317:30-5-708 [NEW]

317:30-5-709 [NEW]

317:30-5-710 [NEW]

317:30-5-711 [NEW]

(Reference APA WF # 19-37)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007(C)(2) of Title 63 of Oklahoma Statutes; Title 42 of the Code of Federal Regulations (C.F.R.), Part 441, Subpart B; Oklahoma State Dentistry Act and the Oklahoma Health Care Authority Board

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Not applicable

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will establish coverage and reimbursement for preventive dental services received through mobile and portable dental treatment facilities. Additionally, revisions will add provider participation requirements pursuant to the Oklahoma State Dentistry Act and the OHCA contracting requirements, while also defining coverage and limitations for preventive dental services, billing requirements, basic consent form requirements, and follow-up care requirements.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 14, 2020:**

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 80. MOBILE AND/OR PORTAL DENTAL TREATMENT FACILITIES

317:30-5-706. Definitions

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

"Individual provider" means a dentist, dental hygienist, or dental assistant who provides dental services at a mobile and/or portable dental treatment facility.

"Mobile and/or portable dental treatment facilities" means the following, limited places of treatment, as authorized by the Oklahoma State Dental Act: group homes for juveniles; public and private schools; and mobile dental clinics. The rules in this Part expressly shall not apply to SoonerCare reimbursement of dental services provided at any other authorized place of service, including, but not limited to: "dental offices," as defined by 59 O.S. § 328.3; federal, tribal, state, or local public health facilities; federally qualified health centers; and hospitals or dental ambulatory surgery centers.

317:30-5-707. Eligible providers

(a) In order for dental services provided at a mobile and/or portable dental treatment facility to be eligible for SoonerCare reimbursement, a dental group shall meet all applicable requirements set forth in the Oklahoma Board of Dentistry rules and the Oklahoma State Dental Act, including, but not limited to, all licensing and permitting requirements.

(1) All dentists and dental hygienists working at a mobile and/or portable dental treatment facility shall be currently licensed in good standing with the Oklahoma Board of Dentistry. All dental assistants working at a mobile

and/or portable dental treatment facility shall be currently permitted by the Oklahoma Board of Dentistry.

(2) The license or permit (or a photocopy of the license or permit) of every individual provider shall be prominently displayed at the mobile and/or portable dental treatment facility, pursuant to 59 O.S. § 328.21.

(3) For services provided in a mobile dental clinic, the permit to operate the mobile dental clinic shall be prominently displayed in the mobile dental clinic vehicle, pursuant to 59 O.S. § 328.40a.

(b) In accordance with OAC 317:30-5-695.1, every dental group providing services at a mobile and/or portable dental treatment facility must be fully contracted with the OHCA as a dental group provider and must be fully contracted with OHCA as a mobile and/or portable dental treatment facility.

(c) Every individual dentist practicing at a mobile and/or portable dental treatment facility must be fully contracted with the OHCA as a dentist.

(d) Dental groups and individual providers providing dental services at a mobile and/or portable dental treatment facility shall comply with all state and federal Medicaid law, including, but not limited to, OHCA administrative rules, the Code of Federal Regulations, and the Oklahoma State Medicaid Plan.

317:30-5-708. Parental consent requirements

Individual providers at a mobile and/or portable dental treatment facility shall not perform any service on a minor without having obtained, prior to the provision of services, a signed, written consent from the minor's parent or legal guardian, that includes, at a minimum, the:

(1) Name of the dental group and/or dentist providing the dental services at the mobile and/or portable dental treatment facility;

(2) Permanent business mailing address of the dental group and/or dentist providing the dental services at the mobile and/or portable dental treatment facility;

(3) Business telephone number of the dental group and/or dentist providing the dental services at the mobile and/or portable dental treatment facility. This telephone number must be available for emergency calls;

(4) Full printed name of the child to receive services;

(5) Child's SoonerCare Member ID number; and

(6) An inquiry of whether the child has had dental care in the past twelve (12) months and if the child has a dental appointment scheduled with his/her regular dentist. If applicable, parent should list the name and address of the dentist and/or dental office where the care is provided.

317:30-5-709. Coverage

Payment is made only to contracted dental groups for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services provided to SoonerCare-eligible individuals under the age of twenty-one (21). All mobile and/or portable dental treatment facilities must have a SoonerCare-contracted, Oklahoma-licensed dentist onsite to supervise staff and provide certain services. Coverage for dental services provided

to children/adolescents at a mobile and/or portable dental treatment facility is limited to:

(1) One (1) fluoride application per member per twelve (12) months;

(2) One (1) dental assessment annually that is performed by a SoonerCare-contracted, Oklahoma-licensed dentist; and

(3) Dental sealants on tooth numbers 2, 3, 14, 15, 18, 19, 30, and 31. The Oklahoma Health Care Authority (OHCA) will not reimburse the application of dental sealants for a given OHCA member more than once every thirty-six (36) months, regardless of whether the services are provided at a mobile and/or portable dental treatment facility, or at some other authorized place of service.

317:30-5-710. Post-care

Each member receiving dental care at a mobile and/or portable dental treatment facility must receive an information sheet at the end of the visit. The information sheet must contain:

(1) The name of the dentist, dental hygienist, and/or dental assistant who provided the dental services at the mobile and/or portable dental treatment facility;

(2) A valid business telephone number and/or other emergency contact number for the dental group and/or dentist that provided the dental services at the mobile and/or portable dental treatment facility;

(3) A listing of the treatment rendered, including, when applicable, billing codes, fees, and tooth numbers;

(4) A description of any follow-up treatment that is needed or recommended; and

(5) Referrals to specialists or other dentists if the individual providers were unable to provide the necessary treatment, and additional care is needed.

317:30-5-711. Billing

Refer to Oklahoma Administrative Code (OAC) 317:30-5-704 through 317:30-5-705 for billing instructions and guidelines. Please note that for any dental service provided at a mobile and/or portable dental treatment facility that is billed to SoonerCare, the appropriate place of service must be identified on the claim.

[OAR Docket #20-459; filed 6-26-20]

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

[OAR Docket #20-451]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 87. Birthing Centers [REVOKED]

317:30-5-890 [REVOKED]

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317:30-5-890.1 [REVOKED]
317:30-5-891 [REVOKED]
317:30-5-892 [REVOKED]
317:30-5-893 [REVOKED]
(Reference APA WF # 19-23)

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The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; and the Oklahoma Health Care Authority Board

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will revoke the free-standing birthing centers rules as this type of provider no longer exists in Oklahoma.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 87. BIRTHING CENTERS [REVOKED]

317:30-5-890. Eligible providers [REVOKED]

Eligible providers are birthing centers that are currently licensed by the Oklahoma State Health Department and meet the requirements listed in (1) (5) of this subsection:

- (1) Have a current written agreement with a board certified Obstetrician Gynecologist (OB GYN) to provide coverage for consultation, collaboration or referral services as defined by the American College of Nurse-Midwives.
- (2) Have a current medical director who is a board certified OB GYN and is responsible for establishing patient protocols and other functions as defined in requirements for state licensure. This individual may, or may not, be the physician providing individual patient coverage for consultation, collaborative or referral service.

(3) Have a written agreement with a referral hospital which is a Class II hospital. Class II hospital is defined as a facility with 24 hour availability of OB GYN and capability of performing a C-section within 30 minutes of the decision to operate. The 30 minute timeframe is subject to each hospital's unique circumstance, logistical issues that include, but are not limited to, obtaining informed consent, transporting the patient, and any other potential problems that may arise.

(4) Must be accredited by the Commission for the Accreditation of Freestanding Birth Centers.

(5) Have a current contract on file with the Oklahoma Health Care Authority.

317:30-5-890. 1 Definitions [REVOKED]

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

"Birthing center" means a freestanding facility, place or institution, which is maintained or established primarily for the purpose of providing services of a certified midwife or licensed medical doctor to assist or attend a woman in delivery and birth, and where a woman is scheduled in advance to give birth following a normal, uncomplicated, low-risk pregnancy.

"Certified Nurse-Midwife" means a person educated in the discipline of nursing and midwifery, certified by the American College of Nurse-Midwives (ACNM) and licensed by the state to engage in the practice of midwifery and as a registered nurse.

"Low-risk" means a normal, uncomplicated prenatal course as determined by adequate prenatal care and prospects for a normal, uncomplicated birth as defined by generally accepted criteria of maternal and fetal health.

"Newborn" means an infant during the first 28 days following birth.

317:30-5-891. Coverage by category [REVOKED]

- (a) **Adults.** Payment is made for birthing center services for adults and includes admission to the birthing center of low-risk, uncomplicated pregnancies, with an anticipated spontaneous vaginal delivery for the period of labor and delivery.
- (b) **Newborn.** Coverage for newborns within scope of practice as defined by state law.
- (c) **Individuals eligible for Part B of Medicare.** Birthing center services provided to Medicare eligible recipients should be billed directly to the fiscal agent.

317:30-5-892. Reimbursement [REVOKED]

(a) Payment rates are based on a geographic adjustment made for centers in rural and urban areas. A birthing center will be designated as an urban or rural entity based on the definition of urban and rural counties used by the Medicare program for reimbursement purposes. The urban areas (counties) are those inside the Metropolitan Statistical Areas (MSA) and the rural areas (counties) are those outside the MSA.

- (1) Urban areas:
 - (A) Canadian

- (B) Cleveland
- (C) Comanche
- (D) Creek
- (E) Garfield
- (F) Logan
- (G) McClain
- (H) Oklahoma
- (I) Osage
- (J) Pottawatomie
- (K) Rogers
- (L) Sequoyah
- (M) Tulsa
- (N) Wagoner
- (2) Rural areas:
 - (A) Adair
 - (B) Alfalfa
 - (C) Atoka
 - (D) Beaver
 - (E) Beckham
 - (F) Blaine
 - (G) Bryan
 - (H) Caddo
 - (I) Carter
 - (J) Cherokee
 - (K) Choctaw
 - (L) Cimarron
 - (M) Coal
 - (N) Cotton
 - (O) Craig
 - (P) Custer
 - (Q) Delaware
 - (R) Dewey
 - (S) Ellis
 - (T) Garvin
 - (U) Grady
 - (V) Grant
 - (W) Greer
 - (X) Harmon
 - (Y) Harper
 - (Z) Haskell
 - (AA) Hughes
 - (BB) Jackson
 - (CC) Jefferson
 - (DD) Johnston
 - (EE) Kay
 - (FF) Kingfisher
 - (GG) Kiowa
 - (HH) Latimer
 - (II) LeFlore
 - (JJ) Lincoln
 - (KK) Love
 - (LL) McCurtain
 - (MM) McIntosh
 - (NN) Major
 - (OO) Marshall
 - (PP) Mayes
 - (QQ) Murray
 - (RR) Muskogee

- (SS) Noble
- (TT) Nowata
- (UU) Okfuskee
- (VV) Okmulgee
- (WW) Ottawa
- (XX) Pawnee
- (YY) Payne
- (ZZ) Pittsburg
- (AAA) Pontotoc
- (BBB) Pushmataha
- (CCC) Roger Mills
- (DDD) Seminole
- (EEE) Stephens
- (FFF) Texas
- (GGG) Tillman
- (HHH) Washington
- (III) Washita
- (JJJ) Woods
- (KKK) Woodward

(b) ~~Payment to a birthing center on behalf of a Medicaid client is an all-inclusive facility payment and represents payment in full for the birthing center services. Separate payment will be made for the midwife or physician obstetrical care, delivery and postpartum care as appropriate.~~

~~(1) Urban Birthing Center: Unit 1, Limit 1 each 9 months.~~

~~(2) Rural Birthing Center: Unit 1, Limit 1 each 9 months.~~

317:30-5-893. Billing [REVOKED]

~~Billing for birthing center services will be on HCFA-1500. Claims must be submitted in accordance with guidelines found at OAC 317:30-3-11 and 317:30-3-11.1.~~

[OAR Docket #20-451; filed 6-26-20]

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

[OAR Docket #20-455]

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RULES:

Subchapter 5. Individual Providers and Specialties

Part 97. Targeted Case Management Services for Members Under Age 48Twenty-One Years of Age at Risk of Involvement with or in the Temporary Custody or Supervision of the Oklahoma Office of Juvenile Affairs (OJA)

317:30-5-970 [AMENDED]

317:30-5-971 [AMENDED]

317:30-5-971.1 [NEW]

317:30-5-972 [AMENDED]

317:30-5-973 [AMENDED]

317:30-5-974 [AMENDED]

(Reference APA WF # 19-30)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; and the Oklahoma Health Care Authority Board

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n/a

GIST/ANALYSIS:

The proposed revisions will increase the maximum eligible age for individuals who are involved in or at serious risk of involvement with the juvenile justice system and who are eligible for TCM services from eighteen (18) to under twenty-one (21). Additionally, the proposed revisions will align and reorganize TCM policy with the current evidence-based practices used by OJA.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 97. TARGETED CASE MANAGEMENT SERVICES FOR MEMBERS UNDER AGE 18 TWENTY-ONE YEARS OF AGE AT RISK OF INVOLVEMENT WITH OR IN THE TEMPORARY CUSTODY OR SUPERVISION OF THE OKLAHOMA OFFICE OF JUVENILE AFFAIRS (OJA)

317:30-5-970. Eligible providers

(a) ~~Case management agencies.~~ Services are provided by case management agencies established for the purpose of providing case management services. Medicaid Office of Juvenile Affairs Targeted Case Management (OJATCM) services must be made available to all eligible recipients and must be delivered by provider agencies on a statewide basis with procedures that assure 24 hour availability, the protection and safety of recipients, continuity of services without duplication, and compliance with federal and State mandates and regulations related to servicing the targeted population are met in a uniform and consistent manner. The agency must demonstrate that their staff has:

- (1) ~~experience working with the target population.~~
 - (2) ~~a minimum of five years experience in providing all core elements of case management services including:~~
 - (A) ~~individualized strengths and needs assessment;~~
 - (B) ~~needs-based service planning;~~
 - (C) ~~service coordination and monitoring; and~~
 - (D) ~~on-going assessment and treatment plan revision.~~
 - (3) ~~adequate administrative capacity to fulfill State and federal requirements.~~
 - (4) ~~a financial management capacity and system that provides documentation of services and costs.~~
 - (5) ~~a capacity to document and maintain individual case records in accordance with State and federal requirements.~~
 - (6) ~~ability to meet all State and federal laws governing the participation of providers in the State Medicaid program including, but not limited to, the ability to meet federal and State requirements for documentation, billing and audits.~~
 - (7) ~~statutory authority to care for, supervise and provide services to the targeted population on a statewide basis.~~
 - (8) ~~a minimum of five years experience in providing case management services that coordinate and link the community resources required by the target population.~~
 - (9) ~~a minimum of five years experience in meeting the case management and service needs of the target population, including the statewide contract management/oversight and administration of services funded through the Oklahoma Children's Initiative.~~
 - (10) ~~responsibility for planning and coordinating statewide juvenile justice and delinquency prevention services in accordance with Title 10, Section 7302-3.1A. of Oklahoma Statutes.~~
- (b) ~~Provider agreement.~~ A Provider Agreement between the Oklahoma Health Care Authority and the provider agency for OJATCM services must be in effect before reimbursement can be made for compensable services.
- (c) ~~Qualifications of individual case managers.~~ A targeted case manager for the OJATCM program must:
- (1) ~~be employed by the provider agency or its contractor.~~
 - (2) ~~possess a minimum of a bachelor's degree in a behavioral science or a bachelor's degree and one year of professional experience in juvenile justice or a related field.~~
 - (3) ~~possess knowledge of laws, rules, regulations, legislation, policies and procedures as they pertain to:~~
 - (A) ~~the State administration of juvenile justice and the investigation of juvenile delinquency;~~
 - (B) ~~community resources;~~
 - (C) ~~human developmental stages and related dysfunctions;~~
 - (D) ~~social work theory and practices;~~
 - (E) ~~emotional, physical and mental needs of children and families;~~
 - (F) ~~sensitivity to cultural diversity; and~~

- (G) ~~clinical and counseling techniques and treatment of juvenile delinquency;~~
- (4) ~~possess skill in:~~
 - (A) ~~crisis intervention;~~
 - (B) ~~gathering necessary information to determine the needs of the child;~~
 - (C) ~~casework management;~~
 - (D) ~~courtroom testimony, terminology and procedures;~~
 - (E) ~~effective communication;~~
 - (F) ~~developing, evaluating and modifying an intervention plan on an ongoing basis;~~
 - (G) ~~establishing and maintaining constructive relationships with children and their families;~~
 - (H) ~~helping families become and maintain as functional family units; and~~
 - (I) ~~working with courts and law enforcement entities.~~
- (d) **Provider selection.** Provision of case management services must not restrict an individual's free choice of providers. Eligible recipients must have free choice of providers of case management as well as providers of other medical care under the plan.
- (a) **Case management agency qualifications.** As the provider agency, the Oklahoma Office of Juvenile Affairs (OJA) must meet applicable state and federal laws governing the participation of providers in the Medicaid program. The Office of Juvenile Affairs Targeted Case Management (OJATCM) program must:
 - (1) Be available to all eligible members;
 - (2) Be delivered on a statewide basis with procedures that assure twenty-four (24) hour availability, the protection and safety of recipients, and continuity of services without duplication;
 - (3) Ensure compliance with federal and state mandates and regulations related to serving the targeted population are met in a consistent and uniform manner;
 - (4) Meet applicable state and federal laws governing the participation of providers in the Medicaid program, including, but not limited to, the ability to meet federal and state requirements for documentation billing and audits;
 - (5) Demonstrate that its staff has experience working with the target population and a minimum of five (5) years' experience in providing all core elements of case management including:
 - (A) Individual strengths and needs assessment;
 - (B) Needs-based service planning;
 - (C) Service coordination and monitoring; and
 - (D) Ongoing assessment and treatment plan revision.
 - (6) Have adequate administrative capacity to fulfill state and federal requirements;
 - (7) Have financial management capacity and systems that provide documentation of services and costs in accordance with Generally Accepted Government Auditing Standards (GAGAS);
 - (8) Have the capacity to document and maintain individual case records in accordance with state and federal requirements;
 - (9) Have a minimum of five (5) years' experience in providing and meeting the case management and service needs of the target population;
 - (10) Have responsibility for planning and coordinating statewide juvenile justice and delinquency prevention services in accordance with Title 10A of the Oklahoma Statutes (O.S.), Section (§) 2-2-102; and
 - (11) Have the ability to evaluate the effectiveness, accessibility, and quality of targeted case management (TCM) services on a community-wide basis.
- (b) **Interagency agreement.** An agreement between the Oklahoma Health Care Authority (OHCA) and OJA for TCM services must be in effect before Medicaid reimbursement can be made for compensable services.
- (c) **Case manager qualifications.** A targeted case manager for the OJATCM program must:
 - (1) Be employed by OJA;
 - (2) Possess a minimum of a bachelor's degree in a behavioral science, or a bachelor's degree and one (1) year of professional experience in juvenile justice or a related field;
 - (3) Possess knowledge of:
 - (A) Laws, regulations, legislation, policies, and procedures as they pertain to the State's administration of juvenile justice and the investigation of juvenile delinquency;
 - (B) Community resources;
 - (C) Human developmental stages, developmental disorders, and social work theory and practices;
 - (D) Adverse childhood experiences and the impact of trauma on the developing brain;
 - (E) The risk and protective factors of child delinquency;
 - (F) Solution-focused practices and the critical role protective factors play in intervention planning;
 - (G) Sensitivity of cultural diversity; and
 - (H) Clinical and counseling techniques and treatment of juvenile delinquency;
 - (4) Possess skills in:
 - (A) Crisis intervention;
 - (B) Gathering necessary information to determine the needs of the child;
 - (C) Casework management;
 - (D) Courtroom testimony, terminology, and procedures;
 - (E) Effective communication;
 - (F) Developing, evaluating, and modifying, as appropriate, intervention planning on an ongoing basis;
 - (G) Establishing and maintaining supportive relationships with children and their families;
 - (H) Assisting children and families to access needed resources and supports; and
 - (I) Working with courts and law enforcement entities; and

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(5) Have the ability to access multi-disciplinary staff, when needed. This includes, at a minimum, medical professionals and a child protective services social worker.

317:30-5-971. Coverage by category

~~Payment is made for case management service as set forth in this Section.~~

- (1) ~~**Adults.** There is no coverage for adults.~~
(2) ~~**Children.** Payment is made for services to persons under age 18 as follows:~~

~~(A) **Description of case management services.** The target group for case management services are persons under age 18 who are in temporary custody or supervision of the Office of Juvenile Affairs (OJA), who are placed in own home or out of home care or Medicaid eligible recipients under age 18 whose behavior places them at risk of coming into the custody or supervision of OJA.~~

~~(i) Services are provided to assist a client in gaining access to needed medical, social, educational and other services. Major components of the services include working with the client in gaining access to appropriate community resources. The case manager may also provide referral, linkage and advocacy. Case management is designed to assist individuals in accessing services. The client has the right to refuse case management and cannot be restricted from services because of a refusal for Case Management Services.~~

~~(ii) Case management does not include:~~

- ~~(I) Physically escorting or transporting a client to scheduled appointments or staying with the client during an appointment;~~
~~(II) Monitoring financial goals;~~
~~(III) Providing specific services such as shopping or paying bills; or~~
~~(IV) Delivering bus tickets, food stamps, money, etc.~~

~~(B) **Non-Duplication of services.** To the extent any eligible recipients in the identified target population are receiving OJATCM services from another provider agency as a result of being members of other covered target groups, the provider agency assures that case management activities are coordinated to avoid unnecessary duplication of service.~~

~~(C) **Providers.** Case management services must be provided by case management agencies.~~

- ~~(3) **Individuals eligible for Part B of Medicare.** Case Management Services provided to Medicare eligible recipients are filed directly with the fiscal agent.~~

The target group includes individuals under twenty-one (21) years of age involved in, or at serious risk of involvement with, the juvenile justice system, as provided in Article II of the Oklahoma Juvenile Code. The target group includes individuals, under twenty-one (21) years of age, who have been temporarily placed in OJA custody or supervision or who are voluntarily supervised by OJA to prevent further involvement with the juvenile justice

system. The target group may include individuals, under twenty-one (21) years of age, who are assessed as at risk of abuse or neglect as defined in Title 10A of the Oklahoma Statutes (O.S.), Section (§) 1-1-105. The target group does not include those who are involuntarily in secure custody of law enforcement or judicial systems, except individuals who meet Medicaid criteria for inpatient care as defined in § 435.1010 of Title 42 of the Code of Federal Regulations.

(1) **Adults.** There is no coverage for adults age twenty-one (21) and older.

(2) **Children.** Payment is made for services to members under the age twenty-one (21).

317:30-5-971.1. Description of targeted case management (TCM) services

(a) **Definition.** In accordance with Section (§) 440.169(b) of Title 42 of the Code of Federal Regulations (C.F.R.), TCM services are defined as services furnished to assist individuals, eligible under the Oklahoma Medicaid State Plan, in gaining access to needed medical, social, educational, and other services. TCM includes providing services that are directly related to identifying the individual's needs and care, for the purposes of helping the individual access services; identifying needs and supports to assist the individual in obtaining services; providing case managers with useful feedback, and alerting case managers to changes in the individual's needs [42 C.F.R. 440.169(e)]. TCM includes the following assistance:

(1) Comprehensive assessment and periodic reassessment of an individual's needs, to determine the need for any medical, educational, social, or other services.

(A) All members are assessed using comprehensive, evidence-based, risk/needs assessment tools at the beginning of case assignment.

(B) Comprehensive, evidence-based, risk/needs assessment tools are used to measure multiple areas or domains in the lives of the members and then linking that information to case planning.

(C) Any area showing a moderate to high-risk/need/strength score could result in additional goals and action steps documented within the individualized treatment plan.

(D) In addition to the initial assessment, each member is assessed, at least once every six (6) months. Assessment activities include:

(i) Taking member history;

(ii) Identifying and documenting the member's needs; and

(iii) Gathering information from family members, medical providers, social workers, educators (if necessary), and other applicable sources to form a complete assessment of the member.

(E) Should behavior shifts or life-changing events occur prior to six (6) months, the member is reassessed and the individualized treatment service plan is adjusted to reflect identified needs. Any needed changes in services, service providers, treatment type, frequency, or duration may be adjusted at this time.

(2) Development (and periodic revision) of a specific individualized treatment service plan is based on the information collected through the assessment that:

(A) Specifies the goals and actions to address the medical, social, educational, and other services needed by the individual;

(B) Includes activities such as ensuring the active participation of the individual, and working with his or her authorized health care decision maker and others to develop those goals; and

(C) Identifies a course of action to respond to the assessed needs of the individual.

(3) Referral and related activities (such as scheduling appointments for the member) to help the individual obtain needed services, including activities that help link the member with medical, social, educational providers, or other programs and services that are capable of providing needed services to address identified needs and achieve goals specified in the treatment service plan.

(4) Monitoring and follow-up activities necessary to ensure the individualized treatment service plan is implemented and adequately addresses the individual's needs.

(A) The targeted case manager visits with the child at least once each month, face to face, and/or weekly (via telephone) to review progress as outlined within the individualized treatment service plan. The targeted case manager must visit with the parent or legal guardians monthly. The targeted case manager maintains consistent contact with the service providers to remain up to date on the child's treatment and progress.

(B) The frequency and type of visits may be adjusted or revised to better meet the needs of the child.

(C) Monitoring and follow-up activities may be conducted as frequently as necessary, including at least one (1) annual monitoring, to determine whether the following conditions are met:

(i) Services are being furnished in accordance with the member's treatment service plan;

(ii) Services in the treatment service plan are adequate; and

(iii) Changes in the needs or status of the member are reflected in the treatment service plan. Monitoring and follow-up activities include making necessary adjustments in the treatment service plan and service arrangements with providers.

(b) **Non-covered services.** TCM does not include:

(1) Physically escorting or transporting a member to scheduled appointments or staying with the member during an appointment;

(2) Monitoring financial goals;

(3) Providing specific services such as shopping or paying bills; and/or

(4) Delivering bus tickets, nutritional services, money, etc.

(c) **Non-duplication of services.** Consistent with 42 C.F.R. § 441.18(a)(4), payment for case management or TCM services shall not duplicate payments made to public agencies

or private entities under the Oklahoma Medicaid State Plan or other program authorities.

(d) **Individuals eligible for Part B of Medicare.** Case management services provided to Medicare eligible recipients are filed directly with the fiscal agent.

317:30-5-972. Reimbursement

~~Office of Juvenile Affairs Targeted Case Management (OJATCM) services will be reimbursed pursuant to the methodology described in the Oklahoma Title XIX State Plan.~~

(a) Targeted case management (TCM) services will be reimbursed pursuant to the methodology described in the Oklahoma Medicaid State Plan.

(b) The reimbursement methodology is based upon qualifying costs for the eligible population from the Cost Allocation Plan. The TCM unit rate is a prospective flat rate based on a qualifying TCM contact with the member in the target population or with some other person on behalf of the member during the claim period.

317:30-5-973. Billing

~~Billing for case management services is on Form HCFA-1500. Claims must be submitted in accordance with guidelines found at OAC 317:30-3-11 and 317:30-3-11.1.~~

Billing for case management services must be submitted, ensuring no duplication of services, and in accordance with state and federal requirements, reflective of guidelines found at Oklahoma Administrative Code (OAC) 317:30-3-11, 317:30-3-11.1, and 317:30-3-20.

317:30-5-974. Documentation of records

~~All case management services rendered must be reflected by documentation in the records. All units of Medicaid OJATCM services provided are documented by the case manager on the monthly Record of Contact form.~~

(a) The Oklahoma Office of Juvenile Affairs (OJA) must maintain case records that document for all members receiving targeted case management (TCM) as follows:

(1) The name of the member;

(2) The dates of the case management services;

(3) The name of the OJA as the provider agency (if applicable) and the person providing the case management service;

(4) The nature, content, units of the case management services received, and whether goals specified in the treatment service plan have been achieved;

(5) Whether the member has declined services in the treatment service plan;

(6) The need for, and occurrences of, coordination with other case managers;

(7) A timeline for obtaining needed services; and

(8) A timeline for reevaluation of the plan.

(b) All case management services rendered must be reflected by documentation in the records. All TCM units

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provided to the member must be documented by the case manager on the electronic case management system designated by OJA.

[OAR Docket #20-455; filed 6-26-20]

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

[OAR Docket #20-458]

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RULES:

Subchapter 5. Individual Providers and Specialties

Part 110. Indian Health Services, Tribal Programs, and Urban Indian Clinics (I/T/Us)

317:30-5-1095 [AMENDED]

317:30-5-1099 [AMENDED]

(Reference APA WF # 19-33)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007(C)(2) of Title 63 of Oklahoma Statutes; and the Oklahoma Health Care Authority Board

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Not applicable

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will clarify how I/T/U OB providers should bill for OB care. I/T/Us have the option of either billing for OB encounters or a bundled rate for total OB care. The clarification will require I/T/Us to be specific when choosing a billing method as they are only allowed to choose one of the billing methods.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 14, 2020:**

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

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

317:30-5-1095. I/T/U services not compensable under outpatient encounters

I/T/U services that are not compensable under outpatient encounters include:

- (1) group or mass information programs, health education classes, or group education activities, including media productions and publications;
- (2) vaccines covered by the Vaccines for Children program [refer to ~~OAC~~Oklahoma Administrative Code 317:30-5-14(a)(1)];
- (3) group or sports physicals and medical reports;
- (4) drug samples or other prescription drugs provided to the clinic free of charge;
- (5) administrative medical examinations and report services; and
- (6) gauze, band-aids, or other disposable products used during an office visit; and
- (7) billing global obstetrical care when performing a cesarean or vaginal delivery only.

317:30-5-1099. I/T/U service limitations and requirements

Service limitations governing the provision of all Oklahoma SoonerCare services will apply pursuant to Chapter 30 of the OHCA rules. In addition, the following limitations and requirements apply to services provided by I/T/U facilities:

- (1) **Multiple encounters.** An I/T/U facility may bill for more than one encounter per ~~24~~twenty-four (24) hour period under certain conditions.
- (2) **Behavioral Health services.** Behavioral Health Services are limited to those services furnished to members at or on behalf of the I/T/U facility.
- (3) **Laboratory procedures.** Laboratory procedures performed by an I/T/U outpatient facility (not an independently certified enrolled laboratory) on the same date of service are considered part of the health care practitioner's service and are included in the I/T/U encounter.
- (4) **Obstetrical services.** For OB services provided to a member before, during, and/or after the same pregnancy, ITUs may not bill for individual encounters and the package/bundled rate. Providers may only either:
 - (A) bill for antepartum visits, postpartum visits, and/or a cesarean or vaginal delivery as individual encounter; or
 - (B) bill the packaged/bundled rate for total care obstetrics, (which includes antepartum and postpartum visits and delivery). Refer to Oklahoma Administrative Code 317:30-5-22 for more detailed obstetrical care policy.

[OAR Docket #20-458; filed 6-26-20]

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

[OAR Docket #20-474]

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Subchapter 1. General Provisions

317:35-1-2 [AMENDED]

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The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board

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n/a

GIST/ANALYSIS:

The proposed revisions will establish definitions to clarify what the OHCA views as a child and an adult, unless otherwise specified by federal and/or state law. Additional revisions will involve limited rewriting aimed at clarifying text; fixing any grammatical errors; and aligning rules with the current business practice.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
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SUBCHAPTER 1. GENERAL PROVISIONS

317:35-1-2. Definitions

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

"Acute Care Hospital" means an institution that meets the requirements of 42 CFR, Section 440.10 and defined in Section (§) 440.10 of Title 42 of the Code of Federal Regulations (C.F.R.) and:

(A) is maintained primarily for the care and treatment of patients with disorders other than mental diseases;

(B) is formally licensed or formally approved as a hospital by an officially designated authority for state standard setting; and

(C) meets the requirements for participation in Medicare as a hospital.

"Adult" means an individual twenty-one (21) years of age or older, unless otherwise specified by statute, regulation, and/or policy adopted by the Oklahoma Health Care Authority (OHCA). For eligibility criteria policy for children and adults, please refer to Oklahoma Administrative Code (OAC) 317:35-5-2.

"Advantage Administration (AA)" means the Oklahoma Department of Human Services (OKDHS) which performs certain administrative functions related to the Advantage Waiver.

"Aged" means an individual whose age is established as ~~65~~sixty-five (65) years or older.

"Agency partner" means an agency or organization contracted with the OHCA that will assist those applying for services.

"Aid to Families with Dependent Children (AFDC)" means the group of low income families with children described in Section 1931 of the Social Security Act. The Personal Responsibility and Work Opportunity Act of 1996 established the new eligibility group of low income families with children and linked eligibility income and resource standards and methodologies and the requirement for deprivation for the new group to the State plan for ~~Aid to Families with Dependent Children~~ AFDC in effect on July 16, 1996. Oklahoma has elected to be less restrictive for all SoonerCare members related to AFDC. Effective January 1, 2014, children covered under Section 1931 are related to the children's group, and adults covered under Section 1931 are related to the parent and caretaker relative group. The Modified Adjusted Gross Income (MAGI) methodology is used to determine eligibility for these groups.

"Area nurse" means a registered nurse in the OKDHS Aging Services Division, designated according to geographic areas who evaluates the ~~UCAT~~Uniform Comprehensive Assessment Tool (UCAT) and determines medical eligibility for Personal Care, Advantage Waiver, and Nursing Facility services. The area nurse also approves care plan and service plan implementation for Personal Care services.

"Area nurse designee" means a registered nurse selected by the area nurse who evaluates the UCAT and determines medical eligibility for Personal Care, Advantage Waiver, and Nursing Facility services.

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

"Blind" means an individual who has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens.

"Board" means the ~~Oklahoma Health Care Authority~~ OHCA Board.

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"Buy-in" means the procedure whereby the OHCA pays the member's Medicare premium.

(A) **"Part A Buy-in"** means the procedure whereby the OHCA pays the Medicare Part A premium for individuals determined eligible as Qualified Medicare Beneficiaries Plus (QMBP) who are enrolled in Part A and are not eligible for premium free enrollment as explained under Medicare Part A. This also includes individuals determined to be eligible as Qualified Disabled and Working Individuals (QDWI).

(B) **"Part B Buy-in"** means the procedure whereby the OHCA pays the Medicare Part B premium for categorically needy individuals who are eligible for Part B Medicare. This includes individuals who receive TANF or the State Supplemental Payment to the Aged, Blind or Disabled, and those determined to be Qualified Medicare Beneficiary Plus (QMBP), Specified Low Income Medicare Beneficiaries (SLMB) or Qualifying Individual-1 (QI-1). Also included are individuals who continue to be categorically needy under the PICKLE amendment and those who retain eligibility after becoming employed.

"Caretaker relative" means a person other than the biological or adoptive parent with whom the child resides who meets the specified degree of relationship within the fifth degree of kinship.

"Case management" means the activities performed for members to assist them in accessing services, advocacy and problem solving related to service delivery.

"Categorically needy" means that income and, when applicable, resources are within the standards for the category to which the individual is related.

"Categorically related" or **"related"** means the individual meets basic eligibility requirements for an eligibility group.

"Certification period" means the period of eligibility extending from the effective date of certification to the date of termination of eligibility or the date of the next periodic redetermination of eligibility.

"Child" means an individual under twenty-one (21) years of age, unless otherwise specified by statute, regulation, and/or policy adopted by the OHCA. For eligibility criteria policy for children and adults, please refer to OAC 317:35-5-2.

"County" means the Oklahoma ~~Department of Human Services~~ OKDHS office or offices located in each county within the State.

"Custody" means the custodial status, as reported by ~~the Oklahoma Department of Human Services~~ OKDHS.

"Deductible/Coinsurance" means the payment that must be made by or on behalf of an individual eligible for Medicare before Medicare payment is made. The coinsurance is that part of the allowable medical expense not met by Medicare, which must be paid by or on behalf of an individual after the deductible has been met.

(A) For Medicare Part A (Hospital Insurance), the deductible relates to benefits for inpatient services while the patient is in a hospital or nursing facility. After the deductible is met, Medicare pays the remainder of the allowable cost.

(B) For Medicare Part B (Medical Insurance), the deductible is an annual payment that must be made before Medicare payment for medical services. After the deductible is met, Medicare pays ~~80%~~ eighty percent (80%) of the allowable charge. The remaining ~~20%~~ twenty percent (20%) is the coinsurance.

"Disabled" means an individual who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted (or can be expected to last) for a continuous period of not less than ~~12~~ twelve (12) months.

"Disabled child" means for purposes of Medicaid Recovery a child of any age who is blind, or permanently and totally disabled according to standards set by the Social Security Administration.

"Estate" means all real and personal property and other assets included in the member's estate as defined in Title 58 of the Oklahoma Statutes.

"Gatekeeping" means the performance of a comprehensive assessment by the OKDHS nurse utilizing the ~~Uniform Comprehensive Assessment Tool (UCAT)~~ UCAT for the determination of Medical eligibility, care plan development, and the determination of Level of Care for Personal Care, ADvantage Waiver and Nursing Facility services.

"Ineligible Spouse" means an individual who is not eligible for ~~SSI~~ Supplemental Security Income (SSI) but is the husband or wife of someone who is receiving SSI.

"Local office" means the Oklahoma ~~Department of Human Services~~ OKDHS office or offices located in each county within the State.

"LOCEU" means the Oklahoma Health Care Authority's Level of Care Evaluation Unit.

"MAGI eligibility group" means an eligibility group whose financial eligibility is determined through the Modified Adjusted Gross Income (MAGI) methodology. The groups subject to MAGI are defined in ~~42 CFR 435.603~~ 42 C.F.R. § 436.603 and listed in OAC 317:35-6-1.

"Modified Adjusted Gross Income (MAGI)" means the financial eligibility determination methodology established by the Patient Protection and Affordable Care Act (PPACA) in 2009.

"Medicare" means the federally funded health insurance program also known as Title XVIII of the Social Security Act. It consists of four ~~(4)~~ (4) separate programs. Part A is Hospital Insurance, Part B is Medical Insurance, Part C is Medicare Advantage Plans, and Part D is Prescription Drug Coverage.

(A) **"Part A Medicare"** means Hospital Insurance that covers services for inpatient services while the patient is in a hospital or nursing facility. Premium free enrollment is provided for all persons receiving OASDI or Railroad Retirement income who are age ~~65~~ sixty-five (65) or older and for those under age ~~65~~ sixty-five (65) who have been receiving disability benefits under these programs for at least ~~24~~ twenty-four (24) months.

(i) Persons with end stage renal disease who require dialysis treatment or a kidney transplant may also be covered.

(ii) Those who do not receive OASDI or Railroad Retirement income must be age ~~65~~sixty-five (65) or over and pay a large premium for this coverage. Under Authority rules, these individuals are not required to enroll for Part A to be eligible for SoonerCare benefits as categorically needy. They must, however, enroll for Medicare Part B. Individuals eligible as a QMBP or as a ~~Qualified Disabled and Working Individual (QDWI)~~QDWI under Medicaid are required to enroll for Medicare Part A. The Authority will pay Part A premiums for QMBP individuals who do not qualify for premium free Part A and for all QDWI's.

(B) **"Part B Medicare"** means Supplemental Medical Insurance that covers physician and related medical services other than inpatient or nursing facility care. Individuals eligible to enroll in Medicare Part B are required to do so under OHCA policy. A monthly premium is required to keep this coverage in effect.

"Minor child" means a child under the age of ~~18~~eighteen (18).

"Nursing Care" for the purpose of Medicaid Recovery is care received in a nursing facility, an intermediate care facility for individuals with intellectual disabilities (ICF/IIDs) or other medical institution providing nursing and convalescent care, on a continuing basis, by professional personnel who are responsible to the institution for professional medical services.

"OCSS" means the ~~Oklahoma Department of Human Services~~OKDHS Oklahoma Child Support Services (formerly Child Support Enforcement Division).

"OHCA" means the Oklahoma Health Care Authority.

"OHCA Eligibility Unit" means the group within the ~~Oklahoma Health Care Authority~~OHCA that assists with the eligibility determination process.

"OKDHS" means the Oklahoma Department of Human Services.

"OKDHS nurse" means a registered nurse in the OKDHS Aging Services Division who meets the certification requirements for UCAT Assessor and case manager, and who conducts the uniform assessment of individuals utilizing the ~~Uniform Comprehensive Assessment Tool (UCAT)~~UCAT for the purpose of medical eligibility determination. The OKDHS nurse also develops care plans and service plans for Personal Care services based on the UCAT.

"Qualified Disabled and Working Individual (QDWI)" means individuals who have lost their Title II OASDI benefits due to excess earnings, but have been allowed to retain Medicare coverage.

"Qualified Medicare Beneficiary Plus (QMBP)" means certain aged, blind or disabled individuals who may or may not be enrolled in Medicare Part A, meet the Medicaid QMBP income and resource standards and meet all other Medicaid eligibility requirements.

"Qualifying Individual" means certain aged, blind or disabled individuals who are enrolled in Medicare Part A, meet the Medicaid Qualifying Individual income and resource standards and meet all other Medicaid eligibility requirements.

"Qualifying Individual-1" means a Qualified Individual who meets the Qualifying Individual-1 income and resource standards.

"Reasonably compatible" means that there is no significant discrepancy between information declared by a member or applicant and other information available to the agency. More specific policies and procedures for determining whether a declaration is reasonably compatible are detailed in Oklahoma's Verification Plan.

"Recipient lock-in" means when a member is restricted to one primary physician and/or one pharmacy. It occurs when the OHCA determines that a SoonerCare member has used multiple physicians and/or pharmacies in an excessive manner over a ~~12-month~~twelve (12) month period.

"Scope" means the covered medical services for which payment is made to providers on behalf of eligible individuals. The ~~Oklahoma Health Care Authority~~OHCA Provider Manual (OAC 317:30) contains information on covered medical services.

"Specified Low Income Medicare Beneficiaries (SLMB)" means individuals who, except for income, meet all of the eligibility requirements for QMBP eligibility and are enrolled in Medicare Part A.

"TEFRA" means the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97-248). TEFRA provides coverage to certain disabled children living in the home who would qualify for SoonerCare if residents of nursing facilities, ICF/IIDs, or inpatient acute care hospital stays are expected to last not less than ~~60~~sixty (60) days.

"Worker" means the OHCA or OKDHS worker responsible for assisting in eligibility determinations.

[OAR Docket #20-474; filed 6-26-20]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY

CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN-ELIGIBILITY

[OAR Docket #20-467]

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RULES:

Subchapter 5. Eligibility and Countable Income
Part 3. Non-Medical Eligibility Requirements
317:35-5-26 [AMENDED]
Part 7. Application and Eligibility Determination Procedures
317:35-5-67 [NEW]
(Reference APA WF # 19-04)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; 42 Code of Federal Regulations (CFR) § 435.916(d); 42 CFR § 457.343; 42 CFR § 431.213; and 42 CFR § 431.231

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Subchapter 5. Eligibility and Countable Income

Part 3. Non-Medical Eligibility Requirements

317:35-5-26 [AMENDED]

Part 7. Application and Eligibility Determination Procedures

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n/a

GIST/ANALYSIS:

The proposed revisions will comply with 42 Code of Federal Regulations (CFR) § 435.916(d), which requires a prompt redetermination of eligibility whenever information is received about a change in a member's circumstances that may affect eligibility. The proposed policy outlines that a member's eligibility will be terminated if his or her mail is returned to the agency as unforwardable, with address unknown, and after the Oklahoma Health Care Authority (OHCA) has made reasonable but unsuccessful attempts to verify the member's current address. Per 42 CFR §§ 431.213 and 431.231, advance notice is not required to be given to the member when eligibility is terminated due to returned mail; however, notice will be sent to the member by mail and by email, (if the agency has an email address on file). Additionally, notice will be posted to the member's online SoonerCare account. If the member's whereabouts become known within the eligibility period, eligibility will be reinstated. Rules and procedures for terminating eligibility due to returned mail are employed by other states' Medicaid agencies, including those of Alabama, Arizona, Ohio, New Jersey, New York, Oregon, and Colorado.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 3. NON-MEDICAL ELIGIBILITY REQUIREMENTS

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

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

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

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

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

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

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

(b) **Individuals residing in institutions (correctional facilities and institutions for mental disease).** The SoonerCare program will only pay for services rendered to adults (21 through 64 years of age) who are inpatients in an institution for mental disease (IMD), juveniles in the custody of the Office of Juvenile Affairs who are inmates in a state-owned and operated facility, or inmates in a correctional facility, when these individuals are admitted as an inpatient to a hospital, nursing facility, juvenile psychiatric facility or an intermediate care facility for the mentally retarded and meet all other eligibility requirements.

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

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

PART 7. APPLICATION AND ELIGIBILITY DETERMINATION PROCEDURES

317:35-5-67. Returned mail

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

[OAR Docket #20-467; filed 6-26-20]

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

[OAR Docket #20-469]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Eligibility and Countable Income
Part 5. Countable Income and Resources
317:35-5-41.1 [AMENDED]
317:35-5-42 [AMENDED]
Subchapter 7. Medical Services
Part 5. Determination of Eligibility for Medical Services
317:35-7-40 [AMENDED]
(Reference APA WF # 19-26)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; 20 Code of Federal Regulations (C.F.R.) Section 416.1210; 20 C.F.R. Section 416.1222; 20 C.F.R. Section 416.1224; 20 C.F.R. Section 416.1236; 20 C.F.R. Section 416.1235; and 20 C.F.R. Section 416.1245

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

December 18, 2019

COMMENT PERIOD:

January 16, 2020 through February 18, 2020

PUBLIC HEARING:

February 19, 2020

ADOPTION:

March 30, 2020

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

March 31, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 14, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will update policy regarding the determination of countable income for individuals in the ABD categorical group. The rule changes will incorporate the federal Supplemental Security Income (SSI) standards, including the exclusion of earned and unearned income, and clarify guidance on how income is deemed from certain individuals to another (i.e.

ineligible spouse's income deemed to the applicant). Additional rule changes will update policy to note that the value of a life estate may be established by a written estimate instead of a written appraisal. Finally, rule changes will update QMB Plus policy to align with other Medicare savings programs and to clarify income and resource standards for individuals and couples.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 14, 2020:**

**SUBCHAPTER 5. ELIGIBILITY AND
COUNTABLE INCOME**

**PART 5. COUNTABLE INCOME AND
RESOURCES**

317:35-5-41.1. Home/real property

(a) Home property is excluded from resources regardless of value unless the individual is applying for long-term care services [See Oklahoma Administrative Code (OAC) 317:35-5-41.8(a) (relating to eligibility for long-term care services)]. For purposes of the home property resource exclusion, a home is defined as any shelter in which the individual has an ownership interest and which is used by the individual as his/her principal place of residence. The home may be either real or personal property, fixed or mobile.

(1) Home property includes all property which is adjacent to the home. Land is considered adjacent even if separated by a boundary line, street, alley, highway, or waterway.

(2) Property has a value regardless of whether there is an actual offer to purchase. Verification of home/real property value is established by collateral contacts with specialized individuals knowledgeable in the type and location of property being considered. Mineral rights and wind rights associated with the home property are not valued separate from the surface.

(3) The home may be retained without affecting eligibility during periods when it is necessary to be absent for illness or other necessity. When it is determined that the member does not have a feasible plan for and cannot be expected to return to his/her home, the market value of the property is considered in relation to the resource. The member is responsible for taking all steps necessary to convert the resource for use in meeting current needs. If the member is making an effort to make the resource available, a reasonable period of time is given [not to exceed ninety (90) days] to convert the resource. He/she is advised in writing that the ninety-day (90-day) period begins with the determination that the property be considered in relation to the resource. The ninety-day (90-day) period is given only if efforts are in progress to make the resource

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available. Any extension beyond the initial ninety-day (90-day) period is justified only after interviewing the member, determining that a good faith effort to sell is still being made and failure to sell is due to circumstances beyond the control of the member. A written notification is also provided to the member at any time an extension is allowed. Detailed documentation in the case record is required.

(4) If the member fails or is unwilling to take steps necessary to convert the resource for use in meeting current needs, continuing eligibility cannot be established and the member is advised as to the effective date of closure and of the right to receive assistance when the resources are within the maximum allowable resources provided other conditions of eligibility continue to be met.

(5) When a member sells his/her home with the intention of purchasing another home or when an insurance payment for damage to the home is received, a reasonable period of time is given to reinvest the money in another home. A reasonable period of time is considered to not exceed a ninety-day (90-day) period. Extensions beyond the ninety (90) days may be justified only after interviewing the member; and determining that a good faith effort is still being made; and that completion of the transaction is beyond his/her control. This must be documented in the case record.

(6) At the point a member decides not to reinvest the proceeds from the sale of his/her home in another home, the member's plan for use of the proceeds is evaluated in relation to rules on resources disposed of while receiving assistance.

(7) A home traded for another home of equal value does not affect the member's eligibility status. If the home is traded for a home of lesser value, the difference may be invested in improvement of the new home.

(8) Absences from home for up to ninety (90) days for trips or visits or six (6) months for medical care (other than nursing facilities) do not affect receipt of assistance or the home exclusion as long as the individual intends to return home. Such absences, if they extend beyond those limits, may indicate the home no longer serves as the principal place of residence.

(9) Mineral rights, associated with the home property, are considered along with the surface rights and are excluded as a resource.

(b) Real property other than home property shall be treated as follows:

(1) Mineral rights which are not associated with the home property are considered as a resource. Since evaluation and ~~scalability~~ salability of mineral rights fluctuate, the establishment of the value of mineral rights are established based on the opinion of collateral sources. Actual offers of purchase are used when established as a legitimate offer through a collateral source. Mineral rights not associated with home property which are income producing are considered in the same way as income producing property. Refer to OAC 317:35-5-41.12(c)(3) for

treatment of mineral rights as non-trade or non-business property.

(2) The market value of real estate other than home property owned by the member or legal dependent and encumbrances against such property are ascertained in determining the equity (including the cost to the member of a merchantable title to be determined when the resource approaches the maximum). The market value of real estate other than the home owned by the applicant is established on the basis of oral or written information which the applicant has on hand and counsel with persons who have specialized knowledge about this kind of resource. Refer to OAC 317:35-5-41.12(c) for exclusion of real estate that produces income.

(3) For any individual (and spouse, if any) who is of Indian descent from a federally recognized Indian tribe, any interest in land which is held in trust by the United States for an individual Indian or tribe, or which is held by an individual Indian or tribe and which can only be sold, transferred, or otherwise disposed of with the approval of other individuals, his or her tribe, or an agency of the federal government, shall be excluded from resource determinations, in accordance with 20 Code of Federal Regulations (C.F.R.) § 416.1234.

(4) A life estate conveys upon an individual or individuals for his/her lifetime, certain rights in property. Its duration is measured by the lifetime of the tenant or of another person; or by the occurrence of some specific event, such as remarriage of the tenant. The owner of a life estate has the right of possession, the right to use the property, the right to obtain profits from the property and the right to sell his/her life estate interest. However, the contract establishing the life estate may restrain one or more rights of the individual. The individual does not have title to all interest in the property and does not have the right to sell the property other than the interest owned during his/her lifetime. He/she may not usually pass it on to heirs in the form of an inheritance.

(A) When a life estate in property is not used as the member's home, it is necessary to establish the value. A computer procedure is available to compute the value of a life estate by input of the current market value of the property and the age of the life estate owner.

(B) The value of a life estate on mortgaged property is based on equity rather than market value and the age of the individual.

(C) In the event the member does not accept as valid the value of the life estate as established through this method, the member must secure a written appraisal estimate by two (2) persons who are familiar with current values. If there is substantial unexplained divergence between these appraisals, the worker and the member will jointly arrange for the market value to be established by an appraisal made by a third (3rd) person who is familiar with current market values and who is acceptable to both the member and the worker.

- (5) Real and/or personal property which produces income is excluded if it meets the following conditions established in OAC 317:35-5-41.12.

317:35-5-42. Determination of countable income for individuals categorically related to aged, blind and disabled

(a) **General.** The term income is defined as ~~that a~~ gross gain or gross recurrent benefit ~~which is derived that~~ derives from labor, business, property, retirement and other benefits, ~~and many other forms which can be counted on as currently or sources that are~~ available for use on a regular basis. ~~When an individual's income is reduced due to recoupment of an overpayment or garnishment, the gross amount before the recoupment or garnishment is counted as income. Verification of the member's countable income or resources held in bank accounts or at other financial institutions can be established through an Asset Verification System (AVS).~~

(1) If it appears the applicant or SoonerCare member is eligible for any type of income (excluding Supplemental Security Income (SSI)) or resources, ~~he/she~~ Oklahoma Department of Human Services (OKDHS) staff must be notified notify the individual in writing by the Agency of his/her potential eligibility, per Section 416.210 of Title 20 of the Code of Federal Regulations (20 C.F.R. § 416.210). ~~The notice must contain the information that failure to file for and take all appropriate steps to obtain such benefit within thirty (30) days from the date of the notice will result in a determination of ineligibility.~~

(A) Potential income may include, but is not limited to:

- (i) Retirement, Survivors, Disability Insurance (RSDI) benefits;
- (ii) Benefits from the United States (U.S.) Department of Veterans Affairs (VA);
- (iii) Workers' compensation payments;
- (iv) Unemployment insurance benefits (UIB);
- (v) Annuities;
- (vi) Pensions or other retirement benefits; or
- (vii) Disability benefits.

(B) The notice must contain the information that failure to file for and take all appropriate steps to obtain the potential income within thirty (30) calendar days from the date of the notice will result in an ineligibility determination of ineligibility.

(C) When the individual has a good cause reason for not filing for the potential income within the thirty (30) calendar day period or taking other necessary steps to obtain the income, he or she is not determined ineligible.

(2) ~~If a husband and wife are living spouses live in their own home, the couple's total income and/or resource is~~resources are divided equally between the two cases. If they both enter a nursing facility, their income and resources are considered separately.

(3) When an eligible individual or child resides with an ineligible spouse or parent(s), a portion of the ineligible spouse's or parent's income is deemed as available income

to the eligible individual, per Oklahoma Administrative Code (OAC) 317:35-5-42(k).

~~(34) If only one spouse in a couple is eligible and the couple ceases to live stops living together, only the income and resources of that the ineligible spouse that are actually contributed~~ contributes to the eligible spouse are considered in determining the eligible spouse's eligibility, beginning with the month after the month which they ceased to live stop living together are considered.

(45) In calculating monthly income, cents are included in the computation until the monthly amount of each individual's source of income has been established. When the monthly amount of each income source has been established, cents are rounded to the nearest dollar (1-49 cents is rounded down, and 50-99 cents is rounded up). For example, an individual's weekly earnings of \$99.90 are multiplied by 4.3 and the cents rounded to the nearest dollar (\$99.90 x 4.3 = \$429.57 rounds to \$430). See rounding procedures in OAC 340:65-3-4 when using BENDEX to verify Retirement, Survivors, and Disability Insurance (RSDI) benefits. Refer to OAC 317:35-9-68 to determine how to consider a community spouse's income eligibility for SoonerCare (Medicaid) when his or her spouse:

- (A) Is institutionalized in a nursing facility or an intermediate care facility for the intellectually disabled;
- (B) Is sixty-five (65) years or older and lives in a mental health hospital; or
- (C) Receives ADvantage or Home and Community Based Waiver services.

(6) In certain circumstances, the amount of income determined to be available to an individual may be greater than the amount of income the individual actually receives for his or her own use. This includes, but is not limited to:

- (A) Court-ordered income deductions for child and/or spousal support even when the support is paid directly to the child's guardian or spouse by the individual's employer or benefit payer;
- (B) Deductions due to a repayment of an overpayment, loan, or other debt, unless the amount being withheld to reduce a previous overpayment was included when determining the amount of unearned income for a previous month in the determination of medical assistance eligibility; or
- (C) Garnishments or liens placed against earned or unearned income of the individual, regardless of the purpose for the garnishment or lien.

(7) The individual's statement regarding the source and amount of available income must be verified at application, renewal, and when changes occur by:

- (A) Award letters, warrants, or other documents provided by the individual;
- (B) Automated data exchange with other agencies such as Beneficiary and Earnings Data Exchange System (BENDEX); Supplemental Security Income (SSI)/State Data Exchange System (SDX), or UIB;
- (C) The Asset Verification System (AVS) when income is held in bank accounts or other financial institutions;

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- (D) Public records; or
- (E) Collateral contacts such as employers, agencies, businesses, or community action groups.
- (8) The individual is responsible for reporting and verifying income changes within ten (10) calendar days of the change occurring.
- (b) **Income disregards.** In determining need, the following are not considered as income:
 - (1) ~~The value of Supplemental Nutrition Assistance Program (food stamps) received;~~
 - (2) ~~Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;~~
 - (3) ~~Educational grants (excluding work study), scholarships, etc., that are contingent upon the student regularly attending school. The student's classification (graduate or undergraduate) is not a factor;~~
 - (4) ~~Loans (regardless of use) if a bona fide debt or obligation to pay can be established. Criteria to establish a loan as bona fide includes:~~
 - (A) ~~An acknowledgment of obligation to repay or evidence that the loan was from an individual or financial institution in the loan business. If the loan agreement is not written, an OKDHS Form 08AD103E, Loan Verification, should be completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan. When copies of written agreements or OKDHS Form 08AD103E are not available, detailed case documentation must include information that the loan is bona fide and how the debt amount and date of receipt was verified.~~
 - (B) ~~If the loan was from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay (with or without interest) and the lender's verification of the loan are required to indicate that the loan is bona fide.~~
 - (C) ~~Proceeds of a loan secured by an exempt asset are not an asset;~~
 - (5) ~~One third of child support payments received on behalf of the disabled minor child;~~
 - (6) ~~Indian payments (including judgment funds or funds held in trust) distributed by the Secretary of the Interior (Bureau of Indian Affairs) or distributed by the tribe subject to approval by the Secretary of the Interior. Also, any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest or investment income accrued on such funds. Any income from mineral leases, from tribal business investments, etc. However, any interest or income derived from the principal or produced by purchases made with funds after distribution is considered as any other income;~~
 - (7) ~~Special allowance for school expenses made available upon petition (in writing) for funds held in trust for the student;~~
 - (8) ~~Title III benefits from State and Community Programs on Aging;~~
 - (9) ~~Payment for supportive services or reimbursement of out of pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE);~~
 - (10) ~~Payments to volunteers under the Domestic Volunteer Services Act of 1973 (VISTA), unless the gross amount of VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater;~~
 - (11) ~~The value of supplemental food assistance received under the Child Nutrition Act or the special food service program for children under the National School Lunch Act;~~
 - (12) ~~Any portion of payments made under the Alaska Native Claims Settlement Act to an Alaska Native which are exempt from taxation under the Settlement Act;~~
 - (13) ~~Reimbursements from an employer for out of pocket expenditures and allowances for travel or training to the extent the funds are used for expenses directly related to such travel or training and uniform allowance if the uniform is uniquely identified with company names or logo;~~
 - (14) ~~Assistance or services from the Vocational Rehabilitation program such as transportation expenses to a rehabilitation center, extra clothing, lunches, grooming needed for a training program and any other such complementary payments;~~
 - (15) ~~Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended;~~
 - (16) ~~Payments made by a public or private non profit child care agency for a child placed in foster care or subsidized adoption;~~
 - (17) ~~Governmental rental or housing subsidies by governmental agencies, e.g., HUD (received in kind or in cash) for rent, mortgage payments, or utilities;~~
 - (18) ~~Low Income Home Energy Assistance Program (LIHEAP) payments for energy assistance and payments for emergency situations under Emergency Assistance to Needy Families with Children;~~
 - (19) ~~Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);~~
 - (20) ~~Payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;~~
 - (21) ~~Federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, and comparable disaster assistance provided by States, local governments, and disaster assistance organizations;~~
 - (22) ~~Income of a sponsor to the sponsored eligible alien;~~
 - (23) ~~Income that is set aside under an approved Plan for Achieving Self Support for Blind or Disabled People~~

(PASS). The Social Security Administration (SSA) approves the plan, the amount of income excluded and the period of time approved. A plan can be approved for an initial period of eighteen (18) months. The plan may be extended for an additional eighteen (18) months if needed, and an additional twelve (12) months (total forty-eight (48) months) when the objective involves a lengthy educational or training program;

(24) Payments made to individuals because of their status as victims of Nazi persecution (PL 103-286);

(25) Payments received under the Civil Liberties Act of 1988. These payments are to be made to individuals of Japanese ancestry who were detained in internment camps during World War II;

(26) Payments received as a result of participation in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation". These payments are made to hemophilia patients who are infected with HIV. However, if the payments are placed in an interest bearing account, or some other investment medium that produces income, the income generated by the account may be countable as income to the individual;

(27) Payments made to certain Vietnam veterans' children with spina bifida (PL 104-204);

(28) Payments made to certain Korea service veterans' children with spina bifida (PL 108-183);

(29) Payments made to the children of women Vietnam veterans who suffer from certain birth defects (PL 106-419);

(30) Additional payments of regular unemployment compensation in the amount of \$25 per week ending June 30, 2010, and any amount of emergency unemployment compensation paid through May 31, 2010, as authorized under the American Recovery and Reinvestment Tax Act of 2009;

(31) Wages paid by the Census Bureau for temporary employment related to Census activities;

(32) Income tax refunds;

(33) Home energy assistance;

(34) Food or shelter based on need provided by non-profit agencies;

(35) Money someone else spends to pay your expenses for items other than food or shelter (e.g., someone pays for your telephone or medical bills);

(36) Earned income for working students younger than twenty-two (22) years of age when they regularly attend a school, college, university or a course of vocational or technical training. Refer to Appendix C-1, Schedule VIII.E; Maximum Income, Resource and Payment Standards for the maximum monthly and yearly exclusion amounts;

(37) The cost of impairment related work expenses for items or services that a disabled person needs in order to work; and

(38) The first \$2,000 of compensation received per calendar year for participating in certain clinical trials.

(b) **Sources of income considered.** The individual is responsible for reporting information regarding all sources of

available income. All monies or payments that are available for current living expenses, unless specifically disregarded per (c) of this Section are considered in determining monthly gross income. Some of the more common income sources to be considered in determining eligibility are included in (1) through (8) of this subsection:

(1) **Annuities, pensions, retirement, disability, and other payments.** In accordance with 20 C.F.R. 416.1123, benefits and payments are considered for the month they are received, unless they include retroactive payments. Retroactive payments are considered as lump sum payments per (b)(5) of this Section.

(A) Payments include, but are not limited to:

(i) RSDI and SSI benefits;

(ii) Veteran's benefits;

(iii) Railroad retirement annuities;

(iv) Pensions, retirement, or disability benefits from government or private sources;

(v) Workers' compensation; and

(vi) UIB.

(B) Determination of RSDI benefits to be considered; disregarding cost-of-living adjustments (COLAs) for former State Supplemental Payment recipients, who are reapplying for medical benefits under the Pickle Amendment, are computed, per OKDHS Appendix C-2-A, COLA Increase Computation Formulas.

(C) The U.S. Department of Veterans Affairs allows their recipients to request reimbursement for medical expenses not covered by SoonerCare. When a recipient is eligible for a readjustment payment, it is paid in a lump sum for the entire past year. When received, this reimbursement is disregarded as income or a resource for the month received. Any amount retained in the month following receipt is considered as a resource.

(D) Government financial assistance in the form of VA Aid and Attendance or Champus payments are considered as:

(i) A third party resource whether paid to the individual or the facility when the individual resides in a nursing facility. These payments do not affect income eligibility or the vendor payment of the member; or

(ii) Excluded income when paid for an attendant in the individual's home.

(E) SSI benefits may be continued for up to three (3) months for a recipient who enters a public medical or psychiatric institution, a SoonerCare approved hospital, extended care facility, intermediate care facility for individuals with an intellectual disability, or nursing facility. To be eligible for the continuation of benefits, the SSI recipient must have a physician's certification that the institutionalization is not expected to exceed three (3) months and there must be a need to maintain and provide expenses for the home. These continued payments are intended for the use of the recipient and do not affect the vendor payment.

(F) A veteran or his or her surviving spouse who receives a VA pension may have the pension reduced to ninety dollars (\$90) per month if the veteran does not have dependents, is SoonerCare (Medicaid) eligible, and resides in a nursing facility that is approved under SoonerCare, per Section 8003 of Public Law (P.L.) 101-508. The VA pension for a veteran or his or her surviving spouse who meets these conditions is reduced the month following the month of admission to a SoonerCare (Medicaid) approved nursing facility.

(i) The reduced VA pension is not used to compute the vendor payment or spenddown. The nursing facility resident is entitled to receive the ninety-dollars (\$90) reduced VA pension and the regular nursing facility maintenance standard, per OKDHS Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule VIII.B.2, Maximum Income, Resource, and Payment Standards.

(ii) The vendor payment or spenddown is computed using other income minus the monthly nursing facility maintenance standard and any applicable medical deductions.

(2) **Child support and alimony payments.** Child support and alimony payments are counted as unearned income whether in cash or in-kind. Per (f)(11) of this Section, one-third of child support payments received on behalf of the disabled minor child is excluded.

(3) **Dividends, interest, and certain royalties.** Dividends, interest, and certain royalties are counted as unearned income. Dividends and interest are returns on capital investments, such as stocks, bonds, or savings accounts. Royalties are compensation paid to the owner for the use of property or natural resources. Royalties are considered earned income when received as part of the individual's trade or business or in conjunction with a work publication.

(4) **Income from capital resources and rental property.** Income from capital resources may be received from the use of real or personal property, such as land, housing, machinery, leasing of minerals, a life estate, homestead rights, or interest.

(A) Rental income may be treated as self-employment income when the individual participates in the management of the trade or business or invests his/her own labor in producing the income. When the individual does not participate in the management of the trade or business or does not invest his/her own labor in producing the income, it is considered as unearned income.

(i) The individual's federal income tax return or business records verify when the rental income is considered as self-employment income. When the individual's federal tax return or business records do not verify the rental income is from self-employment, the income is considered unearned income.

(ii) Expenses necessary for the production or collection of the rental income are deducted when paid, not when they are incurred. Examples of deductible expenses include interest on debt, state and local taxes on real or personal property and on motor fuel, general sales taxes, and expenses on managing or maintaining the property. Depreciation or depletion of property is not considered a deductible expense.

(iii) When rental property is handled by a leasing agent who collects the rent and deducts a management fee, only the rent actually received by the individual is considered as income.

(B) If the individual receives royalty income monthly but in irregular amounts or less often than monthly, the income is averaged over the previous six (6) month period to determine the countable monthly income.

(i) At any time a dramatic increase or decrease in royalty income occurs, the previous two (2) months of royalty income is averaged to compute the countable monthly income.

(ii) When the difference between the gross and net royalty income is due to a production or severance tax, the net income is used to determine income eligibility as this tax is considered the cost of producing the income.

(5) **Lump sum payments.** Any income received in a lump sum, with the exception of an SSI or RSDI lump sum, covering a period of more than one (1) month, whether received on a recurring or nonrecurring basis, is considered as income in the month it is received. Any amount retained on the first day of the month following receipt of the lump sum is considered as a resource.

(A) A lump sum payment may be considered as earned or unearned income, depending on the source of the lump sum payment. Lump sum payments may include, but are not limited to:

(i) Wages or wage bonuses;

(ii) Retroactive RSDI, VA, or workers' compensation payments;

(iii) Bonus lease payments;

(iv) Annual rentals from land or minerals;

(v) Life insurance death benefits;

(vi) Lottery or gambling winnings;

(vii) Personal injury awards or settlements; or

(viii) Inheritances.

(B) RSDI and SSI retroactive payments do not count as income in the month of receipt. Any unspent portion retained on the first day of the month following receipt of the lump sum is excluded from resources for nine (9) calendar months, per 20 C.F.R. § 416.1233. However, unspent money from a retroactive payment must be identifiable from other resources for this exclusion to apply. The money may be commingled with other funds, but if this is done in such a fashion that the retroactive amount

can no longer be separately identified, that amount is counted toward the resource limit.

(C) Lump sum payments used to establish dedicated bank accounts by representative payees in order to receive and maintain retroactive SSI benefits for children with disabilities or blindness who are under eighteen (18) years of age are excluded as income or a resource. The interest income generated from dedicated bank accounts is also excluded.

(D) A life insurance death benefit received by the individual for another person is considered as income in the month received except for amounts paid for the person's last illness and burial expenses. Money retained in the month following receipt of the benefit is counted as a resource to the extent that it is available.

(E) Changing a resource from one form to another, such as converting personal property to cash, is not considered a lump sum payment, all other things being equal.

(6) **Non-negotiable notes and mortgages.** Installment payments received on a note or mortgage are considered as monthly unearned income.

(7) **Income from the Workforce Innovation and Opportunity Act (WIOA).** Unearned income received by an adult, such as a need-based payment, cash assistance, compensation in lieu of wages, or allowances from a program funded by WIOA is considered as any other unearned income.

(8) **In-kind support and maintenance.** In-kind support and maintenance is food or shelter given to the individual or that the individual receives because someone else pays for it. Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services. The value of this support may be counted as income using the one-third reduction rule, per 20 C.F.R. §§ 416.1131 through 416.1133 or the presumed value rule, per 20 C.F.R. §§ 416.1140 through 416.1145.

(A) **One-third reduction rule.** The one-third reduction rule applies when the individual or the individual and his/her spouse lives in the household of a person who provides him/her with both food and shelter for at least a full calendar month. Per 20 C.F.R. § 416.1131, instead of determining the actual value of in-kind support and maintenance, one-third of the SSI federal benefit rate, per OKDHS Appendix C-1, Schedule VIII.C is counted as income.

(i) The one-third reduction rule applies in full or not at all. When the individual lives in another person's household and the one-third reduction rule applies, no income exclusions are applied to the reduction amount.

(ii) When the one-third reduction rule applies and the individual receives other support and maintenance, the other support and maintenance is not counted.

(iii) The one-third reduction rule does not apply when the individual or the individual and his/her spouse:

(I) Lives in another person's household but does not receive both food and shelter from that person;

(II) Lives in his/her own household; or

(III) Lives in a non-medical institution such as a public or private non-profit educational or vocational institution, or a private non-profit retirement home.

(B) **Another person's household.** The individual is considered to be living in another person's household if the person is not considered to be living in his/her own home per (C) of this subsection, the person who supplies the support and maintenance lives in the same household, and is not:

(i) The individual's spouse;

(ii) A minor child; or

(iii) An ineligible person whose income may be deemed to the individual per OAC 317:35-5-42(k).

(C) **Living in own household.** The individual or the individual and his/her spouse are considered to be living their own household when:

(i) The individual, the individual and his/her spouse, or a person whose income is deemed to the individual, live in a home in which one of them has an ownership interest or life estate in the home;

(ii) The individual, the individual and his/her spouse, or a person whose income is deemed to the individual is liable for any part of the rent charges;

(iii) The individual pays at least a pro rata share of the household and operating expenses;

(iv) The individual lives in a non-institutional care setting. The individual is considered to be living in a non-institutional care situation when:

(I) He/she is placed by a public or private agency under a specific program such as foster or family care;

(II) The placing agency is responsible for the individual's care;

(III) He/she lives in a private household that is licensed or approved by the placing agency to provide care; and

(IV) The individual, a public agency, or someone else pays for his/her care; or

(v) All members of the household receive public maintenance payments such as:

(I) Supplemental Security Income (SSI);

(II) State Supplemental Payment (SSP);

(III) Temporary Assistance for Needy Families (TANF);

(IV) Refugee cash assistance;

(V) Assistance provided under the Disaster Relief and Emergency Assistance Act;

(VI) Bureau of Indian Affairs (BIA) general assistance programs;

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(VII) State or local government assistance programs based on need; or

(VIII) VA payments based on need.

(D) **Presumed value rule.** The presumed value rule applies when the individual receives in-kind support and maintenance and the one-third reduction rule does not apply. The maximum presumed value is one-third of the SSI FBR, per OKDHS Appendix C-1, Schedule VIII.C plus the \$20 general income exclusion.

(i) The presumed value rule allows the individual to show that the amount of in-kind support and maintenance is not equal to the maximum presumed value. When the individual does not question the maximum presumed value, one-third of the SSI FBR, per OKDHS Appendix C-1, Schedule VIII.C plus the \$20 general income exclusion is counted as unearned income.

(I) When the individual disputes the amount counted for in-kind support and maintenance, he/she may verify that the current market value of the food or shelter he/she receives or the actual amount someone else pays for the individual's food and shelter is lower than the maximum presumed value.

(II) When the individual verifies that the food or shelter received is lower the maximum presumed value, the lower amount is used as the presumed value and counted as unearned income.

(III) When the individual verifies the actual value of the food or shelter he/she receives and it is higher than the maximum presumed value amount, the actual amount is counted as unearned income.

(ii) In-kind support and maintenance received by an individual is excluded if:

(I) It is identified as excluded per (e) or (f) of this Section.

(II) It is received from another member of a public assistance household; or

(iii) The individual receives SSI and the SSA does not reduce the individual's SSI benefit because of in-kind support and maintenance.

(iv) When the individual or the individual and his or her spouse live in a household in which all members receive a public maintenance payment per (b)(8)(C)(v) of this subsection, in-kind support and maintenance is not counted unless the individual receives food and shelter from someone outside of the household.

(9) **Earned income.** Earned income may include:

(A) **Wages.** Wages include the gross income earned for work performed as an employee before deductions, such as taxes, bonds, pensions, union dues, credit union payments, or cafeteria plans are subtracted.

(i) Wages paid in cash may include salaries, commissions, tips, piece-rate payments, longevity payments, bonuses, severance pay, and any other special payments received due to employment.

(ii) Wages paid to uniformed service members include basic pay, some types of special pay, and some allowances. Allowances paid for on-base housing or privatized military housing are considered unearned income in the form of in-kind support and maintenance. Allowances paid for private housing are considered wages.

(iii) Wages paid in-kind may include the value of food, clothing, shelter, or other items provided in lieu of or in conjunction with wages. The cash value of in-kind benefits must be verified by the employer. Medical insurance secured through the employer, whether purchased or as a benefit, is not considered a countable in-kind benefit. Exception: In-kind pay received by a domestic or agricultural worker is considered unearned income.

(iv) Work study received by an individual who is attending school is considered as earned income with appropriate earned income exclusions, per (g) of this Section applied.

(v) Payments received for services performed in a sheltered workshop or work activities center are counted as earned income. Payments for each calendar quarter are averaged to determine monthly income.

(vi) Income received as wages from a program funded by WIOA is counted as any other earned income.

(vii) Earnings received from the Senior Community Service Employment Program under Title V of the Older Americans Act of 1965 as amended and employment positions allocated at the discretion of Governor of Oklahoma are counted as earned income.

(B) **Self-employment income.** Self-employment income is the gross income earned from a trade or business. Self-employment income also includes in-kind benefits for a work activity or service for which the self-employed person ordinarily receives payment in his/her business enterprise, such as an exchange of business or labor, the individual's share of profit or loss in any partnership to which he/she belongs, and money received for the sale of whole blood or plasma. Income eligibility is based on the individual's net self-employment income after subtracting business expenses. Refer to (i)(4) of this Section for self-employment income determination procedures.

(c) **What is not income.** Items that are not considered income per 20 C.F.R. § 416.1103 because the individual cannot use them as food or shelter or to obtain food or shelter include, but are not limited to:

- (1) Medical care and services, including medical insurance premiums paid directly by anyone on the individual's behalf;
- (2) Social services, as follows:
 - (A) Assistance provided in cash or in-kind under any federal, state, or local government program to provide social services such as vocational rehabilitation or VA aid and attendance services;
 - (B) In-kind assistance provided under a non-governmental program for social services. This does not include food or shelter;
 - (C) Cash provided by a non-governmental social services program, except for cash to cover food or shelter, when the cash:
 - (i) Is a repayment for program-approved services for which the individual already paid; or
 - (ii) Is a payment restricted to the future purchase of a program-approved service.
- (3) Receipts from the sale, exchange, or replacement of a resource, including cash or an in-kind item provided to replace or repair a resource that was lost, damaged, or stolen;
- (4) Any amount refunded on income taxes already paid by the individual;
- (5) Payments made to the individual under a credit life or credit disability insurance policy;
- (6) Money the individual borrows or receives as repayment of a loan. When the individual borrow money, regardless of use, it is not considered income if a bona fide debt or obligation to pay can be established. Interest the individual receives on money he/she loans someone else is considered income. Criteria to establish a loan as bona fide includes:
 - (A) An acknowledgment of the obligation to repay or evidence that the loan was from an individual or financial institution in the loan business. If the loan agreement is not written, OKDHS Form 08AD103E, Loan Verification, should be completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan. When copies of written agreements or OKDHS Form 08AD103E are not available, documentation must show that the loan is bona fide and how the debt amount and date of receipt was verified.
 - (B) The borrower's acknowledgment of obligation to repay, with or without interest, and the lender's verification of the loan are required to indicate that the loan is bona fide when the loan is from a person(s) not in the loan business.
- (7) Bills paid for the individual by someone else directly to the provider unless it is considered payment for food or shelter;
- (8) Replacement of income that is lost, destroyed, or stolen, such as receiving a replacement paycheck because the original payment was stolen;
- (9) Weatherization assistance; or
- (10) Receipt of certain non-cash items that would be excluded as a non-liquid resource.
- (d) **Income exclusions.** Certain types and amounts of income are excluded in determining the individual's eligibility for SoonerCare. When applying exclusions:
 - (1) Unearned income exclusions are applied before applying earned income exclusions;
 - (2) Income excluded by other federal laws per (e) of this Section are excluded first and then unearned income excluded by the Social Security Act per (f) of this Section;
 - (3) Earned income exclusions are then applied in the order listed per (h) of this Section;
 - (4) Income must never reduce income below zero;
 - (5) Unused portions of a monthly exclusion must not be carried over for use in a subsequent month;
 - (6) Other than the \$20 general income exclusion, unused unearned income exclusions are not applied to earned income; and
 - (7) Unused earned income exclusions are never applied to unearned income.
- (e) **Income excluded by other federal laws.** Unearned income excluded by federal laws other than the Social Security Act, per the Appendix to Subpart K of Part 416, includes:
 - (1) Federal food and nutrition programs, including:
 - (A) The value of Supplemental Nutrition Assistance Program food benefits;
 - (B) U.S. Department of Agriculture food commodities distributed by a private or governmental program;
 - (C) The value of supplemental food assistance received under the Child Nutrition Act or the special food service program for children under the National School Lunch Act;
 - (D) Women, infants, and children program (WIC); and
 - (E) Nutrition programs for older Americans;
 - (2) Housing and utility programs including:
 - (A) Energy assistance provided through the Low Income Home Energy Program that includes the Energy Crisis Assistance Program;
 - (B) Housing assistance provided under the:
 - (i) U.S. Housing Act of 1937;
 - (ii) National Housing Act;
 - (iii) Governmental rental or housing subsidies received in-kind or in cash by governmental agencies, such as the Department of Housing and Urban Development (HUD) for rent, mortgage payments, or utilities;
 - (iv) Title V of the Housing Act of 1949; or
 - (v) Any payment received under Section 216 of P. L. 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
 - (3) Student financial assistance that includes:
 - (A) Grants or loans to undergraduate students made or insured under programs administered by the Secretary of Education under Section 507 of the Higher Education Amendments of 1968 (P. L. 90-575);

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- (B) Wages, allowances, or reimbursements for transportation and attendant care costs, unless excepted on a case-by-case basis, when received by an eligible individual with disabilities employed in a project under Title VI of the Rehabilitation Act of 1973 as added by 29 U.S.C. § 795(b)(c); and
- (C) Student financial assistance received for attendance costs from a program funded in whole or in part under Title IV of the Higher Education Act of 1965, as amended, or under BIA student assistance programs when it is made available for tuition and fees normally assessed to a student carrying the same academic workload, as determined by the institution. This includes costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study and an allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution, under Section 14(27) of P. L. 100-50, the Higher Education Technical Amendments Act of 1987 (20 U.S.C. § 1087uu);
- (4) Native American payments excluded without regard to a specific tribe or group includes:
- (A) Indian judgment funds that are held in trust by the Secretary of the Interior or distributed per capita pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress under P. L. 93-134 as amended by Section 4 of P. L. 97-458 (25 U.S.C. § 1408). Indian judgment funds include interest and investment income accrued while such funds are so held in trust. This exclusion extends to initial purchases made with Indian judgment funds but does not apply to sales or conversions of initial purchases or to subsequent purchases. This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household;
- (B) All funds held in trust by the Secretary of the Interior for an Indian tribe and distributed per capita to a member of that tribe under P.L. 98-64 (25 U.S.C. § 117b). Funds held by Alaska Native Regional and Village Corporations (ANRVC) are not held in trust by the Secretary of the Interior and therefore ANRVC dividend distributions are not excluded from countable income under this exclusion. This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household;
- (C) Cash distributions and dividends received by an individual Alaska Native or descendant under the Alaska Native Claims Settlement Act Amendments of 1987, P.L. 100-241, (43 U.S.C. § 1626(c)) to the extent that it does not, in the aggregate, exceed two-thousand dollars (\$2,000) per individual each year. This exclusion does not apply in deeming income from sponsors to aliens;
- (D) Up to two-thousand dollars (\$2,000) per year received by Indians that is derived from individual interests in trust or restricted lands under P.L. 103-66, (25 U.S.C. § 1408), as amended;
- (5) Payments made to members of specific Indian tribes and groups. Refer to 20 C.F.R. § 416 Subpart K Appendix, Section IV.B for the complete list. Payments to tribes in Oklahoma on this list include:
- (A) Judgement funds distributed per capita to, or held in trust for, members of the Sac and Fox Indian Nation, and the availability of such funds under Section 6 of P. L. 94-189. This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household;
- (B) Any judgement funds distributed per capita or made available for programs for members of the Delaware Tribe of Indians and the Absentee Delaware Tribe of Western Oklahoma under Section 8 of P. L. 96-318;
- (C) Any distribution of judgement funds to members of the Wyandotte Nation of Oklahoma under Section 6 of P. L. 97-371;
- (D) Distributions of judgement funds to members of the Shawnee Tribe of Indians (Absentee Shawnee Tribe of Oklahoma, the Eastern Shawnee Tribe of Oklahoma, and the Cherokee Band of Shawnee descendants) under Section 7 of P. L. 97-372;
- (E) Judgement funds distributed per capita or made available for programs for members of the Miami Tribe of Oklahoma and the Miami Indians of Indiana under Section 7 of P. L. 97-376;
- (F) Judgement funds distributed per capita or made available for any tribal program for members of the Wyandotte Nation of Oklahoma and the Absentee Wyandottes under Section 106 of P. L. 98-602; and
- (G) Judgement funds distributed per capita, or held in trust, or made available for programs, for members of the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the independent Seminole Indians of Florida under Section 8 of P. L. 101-277. This exclusion applies to income of sponsors of aliens only when the alien lives in the sponsor's household;
- (6) Receipts from lands held in trust and:
- (A) Distributed to members of certain Indian tribes under Section 6 of P.L. 94-114, (25 U.S.C. § 459e);
- (B) Awarded to the Pueblo of Santa Ana and distributed to members of that tribe under Section 6 of P.L. 95-498; and
- (C) Awarded to the Pueblo of Zia in New Mexico and distributed to members of that tribe under Section 6 of P.L. 95-499;
- (7) Compensation provided to volunteers by the Corporation for National and Community Service (CNCS), unless determined by the CNCS to constitute the federal or state minimum wage. Programs included under CNCS include:
- (A) AmeriCorps programs;
- (B) The Retired Senior Volunteer Program;

- (C) The Foster Grandparent Program; and
- (D) The Senior Companion Program;
- (8) Benefits from State and Community Programs on Aging, per Title III of the Older Americans Act of 1965, as amended by P.L. 114-144, Older Americans Act Reauthorization Act of 2016. Income received from the Senior Community Service Employment Program under Title V of the Older Americans Act as well as employment positions allocated at the discretion of Governor of Oklahoma is counted as earned income;
- (9) Payments made as restitution under the Civil Liberties Act of 1988 to certain individuals of Japanese ancestry who were detained in internment camps during World War II;
- (10) Payments made on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.) under P. L. 101-201 and Section 10405 of P.L. 101-239;
- (11) Payments made under Section 6 of the Radiation Exposure Compensation Act, P.L. 101-426 for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;
- (12) The value of any child care provided or arranged under the Child Care and Development Block Grant Act, as amended by Section 8(b) of P.L. 102-586.
- (13) Payments made to individuals because of their status as victims of Nazi persecution per P.L. 103-286;
- (14) Matching funds and any interest earned on these funds that are deposited into individual development accounts (IDAs), as a demonstration project or TANF-funded, per 42 U.S.C. § 604;
- (15) Payments made to individuals who were captured and interned by the Democratic Republic of Vietnam as a result of participation in certain military operations, per P.L. 105-78;
- (16) Payments made to certain Vietnam or Korea veterans' children with spina bifida, per P.L. 104-204 (38 U.S.C. § 1805(a)) or PL 108-183;
- (17) Payments made to the children of women Vietnam veterans who suffer from certain birth defects, per P.L. 106-419 (38 U.S.C. § 1833(c));
- (18) Payments of the refundable child tax credit made under Section 24 of the Internal Revenue Code of 1986;
- (19) Assistance provided for flood mitigation activities, per Section 1 of P.L. 109-64 (42 U.S.C. § 4031);
- (20) Payments made to individuals under the Energy Employees Occupational Illness Compensation Program Act of 2000, per Section 1 of P.L. 106-398 (42 U.S.C. § 7385e); and
- (21) The Oklahoma Achieving a Better Life Experience (ABLE) Program, in accordance with OAC 317:35-5-41.9(c)(1) and 26 U.S.C. § 529A. Money deposited into or withdrawn from a qualified ABLE Program account or a qualified ABLE Program account set up in any other state, is excluded as income or a resource when the individual:

- (A) Provides documents to verify the account meets exemption criteria;
- (B) Verifies money deposited in the account does not exceed the annual federal gift tax exclusion amount per 26 U.S.C. § 2503(b). Any money deposited in the account in the calendar year that is in excess of the annual federal gift tax exclusion amount is considered as countable income in the amount deposited; and
- (C) Verifies withdrawals from the account were used to pay qualified disability expenses (QDE). Money withdrawn for reasons other than to pay QDE is considered as income for the month of withdrawal.
- (22) Any other income exempted by new or revised federal statutes that are in effect before the Subpart K Appendix is updated.
- (f) **Unearned income excluded by the Social Security Act.** Unearned income excluded by the Social Security Act, per 20 C.F.R. § 416.1124 includes:
 - (1) Any public agency's refund of taxes on real property or food;
 - (2) Need-based assistance that is wholly funded by a State or one of its political subdivisions. For purposes of this rule, an Indian tribe is considered a political subdivision of a State. Assistance is based on need when it is provided under a program that uses the individual's income as an eligibility factor. State need-based assistance programs include the SSP program, but not federal/state programs such as TANF;
 - (3) Any portion of a grant, scholarship, fellowship, or gift used or set aside for paying tuition, fees, or other necessary educational expenses. This does not include any portion set aside or actually used for food or shelter;
 - (4) Food raised by the individual and/or his or her spouse, if it is consumed by the individual or the individual's household;
 - (5) Assistance received under the Disaster Relief and Emergency Assistance Act and assistance provided under any federal statute because of a presidentially-declared disaster;
 - (6) The first sixty dollars (\$60) of unearned income received in a calendar quarter that is received infrequently or irregularly. Income is considered:
 - (A) To be infrequent when the individual receives it only once during a calendar quarter from a single source and did not receive that type of income in the month preceding or following the month the income was received; and
 - (B) Irregular when the individual cannot reasonably expect to receive it;
 - (7) Alaska longevity bonus payments;
 - (8) Payments for providing foster care to an ineligible child placed in the individual's home by a public or private nonprofit child placement or child care agency;
 - (9) Any interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement that are left to accumulate and become a part of the separate burial fund;

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(10) Certain support and maintenance assistance as described in 20 C.F.R. §416.1157 that is certified in writing by the appropriate state agency to be both based on need and:

(A) Provided in-kind by a private nonprofit agency; or

(B) Provided in cash or in-kind by a:

(i) Supplier of home heating oil or gas;

(ii) Rate-of-return entity providing home energy; or

(iii) A municipal utility providing home energy;

(11) One-third of child support payments received on behalf of the minor child with disabilities;

(12) The first twenty dollars (\$20) of any unearned income received in a month other than income in the form of in-kind support and maintenance received in the household of another per (b)(8) of this Section and need-based income. Need-based income is a benefit that uses financial need as a factor to determine eligibility. The twenty dollars (\$20) exclusion does not apply to a needs-based benefit that is totally or partially funded by the federal government or by a nongovernmental agency. However, assistance which is based on need and funded wholly by a State or one of its political subdivisions, such as SSP, is excluded totally from income. When the individual has less than twenty dollars (\$20) of unearned income in a month, the rest of the twenty dollars (\$20) exclusion may be deducted from the individual's countable earned income;

(13) Any unearned income received and used to fulfill an approved plan to achieve self-support (PASS) for an individual with disabilities or blindness. The Social Security Administration (SSA) approves the plan, the amount of income excluded, and the period of time approved;

(14) Federal housing assistance provided under:

(A) The U.S. Housing Act of 1937;

(B) The National Housing Act;

(C) Section 101 of the Housing and Urban Development Act of 1965;

(D) Title V of the Housing Act of 1949; or

(E) Section 202(h) of the Housing Act of 1959;

(15) Any interest accrued on and left to accumulate as part of the value of an excluded burial space purchase agreement. This exclusion from income applies to interest accrued on or after April 1, 1990;

(16) The value of any commercial transportation ticket among the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands, that is received as a gift and is not converted to cash;

(17) Payments received by an individual from a fund established by a state to aid crime victims;

(18) Relocation assistance provided by a state or local government that is comparable to assistance provided under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 that is subject to the treatment required by Section 216 of that Act;

(19) Special pay received from one of the uniformed services, per 37 U.S.C. § 310;

(20) Interest or other earnings on a dedicated account established for an eligible individual under eighteen (18) years of age when past due benefit payments must or may be paid into such an account, per 20 C.F.R. § 416.1247;

(21) Gifts to children under eighteen (18) years of age with life-threatening conditions from an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, provided that:

(A) In-kind gifts not converted to cash; or

(B) Cash gifts do not exceed two-thousand dollars (\$2,000) within a calendar year;

(22) Interest and dividend income from a countable resource or from a resource excluded under a federal statute other than Section 1613(a) of the Social Security Act;

(23) AmeriCorps State and National and AmeriCorps National Civilian Community Corps cash or in-kind payments made to participants or on their behalf, such as food, shelter, and clothing allowances;

(24) Any annuity paid by a state to an individual, or his or her spouse, based on the State's determination that the individual is a veteran and is blind, disabled, or aged; and

(25) The first two-thousand dollars (\$2,000) per calendar year received as compensation for participation in clinical trials that meet the criteria, per Section 1612(b)(26) of the Social Security Act.

(g) **Earned income exclusions.** Per 20 C.F.R. § 416.1112, earned income exclusions are applied after the unearned income exclusions, and in the order listed per (1) through (11) of this subsection. Earned income exclusions must not exceed the amount earned and include:

(1) Earned income tax credit and child tax credit payments;

(2) The first \$30 of infrequent or irregular earned income received in a calendar quarter;

(3) The student earned income exclusion (SEIE) up to the SEIE monthly limit, per OKDHS Appendix C-1. Schedule VIII.E is applied to the earned income of a student who:

(i) Is blind or disabled;

(ii) Is under twenty-two (22) years of age; and

(iii) Attends a college, university, or a course of vocational or technical training designed to prepare students for gainful employment;

(4) Any portion of the twenty (\$20) month general income exclusion that was not excluded from unearned income in the same month;

(5) The first five-hundred dollars (\$500) of the monthly earnings of an individual who is blind, per Section 15 of Title 7 of the Oklahoma Statutes;

(6) Sixty-five dollars (\$65) of earned income in a month. This exclusion is applied once per couple;

(7) The earned income individuals with disabilities who are not blind used to pay impairment-related work expenses, per 20 C.F.R. § 404.1576, including, but not limited to:

(A) Attendant care services;

- (B) Assistance with personal functions;
- (C) Payments for medical devices;
- (D) Payments for prosthetic devices;
- (E) Payments for work-related equipment;
- (F) Payments for drugs and medical services used to control the impairment; and
- (G) Payments for transportation costs;
- (8) One-half of any remaining earned income in a month;
- (9) Actual work expenses paid by individuals who are blind and under age sixty-five (65) or who receive SSI as a blind person the month before reaching the age of sixty-five (65), such as transportation expenses to and from work and job performance or improvement expenses;
- (10) Earned income received and used to fulfill an approved plan to achieve self-support (PASS) for individuals who are blind or disabled and under sixty-five (65) years of age or who are blind and disabled and received SSI as a blind or disabled person for the month before reaching sixty-five (65) years of age. The SSA approves the plan, the amount of income excluded, and the period of time approved; and
- (11) Payments made to participants in AmeriCorps State and National and AmeriCorps National Civilian Community Corps (NCCC). These payments may be made in cash or in-kind and may be made directly to the AmeriCorps participant or on the AmeriCorps participant's behalf. These payments include, but are not limited to: living allowance payments, stipends, educational awards, and payments in lieu of educational awards.
- (h) Unused exclusions. Unused:
 - (A) Earned or unearned exclusions are never reduced below zero;
 - (B) Portions of a monthly exclusion cannot be carried over for use in a subsequent month;
 - (C) Earned income exclusions are never applied to unearned income;
 - (D) Unearned income exclusions are not applied to earned income except for any remaining portion of the \$20 general income exclusion.
- (ei) **Determination of income**Monthly income determination. The member is responsible for reporting information regarding all sources of available income. This information is verified and used by the worker in determining eligibility. The total gross amount of earned and unearned income available to the eligible individual and eligible or ineligible spouse is determined before subtracting applicable unearned and earned income exclusions per (d) through (g) of this section. In calculating monthly income, cents are included in the computation until the monthly amount of each income source is established. Once the monthly amount of each income source is established, cents are rounded to the nearest dollar (one (1) to forty-nine (49) cents is rounded down, and fifty (50) to ninety-nine (99) cents is rounded up).
 - (1) Gross income is listed for purposes of determining eligibility. It may be derived from many sources, and some items may be automatically disregarded by the computer when so provided by state or federal law.
- (2) If a member is determined to be categorically needy and is also an SSI recipient, any change in countable income (see OAC 317:35-5-42(d)(3) to determine countable income) will not affect receipt of SoonerCare and amount of State Supplemental Payment (SSP) as long as the amount does not cause SSI ineligibility. Income which will be considered by SSI in the retrospective cycle is documented in the case with computer update at the time that SSI makes the change (in order not to penalize the member twice). If the SSI change is not timely, the worker updates the computer using the appropriate date as if it had been timely. If the receipt of the income causes SSI ineligibility, the income is considered immediately with proper action taken to reduce or close the SoonerCare benefit and SSP ease. Any SSI overpayment caused by SSA not making timely changes will result in recovery by SSI in the future. When the worker becomes aware of income changes which will affect SSI eligibility or payment amount, the information is to be shared with the SSA office.
- (3) Some of the more common income sources to be considered in determining eligibility are as follows:
 - (A) **Retirement and disability benefits.** These include but are not limited to OASDI, VA, Railroad Retirement, SSI, and unemployment benefits. Federal and State benefits are considered for the month they are intended when determining eligibility.
 - (i) Verifying and documenting the receipt of the benefit and the current benefit amount are achieved by:
 - (I) seeing the member's award letter or warrant;
 - (II) obtaining a signed statement from the individual who cashed the warrant; or
 - (III) by using BENDEX and SDX.
 - (ii) Determination of OASDI benefits to be considered (disregarding COLA's) for former State Supplemental recipients who are reapplying for medical benefits under the Pickle Amendment must be computed according to OKDHS Form 08AX011E.
 - (iii) The Veterans Administration allows their recipients the opportunity to request a reimbursement for medical expenses not covered by SoonerCare. If a recipient is eligible for the readjustment payment, it is paid in a lump sum for the entire past year. This reimbursement is disregarded as income and a resource in the month it is received; however, any amount retained in the month following receipt is considered a resource.
 - (iv) Government financial assistance in the form of VA Aid and Attendance or Champus payments is considered as follows:
 - (I) **Nursing facility care.** VA Aid and Attendance or Champus payment whether paid directly to the member or to the facility, are considered as third-party resources and do not affect the income eligibility or the vendor payment of the member.

- (II) **Own home care.** The actual amount of VA Aid and Attendance payment paid for an attendant in the home is disregarded as income. In all instances, the amount of VA Aid and Attendance is shown on the computer form.
- (v) Veterans or their surviving spouse who receive a VA pension may have their pension reduced to \$90 by the VA if the veteran does not have dependents, is SoonerCare eligible, and is residing in a nursing facility that is approved under SoonerCare. Section 8003 of Public Law 101-508 allows these veterans' pensions to be reduced to \$90 per month. None of the \$90 may be used in computing any vendor payment or spenddown. In these instances, the nursing home resident is entitled to the \$90 reduced VA pension as well as the regular nursing facility maintenance standard. Any vendor payment or spenddown will be computed by using other income minus the monthly nursing facility maintenance standard minus any applicable medical deduction(s). Veterans or their surviving spouse who meet these conditions will have their VA benefits reduced the month following the month of admission to a SoonerCare approved nursing facility.
- (B) **SSI benefits.** SSI benefits may be continued up to three months for a recipient who enters a public medical or psychiatric institution, a SoonerCare approved hospital, extended care facility, intermediate care facility for individuals with an intellectual disability or nursing facility. To be eligible for the continuation of benefits, the SSI recipient must have a physician's certification that the institutionalization is not expected to exceed three (3) months and there must be a need to maintain and provide expenses for the home. These continued payments are intended for the use of the recipient and do not affect the vendor payment.
- (C) **Lump sum payments.**
- (i) Any income received in a lump sum (with the exception of SSI and Retirement, Survivors, and Disability Insurance (RSDI) lump sum) covering a period of more than one (1) month, whether received on a recurring or nonrecurring basis, is considered as income in the month it is received. Any amount from any lump sum source, excluding RSDI and SSI (with the exception of dedicated bank accounts for disabled/blind children under age eighteen (18)), retained on the first day of the next month is considered as a resource. Such lump sum payments may include, but are not limited to, accumulation of wages, VA benefits, Workers' Compensation, bonus lease payments and annual rentals from land and/or minerals.
- (ii) OASDI and SSI retroactive payments do not count as income in the month of receipt. Any

unspent portion of retroactive SSI and RSDI benefits is excluded from resources for nine (9) calendar months following the month of receipt. However, unspent money from a retroactive payment must be identifiable from other resources for this exclusion to apply. The money may be commingled with other funds, but if this is done in such a fashion that the retroactive amount can no longer be separately identified, that amount will count toward the resource limit. Refer to 20 Code of Federal Regulations (CFR) § 416.1233.

(iii) Lump sum payments used to establish dedicated bank accounts by representative payees in order to receive and maintain retroactive SSI benefits for disabled/blind children under age eighteen (18) are excluded as income. The interest income generated from dedicated bank accounts is also excluded. The dedicated bank account consisting of the retroactive SSI lump sum payment and accumulated interest is excluded as a resource in both the month received and any subsequent months.

(iv) A life insurance death benefit received by an individual while living is considered as income in the month received and as a resource in the following months to the extent it is available.

(v) Changing a resource from one form to another, such as converting personal property to cash, is not considered a lump sum payment.

(D) **Income from capital resources and rental property.** Income from capital resources can be derived from rental of a house, rental from land (cash or crop rent), leasing of minerals, life estate, homestead rights or interest.

(i) If royalty income is received monthly but in irregular amounts, an average based on the previous six (6) months' royalty income is computed and used to determine income eligibility. When the difference between the gross and net income represents a production or severance tax (e.g., most oil royalties are reduced by this tax), the OHCA only uses the net figure when determining income eligibility. The production or severance tax is the cost of producing the income, and, therefore, is deducted from the gross income. Exception: At any time that the county becomes aware of and can establish a trend showing a dramatic increase or decrease in royalty income, the previous two (2) months' royalty income is averaged to compute countable monthly income.

(ii) Rental income may be treated as earned income when the individual participates in the management of a trade or business or invests his/her own labor in producing the income. The individual's federal income tax return will verify whether or not the income is from self employment. Otherwise, income received from rental property is treated as unearned income.

(iii) When rental property is handled by a leasing agent who collects the rent and deducts a management fee, only the rent actually received by the member is considered as income.

(E) **Earned income/self-employment.** The term "earned income" includes income in cash earned by an individual through the receipt of wages, salary, commission, or profit from activities in which he/she is engaged as a self-employed individual or as an employee. See subparagraph (G) of this paragraph for earnings received in fluctuating amounts. "Earned Income" is also defined to include in-kind benefits received by an employee from an employer in lieu of wages or in conjunction with wages. Such benefits received in-kind are considered as earned income only when the employee/employer relationship has been established. The cash value of the in-kind benefits must be verified by the employer. Income from self-employment also includes in-kind benefits for a work activity or service for which the self-employed person ordinarily receives payment in his/her business enterprise. An exchange of labor or services, e.g., barter, is considered as an in-kind benefit. Medical insurance secured through the employer, whether purchased or as a benefit, is not considered in-kind but is recorded on the case computer input document for coordination with SoonerCare benefits.

(i) Work study received by an individual who is attending school is considered as earned income with appropriate earned income disregards applied.

(ii) Money from the sale of whole blood or blood plasma is considered as self-employment income subject to necessary business expenses and appropriate earned income disregards.

(1) **Averaging income.** When the individual indicates that he/she receives income monthly, but on an irregular basis, the most recent two (2) months of income are averaged to determine income eligibility.

(A) Income that is received less often than monthly or in amounts that vary significantly over the course of a year may be averaged over a longer period of time. For instance, royalty income must be averaged over a six (6) month period.

(B) Less than two (2) months of income may be used when the income started less than two (2) months ago or previous income amounts are not representative of future income. For instance, the individual may have started a new job less than two (2) months ago or may have received a one-time bonus or overtime pay that is not expected to recur.

(2) **Converting income to a monthly amount.** Income received more often than monthly is converted to monthly amounts as indicated in (A) through (E) of this subsection:

(A) **Daily.** Income received on a daily basis is converted to a weekly amount. When there is consistency

in days worked each week and regular pay dates, the income is multiplied by 4.3. When there is no consistency, refer to (3) of this subsection for irregular income processing.

(B) **Weekly.** Income received weekly is multiplied by 4.3.

(C) **Twice a month.** Income received twice a month is multiplied by two (2).

(D) **Biweekly.** Income received every two (2) weeks is multiplied by 2.15.

(E) **Irregular income.** Income received monthly but at irregular intervals is not converted by 4.3, 2, or 2.15 when there is no consistency in the work offered or when pay is received. Instead, the income received over the last two (2) months is added together and divided by two (2) to arrive at a monthly average.

(3) **Infrequent or irregular income.** Infrequent or irregular income is considered countable income in the month it is received unless excluded per (C) of this paragraph.

(A) Income is considered to be infrequent if the individual receives it only once during a calendar quarter from a single source and the individual did not receive that type of income in the month preceding or following the month the income was received.

(B) Income is considered to be irregular if the individual cannot reasonably expect to receive it.

(C) When the individual receives infrequent or irregular income, exclude the first:

(i) \$30 per calendar quarter of earned income; and

(ii) \$60 per calendar quarter of unearned income.

(iii) Self-employment income is determined as follows:

(I) Generally, the federal or state income tax form for the most recent year is used for calculating the self-employment income to project income on a monthly basis for the certification period. The gross income amount, as well as the allowable deductions, are the same as can be claimed under the Internal Revenue code for tax purposes.

(II) Self-employment income which represents a household's annual support is prorated over a 12-month period, even if the income is received in a short period of time. For example, self-employment income received by crop farmers is averaged over a 12-month period if the income represents the farmer's annual support.

(III) If the household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise is averaged over the period of time the business has been in operation to establish the monthly income amount.

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(IV) If a tax return is not available because one has not been filed due to recent establishment of the self-employment enterprise, a profit and loss statement must be seen to establish the monthly income amount.

(V) The purchase price and/or payment(s) on the principal of loans for capital assets, equipment, machinery, and other durable goods is not considered as a cost of producing self-employed income. Also not considered are net losses from previous periods, depreciation of capital assets, equipment, machinery, and other durable goods; and federal, state and local income taxes, FICA, money set aside for retirement purposes, and other work-related personal expenses, such as meals and necessary transportation (these expenses are accounted for by the work-related expense deduction given in OAC 340:10-3-33(1)).

(iv) Countable self-employment income is determined by deducting allowable business expenses to determine the adjusted gross income. The earned income deductions are then applied to establish countable earned income.

(4) Self-employment income determination.

Self-employment income is determined per (A) through (E) of this paragraph:

(A) When filed, the federal income tax form for the most recent year is used to calculate the individual's self-employment income and business expenses for the certification period. The net earnings shown on the income tax form after business expenses are subtracted is divided by twelve (12) months to determine the individual's monthly countable self-employment income.

(B) When the individual did not file a federal tax form for the most recent year, the individual's business records showing monthly income and expenses are used to determine the individual's self-employment income. When the business was in operation for the entire year, the individual's net income after subtracting business expenses is divided by twelve (12) months to determine the individual's monthly countable self-employment income.

(C) Self-employment income that represents a household's annual support is prorated over a twelve-month (12-month) period, even if the income is received in a short period of time. For example, self-employment income received by crop farmers is averaged over a twelve-month (12-month) period if the income represents the farmer's annual support.

(D) If the household's business has operated for less than a year, the income from that business is averaged over the period of time the business has operated to establish the monthly income amount.

(E) After the net countable self-employment income is determined, the earned income exclusions per

(g) of this section are then applied to establish countable earned income.

(F) Infrequent or irregular income.

(i) Income is considered to be infrequent if the individual receives it only once during a calendar quarter from a single source and the individual did not receive that type of income in the month preceding or following the month the income was received.

(ii) Income is considered to be irregular if the individual cannot reasonably expect to receive it.

(iii) OHCA excludes the following amount of infrequent or irregular income:

(I) the first \$30 per calendar quarter of earned income; and

(II) the first \$60 per calendar quarter of unearned income.

(iv) Infrequent or irregular income, whether earned or unearned, that exceeds these amounts is considered countable income in the month it is received.

(G) Monthly income received in fluctuating amounts.

Income which is received monthly but in irregular amounts is averaged using two (2) months' income, if possible, to determine income eligibility. Less than two (2) months' income may be used when circumstances (e.g., new employment, unpaid sick leave, etc.) would indicate that previous income amounts would not be appropriate to use in determining future income amounts. Income received more often than monthly is converted to monthly amounts as follows:

(i) **Daily.** Income received on a daily basis is converted to a weekly amount then multiplied by 4.3.

(ii) **Weekly.** Income received weekly is multiplied by 4.3.

(iii) **Twice a month.** Income received twice a month is multiplied by two (2).

(iv) **Biweekly.** Income received every two (2) weeks is multiplied by 2.15.

(H) **Non-negotiable notes and mortgages.** Installment payments received on a note, mortgage, etc., are considered as monthly income.

(I) **Income from the Job Training and Partnership Act (JTPA).** Unearned income received by an adult, such as a needs-based payment, cash assistance, compensation in lieu of wages, allowances, etc., from a program funded by JTPA is considered as any other unearned income. JTPA earned income received as wages is considered as any other earned income.

(J) **Other income.** Any other monies or payments which are available for current living expenses must be considered.

(5) **SSI recipients.** If a member is determined to be categorically needy and is also an SSI recipient, any change in countable income does not affect SoonerCare

receipt and the State Supplemental Payment (SSP) payment amount as long as the changed income amount does not cause SSI ineligibility.

(A) Income considered by SSI in the retrospective cycle is not counted until SSI makes the change so the income is not counted twice. If the SSI change is not made timely by SSA, the income is counted as if it had been timely.

(B) If the receipt of the income causes SSI ineligibility, the income is considered immediately with proper action taken to reduce or close the SoonerCare and SSP benefit. Any SSI overpayment caused by SSA not making timely changes will result in recovery by SSI in the future. When the OKDHS worker becomes aware of income changes that affect the individual's SSI eligibility or payment amount, he/she shares the information with the SSA office.

(ej) **Computation of income.** After determining the individual's and his/her spouse's monthly income.

(1) **EarnedGeneral income or—unearned—incomeexclusion.** The general income exclusion of \$20twenty dollars (\$20) per month is allowed forsubtracted fromearned or unearned income, unless the unearned income is SSP, on the combined unearned income of the eligible individual and eligible or ineligible spouse, unless the only unearned income is SSP. See paragraph (5) of this subsection if there are ineligible minor children. After the \$20 exclusion, deduct \$65 and one half of the remaining combined earned income. The total gross amount of unearned income of the eligible individual and eligible or ineligible spouse is considered. If any portion of the general income exclusion is not subtracted from unearned income, it is subtracted from earned income.

(2) **Earned income deduction.** When the individual has earned income, after deducting the twenty dollars (\$20) exclusion, the sixty-five (\$65) and one-half of the remaining combined earned income is then deducted.

(2) **Countable income.** The countable income is the sum of the earned income and the total gross unearned income after exclusions.

(3) **Deeming computation for disabled or blind minor child(ren)procedures.** An automated calculation is available for computing the income amount to be deemed from parent(s) and the spouse of the parent to eligible disabled or blind minor child(ren) by use of transaction CID. The ineligible minor child in the computation regarding allocation for ineligible child(ren) is defined as: a dependent child under age eighteen (18). Refer to OAC 340:35-5-42(k) for deeming computation procedures from an ineligible spouse, ineligible parent, sponsor of an alien or an essential person to the eligible individual or child.

(A) An intellectually disabled child living in the home who is ineligible for SSP due to the deeming process may be approved for SoonerCare under the Home and Community Based Services Waiver (HCBS) Program as outlined in OAC 317:35-9-5.

(B) For TEFRA, the income of child's parent(s) is not deemed to him/her.

(4) **Premature infants.** Premature infants (i.e., thirty seven (37) weeks or less) whose birth weight is less than twelve hundred (1200) grams (approximately two (2) pounds ten (10) ounces) will be considered disabled by SSA even if no other medical impairment(s) exist. In this event, the parents' income is not deemed to the child until the month following the month in which the child leaves the hospital and begins living with his/her parents.

(5) **Procedures for deducting ineligible minor child allocation.** When an eligible individual has an ineligible spouse and ineligible minor children (not receiving TANF), the computation is as follows:

(A) Each ineligible child's allocation (OKDHS Form 08AX001E, Schedule VII, C.) minus each child's gross countable income is deducted from the ineligible spouse's income. Deeming of income is not done from child to parent.

(B) The deduction in subparagraph (A) of this paragraph is prior to deduction of the general income exclusion and work expense.

(C) After computations in subparagraphs (A) and (B) of this paragraph, the remaining amount is the ineligible spouse's countable income considered available to the eligible spouse.

(6) **Special exclusions for blind individuals.** Any blind individual who is employed may deduct the general income exclusion and the work exclusion from the gross amount of earned income. After the application of these exclusions, one half of the remaining income is excluded. The actual work expense is then deducted from the remaining half to arrive at the amount of countable income. If this blind individual has a spouse who is also eligible due to blindness and both are working, the amount of ordinary and necessary expenses attributable to the earning of income for each of the blind individuals may be deducted. Expenses are deductible as paid but may not exceed the amount of earned income. To be deductible, an expense need not relate directly to the blindness of the individual, it need only be an ordinary and necessary work expense of the blind individual. Such expenses fall into three (3) broad categories:

- (A) transportation to and from work;
- (B) job performance; and
- (C) job improvement.

(k) **General income deeming procedures.** The term deeming is used to identify the process for considering another individual's income to be available to the applicant or SoonerCare member, described in this Section as the eligible individual or child. Per Section 416.1160 of Title 20 of the Code of Federal Regulations (20 C.F.R. § 416.1160), there are four categories of individuals whose income may be deemed when determining eligibility: an ineligible spouse, ineligible parent, the sponsor of an alien, or an essential individual. The first step in deeming is determining how much income the applicable individual(s) has. When deeming rules apply, it does not matter if the other

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individual's income is actually available to the eligible individual or child.

(1) **Ineligible spouse.** An ineligible spouse is a spouse who lives in the same household with the eligible individual and is not eligible for Supplemental Security Income (SSI). For spouse-to-spouse deeming to apply, the eligible individual must be eligible based on his or her own income.

(2) **Ineligible parent.** An ineligible parent is a natural or adoptive parent or stepparent who lives with an eligible child under eighteen (18) years of age and is not eligible for SSI. A stepparent's income is not deemed if the eligible child's natural or adoptive parent dies or permanently leaves the home, per 20 C.F.R. § 416.1165.

(3) **Sponsor of an alien.** A sponsor is an individual, not an organization or an employer, who signs an affidavit agreeing to support the alien as a condition for the alien's admission for permanent residence in the United States (U.S.). A portion of the sponsor's income is deemed to the alien for three (3) years even when the sponsor and alien do not live together unless (A) if this paragraph applies.

(A) Deeming rules regarding sponsored aliens do not apply when the alien:

(i) Is a refugee admitted to the United States (U.S.), per Section 203(a)(7), 207(c)(1) or Section 212(d)(5) the Immigration and Nationality Act;

(ii) Was granted asylum by the Attorney General of the U. S.; or

(iii) Becomes blind or disabled, per 20 C.F.R. §416.901 after admission to the U. S. When this occurs, the sponsor's income is no longer deemed beginning with the month in which you're the disability or blindness begins.

(B) If the sponsor is the alien's ineligible spouse or ineligible parent(s), the spouse-to-spouse or parent-to-child deeming calculations apply.

(C) If a sponsored alien has a sponsor and an ineligible spouse or ineligible parent(s) who is not his/her sponsor, both sponsor-to-alien and spouse-to-spouse or parent-to-child deeming calculations apply.

(4) **Household definition.** A household for deeming purposes may include the eligible individual or child, an eligible or ineligible spouse, and any children of the couple or of either member of the couple. A household for an eligible child includes the eligible child's parent(s), and any other children of the parent(s).

(A) A child is considered a member of the household from birth for deeming purposes unless the parent(s) completed paperwork to give the child up for adoption or the child was placed in the temporary custody of a public children's services agency. Exception: A premature infant born at thirty-seven (37) weeks or less whose birth weight in less than two (2) pounds ten (10) ounces is considered disabled by the Social Security Administration even if no other medical impairment exists. When this occurs, the parent(s)' income is not deemed to the child until the

month after the month the child leaves the hospital and begins living with his/her parent(s).

(B) An eligible individual or an ineligible spouse or ineligible parent who is temporarily absent from the home per (5) of this subsection, is considered to be a member of the household for deeming purposes per 20 C.F.R. § 416.1167.

(5) **Temporary absence for deeming purposes.** During a temporary absence, per 20 C.F.R. § 416.1167, the absent individual is considered a household member for deeming purposes when an:

(A) Eligible individual or child, ineligible spouse, ineligible parent, or an ineligible child leaves the household but intends to and does return in the same month or the next month;

(B) Eligible individual or child enters a medical treatment facility for up to two (2) or three (3) full months;

(C) Eligible child is away at school but comes home on some weekends or lengthy holidays and is subject to his/her parent's control; or

(D) Ineligible spouse or parent is absent from the household due solely to a duty assignment as a member of the Armed Forces on active duty.

(I) **Income exclusions for an ineligible spouse or ineligible parent.** Income excluded for an ineligible spouse or parent per 20 C.F.R. § 416.1161 include:

(1) Income excluded by federal laws other than the Social Security Act, per the Appendix to Subpart K of Part 416 and Oklahoma Administrative Code (OAC) 317:35-5-42(e);

(2) Any public income-maintenance payments the ineligible spouse or parent receives and any income that was counted or excluded in figuring the amount of that payment. Per 20 C.F.R. § 416.1142, these payments include SSI, State Supplemental Payment (SSP), TANF, refugee cash assistance, disaster relief and emergency assistance, general assistance provided by the Bureau of Indian Affairs, and U.S. Department of Veteran Affairs, State or local government assistance programs based on need;

(3) Any of the ineligible spouse's or parent's income that is used by a public income-maintenance program to determine that program's benefits to someone else;

(4) Income used to comply with the terms of court-ordered support, or support payments enforced under Title IV-D of the Social Security Act;

(5) Income the ineligible spouse or ineligible parent was paid under a federal, state, or local government program to provide the eligible spouse or child with chore, attendant, or homemaker services, such as payments under Title XX of the Social Security Act;

(6) Any portion of a grant, scholarship, fellowship, or gift used or set aside to pay tuition, fees or other necessary educational expenses;

(7) Money received for providing foster care to an ineligible child;

- (8) The value of Supplemental Nutrition Assistance Program food benefits and the value of Department of Agriculture donated foods;
- (9) Food raised by the spouse or parent and consumed by members of the household in which you live;
- (10) Tax refunds on income, real property, or food purchased by the family;
- (11) Income used to fulfill an approved plan for achieving self-support, per 20 C.F.R. §§ 416.1180 through 416.1182 and OAC 317:35-5-42(f)(13) and (g)(10);
- (12) The value of in-kind support and maintenance as described in OAC 317:35-5-42(b)(8);
- (13) Alaska longevity bonus payments;
- (14) Disaster assistance, per 20 C.F.R. §§ 416.1150 and 416.1151;
- (15) Income received infrequently or irregularly, per 20 C.F.R. §§ 416.1112(c)(1) and 416.1124(c)(6) and OAC 317:35-5-42(f)(6) and (g)(2);
- (16) Work expenses if the ineligible spouse or parent is blind such as transportation expenses to and from work and job performance or improvement expenses;
- (17) Certain support and maintenance assistance, per 20 C.F.R. § 416.1157(c) and OAC 317:35-5-42(e)(10);
- (18) Housing assistance, per 20 C.F.R. § 416.1124(c)(14);
- (19) The value of a commercial transportation ticket, per 20 C.F.R. § 416.1124(c)(16). However, if such a ticket is converted to cash, the cash is income in the month your spouse or parent receives the cash;
- (20) Refunds of Federal income taxes and advances made by an employer relating to an earned income tax credit, per 20 C.F.R. § 416.1112(c);
- (21) Payments from a fund established by a State to aid victims of crime, per 20 C.F.R. § 416.1124(c)(17));
- (22) Relocation assistance, per 20 C.F.R. § 416.1124(c)(18);
- (23) Special pay received from one of the uniformed services pursuant to Section 310 of Title 37 of the United States Code;
- (24) Impairment-related work expenses, per 20 C.F.R. 404.1576 and OAC 317:35-5-42(g)(7), incurred and paid by an ineligible spouse or parent, if the ineligible spouse or parent receives disability benefits under Title II of the Social Security Act;
- (25) Interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements which are left to accumulate and become part of separate burial funds, and interest accrued on and left to accumulate as part of the value of agreements representing the purchase of excluded burial spaces per 20 C.F.R. § 416.1124(c)(9) and (15));
- (26) Interest and dividend income from a countable resource or from a resource excluded under a Federal statute other than Section 1613(a) of the Social Security Act;
- (27) Earned income of a student, per 20 C.F.R. § 416.1112(c)(3) and OAC 317:35-5-42(g)(3); and
- (28) Any additional increment in pay, other than any increase

in basic pay, received while serving as a member of the uniformed services, if the ineligible spouse or parent:

- (A) Received the pay as a result of deployment to or service in a combat zone; and
 - (B) Was not receiving the additional pay immediately prior to deployment to or service in a combat zone.
- (m) **Deeming from an ineligible spouse.** When the eligible individual lives with an ineligible spouse who has income, the deeming steps in (1) through (5) of this paragraph are used to calculate the amount of income to deem to the eligible individual.
- (1) The ineligible's spouse's total gross unearned and earned income is determined and appropriate exclusions per (l) of this Section are applied.
 - (2) An ineligible child allocation is then subtracted for each ineligible child in the home, per OKDHS Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule VIII.C.
 - (A) The ineligible child allocation is subtracted from the ineligible spouse's unearned income before subtracting any remaining allocation from his/her earned income.
 - (B) An ineligible child allocation is not allowed for a child who receives a public income-maintenance payments, per 20 C.F.R. § 416.1142 and as listed per (l)(2) of this Section.
 - (C) When the ineligible child has countable income, the child's income is subtracted from the ineligible child allocation before subtracting the remaining allocation from the ineligible spouse's income.
 - (3) When the ineligible spouse sponsors an alien(s), the allocation for the alien(s) that is deemed from the ineligible spouse's income is subtracted from the ineligible spouse's unearned income before subtracting any remaining allocation from his/her earned income.
 - (A) The allocation for each sponsored alien is the difference between the SSI federal benefit rate (FBR) for an eligible couple minus the FBR for an eligible individual, per OKDHS Appendix C-1, Schedule VIII.C.
 - (B) Each alien's allocation is reduced by the amount of the alien's own income, per (m) of this Section.
 - (4) When, after subtracting the ineligible child allocation and, if appropriate, the sponsored alien allocation, the ineligible spouse's income is less than or equal to the difference between the SSI FBR for an eligible couple and the SSI FBR for an eligible individual, per OKDHS Appendix C-1, Schedule VIII.C, no income is deemed from the ineligible spouse.
 - (A) In this instance, only the eligible individual's own countable income minus exclusions per (l) of this Section is considered.
 - (B) When the eligible individual's countable income is less than or equal to the SSI FBR for an individual, per OKDHS Appendix C-1, Schedule

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VIII.C, he/she is financially eligible for SoonerCare (Medicaid).

(5) When, after subtracting the appropriate allocations, the ineligible spouse's income is greater than the difference between the SSI FBR for an eligible couple and the SSI FBR for an eligible individual, per OKDHS Appendix C-1, Schedule VIII.C, the spouses are treated as an eligible couple by:

(A) Combining the remainder of the ineligible spouse's unearned income with the eligible individual's unearned income and the remainder of the ineligible spouse's earned income with the eligible individual's earned income;

(B) Applying appropriate income exclusions, per OAC 317:35-5-42(e), (f), and (g) from the eligible spouse's income, including the \$20 general exclusion from the couple's unearned income and \$65 plus one-half of the remaining earned income from the couple's earned income; and

(C) Subtracting the couple's countable income from the SSI FBR for an eligible couple, per OKDHS Appendix C-1, Schedule VIII.C. When the income is less than or equal to the SSI FBR for an eligible couple, the eligible individual is financially eligible for SoonerCare (Medicaid).

(n) **Deeming from ineligible parent(s).** When a child with disabilities or blindness lives with ineligible parent(s), the deeming steps in (1) through (6) of this paragraph are used to calculate the amount of income to deem to the eligible child, up through the month in which the child reaches age eighteen (18).

(1) The gross unearned and earned income of each ineligible parent living in the home is determined and appropriate exclusions are applied, per (l) of this Section.

(2) An ineligible child allocation is subtracted for each ineligible child in the home, per OKDHS Appendix C-1, Schedule VIII.C. Exception: An ineligible child allocation is not allowed for a child who receives public income-maintenance payments, per 20 C.F.R. § 416.1142 and as listed per (l)(2) of this Section.

(A) The ineligible child allocation is first subtracted from the ineligible parent(s)' combined unearned income before subtracting any remaining allocation from their earned income.

(B) When the ineligible child has countable income, the child's income is subtracted from the ineligible child allocation before applying the allocation.

(3) When the ineligible parent sponsors an alien(s), the allocation for the alien(s) that is deemed from the ineligible parent's income per (p) of this Section is subtracted from the ineligible parent(s)' income.

(4) An allocation is then subtracted for the ineligible parent(s) unless the parent receives public income-maintenance payments. The allocation is calculated by:

(A) Subtracting the twenty dollars (\$20) general exclusion from the combined unearned income of the ineligible parent(s). If there is less than twenty dollars

(\$20) of unearned income, subtract the twenty dollars (\$20) remaining exclusion from their combined earned income;

(B) Subtracting sixty-five dollars (\$65) and one-half of the remainder of their earned income; and

(C) Totaling the ineligible parent(s)' remaining earned and unearned income and, depending on the number of parents in the home, subtracting the SSI FBR for an individual or a couple, per OKDHS Appendix C-1, Schedule VIII.C.

(5) The parent(s)' remaining income is then deemed to the eligible child. When there is more than one eligible child in the home, the parent(s)' remaining income is divided by the number of eligible children in the home.

(6) The deemed income is added to the eligible child's own countable unearned income. When the eligible child's deemed and own unearned and earned income, minus appropriate exclusions, per OAC 317:35-5-42(e),(f), and (g), is less than or equal to the SSI FBR for an individual, per OKDHS Appendix C-1, Schedule VIII.C, the child is financially eligible for SoonerCare (Medicaid).

(A) When a child with intellectual disabilities is ineligible for SoonerCare due to the deeming process, he/she may be approved for SoonerCare under the Home and Community Based Services Waiver (HCBS) Program, per OAC 317:35-9-5.

(B) When a child is eligible for Tax Equity & Fiscal Responsibility Act (TEFRA), the income of child's parent(s) is not deemed to him/her.

(C) The parent(s)' income is not deemed to a premature infant born at thirty seven (37) weeks or less whose birth weight is less than twelve hundred (1200) grams or approximately two (2) pounds ten (10) ounces until the child leaves the hospital and begins living with his/her parent(s).

(o) **Deeming when the household includes an ineligible spouse, an eligible spouse, and an eligible and ineligible child.** When the household includes an ineligible spouse, an eligible spouse, one or more eligible children, and one or more ineligible children, the ineligible spouse's income is first deemed to the eligible spouse and the remainder to the eligible child(ren) using the deeming steps in (1) through (6) of this subsection.

(1) The gross unearned and earned income of the ineligible spouse is determined and appropriate exclusions are applied, per (l) of this Section.

(2) An ineligible child allocation is subtracted for each ineligible child in the home, per OKDHS Appendix C-1, Schedule VIII.C. Exception: An ineligible child allocation is not allowed for a child who receives public income-maintenance payments, per 20 C.F.R. § 416.1142 and as listed per (l)(2) of this Section.

(3) If the ineligible spouse's remaining income is less than or equal to the current SSI FBR for a couple minus the current SSI FBR for an individual, no income is deemed to the eligible spouse or eligible child(ren).

(A) Compare the eligible spouse's and each eligible child's own countable income, after applying

appropriate exclusions, per OAC 317:35-5-42(e),(f), and (g) to the current SSI FBR for an individual, per OKDHS Appendix C-1, Schedule VIII.C.

(B) When the eligible spouse's and/or each eligible child's own income is less than or equal to the current SSI FBR for an individual, they are financially eligible for SoonerCare.

(4) If the ineligible spouse's remaining income after subtracting the ineligible child allocation(s) is greater than the current SSI FBR for a couple minus the current SSI FBR for an individual:

(A) Combine the ineligible spouse's post-allocation unearned and earned income and the eligible spouse's unearned and earned income, after applying the appropriate exclusions, per OAC 317:35-5-42(e),(f), and (g);

(B) Subtract the twenty dollars (\$20) general exclusion from the couple's combined unearned income. If there is less than twenty dollars (\$20) of unearned income, then subtract the remainder of the exclusion from the couple's combined earned income; and

(C) Subtract sixty-five dollars (\$65) plus one-half of the remainder from the couple's combined earned income.

(5) If the couple's countable income is less than or equal to the current SSI FBR for a couple, per OKDHS Appendix C-1, Schedule VIII.C, the eligible spouse is financially eligible for SoonerCare and no income is deemed to the eligible child(ren). If the couple's countable income is greater than the current SSI FBR for a couple, the eligible spouse is not financially eligible for SoonerCare.

(6) When the eligible spouse is not financially eligible for SoonerCare, the amount of the couple's income in excess of the SSI FBR for a couple is divided by the number of eligible children in the household. The resulting amount is deemed to each eligible child.

(A) Any income deemed to an eligible child is added to the eligible child's own unearned income.

(B) The eligible child's unearned and earned income are combined after applying appropriate exclusions, per OAC 317:35-5-42(e),(f), and (g).

(C) If each eligible child's resulting countable income is less than or equal to the current SSI FBR for an individual, per OKDHS Appendix C-1, Schedule VIII.C, the eligible child is financially eligible for SoonerCare.

(p) **Deeming from a sponsor to an alien.** Sponsor-to-alien deeming applies regardless of whether the sponsor and the sponsored alien live in the same household or whether the sponsor actually provides any support to the sponsored alien unless (a)(3)(A) applies.

(1) The income of the sponsor and the sponsor's spouse, if applicable, is first determined and applicable exclusions applied, per OAC 317:35-5-42(e).

(2) The appropriate allocation for the sponsor, the sponsor's spouse, and any children of the sponsor is

then subtracted. An ineligible dependent's income is not subtracted from the sponsor's child(ren)'s allocation.

(A) The allocation amount for the sponsor is the current SSI FBR for an individual, per OKDHS Appendix C-1, Schedule VIII.C.

(B) The allocation for each sponsor's spouse and child(ren) of each sponsor is one-half of the current SSI FBR for an individual, per OKDHS Appendix C-1, Schedule VIII.C.

(3) The remaining income amount is deemed to the sponsored alien as unearned income. If the sponsor sponsors multiple aliens, the deemed amount is applied in full to each sponsored alien.

(4) The sponsored alien's unearned and earned income is combined and applicable exclusions applied, per OAC 317:35-5-42(e),(f), and (g). When the alien's countable income and deemed income is less than or equal to the current SSI FBR for an individual, per OKDHS Appendix C-1, Schedule VIII.C, the alien is financially eligible for SoonerCare.

SUBCHAPTER 7. MEDICAL SERVICES

PART 5. DETERMINATION OF ELIGIBILITY FOR MEDICAL SERVICES

317:35-7-40. Eligibility as Qualified Medicare Beneficiary Plus

An individual determined to be categorically related to aged, blind or disabled is eligible for Medical Services as a Qualified Medicare Beneficiary Plus (QMBP) if he/she meets the conditions of eligibility shown in paragraphs (1)-(3) of this subsection. For persons age 65 and older in mental health hospitals, refer to Oklahoma Administrative Code 317:35-9-7.

(1) ~~The individual's/couple's income and resources do not exceed the standards as shown on DHS Appendix C-1, Schedule VI, of which the income standard is based on 100 percent of the Federal Poverty Level.~~ The individual's income and resources do not exceed the standard as shown on OKDHS Appendix C-1, Schedule VI, of which the income standard is based on 100 percent (100%) of the Federal Poverty Level. For an individual whose spouse is not eligible for Medicare, total countable income of the eligible individual must be equal to or less than the QMBP standards for an individual, and the income of both must be equal to or less than the QMBP standards for a couple. For a couple who are both eligible for Medicare, total countable income must be equal to or less than the QMBP standards for a couple.

(2) Countable income and resources are determined using the same rules followed in determining eligibility for individuals categorically related to Aged, Blind or Disabled, except that a \$20 general income disregard is applied to either earned or unearned income, but not both. For couples, only one \$20 general income disregard is given.

- (3) The individual meets all other eligibility conditions for SoonerCare.

[OAR Docket #20-469; filed 6-26-20]

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

[OAR Docket #20-472]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Eligibility and Countable Income

Part 7. Application and Eligibility Determination Procedures

317:35-5-63 [AMENDED]

Subchapter 18. Programs of All-Inclusive Care for the Elderly (PACE)

317:35-18-3 [AMENDED]

(Reference APA WF # 19-36)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; SB 888, codified at 56 U.S.C. § 1017.6; Social Security Act 1894(a)(3)(B), codified at 42 U.S.C. § 1395eee and 1934(a)(3)(B), codified at 42 U.S.C. § 1396u(4)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 21, 2019

COMMENT PERIOD:

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APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 14, 2020

SUPERSEDED EMERGENCY ACTIONS:

Not applicable

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will bring the OHCA into compliance with Senate Bill (SB) 888 and federal regulations by adding language to clarify PACE participant enrollment and voluntary disenrollment process and criteria. Revisions will also add language to allow PACE providers to either be a non-profit or a for-profit entity to align with the Social Security Act sections 1894(a)(3)(B) and 1934(a)(3)(B).

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 14, 2020:**

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 7. APPLICATION AND ELIGIBILITY DETERMINATION PROCEDURES

317:35-5-63. Agency responsible for determination of eligibility

(a) **Determination of eligibility by ~~OHCA~~-Oklahoma
Health Care Authority (OHCA).** OHCA is responsible for
determining eligibility for the following eligibility groups:

- (1) children
- (2) newborns deemed eligible
- (3) pregnant women
- (4) pregnancy-related services under Title XXI
- (5) parents and caretaker relatives
- (6) former foster care children
- (7) Oklahoma Cares Breast and Cervical Cancer program
- (8) SoonerPlan Family Planning program.
- (9) Programs of All-Inclusive Care for the Elderly

(b) **Determination of eligibility by ~~OKDHS~~DHS.** ~~OKDHS~~DHS is responsible for determining eligibility for the following eligibility groups:

- (1) TANF recipients
- (2) recipients of adoption assistance or kinship guardianship assistance
- (3) state custody
- (4) Refugee Medical Assistance
- (5) aged
- (6) blind
- (7) disabled
- (8) Tuberculosis
- (9) QMBP
- (10) QDWI
- (11) SLMB
- (12) QI-1
- (13) Long term care services
- (14) alien emergency services.

(c) **Determination of eligibility for programs offered
through the Health Insurance Exchange.** Effective October 1, 2013, OHCA assesses applicants who are found to be ineligible for SoonerCare for potential eligibility for affordable insurance programs offered through the Health Insurance Exchange. OHCA does not determine eligibility or ineligibility for those programs. OHCA facilitates the determination for those affordable insurance programs by forwarding applicants' electronic applications to the Health Insurance Exchange.

SUBCHAPTER 18. PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)

317:35-18-3. Definitions

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

- (1) **"American Indian/Alaska Native (AI/AN)"** means an individual of Native American descent who has or is eligible for a Certificate of Degree of Indian Blood (CDIB) card;
- (2) **"Capitation"** means the per member per month (pmpm) amount that the Oklahoma Health Care Authority pays PACE providers for PACE compensable services.
- (3) **"Interdisciplinary Team (IDT)"** means the team of persons who interact and collaborate to assess PACE participants and plan for their care as set forth in 42 CFR 460.102. The IDT may also include the PACE participant's personal representative or advocate.
- (4) **"Participant"** means an individual enrolled in a PACE program.
- (5) **"Program agreement"** means the three-party agreement between the PACE provider, Centers for Medicare & Medicaid Services (CMS), and OHCA.
- (6) **"Provider"** means the non-profit or for-profit entity that delivers required PACE services under an agreement with OHCA and CMS.
- (7) **"Service area"** means the geographic area served by the provider agency, according to the program agreement.
- (8) **"State Administering Agency (SAA)"** means the Oklahoma Health Care Authority.

[OAR Docket #20-472; filed 6-26-20]

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

[OAR Docket #20-468]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 6. SoonerCare for Pregnant Women and Families with Children
Part 5. Determination of Eligibility for SoonerCare Health Benefits for Pregnant Women and Families with Children
317:35-6-45 [NEW]
(Reference APA WF # 19-09)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; 42 U.S.C. § 1396a(a)(84); 42 C.F.R. § 435.1009; and 42 C.F.R. § 435.1010

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Approved by Governor's declaration on June 25, 2020

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EFFECTIVE:

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SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 6. SoonerCare for Pregnant Women and Families With Children

Part 5. Determination of Eligibility for SoonerCare Health Benefits for Pregnant Women and Families with Children

317:35-6-45 [NEW]

Gubernatorial approval:

January 6, 2020

Register publication:

37 Ok Reg 528

Docket number:

20-32

(Reference APA WF # 19-09)

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will comply with recent changes in federal law, which provides that individuals under the age of twenty-one, or individuals under the age of twenty-six in the former foster care eligibility group, who become incarcerated, shall not have their eligibility terminated. Eligibility, for the aforementioned populations, will instead be suspended for the duration of the incarceration. Additionally, revisions outline that a redetermination of eligibility, based on information known to the OHCA, will be conducted prior to the inmate's release without requiring a new application. Eligibility will be restored to the date the inmate is released from custody, if the individual meets all other eligibility requirements. The process of restoring SoonerCare eligibility to the date the individual is released from incarceration will involve collaboration between the OHCA, Oklahoma Department of Human Services (DHS), Oklahoma Office of Juvenile Affairs (OJA), and the Oklahoma Department of Corrections (DOC). Of note, coverage and reimbursement of inpatient services, while an individual is incarcerated, will not change through these proposed changes.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 14, 2020:**

**SUBCHAPTER 6. SOONERCARE FOR
PREGNANT WOMEN AND FAMILIES WITH
CHILDREN**

**PART 5. DETERMINATION OF ELIGIBILITY
FOR SOONERCARE HEALTH BENEFITS FOR
PREGNANT WOMEN AND FAMILIES WITH
CHILDREN**

317:35-6-45. Eligibility for inmates

(a) The Oklahoma Health Care Authority (OHCA) shall receive applications from and make eligibility determinations for individuals residing in correctional institutions, including juvenile facilities. However, the SoonerCare program will

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only pay for services rendered to individuals residing in a correctional institution as specified in Oklahoma Administrative Code (OAC) 317:35-5-26.

(b) In accordance with federal law, including, but not limited to, 42 United States Code (U.S.C.) § 1396a(a)(84), individuals residing in correctional institutions who are under the age of twenty-one (21) or who meet the former foster care child requirements found at OAC 317:35-5-2, shall have their eligibility suspended for the duration of the incarceration period, except for periods of time that inpatient services are provided as specified in OAC 317:35-5-26.

(c) The effective date of the suspension is the calendar day following the date on which an individual described in (b) of this section becomes incarcerated.

(d) A redetermination of eligibility for an individual described in (b) of this section shall be conducted prior to release to determine if the individual continues to meet the eligibility requirements for SoonerCare. A new application will not be required to redetermine eligibility.

(e) Suspended eligibility shall be restored to the release date after a redetermination of eligibility, when:

(1) The Oklahoma Department of Human Services (OKDHS), using the release date supplied by the Oklahoma Office of Juvenile Affairs (OJA) or the Oklahoma Department of Corrections (DOC), removes the suspension;

(2) The individual reports his or her release to the Oklahoma Health Care Authority (OHCA) within ten (10) calendar days of the release date; or

(3) The individual reports his or her release to OHCA more than ten (10) calendar days from the release date, and there is good cause for the delay in reporting.

[OAR Docket #20-468; filed 6-26-20]

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

[OAR Docket #20-470]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. ICF/IID, HCBW/IID, and Individuals Age 65 or Older in Mental Health Hospitals

Part 7. Determination of Financial Eligibility

317:35-9-68 [AMENDED]

Subchapter 19. Nursing Facility Services

317:35-19-21 [AMENDED]

(Reference APA WF # 19-29)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; and 42 C.F.R. Section 435.832

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Approved by Governor's declaration on June 25, 2020

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September 14, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will revise the formula for calculating the vendor payment for SoonerCare members receiving services in a Nursing Facility (NF) or an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID). The vendor payment is the monthly amount the member must contribute toward the cost of their care in a long-term care facility. The revisions will establish limitations and/or reasonable requirements before a medical expense can be deducted from the individual's post-eligibility income when determining the vendor payment. Currently, there are no limitations or established criteria by which expenses are quantified or determined to be allowed for deduction. Similar reasonable limits have been implemented by numerous State Medicaid agencies, including that of Arkansas, Colorado, Massachusetts, and Texas.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 9. ICF/IID, HCBW/IID, AND INDIVIDUALS AGE 65 OR OLDER IN MENTAL HEALTH HOSPITALS

PART 7. DETERMINATION OF FINANCIAL ELIGIBILITY

317:35-9-68. Determining financial eligibility for care in an ~~ICF/MR~~Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) (public and private), for ~~HCBW/MR~~HCBW/IID services, and for persons age ~~65~~sixty-five (65) or older in mental health hospitals

(a) **Determining financial eligibility for care in an ~~ICF/MR~~ICF/IID.** Financial eligibility and spenddown for individuals in an ~~ICF/MR~~ICF/IID is determined according to whether or not a spouse remains in the home.

(1) **Individual without a spouse.** For an individual without a spouse, the following rules are used to determine financial eligibility for ~~ICF/MR~~ICF/IID care.

(A) **Income eligibility.** To determine the income of the individual without a spouse, the rules in (i) - (iii) of this subparagraph apply.

(i) If payment of income is made to the individual and another person(s), the income is considered in proportion to the individual's interest.

(ii) If a legal instrument exists which specifies terms of payment, income is considered according to the terms of the instrument.

(iii) After determination of income, the gross income of the individual cannot exceed the categorically needy standard in OKDHS Oklahoma Department of Human Services (OKDHS) Form 08AX001E (Appendix C-1), Schedule VIII. B. 1., to be eligible for ICF/MR/ICF/IID services. If the individual's gross income exceeds this standard, refer to SoonerCare rules for establishing a Medicaid Income Pension Trust [OAC 317:35-5-41.6(a)(6)(B)].

(B) **Resource eligibility.** In order for an individual without a spouse to be eligible for ICF/MR/ICF/IID services, his/her countable resources cannot exceed the maximum resource standard listed in OKDHS Form 08AX001E (Appendix C-1), Schedule VIII. D.

(C) **Vendor payment.** When eligibility for ICF/MR/ICF/IID services has been determined, the vendor payment is computed. For an individual eligible for long-term care in an ICF/MR/ICF/IID, the individual's share of the vendor payment is not prorated over the month. As SoonerCare is the payer of last resort, the full amount of the member's share of the vendor payment must first be applied to the facility's charges before SoonerCare reimbursement begins. See (b) of this Section for calculation of the vendor payment after financial eligibility has been determined.

(D) **First month.** For the first month of care, the following procedures apply when determining the vendor payment:

(i) When an individual enters the facility on the first day of the month, all countable income is considered with the facility maintenance standard allowed.

(ii) When an individual enters the facility after the first day of the month, all countable income is considered with the own home standard allowed in computation of the vendor payment. Only the remaining income actually available is used to compute the vendor payment.

(E) **Equity in capital resources.** If the equity in capital resources is in excess of the standards, certification is delayed up to 30thirty (30) days providing plans are made for the applicant to utilize the excess resource. Certification is made at the point the excess resources have been exhausted, with the effective date of certification being shown as the date on which the resources came within the standard. If the excess

capital resources, along with excess income to be considered against the vendor payment, are in excess of one (1) month's vendor payment, the application is denied.

(2) **Individual with a spouse who is institutionalized in a NF or ICF/MR/ICF/IID, or who receives ADvantage or HCBW/MR/HCBW/IID services, or is 65sixty-five (65) or over and in a mental health hospital.** For an individual with a spouse who is institutionalized in a NF or ICF/MR/ICF/IID, or who receives ADvantage or HCBW/MR/HCBW/IID services, or is 65sixty-five (65) or over and in a mental health hospital, resources are determined for each individual as the amount owned by each individual plus one-half of the jointly owned resources of the couple. Once this separation of assets is made, a resource of either spouse is not considered available to the other during institutionalization.

(A) **Income eligibility.** To determine income for an individual whose spouse is institutionalized in a NF or ICF/MR/ICF/IID, or who receives ADvantage or HCBW/MR/HCBW/IID services, or is 65sixty-five (65) or over and in a mental health hospital, income determination is made individually. The income of either spouse is not considered as available to the other during institutionalization for determination of financial eligibility. See (b) of this Section for post-eligibility calculation of the vendor payment and the community spouse income allowance, if applicable. The rules in (i) - (v) of this subparagraph apply in this situation.

(i) If payment of income is made solely to one (1) or the other, the income is considered available only to that individual.

(ii) If payment of income is made to both, one-half is considered for each individual.

(iii) If payment of income is made to either one (1) or both and another person(s), the income is considered in proportion to either spouse's interest (if payment is to that spouse) or one-half of the joint interest if no interest is specified.

(iv) If a legal instrument exists which specifies terms of payment, income is considered according to the terms of the instrument.

(v) After determination of income, the gross income of the individual cannot exceed the categorically needy standard in OKDHS Form 08AX001E (Appendix C-1), Schedule VIII. B. 1., to be eligible for ICF/MR/ICF/IID care. If the individual's gross income exceeds this standard, refer to SoonerCare rules for establishing a Medicaid Income Pension Trust [OAC Oklahoma Administrative Code (OAC) 317:35-5-41.6(a)(6)(B)].

(B) **Resource eligibility.** In order for an individual with a spouse who is institutionalized in a NF or ICF/MR/ICF/IID, receives ADvantage or HCBW/MR/HCBW/IID services, or is 65sixty-five (65) or older and in a mental health hospital to be

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eligible for ~~ICF/MR~~ICF/IID services, his/her countable resources cannot exceed the maximum resource standard for an individual listed in OKDHS Form 08AX001E (Appendix C-1), Schedule VIII. D.

(C) **Vendor payment.** When eligibility for ~~ICF/MR~~ICF/IID services has been determined, the vendor payment is computed. For an individual eligible for long-term care in an ~~ICF/MR~~ICF/IID, the individual's share of the vendor payment is not prorated over the month. As SoonerCare is the payer of last resort, the full amount of the member's share of the vendor payment must first be applied to the facility's charges before SoonerCare reimbursement begins. See (b) of this Section for calculation of the vendor payment after financial eligibility has been determined.

(D) **First month.** For the first month of care, the following procedures apply when determining the vendor payment:

(i) When an individual enters the facility on the first day of the month, all countable income is considered with the facility maintenance standard allowed.

(ii) When an individual enters the facility after the first day of the month, all countable income is considered with the own home standard allowed in computation of the vendor payment. Only the remaining income actually available is used to compute the vendor payment.

(E) **Equity in capital resources.** If the equity in capital resources is in excess of the standards, certification is delayed up to ~~30~~thirty (30) days providing plans are made for the applicant to utilize the excess resource. Certification is made at the point the excess resources have been exhausted, with the effective date of certification being shown as the date on which the resources came within the standard. If the excess capital resources, along with excess income to be considered against the vendor payment, are in excess of one (1) month's vendor payment, the application is denied.

(3) **Individual with a spouse remaining in the home who does not receive ADvantage or ~~HCBW/MR~~HCBW/IID services.** When an individual and spouse are separated due to the individual entering an ~~ICF/MR~~ICF/IID, income and resources are determined separately. However, the income and resources of the community spouse must be included on the application form. At redetermination of eligibility, the community spouse's income must be included in the review process. During any month that the individual is in the ~~ICF/MR~~ICF/IID, income of the community spouse is not considered available to that individual. The following rules are used to determine the income and resources of each:

(A) **Income eligibility.** To determine the income of both spouses, the rules in this subparagraph apply:

(i) If payment of income is made solely to one (1) or the other, the income is considered available only to that individual.

(ii) If payment of income is made to both, one-half is considered for each individual.

(iii) If payment of income is made to either one (1) or both and another person(s), the income is considered in proportion to either the spouse's interest (if payment is to that spouse) or one-half of the joint interest if no interest is specified.

(iv) If a legal instrument exists which specifies terms of payment, income is considered according to the terms of the instrument.

(v) If the individual's gross income exceeds the categorically needy standard as shown on OKDHS Form 08AX001E (Appendix C-1), Schedule VIII. B. 1., refer to SoonerCare rules for establishing a Medicaid Income Pension Trust [OAC 317:35-5-41.6(a)(6)(B)].

(B) **Resource eligibility.** To determine resource eligibility, it is necessary to determine the amount of resources for both spouses for the month of the individual's entry into the nursing facility. Of the resources available to the couple (both individual and joint ownership) an amount will be protected for the community spouse which will not be considered available to the spouse in the ~~ICF/MR~~ICF/IID. OKDHS Form 08MA011E, Assessment of Assets, is used for the assessment prior to application for SoonerCare. The amount determined as the spousal share is used for all subsequent applications for SoonerCare, regardless of changes in the couple's resources. The protected spousal share cannot be changed for any reason. When application for SoonerCare is made at the same time the individual enters the ~~ICF/MR~~ICF/IID, OKDHS Form 08MA012E, Title XIX Worksheet, is used in lieu of OKDHS Form 08MA011E.

(i) The first step in the assessment process is to establish the total amount of resources for the couple during the first month of the entry of the spouse into the ~~ICF/MR~~ICF/IID.

(ii) The community spouse's share is equal to one-half of the total resources of the couple not to exceed the maximum amount of resource value that can be protected for the community spouse, as shown on OKDHS Appendix C-1, Section XI.

(iii) The minimum resource standard for the community spouse is found on OKDHS Appendix C-1, Schedule XI. When the community spouse's share is less than the minimum standard, an amount may be deemed from the other spouse's share to ensure the minimum resource standard for the community spouse. If the community spouse's share equals or exceeds the minimum resource standard, deeming cannot be done.

(iv) If deeming is necessary to meet the minimum resource standard for the community spouse,

the amount that is deemed must be legally transferred to the community spouse within one (1) year of the effective date of certification for SoonerCare. At the first redetermination of eligibility, the worker must document that the resources have been transferred. After the first year of SoonerCare eligibility, resources of the community spouse will not be available to the other spouse and resources cannot be deemed to the community spouse.

(v) After the month in which the institutionalized spouse and community spouse have met the resource standards and the institutionalized spouse is determined eligible for benefits, no resources of the community spouse, regardless of value, will be considered available to the institutionalized spouse. If the resources of the community spouse grow to exceed the original deemed amount, the State cannot require the community spouse to apply any of these excess resources toward the cost of the care of the institutionalized spouse.

(vi) When determining eligibility for SoonerCare, the community spouse's share of resources is protected and the remainder considered available to the spouse in the ICF/MR/ICF/IID.

(vii) The resources determined for the individual in the ICF/MR/ICF/IID cannot exceed the maximum resource standard for an individual as shown in OKDHS Form 08AX001E (Appendix C-1), Schedule VIII. D.

(viii) Once the dollar value of the community spouse's share of resources is established for the month of the other spouse's entry into an ICF/MR/ICF/IID, that amount is used when determining resource eligibility for a subsequent SoonerCare application for ICF/MR/ICF/IID.

(ix) Once a determination of eligibility for SoonerCare is made, either spouse is entitled to a fair hearing. Any such hearing regarding the determination of the community spouse's resource allowance is held within ~~30~~thirty (30) days of the date of the request for the hearing. Either spouse is entitled to a fair hearing if dissatisfied with a determination of:

- (I) ~~the~~The community spouse's monthly income allowance;
- (II) ~~the~~The amount of monthly income otherwise available to the community spouse;
- (III) ~~determination~~Determination of the spousal share of resource;
- (IV) ~~the~~The attribution of resources (amount deemed); or
- (V) ~~the~~The determination of the community spouse's resource allowance.

(x) The rules on determination of income and resources are applicable only when an individual has entered an ICF/MR/ICF/IID and is likely to remain under care for ~~30~~thirty (30) consecutive

days. The ~~30-day~~thirty-day requirement is considered to have been met even if it is interrupted by a hospital stay or the individual is deceased before the ~~30-day~~thirty-day period ends.

(xi) The rules on resources included in this Section apply only to those cases in which an individual begins a continuous period of care in an ICF/MR/ICF/IID on or after September 30, 1989.

(xii) If the individual was admitted prior to September 30, 1989, there is not a protected amount for the community spouse. Resources are separated according to spousal ownership with one-half of jointly owned resources counted for each. In this instance, each spouse's resources are considered separately and the resources of the community spouse does not affect the eligibility of the spouse in the ICF/MR/ICF/IID.

(C) **Vendor payment.** After the institutionalized spouse has been determined eligible for long-term care, the vendor payment is computed. For an individual eligible for long-term care in an ICF/MR/ICF/IID, the individual's share of the vendor payment is not prorated over the month. As SoonerCare is the payer of last resort, the full amount of the member's share of the vendor payment must first be applied to the facility's charges before SoonerCare reimbursement begins. See (b) of this Section for calculation of the vendor payment after financial eligibility has been determined.

(D) **Excess resources.** If the equity in capital resources is in excess of the standards but less than the amount of one (1) month's vendor payment, certification is delayed up to ~~30~~thirty (30) days providing plans are made for the applicant to utilize the excess resource. Certification is made at the point the excess resources have been exhausted, with the effective date of certification being shown as the date on which the resources came within the standard. If the excess capital resources, along with excess income to be considered against the vendor payment, are in excess of the vendor payment, the application is denied.

(b) **Determination of the vendor payment for ICF/MR/ICF/IID.** Calculation of the vendor payment after financial eligibility for care in an ICF/MR/ICF/IID has been established is determined according to whether or not a spouse remains in the home. For the purpose of calculating the community spouse income allowance, spouses receiving ADvantage or HCBW/MR/HCBW/IID services are considered community spouses. The formula for determining the vendor payment for individuals without a spouse or other dependents is in accordance with OAC 317:35-19-21(b).

~~(1) The formula for determining the vendor payment for individuals without a spouse or other dependents is:~~

- ~~(A) Countable income;~~
- ~~(B) Minus the institutional or own home standard;~~
- ~~and~~
- ~~(C) Minus the verified countable medical expenses (only the actual monthly payments being made for~~

medical insurance premiums including Medicare premiums).

(2) ~~The own home standard is the categorically needy standard found on OKDHS Form 08AX001E (Appendix C-1), Schedule VI.~~

(3) ~~The computation for the community spouse's share of resources for individuals with a spouse remaining in the home is the total countable resources divided by two. This amount cannot exceed the maximum resource standard. If it is less than the minimum resource standard, resources are deemed from the institutionalized spouse to the community spouse, up to the minimum standard.~~

(4) ~~The formula for determining the vendor payment for an individual with a spouse remaining in the home, regardless of whether the spouse receives ADvantage or HCBW/MR services, is:~~

~~(A) Determine the institutionalized spouse's monthly income as described in (b)(1) of this Section.~~

~~(B) Determine how much of the institutionalized spouse's income can be deemed to the community spouse:~~

~~(i) Subtract the community spouse's gross income from the maximum monthly income standard on OKDHS Form 08AX001E (Appendix C-1), Schedule XI.~~

~~(ii) The resulting amount is the maximum amount that can be deemed from the institutionalized spouse to the community spouse.~~

~~(C) The amount actually deemed from the institutionalized spouse to the community spouse is subtracted from the institutionalized spouse's monthly income as described in (b)(1) of this Section. Any amount remaining is the vendor payment if there are no minor dependent children, parents, or siblings residing with the community spouse.~~

~~(D) If there are minor dependent children, parents, or siblings residing with the community spouse, the formula for determining their allowance is:~~

~~(i) Divide the maximum monthly income standard from OKDHS Form 08AX001E (Appendix C-1), Schedule XI by 3;~~

~~(ii) Subtract the gross income of each dependent child, parent, or sibling residing with the community spouse from the amount in (i);~~

~~(iii) If there is more than one dependent, add the amounts from (ii) together;~~

~~(iv) This amount is deemed to the dependents residing with the community spouse.~~

~~(E) The amount actually deemed to the dependents residing with the community spouse is subtracted from the amount determined in (b)(4)(C) of this Section. Any amount of the institutionalized spouse's income remaining is the vendor payment.~~

(c) **Determining financial eligibility for HCBW/MRHCBW/IID.** For individuals determined eligible for HCBW/MRHCBW/IID services, there is no vendor payment. Financial eligibility for HCBW/MRHCBW/IID

services for a single individual is determined the same as for ICF/MR/ICF/IID services as outlined in paragraph (a)(1) of this Section with the exception of the vendor payment. Financial eligibility for HCBW/MRHCBW/IID services for an individual with a spouse who is institutionalized in a NF or ICF/MR/ICF/IID, or who receives ADvantage or HCBW/MRHCBW/IID services, or is ~~65~~sixty-five (65) or over and in a mental health hospital is determined the same as for ICF/MR/ICF/IID services as outlined in paragraph (a)(2) of this Section with the exception of the vendor payment. Financial eligibility for HCBW/MRHCBW/IID services for an individual with a spouse in the home who does not receive ADvantage or HCBW/MRHCBW/IID services is determined the same as for an individual with a community spouse according to paragraph (a)(3) of this Section. If the individual is a minor child who can be determined categorically needy and SSP eligible by considering the parent(s)' income and resources in the deeming process, the case is handled in the usual manner. If the child is not eligible for SSP only because of the deeming of parent(s)' income/resources, financial eligibility for HCBW/MRHCBW/IID services is determined using only the child's income/resources and exempting the parent(s)' income and resources from the deeming process.

(d) **Determining financial eligibility for persons age ~~65~~sixty-five (65) years or older in mental health hospitals.** The eligibility determination for an individual age ~~65~~sixty-five (65) or older in a mental health hospital as categorically needy is the same as for any other person who is institutionalized. (Refer to subsection (a) in this Section.) The same procedure for determining excess income to be applied to the vendor payment as described in this Section is applicable.

SUBCHAPTER 19. NURSING FACILITY SERVICES

317:35-19-21. **Determining financial eligibility for care in ~~NF~~nursing facility**

(a) Financial eligibility and vendor payment calculations for individuals in ~~an NF~~nursing facility (NF) are determined according to whether or not a spouse remains in the home.

(1) **Individual without a spouse.** For an individual without a spouse, the following rules are used to determine financial eligibility.

(A) **Income eligibility.** To determine the income of the individual without a spouse, the rules in (i) - (iii) of this subparagraph apply.

(i) If payment of income is made to the individual and another person(s), the income is considered in proportion to the individual's interest.

(ii) If a legal instrument exists which specifies terms of payment, income is considered according to the terms of the instrument.

(iii) After determination of income, the gross income of the individual cannot exceed the categorically needy standard in ~~OKDHS~~Oklahoma Department of Human Services (OKDHS) Form

08AX001E (Appendix C-1), Schedule VIII. B. 1., to be eligible for NF services. If the individual's gross income exceeds this standard, refer to SoonerCare rules for establishing a Medicaid Income Pension Trust [OAC ~~Oklahoma Administrative Code (OAC)~~ 317:35-5-41.6(a)(6)(B)].

(B) **Resource eligibility.** In order for an individual without a spouse to be eligible for NF services, his/her countable resources cannot exceed the maximum resource standard listed in OKDHS Form 08AX001E (Appendix C-1), Schedule VIII. D.

(C) **Vendor payment.** When eligibility for NF care has been determined, the vendor payment is computed. For an individual eligible for long-term care in a NF, the individual's share of the vendor payment is not prorated over the month. As SoonerCare is the payer of last resort, the full amount of the member's share of the vendor payment must first be applied to the facility's charges before SoonerCare reimbursement begins. See (b) of this Section for calculation of the vendor payment after financial eligibility has been determined.

(D) **First month.** For the first month of care, the following procedures apply when determining the vendor payment:

(i) When an individual enters the facility on the first day of the month, all countable income is considered with the facility maintenance standard allowed.

(ii) When an individual enters the facility after the first day of the month, all countable income is considered with the own home standard allowed in computation of the vendor payment. Only the remaining income actually available is used to compute the vendor payment.

(E) **Equity in capital resources.** If the equity in capital resources is in excess of the standards, certification is delayed up to ~~thirty~~ (30) days providing plans are made for the applicant to utilize the excess resource. Certification is made at the point the excess resources have been exhausted, with the effective date of certification being shown as the date on which the resources came within the standard. If the excess capital resources, along with excess income to be considered against the vendor payment, are in excess of ~~one~~ (1) month's vendor payment, the application is denied.

(2) **Individual with a spouse who is institutionalized in a NF or ~~ICF/MR~~ICF/IID, or who receives ADvantage or ~~HCBW/MR~~HCBW/IID services, or is ~~65~~sixty-five (65) or over and in a mental health hospital.** For an individual with a spouse who is institutionalized in a NF or ~~ICF/MR~~ICF/IID, or who receives ADvantage or ~~HCBW/MR~~HCBW/IID services, or is ~~65~~sixty-five (65) or over and in a mental health hospital, resources are determined for each individual as the amount owned by each individual plus one-half of the

jointly owned resources of the couple. Once this separation of assets is made, a resource of either spouse is not considered available to the other during institutionalization.

(A) **Income eligibility.** To determine income for an individual whose spouse is institutionalized in a NF or ~~ICF/MR~~ICF/IID, or who receives ADvantage or ~~HCBW/MR~~HCBW/IID services, or is ~~65~~sixty-five (65) or over and in a mental health hospital, income determination is made individually. The income of either spouse is not considered as available to the other during institutionalization for determination of financial eligibility. See (b) of this Section for post-eligibility calculation of the vendor payment and the community spouse income allowance, if applicable. The rules in (i) - (v) of this subparagraph apply in this situation.

(i) If payment of income is made solely to ~~one~~ (1) or the other, the income is considered available only to that individual.

(ii) If payment of income is made to both, one-half is considered for each individual.

(iii) If payment of income is made to either one (1) or both and another person(s), the income is considered in proportion to either spouse's interest (if payment is to that spouse) or one-half of the joint interest if no interest is specified.

(iv) If a legal instrument exists which specifies terms of payment, income is considered according to the terms of the instrument.

(v) After determination of income, the gross income of the individual cannot exceed the categorically needy standard in OKDHS Form 08AX001E (Appendix C-1), Schedule VIII. B. 1., to be eligible for Nursing Facility services. If the individual's gross income exceeds this standard, refer to SoonerCare rules for establishing a Medicaid Income Pension Trust [OAC 317:35-5-41.6(a)(6)(B)].

(B) **Resource eligibility.** In order for an individual with a spouse who is institutionalized in a NF or ~~ICF/MR~~ICF/IID, receives ADvantage or ~~HCBW/MR~~HCBW/IID services, or is ~~65~~sixty-five (65) or older and in a mental health hospital to be eligible for NF services, his/her countable resources cannot exceed the maximum resource standard for an individual listed in OKDHS Form 08AX001E (Appendix C-1), Schedule VIII. D.

(C) **Vendor payment.** When eligibility for NF services has been determined, the spenddown calculation is used to compute the vendor payment. For an individual eligible for long-term care in a NF, the individual's share of the vendor payment is not prorated over the month. As SoonerCare is the payer of last resort, the full amount of the member's share of the vendor payment must first be applied to the facility's charges before SoonerCare reimbursement begins. See (b) of this Section for calculation of the

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vendor payment after financial eligibility has been determined.

(D) **First month.** For the first month of care, the following procedures apply when determining the vendor payment:

(i) When an individual enters the facility on the first day of the month, all countable income is considered with the facility maintenance standard allowed.

(ii) When an individual enters the facility after the first day of the month, all countable income is considered with the own home standard allowed in computation of the vendor payment. Only the remaining income actually available is used to compute the vendor payment.

(E) **Equity in capital resources.** If the equity in capital resources is in excess of the standards, certification is delayed up to ~~30~~thirty (30) days providing plans are made for the applicant to utilize the excess resource. Certification is made at the point the excess resources have been exhausted, with the effective date of certification being shown as the date on which the resources came within the standard. If the excess capital resources, along with excess income to be considered against the vendor payment, are in excess of ~~one~~one (1) month's vendor payment, the application is denied.

(3) **Individual with a spouse remaining in the home who does not receive ADvantage or HCBW/MRHCBW/ID services.** When an individual and spouse are separated due to the individual entering an NF, income and resources are determined separately. However, the income and resources of the community spouse must be included on the application form. At redetermination of eligibility, the community spouse's income must be included in the review process. During any month that the individual is in the NF, income of the community spouse is not considered available to that individual. The following rules are used to determine the income and resources of each:

(A) **Income eligibility.** To determine the income of both spouses, the following rules in this subparagraph apply:

(i) If payment of income is made solely to one (1) or the other, the income is considered available only to that individual.

(ii) If payment of income is made to both, one-half is considered for each individual.

(iii) If payment of income is made to either one (1) or both and another person(s), the income is considered in proportion to either the spouse's interest (if payment is to that spouse) or one-half of the joint interest if no interest is specified.

(iv) If a legal instrument exists which specifies terms of payment, income is considered according to the terms of the instrument.

(v) If the individual's gross income exceeds the categorically needy standard as shown on OKDHS

Form 08AX001E (Appendix C-1), Schedule VIII. B. 1., refer to SoonerCare rules for establishing a Medicaid Income Pension Trust [OAC 317:35-5-41.6(a)(6)(B)].

(B) **Resource eligibility.** To determine resource eligibility, it is necessary to determine the amount of resources for both spouses for the month of the individual's entry into the nursing facility. Of the resources available to the couple (both individual and joint ownership) an amount will be protected for the community spouse which will not be considered available to the spouse in the NF. OKDHS Form 08MA011E, Assessment of Assets, is used for the assessment prior to application for SoonerCare. The amount determined as the spousal share is used for all subsequent applications for SoonerCare, regardless of changes in the couple's resources. The protected spousal share cannot be changed for any reason. When application for SoonerCare is made at the same time the individual enters the NF, OKDHS Form 08MA012E, Title XIX Worksheet, is used in lieu of OKDHS Form 08MA011E.

(i) The first step in the assessment process is to establish the total amount of resources for the couple during the first month of the entry of the spouse into the NF.

(ii) The community spouse's share is equal to one-half of the total resources of the couple not to exceed the maximum amount of resource value that can be protected for the community spouse, as shown on OKDHS Form 08AX001E (Appendix C-1), Schedule XI.

(iii) The minimum resource standard for the community spouse, as established by the ~~OHCA~~Oklahoma Health Care Authority (OHCA), is found on OKDHS Form 08AX001E (Appendix C-1), Schedule XI. When the community spouse's share is less than the minimum standard, an amount may be deemed from the other spouse's share to ensure the minimum resource standard for the community spouse. If the community spouse's share equals or exceeds the minimum resource standard, deeming cannot be done.

(iv) If deeming is necessary to meet the minimum resource standard for the community spouse, the amount that is deemed must be legally transferred to the community spouse within ~~one~~one (1) year of the effective date of certification for SoonerCare. At the first redetermination of eligibility, the worker must document that the resources have been transferred. After the first year of SoonerCare eligibility, resources of the community spouse will not be available to the other spouse and resources cannot be deemed to the community spouse.

(v) After the month in which the institutionalized spouse and community spouse have met the resource standards and the institutionalized spouse

is determined eligible for benefits, no resources of the community spouse, regardless of value, will be considered available to the institutionalized spouse. If the resources of the community spouse grow to exceed the original deemed amount, the State cannot require the community spouse to apply any of these excess resources toward the cost of the care of the institutionalized spouse.

(vi) When determining eligibility for SoonerCare, the community spouse's share of resources is protected and the remainder considered available to the spouse in the NF.

(vii) The resources determined above for the individual in the NF cannot exceed the maximum resource standard for an individual as shown in OKDHS Form 08AX001E (Appendix C-1), Schedule VIII. D.

(viii) Once the dollar value of the community spouse's share of resources is established for the month of the other spouse's entry into NF, that amount is used when determining resource eligibility for a subsequent SoonerCare application for NF.

(ix) Once a determination of eligibility for SoonerCare is made, either spouse is entitled to a fair hearing. Any such hearing regarding the determination of the community spouse's resource allowance is held within ~~30~~thirty (30) days of the date of the request for the hearing. Either spouse is entitled to a fair hearing if dissatisfied with a determination of:

(I) ~~the~~The community spouse's monthly income allowance;

(II) ~~the~~The amount of monthly income otherwise available to the community spouse;

(III) ~~determination~~Determination of the spousal share of resource;

(IV) ~~the~~The attribution of resources (amount deemed); or

(V) ~~the~~The determination of the community spouse's resource allowance.

(x) The rules on determination of income and resources are applicable only when an individual has entered an NF and is likely to remain under care for ~~30~~thirty (30) consecutive days. The ~~30-day~~thirty (30) day requirement is considered to have been met even if it is interrupted by a hospital stay or the individual is deceased before the ~~30-day~~thirty (30) day period ends.

(xi) The rules on resources included in this Section apply only to those cases in which an individual begins a continuous period of care in an NF on or after September 30, 1989.

(xii) If the individual was admitted prior to September 30, 1989, there is not a protected amount for the community spouse. Resources are separated according to spousal ownership with one-half of jointly owned resources counted for

each. In this instance, each spouse's resources are considered separately and the resources of the community spouse do not affect the eligibility of the spouse in the NF.

(C) **Vendor payment.** After the institutionalized spouse has been determined eligible for long-term care, the vendor payment is computed. For an individual eligible for long-term care in a NF, the individual's share of the vendor payment is not prorated over the month. As SoonerCare is the payer of last resort, the full amount of the member's share of the vendor payment must first be applied to the facility's charges before SoonerCare reimbursement begins. See (b) of this Section for calculation of the vendor payment after financial eligibility has been determined.

(D) **Excess resources.** If the equity in capital resources is in excess of the standards but less than the amount of ~~one~~one (1) month's vendor payment, certification is delayed up to ~~30~~thirty (30) days providing plans are made for the applicant to utilize the excess resource. Certification is made at the point the excess resources have been exhausted, with the effective date of certification being shown as the date on which the resources came within the standard. If the excess capital resources, along with excess income to be considered against the vendor payment, are in excess of the vendor payment, the application is denied.

(b) Calculation of the vendor payment after financial eligibility for care in a NF has been determined is performed according to whether or not a spouse remains in the home. For the purpose of calculating the community spouse income allowance, spouses receiving ADvantage or ~~HCBW/MR~~HCBW/ID services are considered community spouses.

(1) The formula for determining the vendor payment for individuals without a spouse or other dependents is:

(A) Countable income;

(B) Minus the institutional or own home standard; and

(C) Minus ~~the verified countable medical expenses~~only the actual monthly payments being made for medical insurance premiums including Medicare premiums; and

(D) Minus incurred expenses for necessary medical and remedial care not covered under Medicaid, as set forth in the Oklahoma State Medicaid Plan.

(i) In order to be allowed to be deducted, expenses must:

(I) Have been incurred during the three (3) month period immediately preceding the month of application;

(II) Have been prescribed by a medical professional;

(III) Be certified as being medically necessary by a treating physician, physician assistant, or advanced practice registered nurse working within the scope of his or her licensure; and

(IV) Be no more than the least of the fee recognized by Medicaid, Medicare, or the average cost allowed by a commercial health insurance plan in Oklahoma.

(ii) The following expenses are not allowed to be deducted:

(I) Expenses incurred as the result of the imposition of a transfer penalty;

(II) Expenses for which a third party (including Medicaid) is liable, even if provided by an out-of-state network provider;

(III) Expenses resulting from the failure to obtain prior approval from applicable private insurance, Medicare, or Medicaid, due to the service being medically unnecessary;

(IV) Expenses that had been the subject of a prior authorization denial by Medicaid, due to lack of medical necessity; and

(V) Health insurance premiums paid by an individual who is not a financially responsible relative, for which repayment is not expected.

(2) The own home standard is the categorically needy standard found on OKDHS Form 08AX001E (Appendix C-1), Schedule VI.

(3) The computation for the community spouse's share of resources for individuals with a spouse remaining in the home is the total countable resources divided by ~~two~~two (2). This amount cannot exceed the maximum resource standard. If it is less than the minimum resource standard, resources are deemed from the institutionalized spouse to the community spouse, up to the minimum standard.

(4) The formula for determining the vendor payment for an individual with a spouse remaining in the home, regardless of whether the spouse receives ADvantage or ~~HCBW/MR/HCBW/ID~~ services, is:

(A) Determine the institutionalized spouse's monthly income as described in Paragraph (b)(1) of this Section.

(B) Determine how much of the institutionalized spouse's income can be deemed to the community spouse:

(i) Subtract the community spouse's gross income from the maximum monthly income standard on OKDHS Form 08AX001E (Appendix C-1), Schedule XI.

(ii) The resulting amount is the maximum amount that can be deemed from the institutionalized spouse to the community spouse.

(C) The amount actually deemed from the institutionalized spouse to the community spouse is subtracted from the institutionalized spouse's monthly income as described in Paragraph (b)(1) of this Section. Any amount remaining is the vendor payment if there are no minor dependent children, parents, or siblings residing with the community spouse.

(D) If there are minor dependent children, parents, or siblings residing with the community spouse, the formula for determining their allowance is:

(i) Divide the maximum monthly income standard from OKDHS Form 08AX001E (Appendix C-1), Schedule XI by 3;

(ii) Subtract the gross income of each dependent child, parent, or sibling residing with the community spouse from the amount in (i);

(iii) If there is more than ~~one~~one (1) dependent, add the amounts from (ii) together;

(iv) This amount is deemed to the dependents residing with the community spouse.

(E) The amount actually deemed to the dependents residing with the community spouse is subtracted from the amount determined in Subparagraph (b)(4)(C) of this Section. Any amount of the institutionalized spouse's income remaining is the vendor payment.

[OAR Docket #20-470; filed 6-26-20]

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

[OAR Docket #20-471]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 15. Personal Care Services

317:35-15-8.2 [NEW]

Subchapter 17. Advantage Waiver Services

317:35-17-1 [AMENDED]

317:35-17-3 [AMENDED]

(Reference APA WF # 19-34)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; 56 O.S. Sections 162 and 1020

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Not applicable

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will add language addressing the State Plan Personal Care eligibility provider exception criteria. Additionally, revisions will update existing policy that clarifies the criteria an applicant must meet to

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other SoonerCare services. ADvantage ~~Waiver~~waiver members do not have a copayment for ADvantage services except for prescription drugs. For members residing in an ADvantage ~~Assisted Living Center~~assisted living center, any income beyond ~~150~~one-hundred and fifty percent (150%) of the federal benefit rate is available to defray the cost of the assisted living services received. The member is responsible for payment to the assisted living services center provider for days of service, from the first day of each full-month in which services were received, until the vendor pay obligation is met. When an individual is aged, blind, or disabled and is determined eligible for long-term care, a separate eligibility determination must be made for QMBP or SLMB benefits. An ADvantage program member may reside in a licensed assisted living services center only when the assisted living services center is a certified ADvantage assisted living services center provider from whom the member is receiving ADvantage assisted living services.

317:35-17-3. ADvantage program services

(a) The ADvantage program is a Medicaid Home and ~~Community-Based Waiver~~Community-Based waiver used to finance non-institutional, long-term care services for the elderly and a targeted group of physically disabled adults when there is a reasonable expectation that within a ~~30 calendar~~thirty (30) calendar day period, the person's health, due to disease process or disability, would, without appropriate services, deteriorate and require nursing long-term care (LTC) facility care to arrest the deterioration. Individuals may not be enrolled in ADvantage for the sole purpose of enabling them to obtain Medicaid eligibility. Eligibility for ADvantage program services is contingent on an individual requiring one (1) or more of the services offered in the ~~Waiver~~waiver, at least monthly, ~~in order~~ to avoid institutionalization.

(b) The number of individuals who may receive ADvantage services is limited.

(1) To receive ADvantage program services, individuals must meet one of the ~~following categories:~~ in (A) though (D) of this paragraph. He or she must:

(A) ~~be 65~~Be sixty-five (65) years of age and older; or

(B) ~~be 21 to 64~~Be twenty-one (21) to sixty-four (64) years of age, ~~when physically disabled and not developmentally disabled or when 21 to 64 years of age and not physically disabled, the person has a clinically documented, progressive degenerative disease process that responds to treatment and previously required hospital or nursing facility (NF) level of care services for treatment related to the condition; and requires ADvantage services to maintain the treatment regimen to prevent health deterioration;~~

(C) ~~when~~When developmentally disabled, and ~~21 to 64~~twenty-one (21) to sixty-four (64) years of age; and does not have an intellectual disability or a cognitive impairment related to the developmental disability;

(D) Be twenty-one (21) to sixty-four (64) years of age, not physically disabled but has clinically documented, progressive, degenerative disease process

that responds to treatment and previously required hospital or LTC facility level of care services to maintain the treatment regimen to prevent health deterioration.

(2) In addition, the individual must meet criteria in (A) through (C) ~~of this paragraph~~. He or she must:

(A) ~~require~~Require nursing long-term care facility level of care. ~~Refer to, per~~ Oklahoma Administrative Code (OAC) 317:35-17-2;

(B) ~~meet~~Meet service eligibility criteria. ~~Refer to, per~~ OAC 317:35-17-3(f); and

(C) ~~meet~~Meet program eligibility criteria. ~~Refer to, per~~ OAC 317:35-17-3(g).

(c) ADvantage members are eligible for limited types of living arrangements. The specific living arrangements are set forth ~~below in (1) though (5) of this subsection.~~

(1) ADvantage program members are not eligible to receive services while residing in an unlicensed institutional living arrangement, such as a room and board home and/or facility; an institutional setting including, but not limited to, licensed facilities, such as a hospital, a nursing LTC facility, licensed residential care facility, or licensed assisted living facility, unless the facility is an ADvantage Assisted Living Center ~~or in an unlicensed institutional living arrangement, such as a room and board home/facility-assisted living center.~~

(2) Additional living arrangements in which members may receive ADvantage services are the member's own home, apartment, or independent-living apartment, or a family or friend's home or apartment. A home/apartment unit is defined as a self-contained living space having a lockable entrance to the unit and including a bathroom and ~~food storage/preparation~~food storage and/or preparation amenities in addition to ~~bedroom/living~~bedroom and/or living space.

(3) ADvantage program members may receive services in a shelter or similar temporary-housing arrangement that may or may not meet the definition of ~~home/apartment~~home and/or apartment in emergency situations, for a period not to exceed ~~60 calendar~~sixty (60) calendar days during which location and transition to permanent housing is sought.

(4) For ADvantage members who are full-time students, a dormitory room qualifies as an allowable living arrangement in which to receive ADvantage services ~~for the period during which~~while the member is a student.

(5) Members may receive ADvantage respite services in a ~~nursing facility~~an LTC facility for a continuous period not to exceed ~~30 calendar~~thirty (30) calendar days.

(d) ~~Home and Community-Based Waiver Services~~Community-Based waiver services are outside of the scope of Medicaid State Plan services. The Medicaid ~~Waiver~~waiver allows ~~OHCA~~the Oklahoma Health Care Authority (OHCA) to offer certain Home and ~~Community-Based~~Community-Based services to an annually capped number of persons, who are categorically needy, ~~refer to~~ DHS Former Oklahoma Department of Human Services (OKDHS) Appendix C-1, Schedule VIII. B. 1., and without

such services would be institutionalized. The estimated cost of providing an individual's care outside the ~~nursing facility~~ LTC facility cannot exceed the annual cost of caring for that individual in a ~~nursing facility~~ an LTC facility. When determining the ADvantage service plan cost cap for an individual, the comparable SoonerCare cost to serve that individual in a ~~NF~~ an LTC facility is estimated.

(e) Services provided through the ADvantage ~~Waiver~~ waiver are:

- (1) ~~ease~~Case management;
- (2) ~~respite~~Respite;
- (3) ~~adult~~Adult day health care;
- (4) ~~environmental~~Environmental modifications;
- (5) ~~specialized~~Specialized medical equipment and supplies;
- (6) ~~physical~~Physical, occupational, or speech therapy or consultation;
- (7) ~~advanced—supportive/restorative—assistance~~Ad-
vanced supportive and/or restorative assistance;
- (8) ~~nursing~~Nursing
- (9) ~~skilled~~Skilled nursing;
- (10) ~~home—delivered~~Home-delivered meals;
- (11) ~~hospice~~Hospice care;
- (12) ~~medically~~Medically necessary prescription drugs, within the limits of the ~~ADvantage Waiver~~ waiver;
- (13) ~~personal~~Personal care, State Plan, or ADvantage personal care;
- (14) A Personal Emergency Response System (PERS);
- (15) Consumer-Directed Personal Assistance Services and Supports (CD-PASS);
- (16) Institution ~~Transition Services~~;
- (17) ~~assisted~~Assisted living; and
- (18) SoonerCare medical services for individuals ~~21~~ twenty-one (21) years of age and over, within the ~~State Plan~~ scope of the State Plan.

(f) The ~~DHS~~OKDHS area nurse or nurse designee makes a determination of service eligibility prior to evaluating the Uniform Comprehensive Assessment Tool (UCAT) assessment for ~~nursing~~ long-term care facility level of care. The following criteria in (1) through (5) of this subsection are used to make the service eligibility determination, which includes:

- (1) ~~an~~An open ADvantage Program ~~Waiver~~ program waiver slot, as authorized by the ~~Waiver~~ document approved by the Centers for Medicare and Medicaid Services (CMS), which is available to ensure federal participation in payment for services to the individual. When the ~~Ok-~~lahoma Department of Human Services/Aging Services (~~DHS/AS~~)(OKDHS/AS) determines all—ADvantage ~~Waiver~~ slots are filled, the individual cannot be certified by ~~DHS~~OKDHS as eligible for ADvantage services, ~~the individual~~ and his or her name is placed on a waiting list for entry when an open slot becomes available;
- (2) ~~the individual is in the~~The ADvantage ~~targeted~~waiver-targeted service group. The target group ~~are~~is individuals, who:

- (A) ~~are~~Are frail and ~~65~~sixty-five (65) years of age and older; or

(B) ~~have a physical disability~~, are between 21 and 64~~Twenty-one to sixty-four~~ years of age; and ~~do not have an intellectual disability or a cognitive impairment; or~~physically disabled; or

(C) ~~have developmental disability~~, are 21 and 64 years of age, and ~~does~~When developmentally disabled, and are twenty-one (21) to sixty-four (64) years of age and do not have an intellectual disability or cognitive impairment related to the developmental disability; or

(D) Are twenty-one (21) to sixty-four (64) years of age, not physically disabled but have a clinically documented, progressive, degenerative disease process that responds to treatment and previously required hospital or long-term care facility level of care services to maintain the treatment regimen to prevent health deterioration. The individual must meet criteria, per OAC 317:35-174-3(b)(2)(A through C).

(3) ~~the~~An ineligible individual is not eligible because he or she poses a physical threat to himself or herself or others as supported by professional documentation;

(4) ~~members~~Members of the household or persons who routinely visit the household, as supported by professional documentation, that do not pose a threat of harm or injury to the individual or other household visitors;

(5) ~~the~~An ineligible individual is not eligible when his or her living environment poses a physical threat to himself or herself or others as supported by professional documentation where applicable, and measures to correct hazardous conditions or assist ~~individuals~~the individual move are unsuccessful or not feasible.

(g) The State, as part of the ~~Waiver~~ADvantage waiver program approval authorization, ensures ~~Centers for Medicare and Medicaid Services (CMS)~~CMS that each member's health, safety, or welfare can be maintained in his or her home. When a member's identified needs cannot be met through provision of ADvantage program or Medicaid State Plan services and other formal or informal services are not in place or immediately available to meet those needs, the individual's health, safety, or welfare in ~~their~~his or her home cannot be ensured. The ADvantage Administration (AA) determines ADvantage program eligibility through the service plan approval process. An individual is deemed ineligible for the ADvantage program based on the following criteria: (1) through (8) of this subsection.

(1) ~~the~~The individual's needs, as identified by UCAT and other professional assessments, cannot be met through ADvantage program services, Medicaid State Plan services, and/or other formal or informal services;

(2) ~~one~~One (1) or more members of the individual's household pose a physical threat to ~~self~~themselves or others as supported by professional documentation;

(3) ~~the~~The individual or other household members use threatening, intimidating, degrading, or use sexually inappropriate language/~~innuendo~~language and/or innuendo or behavior towards service providers, either in the home or through other contact or communications, and significant efforts were attempted to correct such behavior, as

supported by professional documentation or other credible documentation.

(4) ~~the~~The individual or the individual's authorized agent is uncooperative or refuses to participate in service development or service delivery and these actions result in unacceptable increases of risk to the individual's health, safety, or welfare in his or her home, as determined by the individual, the interdisciplinary team, or the AA;

(5) ~~the~~The individual's living environment poses a physical threat to self or others as supported by professional documentation and measures to correct hazardous conditions or assist the person to move are unsuccessful or are not feasible;

(6) ~~the~~The individual provides false or materially inaccurate information necessary to determine program eligibility or withholds information necessary to determine program eligibility;

(7) ~~the~~The individual does not require at least one ADvantage service monthly; ~~and~~.

(8) ~~the~~The individual, his or her family member(s), associate(s), or any other person(s) or circumstances as relates to care and coordination in ~~the individual's~~ his or her living environment produces evidence of illegal drug activity or substances used illegally as intoxicants. This includes:

(A) The use, possession, or distribution of illegal drugs;

(B) The abusive use of other drugs, such as medication prescribed by a doctor; ~~or~~

(C) The use of substances, such as inhalants including, but not limited to:

- (i) ~~typewriter~~Typewriter correction fluid;
- (ii) ~~air~~Air conditioning coolant;
- (iii) ~~gasoline~~Gasoline;
- (iv) ~~propane~~Propane;
- (v) ~~felt tip~~Felt-tip markers;
- (vi) ~~spray~~Spray paint;
- (vii) ~~air~~Air freshener;
- (viii) ~~butane~~Butane;
- (ix) ~~cooking~~Cooking spray;
- (x) ~~paint~~Paint; and
- (xi) ~~glue~~Glue;

(D) The observed intoxication, consumption or sensory indicators, such as smell of the use of ~~any~~ drug or intoxicant by the individual, family members, associates, or any other person(s) present at the time care is provided may be construed as evidence indicative of illegal drug activity or intoxication. This includes drug use or intoxicated activity that is menacing to the member or staff providing services;

(E) ~~the~~The observance of drug paraphernalia or any instrument used in the manufacturing, production, distribution, sale, or consumption of drugs or substances including, but not limited to:

- (i) ~~smoking~~Smoking pipes used to consume substances other than tobacco;
- (ii) ~~roach~~Roach clips containing marijuana cigarettes;

(iii) ~~needles~~Needles and other implements used for injecting drugs into the body;

(iv) ~~plastic~~Plastic bags or other containers used to package drugs;

(v) ~~miniature~~Miniature spoons used to prepare drugs; or

(vi) ~~kits~~Kits used in the production of synthetic controlled substances including descriptive materials that accompany the item, describing or depicting its use;

(F) ~~instructions, oral~~Instructions, verbal or written, concerning the item or device including, but not limited to, the manner in which the object is labeled and displayed for sale;

(G) ~~the~~The typical use of such items in the community; and/or

(H) ~~testimony~~Testimony of an expert witness regarding use of the item.

(h) ~~the~~The case manager provides the AA with professional documentation or other credible documentation to support the recommendation for redetermination of program eligibility. The service providers continue providing services according to the person-centered service plan as provider safety permits until the individual is removed from the ADvantage program. As a part of the procedures requesting redetermination of program eligibility, ~~DHS~~OKDHS AS provides technical assistance to the provider for transitioning the individual to other services; ~~and~~.

~~(i) individuals determined ineligible for ADvantage program services are notified in writing by DHS AS of the determination and of the right to appeal the decision.~~

(i) Individuals determined ineligible for ADvantage program services are notified in writing by OKDHS AS of the determination and of the right to appeal the decision.

[OAR Docket #20-471; filed 6-26-20]

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

[OAR Docket #20-473]

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PERMANENT final adoption

RULES:

Subchapter 22. Pregnancy Related Benefits Covered Under Title XXI
317:35-22-2 [AMENDED]

(Reference APA WF # 19-38)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007(C)(2) of Title 63 of Oklahoma Statutes; Title 42 of the Code of Federal Regulations (CFR), Sections (§) 440.240 and 440.250; 42 CFR § 431.53; 42 CFR § 440.170 and the Oklahoma Health Care Authority Board

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Not applicable

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will remove the two visit limitation for pregnant women covered under the Title XXI State Plan. All visits shall require medical review to deem whether the medical visit affects fetal effect. The revisions are needed to comply with Parity federal regulations which instruct the State to provide equivalent services to all children covered under the Plan.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 22. PREGNANCY RELATED BENEFITS COVERED UNDER TITLE XXI

317:35-22-2. Scope of coverage for Title XXI Pregnancy

- (a) Pregnancy related services provided are prenatal, delivery, postnatal care when included in the global delivery fee, and other related services that are medically necessary to optimize pregnancy outcomes within the defined program benefits.
- (b) Only two Medical visits per month for other related services to evaluate and/or treat conditions that may adversely impact the pregnancy are covered. All visits shall require medical review to deem whether the medical visit is within the scope of coverage.

[OAR Docket #20-473; filed 6-26-20]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 40. DEVELOPMENTAL DISABILITIES SERVICES**

[OAR Docket #20-475]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. Self-Directed Services
317:40-9-1 [AMENDED]

(Reference APA WF # 19-35)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes (O.S.); The Oklahoma Health Care Authority Board; 56 O.S. Section 162

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n/a

GIST/ANALYSIS:

The proposed revisions will allow for self-directed services to be an option under the Community Waiver. Additional revisions will add language to note the daily hourly limits on services provided by the self-directed habilitation training specialist. Other revisions will establish guidelines for the DDS home and community-based services waiver's Electronic Visit Verification (EVV) billing procedures.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 9. SELF-DIRECTED SERVICES

317:40-9-1. Self-directed services (SDS)

- (a) **Applicability.** This Section applies to SDS provided through Home and Community-Based Services (HCBS) Waivers operated by the Oklahoma Department of Human Services (~~DHS~~) OKDHS Developmental Disabilities Services (DDS).
- (b) **Member option.** Traditional service delivery methods are available for eligible members who do not elect to self-direct services.
- (c) **General information.** SDS are an option for members receiving HCBS through the In-Home Supports Waiver for Adults (IHSW-A), In-Home Supports Waiver for Children (IHSW-C), and the Community Waiver when the ~~adult~~ member lives in a non-residential setting. SDS provides a member the opportunity to exercise choice and control in identifying, accessing, and managing specific Waiver services and supports in accordance with his or her needs and personal preferences. SDS are Waiver services ~~DHSDDS~~ OKDHS DDS specifies

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may be directed by the member or representative using employer and budget authority.

- (1) SDS may be directed by:
 - (A) ~~an~~An adult member, when the member has the ability to self-direct;
 - (B) ~~a~~A member's legal representative including a parent, spouse or legal guardian; or
 - (C) ~~a~~A non-legal representative freely chosen by the member or his or her legal representative.
- (2) The person directing services must:
 - (A) ~~be 18~~Be eighteen (18) years of age or older;
 - (B) ~~comply~~Comply with DDS and Oklahoma Health Care Authority (OHCA) rules and regulations;
 - (C) ~~complete~~Complete required DDS training for self-direction;
 - (D) ~~sign~~Sign an agreement with DDS;
 - (E) ~~be~~Be approved by the member or his or her legal representative to act in the capacity of a representative;
 - (F) ~~demonstrate~~Demonstrate knowledge and understanding of the member's needs and preferences; and
 - (G) ~~not~~Not serve as the ~~SDS-HTS~~Self-Directed (SD) Habilitation Training Specialist (HTS) for the member ~~her~~ whom he or she is directing services.
- (d) **The SDS program includes:**
 - (1) The SDS budget. A plan of care is developed to meet the member's needs without SDS consideration. The member may elect to self-direct part or the entire amount identified for traditional ~~Habilitation Training Specialist (HTS)~~HTS services. This amount is under the control and discretion of the member in accordance with this policy and the approved plan of care, and is the allocated amount that may be used to develop the SDS budget. The SDS budget details the specific plan for spending.
 - (A) The SDS budget is developed annually at the time of the annual plan development and updated as necessary by the member, case manager, parent, legal guardian, and others the member invites to participate in the development of the budget.
 - (B) Payment may only be authorized for goods and services (GS) not covered by SoonerCare or other generic funding sources and must meet criteria of service necessity, per ~~OAC~~Oklahoma Administrative Code (OAC) 340:100-3-33.1.
 - (C) The member's SDS budget includes the actual cost of administrative activities including fees for services performed by a financial management services (FMS) subagent, background checks, ~~workers' compensation~~workers' compensation insurance, and the amount identified for ~~SD-HTS and SD-GS~~SD-HTS and Self-directed goods and services (SD-GS).
 - (D) The SDS budget is added to the plan of care to replace any portion of traditional HTS services to be self-directed.
 - (2) The ~~SD Habilitation Training Specialist (SD-HTS)~~SD-HTS supports the member's self-care, and the daily living and leisure skills needed to reside

successfully in the community. Services are provided in community-based settings in a manner that contributes to the member's independence, self-sufficiency, community inclusion, and well-being. SD-HTS services must be included in the approved SDS budget. Payment is not made for routine care and supervision that is normally provided by a family member or the member's spouse. SD-HTS services are provided only during periods when staff is engaged in purposeful activity that directly or indirectly benefits the member. SD-HTS services are limited to a daily average of no more than nine (9) hours per day, per OAC 340:100-5-35. At no time are SD-HTS services authorized for periods during which the staff ~~are~~is allowed to sleep. Legally responsible persons may not provide services, per OAC 340:100-3-33.2. Other family members providing services must be employed by provider agencies per OAC 340:100-3-33.2. For the purpose of this ~~policy~~rule, family members include parents, ~~and siblings, including step and half siblings~~step-parents, step siblings, and anyone living in the same home as the member. Payment does not include room and board, maintenance, or upkeep or improvements to the member's or family's residence. A SD-HTS must:

- (A) ~~be 18~~Be eighteen (18) years of age;
 - (B) ~~pass~~Pass a background check, per OAC 340:100-3-39;
 - (C) ~~demonstrate~~Demonstrate competency to perform required tasks;
 - (D) ~~complete~~Complete required training, per OAC 340:100-3-38 et seq.;
 - (E) ~~sign~~Sign an agreement with DDS and the member;
 - (F) ~~be~~Be physically able and mentally alert to carry out the duties of the job;
 - (G) ~~not~~Not work more than ~~40~~forty (40) hours in any week in the capacity of a SD-HTS;
 - (H) ~~not~~Not implement ~~restrictive or intrusive~~prohibited procedures, per OAC ~~340:100-5-57~~340:100-5-58;
 - (I) ~~provide~~Provide services to only one (1) member at any given time. This does not preclude services from being provided in a group setting where services are shared among members of the group; and
 - (J) ~~not~~Not perform any job duties associated with other employment including on-call duties at the same time they are providing ~~SD-HTS~~SD-HTS services.
- (3) ~~Self-directed goods and services (SD-GS)~~SD-GS are incidental, non-routine goods and services that promote the member's self-care, daily living, adaptive functioning, general household ~~activity~~activities, meal preparation, and leisure skills needed to reside successfully in the community and do not duplicate other services authorized in the member's plan of care. These ~~goods and services~~SD-GS must be included in the individual plan and approved SDS budget. SD-GS must meet the requirements listed in (A) through (F).
 - (A) The item or service is justified by a recommendation from a licensed professional.

(B) The item or service is not prohibited by ~~Federal~~Federal or ~~State~~state statutes and regulations.

(C) One ~~(1)~~ or more of the following additional criteria are met. The item or service would:

- (i) ~~increase~~Increase the member's functioning related to the disability;
- (ii) ~~increase~~Increase the member's safety in the home environment; or
- (iii) ~~decrease~~Decrease dependence on other SoonerCare funded services.

(D) SD-GS may include, but are not limited to:

- (i) ~~fitness~~Fitness items that can be purchased at retail stores;
- (ii) ~~personal emergency monitoring systems~~Short duration camps lasting fourteen (14) consecutive calendar days or less;
- (iii) ~~a~~A food catcher;
- (iv) ~~a~~A specialized swing set;
- (v) ~~toothettes~~Toothettes or an electric toothbrush;
- (vi) ~~a~~A seat lift;
- (vii) ~~weight~~Weight loss programs; or gym memberships when:
- ~~(viii) gym memberships when:~~

- (I) ~~there~~There is an identified need for weight loss or increased physical activity;
- (II) ~~justified~~Justified by outcomes related to weight loss, increased physical activity or stamina; and
- (III) ~~in~~In subsequent plan of care year requests, documentation is provided that supports the member's progress toward weight loss or increased physical activity or stamina; or

~~(viii)~~ Swimming lessons.

(E) SD-GS may not be used for:

- (i) ~~co-payments~~Co-payments for medical services;
- (ii) ~~over the counter~~Over-the-counter medications;
- (iii) ~~items~~Items or treatments not approved by the Food and Drug Administration;
- (iv) ~~homeopathic~~Homeopathic services;
- (v) ~~services~~Services available through any other funding source, such as SoonerCare, Medicare, private insurance, the public school system, rehabilitation services, or natural supports;
- (vi) ~~room~~Room and board including deposits, rent, and mortgage payments;
- (vii) ~~personal~~Personal items and services not directly related to the member's disability;
- (viii) ~~vacation~~Vacation expenses;
- (ix) ~~insurance~~Insurance;
- (x) ~~vehicle~~Vehicle maintenance or other transportation related expense;
- (xi) ~~costs~~Costs related to internet access;
- (xii) ~~clothing~~Clothing;
- (xiii) ~~tickets~~Tickets and related costs to attend recreational events;

(xiv) ~~services~~Services, goods, or supports provided to, or benefiting persons other than the member;

(xv) ~~experimental~~Experimental goods or services;

(xvi) ~~personal~~Personal trainers;

(xvii) ~~spa~~Spa treatments; or

(xviii) ~~goods~~Goods or services with costs that significantly exceed community norms for the same or similar goods or services.

(F) SD-GS are reviewed and approved by the DDS director or designee.

(e) **Member Responsibilities.** When the member chooses the SDS option, the member or member's representative is the employer of record and must:

(1) ~~enroll~~Enroll and complete the DDS-sanctioned self-direction training course ~~in self-direction within forty-five (45) calendar days of SDS training enrollment.~~ Exceptions to this timeframe may be approved by the DDS director or his/her designee. The training must be completed prior to the implementation of self-direction and covers:

- (A) ~~staff~~Staff recruitment;
- (B) ~~hiring~~Hiring of staff as an employer of record;
- (C) ~~staff~~Staff orientation and instruction;
- (D) ~~supervision of staff~~Staff supervision including scheduling and service provisions;
- (E) ~~staff~~Staff evaluation;
- (F) ~~staff~~Staff discharge;
- (G) ~~philosophy~~Philosophy of self-direction;
- (H) OHCA policy on self-direction;
- (I) ~~individual~~Individual budgeting;
- (J) ~~development~~Development of a self-directed support plan;
- (K) ~~cultural~~Cultural diversity; and
- (L) ~~rights~~Rights, risks, and responsibilities;

(2) ~~sign~~Sign an agreement with DDS;

(3) ~~agree~~Agree to utilize the services of a FMS subagent;

(4) ~~agree~~Agree to pay administrative costs for background checks, FMS subagent fee, and workers' compensation insurance from his or her SDS budget;

(5) ~~comply~~Comply with federal and state employment laws and ensure no employee works more than ~~40~~forty (40) hours per week in the capacity of an SD-HTS;

(6) ~~ensure~~Ensure that each employee is qualified to provide the services for which he or she is employed and that all billed services are actually provided;

(7) ~~ensure~~Ensure that each employee complies with all DDS training requirements per OAC 340:100-3-38 et seq.;

(8) ~~recruit~~Recruit, hire, supervise, and discharge all employees providing self-directed services, when necessary;

(9) ~~verify~~Verify employee qualifications;

(10) ~~obtain~~Obtain background screenings on all employees providing SD-HTS services per OAC 340:100-3-39;

(11) ~~send~~Send progress reports per OAC 340:100-5-52.

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- (12) ~~participate~~Participate in the Individual Plan and SDS budget process;
 - (13) ~~immediately~~Immediately notify the case manager of any ~~emergencies or~~ changes in circumstances ~~or emergencies~~ that may require modification of the type or amount of services provided for in the member's Individual Plan or SDS budget;
 - (14) ~~wait~~Wait for approval of budget modifications before implementing changes;
 - (15) ~~comply~~Comply with DDS and OHCA administrative rules;
 - (16) ~~cooperate~~Cooperate with DDS monitoring requirements per OAC 340:100-3-27;
 - (17) ~~cooperate~~Cooperate with FMS subagent requirements to ensure accurate records and prompt payroll processing including:
 - (A) ~~reviewing~~Reviewing and signing employee time cards;
 - (B) ~~verifying~~Verifying the accuracy of hours worked; and
 - (C) ~~ensuring~~Ensuring the appropriate expenditure of funds;
 - (18) ~~complete~~Complete all required documents within established timeframes;
 - (19) ~~pay~~Pay for services incurred in excess of the budget amount;
 - (20) ~~pay~~Pay for services not identified and approved in the member's SDS budget;
 - (21) ~~pay~~Pay for services provided by an unqualified provider;
 - (22) ~~determine~~Determine staff duties, qualifications, and specify service delivery practices consistent with SD-HTS Waiver service specifications;
 - (23) ~~orient~~Orient and instruct staff in duties;
 - (24) ~~evaluate~~Evaluate staff performance;
 - (25) ~~identify~~Identify and train back-up staff, when required;
 - (26) ~~determine~~Determine amount paid for services within ~~Plan~~plan limits;
 - (27) ~~schedule~~Schedule staff and the provision of services;
 - (28) ~~ensure~~Ensure SD-HTS do not implement ~~restrictive or intrusive~~prohibited procedures per OAC 340:100-5-57; 340:100-5-58; and
 - (29) ~~sign~~Sign an agreement with ~~DDS and~~ the SD-HTS.
- (f) ~~Financial management services (FMS) subagent responsibilities.~~FMS. The FMS subagent is an entity designated as an agent by DDS to act on behalf of members who have employer and budget authority for the purpose of managing payroll tasks for the member's employee(s) and for making payment of SD-GS as authorized in the member's Plan-plan. FMS subagent duties include, but are not limited to:
- (1) ~~compliance~~Compliance with all DDS and OHCA administrative rules and contract requirements;
 - (2) ~~compliance~~Compliance with DDS or OHCA random and targeted audits ~~conducted by DDS or the OHCA;~~

- (3) ~~provision of financial management support to the member by tracking~~Tracking individual expenditures and monitoring SDS budgets;
 - (4) ~~processing~~Processing the member's employee payroll, withholding, filing and paying of applicable federal, state, and local employment-related taxes and insurance;
 - (5) ~~collection~~Collection and process of employee's time sheets and making payment to member's employees;
 - (6) ~~processing~~Processing and payment of invoices for SD-GS as authorized in the member's SDS budget;
 - (7) ~~providing~~Providing each member with information that assists with the SDS budget management;
 - (8) ~~providing~~Providing reports to members/representatives, as well as monthly to DDS and to OHCA upon request;
 - (9) ~~providing~~Providing DDS and OHCA authorities access to individual member's accounts through a web-based program;
 - (10) ~~assisting~~Assisting members in verifying employee citizenship status;
 - (11) ~~maintaining~~Maintaining separate accounts for each member's SDS budget;
 - (12) ~~tracking~~Tracking and reporting member funds, balances, and disbursements;
 - (13) ~~receiving~~Receiving and disbursing funds for SDS payment per OHCA agreement; and
 - (14) ~~executing~~Executing and maintaining a contractual agreement between DDS and the SD-HTS (employee).
- (g) **DDS case management responsibilities in support of SDS.**
- (1) The case manager develops the member's ~~Plan~~plan per OAC 340:100-5-50 through 340:100-5-58;
 - (2) The DDS case manager meets with the member, member's representative, or legal guardian, when applicable, to discuss the ~~following~~Waiver service delivery options in the ~~HCBS Waiver;~~ (A) and (B) of this paragraph:
 - (A) ~~traditional~~Traditional Waiver services; and
 - (B) ~~self-directed~~Self-directed services including information regarding scope of choices, options, rights, risks, and responsibilities associated with self-direction.
 - (3) When the member chooses self-direction, the case manager:
 - (A) ~~discusses~~Discusses with member or representative the available ~~amount in~~amount in the budget;
 - (B) ~~assist~~Assists the member or representative with the development and modification of the SDS budget;
 - (C) ~~submits~~Submits request for SD-GS to the DDS director or designee for review and approval ~~prior to the case manager's approval of the SDS budget;~~
 - (D) ~~approves~~Develops the SDS budget and modifications;
 - (E) ~~assists~~Assists the member or representative develop or revise an emergency back-up plan;
 - (F) ~~provides the FMS subagent a copy of the member's authorized SDS budget and any modifications;~~

~~(G) monitors~~Monitors implementation of the Planplan per OAC 340:100-3-27;
~~(H) ensures~~Ensures services are initiated within required time frames;
~~(I) conducts~~Conducts ongoing monitoring of Planplan implementation and the member's health and welfare; and
~~(J) specifies additional employee qualifications in the Plan based on the member's needs and preferences when such qualifications are consistent with approved Waiver qualifications;~~
~~(K) specifies in the Plan how services are provided;~~
~~(L) refers potential SD-HTS providers to the FMS subagent for enrollment;~~
~~(M) assists in locating and securing services and other community resources that promote community integration and independence as provided in the member's Plan; and~~
~~(N) ensures restrictive or intrusive~~Ensures prohibited procedures, per OAC 340:100-5-57340:100-5-58 are not implemented by the SD-HTS. If the Team determines restrictive or intrusive procedures are necessary, SD-HTS is not appropriate to meet the member's needs and traditional services must be used, to address behavioral challenges, requirements must be met, per OAC 340:100-5-57.

(h) **Government fiscal/employer agent model.** DDS serves as the Organized Health Care Delivery System (OHCDs) and FMS provider in a Centers for Medicare and Medicaid Services (CMS) approved government fiscal/employer agent model. DDS has an interagency agreement with OHCA.

(i) **Voluntary termination of self-directed services.** Members may discontinue self-directing services without disruption at any time, provided traditional Waiver services are in place. Members or representatives may not choose the self-directed option again until the next annual planning meeting, with services resuming no earlier than the beginning of the next plan of care. A member desiring to file a complaint must follow procedures per OAC 340:2-5-61.

(j) **Involuntary termination of self-directed services.**

(1) Members may be involuntarily terminated from self-direction and offered traditional Waiver services when it has been determined by the DDS director or designee that any of the following exist:

- (A) ~~immediate~~Immediate health and safety risks associated with self-direction, such as, imminent risk of death or irreversible or serious bodily injury related to Waiver services;
- (B) ~~intentional~~Intentional misuse of funds following notification, assistance and support from DDS;
- (C) ~~failure~~Failure to follow and implement policies of self-direction after receiving DDS technical assistance and guidance;
- (D) ~~fraud~~Fraud;
- (E) ~~it is determined that restrictive or intrusive procedures are essential for safety; or~~A member no longer receives a minimum of one (1) SDS Waiver

service per month and DDS is unable to monitor the member; or

(F) ~~reliable~~Reliable information shows the employer of record or SD-HTS engaged in illegal activity.

(2) When action is taken to involuntarily terminate the member from self-directed services, the case manager assists the member access needed and appropriate services through the traditional Waiver services option, ensuring that no lapse in necessary services occurs for which the member is eligible.

(3) The Fair Hearing process, per OAC 340:100-3-13 applies.

(k) **Reporting requirements.** While operating as an ~~Organized Health Care Delivery System~~OHCDs, DDS provides OHCA reports detailing provider activity in the format and at times OHCA requires.

[OAR Docket #20-475; filed 6-26-20]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 45. INSURE OKLAHOMA

[OAR Docket #20-477]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. Insure Oklahoma ESI Employee Eligibility
 317:45-9-1.1 [NEW]
 Subchapter 11. Insure Oklahoma IP
 Part 1. Individual Plan Providers
 317:45-11-2 [AMENDED]
 Part 5. Insure Oklahoma IP Member Eligibility
 317:45-11-21.1 [NEW]
 317:45-11-22 [AMENDED]
 (Reference APA WF # 19-41B)

AUTHORITY:

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

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n/a

INCORPORATIONS BY REFERENCE:

n/a

Permanent Final Adoptions

GIST/ANALYSIS:

The proposed revisions will establish language to the Insure Oklahoma IP and ESI policy on how a newborn child can be deemed eligible on their date of birth for SoonerCare benefits when the child is born to a member of the Insure Oklahoma IP or ESI. Additionally, the proposed policy changes will define eligibility criteria for the newborn to receive SoonerCare benefits.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 9. INSURE OKLAHOMA ESI EMPLOYEE ELIGIBILITY

317:45-9-1.1. Certification of newborn child deemed eligible

(a) A newborn child is deemed eligible on the date of birth for SoonerCare benefits when the child is born to a member of Insure Oklahoma Employer Sponsored Insurance (ESI) and the annual gross household income does not exceed SoonerCare requirements. The newborn child is deemed eligible for SoonerCare benefits through the last day of the month the child attains the age of one (1) year.

(b) The newborn child's SoonerCare eligibility is not dependent on the mother's continued eligibility in Insure Oklahoma ESI. The child's SoonerCare eligibility is based on the original eligibility determination of the mother for Insure Oklahoma ESI and consideration is not given to any income or resource changes that occur during the deemed eligibility period.

(c) The newborn child's certification period for SoonerCare is shortened only in the event the child:

- (1) Loses Oklahoma residence; or
- (2) Expires.

(d) No other conditions of eligibility are applicable, including social security number enumeration and citizenship and identity verification. However, it is recommended that social security number enumeration be completed as soon as possible after the child's birth.

SUBCHAPTER 11. INSURE OKLAHOMA IP

PART 1. INDIVIDUAL PLAN PROVIDERS

317:45-11-2. Insure Oklahoma IP Individual Plan (IP) provider payments

Payment for covered benefits rendered to Insure Oklahoma IP members is made to contracted Insure Oklahoma IP healthcare providers for medical and surgical services within the scope of OHCA's medical programs, provided the services are medically necessary as defined in Oklahoma Administrative Code 317:30-3-1(f).

(1) Coverage of certain services requires prior authorization and may be based on a determination made by a medical consultant in individual circumstances; and

~~(2) The decision to charge a co-payment for a missed visit is at the provider's discretion;~~

~~(3) The provider may collect the member's co-payment in addition to the SoonerCare reimbursement for services provided; and,~~

~~(4) The provider may refuse to see members based on their inability to pay their co-payment.~~

PART 5. INSURE OKLAHOMA IP MEMBER ELIGIBILITY

317:45-11-21.1. Certification of newborn child deemed eligible

(a) A newborn child is deemed eligible on the date of birth for SoonerCare benefits when the child is born to a member of Insure Oklahoma Individual Plan (IP) and the annual gross household income does not exceed SoonerCare requirements. The newborn child is deemed eligible for SoonerCare benefits through the last day of the month the child attains the age of one (1) year.

(b) The newborn child's SoonerCare eligibility is not dependent on the mother's continued eligibility in Insure Oklahoma IP. The child's SoonerCare eligibility is based on the original eligibility determination of the mother for Insure Oklahoma IP and consideration is not given to any income or resource changes that occur during the deemed eligibility period.

(c) The newborn child's certification period for SoonerCare is shortened only in the event the child:

- (1) Loses Oklahoma residence; or
- (2) Expires.

(d) No other conditions of eligibility are applicable, including social security number enumeration and citizenship and identity verification. However, it is recommended that social security number enumeration be completed as soon as possible after the child's birth.

317:45-11-22. PCP Primary Care Physician (PCP) choices

(a) The applicant ~~(and dependents if also applying for Insure Oklahoma IP)~~ is and any covered dependent(s) are required to select a valid PCP.

(b) If a valid PCP is selected by the applicant or dependents and they are not enrolled with the first PCP choice, they are enrolled with the next available PCP choice. The applicant is notified in writing why their initial choice was not selected. The applicant and any covered dependent(s) must make a PCP selection through their mysooner-care.org account.

(c) After initial enrollment in Insure Oklahoma IP Individual Plan the applicant ~~or dependents~~ can any covered dependent(s) may change their PCP selection through their mysooner-care.org account or by calling the Insure Oklahoma helpline.

(d) To ensure members have access to their Patient Centered Medical Home, Insure Oklahoma staff may facilitate enrollment as applicable.

[OAR Docket #20-477; filed 6-26-20]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 45. INSURE OKLAHOMA

[OAR Docket #20-476]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. Insure Oklahoma ESI Employee Eligibility

317:45-9-4 [AMENDED]

Subchapter 11. Insure Oklahoma IP

Part 5. Insure Oklahoma IP Member Eligibility

317:45-11-24 [AMENDED]

(Reference APA WF # 19-10)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; 42 C.F.R. § 447.56(a)(1)(x); and Section 5006 of the American Recovery and Reinvestment Act (ARRA)

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will align agency rules regarding cost sharing exemptions for AI/AN members with Oklahoma's Medicaid State Plan language and 42 Code of Federal Regulations (C.F.R.) § 447.56(a)(x). Section 5006 of the American Recovery and Reinvestment Act (ARRA) precludes states from imposing Medicaid premiums or any other Medicaid cost sharing on Indian applicants and participants served by Indian health providers.

CONTACT PERSON:

Sandra Puebla, Director of Federal and State Authorities, 405-522-7270, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 14, 2020:**

SUBCHAPTER 9. INSURE OKLAHOMA ESI EMPLOYEE ELIGIBILITY

317:45-9-4. Employee cost sharing

Employees are responsible for up to ~~15 percent~~fifteen percent (15%) of their benefit plan premium. The employees are also responsible for up to ~~15 percent~~fifteen percent (15%) of their dependent's benefit plan premium if the dependent is included in the program. The combined portion of the employee's cost sharing for benefit plan premiums cannot exceed three percent of his/her annual gross household income computed monthly. ~~Native American children providing documentation of ethnicity are exempt from cost sharing requirements, including premium payments and out of pocket expenses~~Cost-sharing, including premium payments and copayments, are not required of American Indian and Alaska Native members, as is established in the federally-approved Oklahoma Medicaid State Plan.

SUBCHAPTER 11. INSURE OKLAHOMA IP

PART 5. INSURE OKLAHOMA IP MEMBER ELIGIBILITY

317:45-11-24. Member cost sharing

(a) Members are given monthly invoices for their benefit plan premiums. IP health plan premiums are established by the OHCA. The premiums are due monthly and must be paid in full.

(1) Members are responsible for their monthly premiums, in an amount not to exceed four percent (4%) of their monthly gross household income.

(2) Working disabled individuals are responsible for their monthly premiums in an amount not to exceed four percent (4%) of their monthly gross household income, based on a family size of one and capped at ~~100 percent~~one-hundred percent (100%) of the Federal Poverty Level.

(3) ~~Native Americans providing documentation of ethnicity are exempt from premium payments~~Cost-sharing, including premium payments and copayments, are not required of American Indian and Alaska Native members, as is established in the federally-approved Oklahoma Medicaid State Plan.

(b) IP coverage is not provided until the premium and any other amounts due are paid in full. Other amounts due may include but are not limited to any fees, charges, or other costs incurred as a result of returned payments.

[OAR Docket #20-476; filed 6-26-20]

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

[OAR Docket #20-517]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

320:15-1-3 [AMENDED]

Subchapter 2. Grant Application

320:15-2-1 [AMENDED]

320:15-2-2 [AMENDED]

320:15-2-3 [AMENDED]

AUTHORITY:

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

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The Oklahoma Heritage Preservation Grant Program provides financial assistance to cities, counties, nonprofit organizations, and tribal governments to operate and improve the effectiveness of museums and historical organizations. The purpose of the Heritage Preservation Grant Program is to encourage the collecting, preserving, and sharing of Oklahoma history. Following the completion of the first cycle of grant applications it was identified that clarification and modification should be made to definitions, eligibility requirements, eligible projects and expenses, the weighted criteria, and the review process. These changes are intended to help applicant organizations, particularly those from smaller, volunteer run organizations, provide better clarity of the review process and streamline the administrative aspects of the program.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

320:15-1-3. Definitions

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

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

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

"Cash match" means or refers to the money that the applicant organization will provide toward the project. This money can be from a number of sources, examples include: general operations, donation, or a fundraiser. Cash match would not include the salary of a staff member already working for the applicant organization. Matching funds must be expended after the grant contract is signed.

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

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

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

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

"Indirect costs" means or refers to an organization's overhead, administrative, or other expenses not directly related to the project and also possibly supporting other projects or functions. An example of this would be another division of the applicant organization managing the financial aspects of the grant and wanting a percentage of the grant funds to pay for the financial overhead costs incurred.

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

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

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

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

"Not-for-profit historical organization" means or refers to museums, historic sites, historical associations, archives, libraries with special collections, or genealogical associations. These organizations must be located in the state of Oklahoma, be registered and in good standing with the Oklahoma Secretary of State as a domestic not for profit, and feature Oklahoma history as a major component of their mission.

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

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

"OHS staff review committee" means or refers to the OHS staff members selected by the OHS Executive Director who will evaluate applications based on the weighted criteria and adherence to program requirements. The OHS Grants Administrator is excluded from appointment to this committee and has no grant decision making power.

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

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

"Operating budget" means or refers to the most recent operating budget approved for the applicant organization. This budget shall include staff salaries but exclude non-reoccurring costs. Applicants of tribal or municipal ~~entities~~ governments may use the operating budget of the division in which the project will take place. If an applicant organization is a sub-entity of tribal or municipal government but is a historical organization (museum, historic site, historical association, archive, library with special collection or genealogical association) they will use the sub-entity's operating budget. Support organizations must use the operating budget of the primary beneficiary of the grant funds, regardless of the funding source of that operating budget. Libraries with special collections may use the operating budget allotted to special collections. An example of this would be a city government applying for a grant to digitize historic maps. This applicant would use the operating budget for the division which oversees archives, not the entire budget of the city government.

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

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

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

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

"Support groups" means or refers to a not-for-profit organization whose purpose is to support the mission and provide

financial support to the applicant organization. This term could also include friend's groups or foundations. An example of this would be a library operated by an institute of higher learning having a friend's group that supports the organization through applying for grants, receiving and managing donations, or hosting donor events.

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

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

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

SUBCHAPTER 2. GRANT APPLICATIONS

320:15-2-1. Eligibility

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

(1) Applicants must be municipal, county, or tribal governments, ~~or—~~not-for-profit historical organizations ~~registered with the Oklahoma Secretary of State (museums, historic sites, historical associations, libraries with special collections, or genealogical associations in the state of Oklahoma that feature Oklahoma history as a major component of their mission) as defined in section 320:15-1-3, or a support group of a municipal, country, or tribal government or a not-for-profit historical organizations.~~

(2) Applicant organizations must be engaged in the collect collection, preserve preservation, and share sharing of collections that may include but are not limited to: objects, photographs, manuscripts, videos, audio recordings, maps, periodicals, microforms, books, vertical files, archaeological material, or buildings.

(3) Applicant organizations must have a strategic plan for their organization. If an organization does not have a strategic plan, the only project that will be eligible for consideration is the development of a strategic plan.

(4) Applicant organizations must have an operating budget under \$300,000.

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

(1) The minimum amount requested shall be \$1,000 and the maximum amount requested shall be \$20,000, with the exception of grant requests for the development of a strategic plan which shall be a minimum of \$500 to and a maximum of \$5,000.

(2) Applicants must provide a cash match of ten (10) percent of the total grant funds awarded by the OHS.

(3) Proposed projects must be completed within twelve (12) months of receipt of grant contract.

(c) **Ineligible Projects—Project Expenses.** The following ~~projects~~ expenses will not be eligible for a grant funding:

- (1) Repair, maintenance, or expansion of facilities
- (2) Rent or mortgage payments

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- (3) Utilities or insurance
- (4) Salaries, wages, or benefits for ~~full-time~~ employees (project-specific salaries will be considered)
- (5) Creation of new monuments, sculptures, murals, or other works of art, unless it serves as an integral part of a larger exhibit
- (6) Acquisition of real estate
- (7) Landscaping or site work
- (8) Planning for new construction
- (9) Indirect costs
- (10) Food or drink
- (11) Fundraising events
- (12) Digitization of materials for which the applicant organization or primary beneficiary does not hold copyright or permission from the copyright holder.

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

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

- (1) Historical importance of the collections or theme of the applicant organization as defined by the most current OHS Historic Context Review Report (available upon request), which is in effect at the time of the solicitation of proposals, ~~which This criteria shall be weighted at a factor of four (4)three (3).~~
- (2) ~~Project possibilities~~Project potential, which may include number of patrons served, fulfilling a demonstrated need in the community or for the applicant organization, economic impact on community or organization, publicly accessible product/service, possible impact on the scope of collections, capacity building impact or anticipated revenue generated which or produces measurable outcomes. This criteria shall be weighted at a factor of four (4)five (5).
- (3) ~~Community support, which may include direct participation of officers, board members, members, or volunteers; affiliations with other non profit organizations; or amount and source of the match, which shall be weighted at a factor of three (3).~~
- (3) Institutional readiness of applicant organization, which may include past accomplishments, programming/activities, facilities, base of support, strength of organizational strategic plan, community engagement, participation of board members/volunteers, accessibility to the public, or record of collecting experience/care. This criteria shall be weighted a factor of three (3).
- (4) Sustainability, which may include record of collecting experience, record of regular meetings of officers and board members, record of past completed projects, and record of budget and project management capabilities, which shall be weighted at a factor of three (3).
- (4) Implementation of project, which may include a clear and comprehensive explanation of the project, a clear explanation of how the project will be accomplished, identification of staff, volunteer, and/or third party vendor responsibilities, identification of deadlines, method for gauging project impact, or ability to complete project

within one year. This criteria shall be weighted at a factor of three (3).

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

(5) Organizational impact, which may include a description of how the project fits into the long-term goals of the applicant organization, a description of how the project will increase the ability to attract and diversify future funders, and the ability to capitalize on the project's success to springboard into future projects/collaborations. This criteria shall be weighted at a factor of three (3).

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

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

320:15-2-3. Application process

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

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

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

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

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

- (1) Storage, management, and/or care of collections
- (2) Conducting, transcribing, or cataloging oral histories
- (3) Digital conversion of historical collections
- (4) Preservation assessments
- (5) Emergency Preparedness Efforts
- (6) Environmental assessments and monitoring systems
- (7) Exhibit research, writing, graphic design, fabricating, mounting, and installation

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

- (Q) Date board of directors approved submitting a project proposal
 - (R) Proposed project budget which shall account for items outlined in project narrative, account for applicant organization's cash match, and include quotes from vendors or use of market research to formulate budget
 - (S) Any other information as may be requested
- (2) OHS staff will evaluate all project proposals and certify whether each meets the minimum eligibility requirements. Incomplete ~~or improperly completed~~ applications; or applications received after the application deadline will not be considered.
 - (3) Only one completed application will be considered per organization each grant selection cycle.
- (f) **Draft application.** Applicant organizations may voluntarily send a draft application to the Grants Administrator for feedback. This draft application must be sent following the guidelines and due date found on the OHS website. Participation in the draft application feedback will not guarantee funding nor will non participation negatively affect an organization's ability to receive funding. The applicant organization is able to accept or disregard in whole or part the recommendations offered by the Grants Administrator. It is important to remember that the Grants Administrator does not have grant decision making authority.
- (fg) **Application evaluation and awards.**
- (1) ~~A committee of OHS staff members~~The OHS staff review committee appointed by the OHS Executive Director, shall rank the proposed projects using the weighted criteria. The OHS staff member(s) designated to facilitate the program and grant application process will be excluded from appointment to this committee.
 - (2) Using the established weighted criteria (320:15-2-2[1-76]), a rating of one (1) to ~~ten (10)~~ five (5) will be applied to each criteria, with one (1) signifying minimum value and ~~ten (10)~~ five (5) signifying maximum value. The rating then will be multiplied by the weight assigned to each criteria to determine a total value. The highest rating an organization may receive is 190 points. In making the list for recommendation the OHS staff review committee shall evaluate based on the weighted criteria and adherence to statutory and regulatory program requirements. These requirements are geographic balance, cash match, the existence of a strategic plan for the applicant organization, tribal division, or governmental department, as well as, consideration of failure to meet requirements from past Heritage Grant awards.
 - (3) The OHS Executive Director shall submit the ~~ranked list of project proposals~~ staff evaluations and accompanying recommendations to the Oklahoma Heritage Preservation Grant Review Committee for review and recommendation to the full Board.
 - (4) The OHS Board of Directors will make the final decision of which projects will be funded, the amount of each grant, and the number of organizations to receive a grant, and the quarter of the year when each project will be initiated. In awarding grants the Board will, in

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accordance with statutory requirements, ~~consider geographic diversity and~~ give preference to projects affecting collections, educational programs, and exhibits (53 O.S. Section 415). Because the grant application procedure(s) are not individual proceedings, the awarding of grants by the Board is not subject to appeal under the Administrative Procedures Act.

(5) The OHS will initiate a contract with each grant recipient.

(6) The Grants Administrator may contact the applicant organization for clarification or for additional information regarding an application.

(7) No employee of the OHS shall act as an individually paid third-party vendor for a project with an applicant organization that receives grant funds.

(gh) **Payment procedures.** Where applicable, payments for projects, programs, services, or activities for the Heritage Preservation Grant Program will be made according to the Central Purchasing Act (74 O.S. Section 85.1 et seq.) and Central Purchasing Rules as established by the Oklahoma Office of Management and Enterprise Services Administrative rules OAC 260:115.

Grant recipients must submit documentation for completed work and invoices to receive reimbursement as the project moves forward. All reimbursements will be made after proof that work has been completed.

(hi) **Audit.**

(1) The grantee shall retain all books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any contract with the State, the successful grant recipient agrees any pertinent State or Federal agency will have the right to examine and audit all records relevant to execution and performance of the resultant contract.

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

[OAR Docket #20-517; filed 7-1-20]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 15. LICENSING

[OAR Docket #20-560]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

325:15-1-2. Definitions [AMENDED]

Subchapter 5. Occupation Licensing

325:15-5-10. Grounds for denial, refusal, suspension or revocation of license [AMENDED]

325:15-5-16. ~~Age, weight, and experience qualifications~~ Qualifications for Jockey [AMENDED]

325:15-5-17. Qualifications for Apprentice Jockey [AMENDED]

325:15-5-20. Program Trainer Prohibited [AMENDED]

AUTHORITY:

3A O.S. § 200 et seq.; Oklahoma Horse Racing Commission

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n/a

GIST/ANALYSIS:

The proposed rule amendments add and revise definitions; update language; modify qualifications for jockeys and apprentice jockeys; clarify determining characteristics of program trainer; provide penalties for violation of section; and require allowance of examination of certain documents under certain circumstances.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

325:15-1-2. Definitions

In addition to the definitions provided in Section 200.1 of Title 3A, of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Oklahoma Horse Racing Act [3A:200 et seq.].

"Apprentice Jockey" means a race rider who has ridden less than forty (40) winners or less than two (2) years since first having been licensed in any racing jurisdiction, and who otherwise meets the license qualifications of a jockey.

"Authorized Agent" means a person licensed by the Commission and appointed by a written notarized affidavit by the Owner, Trainer, Parent or Guardian of a minor in whose behalf the Agent will act, and limited to the actions as specified on the affidavit. ~~Said~~The affidavit ~~must~~shall be on file with the Commission.

"Commissioner" means a member of the Oklahoma Horse Racing Commission.

"Controlling Owner" means a person or family who owns or votes fifty percent (50%) or more of the voting shares of a corporation, partnership, syndicate, or other association or entity or who is the Managing, General, or Limited Partner in a partnership which has been issued a currently valid organization license.

"Day" means a 24-hour period ending at midnight.

"Dark day" means a day during a live race meeting when no pari-mutuel wagering is conducted.

"Entry" means:

- (A) A horse eligible for and entered in a race.
- (B) Two (2) or more horses entered in the same race which have common ties of Ownership, lease, or training.

"Horse" means:

- (A) any equine including and designated as mare, filly, stallion, colt, ridgeling, or gelding registered for racing;
- (B) an ~~entire~~intact equine male five (5) years of age and older.

"Horse racing facility - major pari-mutuel" means a facility having those physical and locational characteristics in accord with the Oklahoma Horse Racing Act and which will qualify it for the Breeders' Cup Series or other graded stakes races as granted by The North American Graded Stakes Committee, or both.

"Jockey" means a rider licensed to race.

"Jockey Agent" means a licensed, authorized representative of a Jockey.

"Lessee" means a licensed Owner whose interest in a horse is by virtue of a completed Commission-approved lease form attached to the Registration Certificate and on file with the Commission.

"Lessor" means the Owner of a horse that is leased.

"Occupation license" means a state requirement for any person acting in any capacity pursuant to provisions of the Act.

"Organization license" means a state requirement for any person desiring to conduct a race meeting in Oklahoma within the minimum standards as required by the Act and the rules of the Commission.

"Owner" means any person who holds in whole or in part, any right, title or interest in a horse or an Organization Licensee or any person who is a Lessee of a horse and has been duly issued a currently-valid Owner license as a person responsible for such horse.

"Program Trainer" is a licensed Trainer who, for the purposes of the official Race program, is identified as the Trainer of a horse and is acting on behalf of another individual that is either licensed or not licensed, cannot be licensed, is prohibited from racing for any reason, or is attempting to assume

the appearance of being the Trainer of a horse that he/she does not have in his/her care, custody or control, or which is under the control of and/or trained by the licensed or unlicensed individual.

"Race" means a contest between horses.

"Race Day" means a day during a race meeting when pari-mutuel wagering occurs on live races conducted at that racetrack.

"Restricted area" means any area within the enclosure where access is limited to licensees whose occupation requires access. Those areas which are restricted shall include but not be limited to the barn area, paddock, test barn, Stewards' tower, racecourse, mutuel line and money rooms, or any other area designated restricted by the Organization Licensee or the Commission or both. Signs giving notice of restricted access shall be prominently displayed at all entry points.

"Rules" means the rules adopted by the Commission to implement the provisions of the Act.

"Scratch time" means the deadline for withdrawal of entries from an overnight race.

"Shareholder" means a person who owns some share of Ownership, including entitlement to potential profits or losses in a corporation, partnership, syndicate, association or other multiple Ownership entity.

"Stable name" means a name used other than the actual legal name of an Owner or Lessee which is registered with the Commission.

"Safety Steward" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"Steward" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"Trainer" means a person qualified and licensed by the Commission as a Trainer.

"Week" means a calendar week.

"Year" means a calendar year.

SUBCHAPTER 5. OCCUPATION LICENSING

325:15-5-10. Grounds for denial, refusal, suspension or revocation of license

(a) In addition to any other valid ground or reason, the Stewards may deny, refuse to issue, suspend or refer to the Commission for revocation the occupation license for any person; or the Commission may deny, refuse to issue, suspend or revoke an occupation license for any person:

- (1) Who has been convicted of a felony in this State, any other state, or the United States of America; ~~or~~
- (2) Who has been convicted of violating any law regarding gambling or a controlled dangerous substance of this State, any other state, or of the United States of America; ~~or~~
- (3) Who is unqualified to perform the duties required of the applicant; ~~or~~
- (4) Who fails to disclose or states falsely any information required in the application; ~~or~~

- (5) Who has been found guilty of a violation of any provision of the Oklahoma Horse Racing Act or of the Rules and Regulations of the Commission; ~~or~~
- (6) Whose license or spouse's license for any racing occupation or activity requiring a license has been or is currently suspended, revoked, refused or denied for just cause in any recognized racing jurisdiction; ~~or~~
- (7) Who has been or is currently excluded from any racing enclosure by a recognized racing jurisdiction; or
- (8) Whose conduct or reputation is such that his/her presence at a race meeting may, in the opinion of the Commission or the Stewards, reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of a race meeting; ~~or~~.
- (b) Notwithstanding the provisions ~~in (a)~~ of this Section, any person whose racing record(s) from any racing jurisdiction(s) recognized by the Commission, including Oklahoma, reflects two (2) or more racing ~~medication~~ substance rule violations for any United States Drug Enforcement Agency Schedule I or II controlled substances or two (2) or more rule violations regarding electrical or mechanical devices within the preceding ten (10) years shall be denied a Commission occupation license. [3A:204.2(C); see also 3A:204.2(D) and 3A:204.3]
- (c) Notwithstanding the ~~above~~ provisions of this Section, any applicant whose racing record(s) from any racing jurisdiction(s) recognized by the Commission, including Oklahoma, reflects any human substance abuse violations may be denied a Commission occupation license until the person pays for and submits to two (2) urine samples thirty (30) days apart with both samples failing to show any trace of a controlled dangerous substance. All such samples shall be obtained and tested by the Commission under conditions properly controlled to guarantee the complete integrity of the process and at the expense of the person. After the person has received two (2) negative tests, s/he may reapply for a license unless his/her continuing participation at a race meeting shall be deemed by the Commission Director of Law Enforcement or his/her designee as to be detrimental to the best interest of horse racing. [3A:204.2(C); see also 3A:204.2(D) and 3A:204.3]

325:15-5-16. ~~Age, weight, and experience~~ ~~qualifications~~ **Qualifications for Jockey**

- (a) ~~No person under~~ Each applicant requesting a Jockey's license shall:
- (1) ~~Be at least sixteen (16) years of age shall be granted a Jockey's license. No person whose riding weight at the time of application exceeds.~~
- (2) ~~Not exceed one hundred thirty (130) pounds shall be licensed as a Jockey. No person who has never in weight at the time of application.~~
- (3) ~~Have~~ ridden in a race at a recognized meeting shall be granted a license as Jockey unless s/he has or satisfactorily worked a horse from the starting gate in company before the Stewards or their representatives. Upon the recommendation of the Stewards, the Commission may issue a Jockey's license granting permission to ~~such person~~ the applicant for the purpose of riding in not more

than four races to establish the qualifications and ability of ~~such person~~ the applicant for the license. Subsequently, the Stewards may recommend the granting of a Jockey's license.

(4) Pass a physical examination and a baseline concussion test which uses the most current SCAT testing protocol. The examination and test shall be conducted by a licensed physician within twelve (12) months prior to application. Results affirming the applicant's fitness to participate as a Jockey shall be provided by the applicant to the Commission. After licensing, Stewards may require further examination and may refuse to allow a Jockey to ride, pending results of an examination.

(5) Show competence by providing evidence of any prior licensing and by demonstrating riding ability, which may include participation in up to five (5) races with the prior approval of the Stewards with the consideration of the recommendations from the starter, the head outrider, and the designated representatives of the Jockeys and the horsemen at the track. The demonstration of riding ability shall include, but not be limited to:

- (A) Breaking with a horse in company from the starting gate;
- (B) Working a horse in company around the turn and down the stretch;
- (C) Switching the riding crop from one hand to the other while maintaining control of the horse in a stretch drive; and
- (D) Causing a horse to switch leads coming out of the turn.

(b) ~~However, each person granted an Amateur Jockey occupation license shall:~~

- (1) ~~be at least 16 years old;~~
- (2) ~~meet all qualification rules for membership to Amateur Riders' Club of the Americas (ARCAS) as contained in the current membership application form.~~
- (3) ~~hold a current amateur riders license from ARCAS and be a current member of ARCAS;~~
- (4) ~~weigh no more than 142 pounds;~~
- (5) ~~not hold a current license as a Jockey or Apprentice Jockey;~~
- (6) ~~submit proof of a satisfactory physical examination given by a person licensed to practice medicine within the previous 12 months. The physical examination shall include visual acuity and hearing examinations. A reexamination of any Amateur Jockey may be required by the Commission or the Stewards at any time. An Amateur Jockey may be prohibited from riding by the Commission or the Stewards until the Amateur Jockey has successfully passed each examination;~~
- (7) ~~wear a properly fastened safety helmet while mounted on a race horse within the enclosure or riding in a race; and~~
- (8) ~~meet all Commission licensing requirements~~ A jockey who is an owner or trainer of a horse competing at a race meeting shall not engage to ride as a jockey at the same race meeting.

325:15-5-17. Qualifications for Apprentice Jockey

(a) An applicant for an Apprentice Jockey license may be prohibited from riding until verification of the applicant's previous riding experience by the stewards or Commission. This prohibition shall not exceed fourteen (14) days.

(b) The conditions of an Apprentice Jockey license shall not apply to quarter horse racing. A jockey's performances in quarter horse racing shall not apply to the conditions of an Apprentice Jockey.

(c) An Apprentice Certificate may be requested from the Stewards on a form provided by the Commission. Each applicant shall be limited to one Apprentice Certificate. If necessary, a duplicate copy may be requested from the issuing Commission.

(d) An applicant with an approved Apprentice Certificate may be licensed as an Apprentice Jockey.

(e) An Apprentice Jockey is a race rider who has ridden less than forty (40) winners since first having been licensed in any racing jurisdiction, and who otherwise meets the license qualifications of a Jockey. An Apprentice may be granted an Apprentice certificate issued by the Stewards and filed with the Commission in lieu of a traditional Apprentice contract. An Apprentice may execute a written contract, if a minor with written consent of his/her parents or guardian, to an Owner or Trainer for a period of not less than three nor more than five (5) years. All contracts and transfers of contracts must be approved by the Stewards and filed with the Commission. A contract employer shall not have any interest in the earnings of an Apprentice Jockey. Racing Officials and their licensed assistants and employees shall not directly or indirectly buy or sell any contract upon any Jockey or Apprentice Jockey for himself or any other person. In all overnight races except overnight stake and/or handicaps run exclusively for Thoroughbreds, an Apprentice Jockey shall ride with a five pound weight allowance beginning with his/her first mount and for one (1) full year from the date of his/her fifth winning mount. If, after riding one (1) full year from the date of his/her fifth winning mount, the Apprentice Jockey has failed to ride a total of forty (40) winners from the date of his/her fifth winning mount, s/he shall continue to ride with a five pound weight allowance for one more year from the date of his/her fifth winning mount, or until s/he has ridden a total of forty (40) winners, whichever comes first. In no event may a weight allowance be claimed for more than two years from the date of the fifth winning mount, unless an extension has been granted. Only Thoroughbred races at authorized race meetings in the United States, Canada, or Mexico which are reported in the DAILY RACING FORM or other recognized racing publications shall be considered in determining eligibility for license as an Apprentice Jockey. The apprentice weight allowance may be waived at the time of entry by the trainer or the trainer's designee with Stewards' approval. If an Apprentice Jockey is unable to ride for a period of fourteen (14) consecutive days or more after the date of his/her fifth winning mount because of service in the Armed Forces of the U.S.A., enrollment in an institution of secondary or higher education, or because of physical disablement disability, the Commission may extend the time during which such the

apprentice weight allowance may be claimed for a period not to exceed the period such the Apprentice Jockey was unable to ride.

325:15-5-20. Program Trainer Prohibited

(a) No licensee shall act as a Program Trainer, nor shall anyone use the services of a Program Trainer. Anyone found to be acting as a Program Trainer or using the services of a Program Trainer shall be responsible for all violations occurring from participation of the horse(s) entered or raced by that person.

(b) A licensed trainer or individual shall be determined to be acting as a Program Trainer or using the services of a Program Trainer if the licensed trainer or individual:

(1) Enters into an agreement on behalf of a licensed, unlicensed, ineligible, or suspended person for the sole purpose of completing an entry form for a race;

(2) Pays an entry, nomination, or starter fee on behalf of a licensed, unlicensed, ineligible or suspended person;

(3) Claims a horse on behalf of a licensed, unlicensed, ineligible, or suspended person;

(4) Receives a financial or beneficial interest from a licensed, unlicensed, ineligible, or suspended person for the sole purpose of being listed as the trainer on the official race program; or

(5) Pays any compensation to the licensed, unlicensed, ineligible, or suspended person.

(c) A licensed trainer or individual who violates the provisions of subsection (b) shall be subject to the following penalties:

(1) First offense - six (6) month suspension and a fine of Five Thousand Dollars (\$5,000.00);

(2) Second offense - one (1) year suspension and a fine of Ten Thousand Dollars (\$10,000.00); and

(3) Third offense - penalty shall be determined by the Commission.

(d) Any person who assumes the care, custody, or control of the horses of a licensed, unlicensed, ineligible, or suspended person, shall, upon request, permit Stewards, the Commission, and other law enforcement officers to examine all relevant financial and other records.

[OAR Docket #20-560; filed 7-7-20]

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 25. ENTRIES AND DECLARATIONS**

[OAR Docket #20-561]

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RULES:

325:25-1-2. Definitions [AMENDED]

325:25-1-19. Deadline for arrival of entered horses [AMENDED]

325:25-1-26. Limitations on field and number of races [AMENDED]

325:25-1-32. Coggins Equine Infectious Anemia test [AMENDED]

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n/a

GIST/ANALYSIS:

The proposed rule amendments add and revise definitions; update language; reduce arrival deadline of entered horses; clarify limitation on races; and change certain required test.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

325:25-1-2. Definitions

In addition to the definitions provided in Section 200.1 of Title 3A, of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Oklahoma Horse Racing Act [3A:200 et seq.].

"Accredited Oklahoma-Bred horse" means a horse that is eligible pursuant to the Act and Commission rules and whose registration in the Oklahoma-Bred Program has been completed by the official Registering Agency.

"Added money" means the amount exclusive of trophy added into a stakes by the Organization Licensee, or by sponsors, state-bred programs, or other funds added to those monies gathered by nomination, entry, sustaining and other fees coming from the horsemen.

"Age" means that the age of a horse is reckoned as beginning on the first day of January in the year in which the horse is foaled.

"Also eligible" means:

(A) A number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched from a race prior to scratch time.

(B) In a trial race, the next preferred contestant that is eligible to participate when an entry is scratched, pursuant to the written conditions of the race.

"Assistant Trainer" means a person qualified and licensed by the Commission as an Assistant Trainer.

"Authorized Agent" means a person licensed by the Commission and appointed by a written notarized affidavit by the Owner, Trainer, Parent or Guardian of a minor on whose behalf the Agent will act and limited to the actions as specified on the affidavit. ~~Said~~The affidavit ~~must~~shall be on file with the Commission.

"Closing" means the time published by the Organization Licensee after which nominations or entries will not be accepted for a race.

"Commissioner" means a member of the Oklahoma Horse Racing Commission.

"Conditions of a race" means the qualifications which determine the eligibility of a horse to be entered in a race.

"Coupled entry" means two or more contestants in a race that are treated as a single betting interest for pari-mutuel wagering purposes (also see "Entry").

"Day" means a 24-hour period ending at midnight.

"Declaration" means the act of withdrawing an entered horse from a race before the closing of entries.

"Draw" means the process of publicly assigning post positions and selecting contestants in a manner to ensure compliance with the conditions of the rules of racing.

"Entry" means:

(A) A horse eligible for and entered in a race.

(B) Two (2) or more horses entered in the same race which have common ties of Ownership, lease, or training (also see "Coupled Entry").

"Field" means all horses competing in a race.

"Horse" means:

(A) Any equine including and designated as mare, filly, stallion, colt, ridgeling, or gelding registered for racing;

(B) An ~~entire~~intact equine male five (5) years of age and older.

"Lessee" means a licensed Owner whose interest in a horse is by virtue of a completed Commission-approved lease form attached to the Registration Certificate and on file with the Commission.

"Lessor" means the Owner of a horse that is leased.

"Maiden" means a horse which has never won an official or recognized race as defined in breed registry rules. A maiden which has been disqualified after finishing first is still a maiden.

"Mutuel field" means two or more contestants treated as a single betting interest for pari-mutuel wagering purposes because the number of betting interests exceeds the number that can be handled individually by the pari-mutuel system.

"Nomination" means the naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.

"Nominator" means the person who nominates a horse as a possible contender in a race.

"Occupation license" means a state requirement for any person acting in any capacity pursuant to provisions of the Act.

"Occupation licensee" means any person who has obtained an occupation license.

"Organization licensee" means a state requirement for any person desiring to conduct a race meeting in Oklahoma within the minimum standards as required by the Act and the rules of the Commission.

"Owner" means any person who holds in whole or in part, any right, title or interest in a horse or an Organization Licensee or any person who is a Lessee of a horse and has been duly issued a currently-valid Owner license as a person responsible for such horse.

"Post position" means the position in the starting gate assigned to the horse for the start of the race.

"Post time" means the scheduled time set for the arrival of the horses at the starting gate for the race.

"Pre-race inspections" means part of the routine for the safety and welfare of the horse on race day. These inspections are performed by a Commission veterinarian or designated veterinarian to provide an evaluation of the horse's racing fitness to compete prior to the race.

"Program" means the published listing of all contests and contestants for a specific performance.

"Race" means a contest between horses.

"Race day" means a day during a race meeting when pari-mutuel wagering occurs on live races conducted at that racetrack.

"Races" mean:

(A) **Allowance.** An overnight race for which eligibility and weight to be carried is determined according to specified conditions which include age, sex, earnings, number of wins, and distance of race.

(B) **Claiming.** A race in which any horse starting may be claimed and purchased for a designated amount in conformance with the rules in this Title.

(C) **Exhibition.** A race on which no wagering is permitted.

(D) **Handicap.** A race in which the weights to be carried by the horses are assigned by the Racing Secretary.

(E) **Invitational.** A race in which the competing horses are selected by inviting their Owners to enter specific horses.

(F) **Maiden.** A race restricted to non-winners.

(G) **Match.** A race contested between two or more horses under conditions agreed to by their Owners.

(H) **Nomination.** A race in which the subscription to a payment schedule nominates and sustains the eligibility of a particular horse. Nominations must close at least seventy-two (72) hours before the first post time of the day the race is originally scheduled to be run.

(I) **Oklahoma-Bred.** A race for which entry may be restricted to accredited Oklahoma-Bred registered horses.

(J) **Overnight (Purse).** A race for which entries close at a time set by the Racing Secretary.

(K) **Progeny.** A race restricted to the offspring of a specific stallion or stallions.

(L) **Schooling.** A preparatory race for entry qualification in official races which conforms to requirements adopted by the Commission.

(M) **Stakes.** A race ~~which is eligible for stakes or "black type" recognition by the particular breed registry in which nomination, entry, or starting fees contribute to the purse.~~

(N) **Trial.** A race or a series of races in which horses participate for the purpose of determining eligibility for a subsequent contest.

(O) **Walkover.** A race in which only one horse starts or in which all the starters are owned by the same interest. To claim the purse, a horse must start and go the distance of the race.

"Restricted area" means any area within the enclosure where access is limited to licensees whose occupation requires access. Those areas which are restricted shall include but not be limited to the barn area, paddock, test barn, Stewards' tower, racecourse, mutuel line and money rooms, or any other area designated restricted by the Organization Licensee or the Commission, or both. Signs giving notice of restricted access shall be prominently displayed at all entry points.

"Rules" means the rules adopted by the Commission to implement the provisions of the Act.

"Scratch" means the act of withdrawing an entered horse from a race after the closing of entries.

"Scratch time" means the deadline for withdrawal of entries from a scheduled race.

"Starter" means a horse whose stall door of the starting gate opens in front of such horse at the time the Starter (the Official) dispatches the horses.

"Safety Steward" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"Steward" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"Subscription" means the act of nominating a horse to a nomination race.

"Trainer" means a person qualified and licensed by the Commission as a Trainer.

"Week" means a calendar week.

"Weight for age" means a race in which a fixed scale is used to assign the weight to be carried by individual horses according to age, sex, distance of the race, and season of the year.

"Year" means a calendar year.

325:25-1-19. Deadline for arrival of entered horses

All horses scheduled to compete in a race must be present within the enclosure no later than ~~one (1) hour thirty (30) minutes~~ prior to their scheduled ~~race~~pre-race inspections, ~~which are listed in the condition book, or earlier if required by the organization licensee or to comply with Commission Furosemide (Salix) medication rules~~Executive Director. An organization licensee shall provide an adequate stall for a horse which is required to arrive more than ~~one (1) hour thirty (30) minutes~~ prior to ~~post time~~ for the horse's scheduled ~~race~~pre-race inspections. Horses not within the enclosure by

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their deadline may be scratched and the Trainer subject to fine and/or suspension.

325:25-1-26. Limitations on field and number of races

A race with less than five (5) wagering interests entered, shall be declared off, with the exception of a trial or the finals for a nomination race or stakes. The Racing Secretary shall determine the number of valid entries necessary for each overnight race to be considered filled. If there are insufficient entries for the race to be considered filled, ~~such the~~ race may be declared off and a substitute race used. No more than twelve (12) races may be run on a race day, except with permission of the Commission.

325:25-1-32. ~~Coggins~~Equine Infectious Anemia test

No horse shall be allowed on the premises of an Oklahoma racetrack unless it has had a ~~Coggins~~negative test for Equine Infectious Anemia (EIA) conducted within the preceding twelve (12) months~~and with a negative result~~. The test record may be a copy of the original ~~Coggins~~EIA test. Record of the negative test for a race horse participating in a claiming race shall be the original VS Form 10-11 or an approved electronic version along with the registration papers of the horse and conducted within twelve (12) months of the race in question. The trainer of the race horse is responsible for insuring that a negative ~~Coggins~~EIA test result is in the racing secretary's office as required by this rule prior to racing. Failure to comply subjects the Licensee to disciplinary action.

[OAR Docket #20-561; filed 7-7-20]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 35. GENERAL CONDUCT

[OAR Docket #20-562]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- 325:35-1-2. Definitions [AMENDED]
- 325:35-1-5. Trainer responsibility [AMENDED]
- 325:35-1-15. Trainer's duty to ensure licensed participation [AMENDED]
- 325:35-1-21. Tricks/schemes prohibited [AMENDED]
- 325:35-1-30. Jockey wagering [AMENDED]

AUTHORITY:

3A O.S. § 200 et seq.; Oklahoma Horse Racing Commission

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Approved by Governor's declaration on June 25, 2020

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rule amendments add a definition; update language; prohibit certain trainers from transferring horses and engaging in certain conduct; modify trainer's duty to ensure licensed participation; prohibit certain trick or scheme relating to training of horse; and add restriction to jockey wagering.

CONTACT PERSON:

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

325:35-1-2. Definitions

In addition to the definitions provided in Section 200.1 of Title 3A, of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Oklahoma Horse Racing Act [3A:200 et seq.].

"Assistant Trainer" means a person qualified and licensed by the Commission as an Assistant Trainer.

"Authorized Agent" means a person licensed by the Commission and appointed by a written notarized affidavit by the Owner, Trainer, Parent or Guardian of a minor in whose behalf the Agent will act, and limited to the actions as specified on the affidavit. ~~Said~~The affidavit ~~must~~shall be on file with the Commission.

"Commissioner" means a member of the Oklahoma Horse Racing Commission.

"Conditions of a race" means the qualifications which determine the eligibility of a horse to be entered in a race.

"Day" means a 24-hour period ending at midnight.

"Entry" means:

- (A) A horse eligible for and entered in a race.
- (B) Two (2) or more horses entered in the same race which have common ties of Ownership, lease, or training.

"Family" means husband, wife, and any dependent children.

"Horse" means:

- (A) Any equine including and designated as mare, filly, stallion, colt, ridgeling, or gelding registered for racing;
- (B) An ~~entire~~intact equine male five (5) years of age and older.

"Jockey" means a rider licensed to race.

"Lessee" means a licensed Owner whose interest in a horse is by virtue of a completed Commission-approved lease

form attached to the Registration Certificate and on file with the Commission.

"Lessor" means the Owner of a horse that is leased.

"Occupation license" means a state requirement for any person acting in any capacity pursuant to provisions of the Act.

"Organization license" means a state requirement for any person desiring to conduct a race meeting in Oklahoma within the minimum standards as required by the Act and the rules of the Commission.

"Owner" means any person who holds in whole or in part, any right, title or interest in a horse or an Organization Licensee or any person who is a Lessee of a horse and has been duly issued a currently-valid Owner license as a person responsible for such horse.

"Race" means a contest between horses.

"Race day" means a day during a race meeting when pari-mutuel wagering occurs on live races conducted at that racetrack.

"Restricted area" means any area within the enclosure where access is limited to licensees whose occupation requires access. Those areas which are restricted shall include but not be limited to the barn area, paddock, test barn, Stewards, tower, racecourse, mutuel line and money rooms, or any other area designated restricted by the Organization Licensee or the Commission, or both. Signs giving notice of restricted access shall be prominently displayed at all entry points.

"Rules" means the rules adopted by the Commission to implement the provisions of the Act.

"Safety Steward" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"Steward" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"Substance" means any kind of physical matter existing in a solid, liquid, or gaseous state or some combination thereof and includes any drugs or medications referred to under the Oklahoma Horse Racing Act, 3A O.S. § 200 et seq.

"Trainer" means a person qualified and licensed by the Commission as a Trainer.

"Week" means a calendar week.

"Year" means a calendar year.

325:35-1-5. Trainer responsibility

(a) The Trainer is presumed to know the rules of racing and is responsible for the condition, soundness, and eligibility of the horses s/he enters in a race. The Trainer shall conduct his/her business of training racehorses with reasonable care and skill and in a humane manner, and with due regard to the interests of his/her Owners and to the safety of employees and Agents and of the horses in his/her care. Should the chemical analysis, urine or otherwise, taken from a horse under his/her supervision show the presence of any substance except as otherwise provided for in Chapter 45, it shall be taken as prima facie evidence that the same was administered by or with the knowledge of the Trainer or person or persons under his/her supervision having care or custody of such horse. At the discretion of the Stewards or Commission, the Trainer and all other persons shown to have had care or custody of such horse may be fined or suspended or both. Under the provisions of

this Section, the Trainer is also responsible for any puncture mark on any horse s/he enters in a race, found by the Stewards upon recommendation of the Racing or Official Veterinarian to evidence injection by syringe. If the Trainer cannot be present on race days s/he shall designate an Assistant Trainer. Such designation shall be made prior to time of entry, unless otherwise approved by the Stewards. Failure to fully disclose the actual Trainer of a horse participating in an approved race shall be grounds to disqualify the horse and subject the actual Trainer to possible disciplinary action by the Stewards or the Commission. Designation of an Assistant Trainer shall not relieve the Trainer's absolute responsibility for the conditions and eligibility of the horse, but shall place the Assistant Trainer under such absolute responsibility also. Willful failure on the part of the Trainer to be present at, or refusal to allow the taking of any specimen, or any act or threat to prevent or otherwise interfere therewith shall be cause for disqualification of the horse involved; and the matter shall be referred to the Stewards for further action.

(b) In addition to the responsibilities of (a) of this Section, a Trainer has the following specific responsibilities:

- (1) Knowledge of ~~medications~~ substance rules;
- (2) Knowledge of ~~medications~~ substance status of all horses in his/her care;
- (3) Knowledge of Furosemide (~~Salix~~) use rules;
- (4) To register all horses in his/her care with the Racing Secretary;
- (5) To ensure that no injectable substances, hypodermic needles, syringes, or electrical or mechanical device (other than the ordinary whip or approved twitch) which may or can be used for the purpose of stimulating or depressing a horse or affecting its speed at any time are in his/her possession; in the possession of employees; or in automobiles; or in sleeping, storage or stable areas owned by or assigned to that Trainer or Trainer's employees;
- (6) Proper entering and eligibility of all horses in his/her care;
- (7) Guard horses in his/her care;
- (8) Make any declaration or scratch of an entered horse in his/her care;
- (9) Bill and account for fees and services rendered on behalf of any horse in his/her care to the appropriate Owner or Owners.
- (10) To instruct and determine the training regimen of all horses in his/her care and entered in any race.

(c) No Trainer duty or responsibility, whether listed in (a) or (b) of this Section or not, may be assigned to any person who is ineligible to hold a license or who is under suspension in this or any other racing jurisdiction.

(d) No licensed Trainer shall assume any of the responsibilities described in this Section for a horse not under his/her active care, supervision or custody.

(e) Trainers who are summarily suspended or suspended for more than sixty (60) days shall not be permitted to transfer their horses to family. A suspended trainer shall not provide financial assistance to, or have communication concerning care, custody, or control with a receiving trainer, once a transfer has been completed.

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325:35-1-15. Trainer's duty to ensure licensed participation

No Trainer shall have in his/her custody within the enclosure of any race meeting any horse owned in whole or in part by any person who is not licensed as a horse Owner by the Commission unless such Owner has filed an application for license as a horse Owner with the Commission and the same is pending before the Commission; nor shall any Trainer have in his/her employ within the enclosure any Groom, Stable Employee, Stable Agent, or other person required to be licensed, unless such person has a valid license. All changes of employee personnel shall be reported immediately within seventy-two (72) hours to the Stewards, Law Enforcement Agent, or Commission Licensing Office.

325:35-1-21. Tricks/schemes prohibited

No person shall falsify, conceal, or cover up by any trick, scheme, or device a material fact; or make any false, fictitious, or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry regarding the prior racing record, pedigree, identity, or ownership of a registered animal in any matter related to the breeding, buying, selling, training or racing of such the animal. No person shall make false, fictitious, or fraudulent statements or misrepresent the identity of a horse or make or use any false writing, document, or statement to an organization licensee or to the Stewards or to the Commission.

325:35-1-30. Jockey wagering

No Jockey shall make any wager or have any wager made on his/her behalf in any race in which s/he participates, except through the Owner or Trainer of and on the horse which s/he rides. Any wager shall be limited to the Jockey's own mount to win or finish first in combination with other horses in multiple type wagers. Any Owner or Trainer wagering for such Jockey shall maintain a record of all such wagers and all gifts or other gratuities s/he has given any Jockey. Such records shall be furnished to the Stewards or the Commission or its investigators upon demand.

[OAR Docket #20-562; filed 7-7-20]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 45. PROHIBITED PRACTICES AND EQUINE TESTING

[OAR Docket #20-563]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- 325:45-1-1. Purpose [AMENDED]
- 325:45-1-2. Definitions [AMENDED]
- 325:45-1-4. Substance violations [AMENDED]
- 325:45-1-6.1. Listed thresholds for Thoroughbreds [AMENDED]

- 325:45-1-6.2. Listed thresholds for Quarter Horses, Paints, and Appaloosas [AMENDED]
- 325:45-1-9.1. Phenylbutazone use [AMENDED]
- 325:45-1-19. Official testing [AMENDED]
- 325:45-1-20. Split tests [AMENDED]
- 325:45-1-24. Substance classification and penalties [AMENDED]
- 325:45-1-27. Prohibited practices and ~~Certain Penalties~~ [AMENDED]
- 325:45-1-29. Environmental contaminants and substances of human use [AMENDED]

AUTHORITY:

3A O.S. § 200 et seq.; Oklahoma Horse Racing Commission

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Approved by Governor's declaration on June 25, 2020

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rule amendments add and revise definitions; update language; modify time frame for substance violations; modify listed thresholds; conform language; modify accreditation requirements for certain laboratories; modify split test procedures; update citation; modify prohibited practices; and clarify mitigation of action relating to environmental contaminants.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

325:45-1-1. Purpose

It is the purpose of the rules in this Chapter to protect the integrity of horse racing, safeguard the health of horses, and defend the interests of the public and racing participants through the prohibition or control of all substances, as authorized under the provisions of the Oklahoma Horse Racing Act, 3A O.S., §200 et seq. The rules contained within this Chapter shall be considered ~~medication~~ substance rules for the application of 75 O.S. § 250.4(B)(13)(b).

325:45-1-2. Definitions

In addition to the definitions provided at 3A O.S. § 200.1, the following words or terms, when used in this Chapter, shall

have the following meanings, unless the context clearly indicates otherwise:

"Act" means the Oklahoma Horse Racing Act 3A O.S. § 200 et seq.

"Analog" means any chemical with structural or chemical similarity to the parent or original chemical.

"Assistant Trainer" means a person qualified and licensed by the Commission as an Assistant Trainer.

"Biological sample" means any physical sample collected from any part of a horse.

"Bleeder" means a horse that is bleeding through one or both nostrils or hemorrhaging in the lumen of the respiratory tract during or following exercise or a race.

"Chemical" means a substance having a specific molecular composition.

"Commissioner" means a member of the Oklahoma Horse Racing Commission.

"Compound substance" means combining two or more substances which constitutes the development of a new substance.

"Conditions of a race" means the requirements which determine the eligibility of a horse to be entered in a race.

"Day" means a 24-hour period beginning and ending at midnight.

"Enclosure" means all buildings and grounds of the Organization licensee and shall include both public areas and areas with restricted access.

"Entered horse" means a horse appearing on the overnight sheet posted by the Racing Secretary.

"Horse" means any equine including mares, fillies, stallions, colts, ridglings, and geldings.

"Intra-articular injection" means the injection of a substance into a joint space.

"Listed threshold" means the maximum concentration of a substance detected in a post-race test which is permitted within a particular breed of horse by Commission rules.

"Metabolite" or **"metabolic derivative"** means any by-product resulting from a substance metabolizing within a horse's body.

"ml" means the standard unit of volume, milliliter.

"Naturally occurring substance" means any chemical, analog, metabolite, or metabolic derivative that exists naturally in the body of an untreated horse.

"ng" means the standard unit of weight, nanogram.

"Official Veterinarian" means a person who is licensed to practice veterinary medicine by the State of Oklahoma and employed by the Commission and qualified and licensed by the Commission as an Official Veterinarian.

"Official work" means a timed work at a pre-determined distance, as recognized by Equibase.

"Out-of-competition testing" means any testing within the enclosure by the Official Veterinarian that is not pre-race testing or post-race testing.

"Organization license" means a state requirement for any person or entity conducting a race meeting in Oklahoma within the minimum standards required by the Act and the rules of the Commission.

"Owner" means any person who holds, in whole or in part, any right, title or interest in a horse or any person who is a lessee or lessor of a horse and has been duly issued a currently-valid Owner license as a person responsible for such horse.

"Parenteral administration" means administration of substances by injection, including intravenous, intramuscular, or subcutaneous injections.

"Permitted substance" means any substance having a listed threshold for a particular breed of horse unless otherwise specified by Commission rules.

"pg" means the standard unit of weight, picogram.

"Plasma" means the fluid portion of the blood, which includes fibrinogen but does not include blood cells.

"Post-race testing" means the collection of biological samples by the Official Veterinarian or designee from any horse participating in a race and directed to report to the test barn following the finish of a race or as otherwise provided by Commission rules if the horse cannot report to the test barn.

"Practicing veterinarian" means a person employed by a trainer or owner to medically treat horses, is licensed to practice veterinary medicine by the State of Oklahoma, and is licensed as a veterinarian by the Commission.

"Pre-race testing" means the collection of biological samples by the Official Veterinarian or designee from any horse entered to participate in a race prior to the actual running of the race.

"Prima Facie evidence" means evidence sufficient to establish a fact unless rebutted by other evidence.

"Primary laboratory" means the laboratory or subcontractor of the laboratory approved by the Commission for primary analysis of biological samples.

"Prohibited substance" means any substance, chemical, or analog that is not listed by Commission rules as a permitted substance for a particular breed of horse or is not a naturally occurring substance.

"Race" means a contest between horses.

"Race day" means a day during a race meeting when live races are conducted at that racetrack.

"Racing Veterinarian" means a person who is licensed to practice veterinary medicine by the State of Oklahoma, employed by the organization licensee, and qualified and licensed by the Commission as a Racing Veterinarian.

"Referee laboratory" means a Commission approved laboratory which accepts referee/split samples previously reported by the primary laboratory as positive for prohibited substances, reported as exceeding the listed threshold for a permitted substance, or reported as exceeding the concentration that listed threshold of a naturally occurring substance may occur by the primary laboratory.

"Safety Steward" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"Steward" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"Serum" means the liquid portion of plasma that remains after fibrinogen has been removed.

"Substance" means any kind of physical matter existing in a solid, liquid, or gaseous state or some combination thereof

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and includes any drugs or medications referred to under the Oklahoma Horse Racing Act, 3A O.S. § 200 et seq..

"Substance violation" means any violation of medication laws or the rules contained within this Chapter.

"Test Barn" means a structure with sufficient facilities to collect biological samples in the manner required by Commission rules.

"Trainer" means a person qualified and licensed by the Commission as a Trainer.

"ug" means the standard unit of weight, microgram."

"Veterinarian's list" means the veterinarian's list specified by OAC 325:20-1-23.

"Week" means a seven (7) day period.

"Year" means a 365 day period.

325:45-1-4. Substance violations

(a) Except as authorized or restricted by the provisions of this Chapter and Chapter 40 of the rules of the Commission, no substance shall be given by parenteral administration to any horse within 24 hours prior to the running of a scheduled post time for the first race in which on the day the horse is entered to race.

(b) The primary laboratory's detection of a prohibited substance in a biological sample collected from any horse during out-of-competition testing, pre-race testing, or post-race testing by the Official Veterinarian or designee shall constitute prima facie evidence that a substance violation occurred and may, at the discretion of the Stewards or Commission, result in summary suspension of the responsible trainer, disqualification of the horse, placement of the horse on the veterinarian's list, placement of the horse on the Stewards' list, and other penalties authorized by the Act and the rules of the Commission.

(c) The primary laboratory's detection of a permitted substance exceeding listed thresholds in a biological sample collected from any horse during post-race testing by the Official Veterinarian or designee shall constitute prima facie evidence that a substance violation occurred and may, at the discretion of the Stewards or Commission, result in summary suspension of the responsible trainer, disqualification of the horse, placement of the horse on the veterinarian's list, placement of the horse on the Stewards' list, and other penalties authorized by the Act and the rules of the Commission.

(d) The primary laboratory's detection of a naturally occurring substance exceeding listed thresholds or exceeding concentrations that the substance may naturally occur in a biological sample collected from any horse during post-race testing by the Official Veterinarian or designee shall constitute prima facie evidence that a substance violation occurred and may, at the discretion of the Stewards or Commission, result in summary suspension of the responsible trainer, disqualification of the horse, placement of the horse on the veterinarian's list, placement of the horse on the Stewards' list, and other penalties authorized by the Act and the rules of the Commission.

(e) It shall be presumed that biological samples tested by a laboratory approved by the Commission are collected from the horse in question; that the integrity of the biological sample is preserved; that all accompanying procedures of collection, preservation, transfer to the laboratory, and analyses of the

sample are correct and accurate; and that the report received from the laboratory pertains to the sample collected from the horse in question and correctly reflects the condition of the horse on the day the biological sample was collected.

(f) Except as otherwise provided by Commission rules, the owner or owners of a horse disqualified for a substance violation shall not participate in any portion of the purse or stakes and any trophy or other awards shall be returned to the Stewards for redistribution to other race participants.

(g) The trainer or owner contesting prima facie evidence of a substance violation shall have the burden of proof to establish that no substance violation occurred or that other evidence mitigates the severity of punishment.

325:45-1-6.1. Listed thresholds for Thoroughbreds

(a) The thresholds listed in this section shall be the considered listed threshold for permitted substances or, if specified as such, naturally occurring substances in Thoroughbreds.

(b) Non-steroidal anti-inflammatories shall be considered prohibited substances except for the chemicals listed below and their corresponding analogs and metabolites in concentrations not exceeding the listed threshold:

(1) Diclofenac: 5 ng/ml in biological samples consisting of plasma or serum;

(2) ~~Dipyrrone: 20 ng/ml in biological samples consisting of plasma or serum;~~

(3) Firocoxib: 20 ng/ml in biological samples consisting of plasma or serum;

(43) Flunixin: 20 ng/ml in biological samples consisting of plasma or serum;

(54) Ketoprofen: 2 ng/ml in biological samples consisting of plasma or serum;

(6) ~~Naproxen: 750 ng/ml in biological samples consisting of plasma or serum; or~~

(75) Phenylbutazone: 2 ug/ml in biological samples consisting of plasma or serum.

(c) Corticosteroids shall be considered prohibited substances except for the chemicals listed below and their corresponding analogs and metabolites in concentrations not exceeding the listed threshold:

(1) Betamethasone: 10 pg/ml in biological samples consisting of plasma or serum;

(2) Dexamethasone: 5 pg/ml in biological samples consisting of plasma or serum;

(3) Isoflupredone: 100 pg/ml in biological samples consisting of plasma or serum;

(4) Methylprednisolone: 100 pg/ml in biological samples consisting of plasma or serum;

(5) Prednisolone: 1ng/ml in biological samples consisting of plasma or serum; or

(6) Triamcinolone Acetonide: 100 pg/ml in biological samples consisting of plasma or serum.

(d) Other substances shall be considered prohibited substances except for the chemicals listed below and their corresponding analogs and metabolites in concentrations not exceeding the listed threshold:

(1) Acepromazine: 10 ng/ml in biological samples consisting of urine;

- (2) Albuterol: 1 ng/ml in biological samples consisting of urine;
 - (3) Butorphanol: 300 ng/ml of total Butorphanol in biological samples consisting of urine or 2 ng/ml of free butorphanol in biological samples consisting of plasma or serum;
 - (4) Cetirizine: 6 ng/ml in biological samples consisting of plasma or serum;
 - (5) Cimetidine: 400 ng/ml in biological samples consisting of plasma or serum;
 - (6) Clenbuterol: 140 pg/ml in biological samples consisting of urine or at the level of detection in biological samples consisting of plasma or serum;
 - (7) Dantrolene: 100 pg/ml of 5-hydroxydantrolene in biological samples consisting of plasma or serum;
 - (8) Detomidine: 1 ng/ml in biological samples consisting of plasma or serum;
 - (9) Dimethyl Sulfoxide (DMSO): 10 ug/ml in biological samples consisting of plasma or serum;
 - (10) Furosemide: 100 ng/ml in biological samples consisting of plasma or serum;
 - (11) Glycopyrrolate: 3 pg/ml in biological samples consisting of plasma or serum;
 - (12) Guaifenesin: 12 ng/ml in biological samples consisting of plasma or serum;
 - (13) Lidocaine: ~~25 pg/ml~~ 20 pg/ml of total 30H-lidocaine in biological samples consisting of plasma or serum;
 - (14) Mepivacaine: 10 ng/ml in biological samples consisting of urine or at the level of detection in biological samples consisting of plasma or serum;
 - (15) Methocarbamol: 1 ng/ml in biological samples consisting of plasma or serum;
 - (16) Omeprazole: omeprazole sulfide- 10 ng/ml in biological samples consisting of plasma or serum;
 - (17) Procaine Penicillin: 25 ng/ml in biological samples consisting of plasma or serum;
 - (18) Pyrilamine: ~~50 ng/ml in biological samples consisting of plasma or serum;~~
 - ~~(19) Ranitidine: 40 ng/ml in biological samples consisting of plasma or serum; or~~
 - (2019) Xylazine: 200 pg/ml in biological samples consisting of plasma or serum.
- (e) Androgenic-Anabolic Steroids (AAS) shall be considered prohibited substances except for the chemicals listed below and their corresponding analogs and metabolites in concentrations not exceeding the listed threshold:
- (1) The naturally occurring substance, boldenone, shall be permitted in concentrations not exceeding:
 - (A) 25 pg/ml in biological samples consisting of plasma or serum for all horses, regardless of sex;
 - (B) 1 ng/ml in biological samples consisting of urine for fillies, mares, or geldings; or
 - (C) 15 ng/ml in biological samples consisting of urine for male horses other than geldings.
 - (2) The naturally occurring substance, nandrolone, shall be permitted in concentrations not exceeding:
 - (A) 25 pg/ml in biological samples consisting of plasma or serum for fillies, mares, and geldings;
 - (B) 1 ng/ml in biological samples consisting of urine for fillies, mares, or geldings; or
 - (C) 45 ng/ml in biological samples consisting of urine for male horses other than geldings.
 - (3) The naturally occurring substance, testosterone, shall be permitted in concentrations not exceeding:
 - (A) ~~25 pg/ml~~ 100 pg/ml in biological samples consisting of plasma or serum for fillies, mares, and geldings;
 - (B) 55 ng/ml in biological samples consisting of urine for fillies, mares (unless in foal); or
 - (C) 20 ng/ml in biological samples consisting of urine for geldings.
 - (D) The concentration of testosterone is not regulated or restricted in fillies or mares that are confirmed pregnant on the day of racing or in male horses other than geldings.
- (f) ~~Environmental contaminants shall be considered prohibited substances except for the chemicals listed below and their corresponding analogs and metabolites in concentrations not exceeding listed threshold:~~
- ~~(1) Arsenic: 0.3 ug/ml total arsenic in biological samples consisting of urine;~~
 - ~~(2) Atropine: 70 ng/ml in biological samples consisting of urine;~~
 - ~~(3) Gamma Aminobutyric Acid (GABA): 110 ng/ml in biological samples consisting of plasma or serum;~~
 - ~~(4) Hydrocortisone: 1 ug/ml in biological samples consisting of urine;~~
 - ~~(5) Methoxytyramine: 4 ug/ml, in biological samples consisting of urine;~~
 - ~~(6) Salicylate, Salicylic Acid: 750 ug/ml in biological samples consisting of urine or 6.5 ug/ml in biological samples consisting of plasma or serum;~~
 - ~~(7) Theobromine: 2 ug/ml in biological samples consisting of urine or 0.3 ug/ml in biological samples consisting of plasma or serum;~~
 - ~~(8) Cobalt: 50 ng/ml in biological samples consisting of plasma or serum;~~
 - ~~(9) Caffeine: 100 ng/ml in biological samples consisting of plasma or serum; or~~
 - ~~(10) Estradiol: 0.045 ug/ml in biological samples consisting of urine for male horses other than geldings.~~
- (g) The use of non-steroidal anti-inflammatories and corticosteroids are subject to the additional conditions:
- (1) The presence of more than two permitted non-steroidal anti-inflammatories in a biological sample consisting of plasma or serum is prohibited; or
 - (2) The presence of more than two corticosteroids in a biological sample consisting of plasma or serum is prohibited.

325:45-1-6.2. Listed thresholds for Quarter Horses, Paints, and Appaloosas

- (a) The thresholds listed in this section shall be considered the listed threshold for permitted substances or, if specified as such, naturally occurring substances in Quarter Horses, Paints, and Appaloosas.

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(b) Non-steroidal anti-inflammatories shall be considered prohibited substances except for the chemicals listed below and their corresponding analogs and metabolites in concentrations not exceeding the listed threshold:

- (1) Diclofenac: 5 ng/ml in biological samples consisting of plasma or serum;
- (2) ~~Dipyrene: 20 ng/ml in biological samples consisting of plasma or serum;~~
- (3) Firocoxib: 20 ng/ml in biological samples consisting of plasma or serum;
- (4) Flunixin: 20 ng/ml in biological samples consisting of plasma or serum;
- (5) Ketoprofen: 2 ng/ml in biological samples consisting of plasma or serum;
- (6) ~~Naproxen: 750 ng/ml in biological samples consisting of plasma or serum; or~~
- (7) Phenylbutazone: 2 ug/ml in biological samples consisting of plasma or serum.

(c) Corticosteroids shall be considered prohibited substances except for the chemicals listed below and their corresponding analogs and metabolites in concentrations not exceeding the listed threshold:

- (1) Betamethasone: 10 pg/ml in biological samples consisting of plasma or serum;
- (2) Dexamethasone: 5 pg/ml in biological samples consisting of plasma or serum;
- (3) Isoflupredone: 100 pg/ml in biological samples consisting of plasma or serum;
- (4) Methylprednisolone: 100 pg/ml in biological samples consisting of plasma or serum;
- (5) Prednisolone: 1ng/ml in biological samples consisting of plasma or serum; or
- (6) Triamcinolone Acetonide: 100 pg/ml in biological samples consisting of plasma or serum.

(d) Other substances shall be considered prohibited substances except for the chemicals listed below and their corresponding analogs and metabolites in concentrations not exceeding the listed threshold:

- (1) Acepromazine: 10 ng/ml in biological samples consisting of urine;
- (2) Butorphanol: 300 ng/ml of total Butorphanol in biological samples consisting of urine or 2 ng/ml of free butorphanol in biological samples consisting of plasma or serum;
- (3) Cetirizine: 6 ng/ml in biological samples consisting of plasma or serum;
- (4) Cimetidine: 400 ng/ml in biological samples consisting of plasma or serum;
- (5) Dantrolene: 100 pg/ml of 5-hydroxydantrolene in biological samples consisting of plasma or serum;
- (6) Detomidine: 1 ng/ml in biological samples consisting of plasma or serum;
- (7) Dimethyl Sulfoxide (DMSO): 10 ug/ml in biological samples consisting of plasma or serum;
- (8) Furosemide: 100 ng/ml in biological samples consisting of plasma or serum;
- (9) Glycopyrrolate: 3 pg/ml in biological samples consisting of plasma or serum;

(10) Guaifenesin: 12 ng/ml in biological samples consisting of plasma or serum;

(11) Lidocaine: ~~25 pg/ml~~ 20 pg/ml of total 30H-lidocaine in biological samples consisting of plasma or serum;

(12) Mepivacaine: 10 ng/ml in biological samples consisting of urine or at the level of detection in biological samples consisting of plasma or serum;

(13) Methocarbamol: 1 ng/ml in biological samples consisting of plasma or serum;

(14) Omeprazole: omeprazole sulfide- 10 ng/ml in biological samples consisting of plasma or serum;

(15) Procaine Penicillin: 25 ng/ml in biological samples consisting of plasma or serum;

(16) ~~Pyrilamine: 50 ng/ml in biological samples consisting of plasma or serum;~~

(17) Ranitidine: 40 ng/ml in biological samples consisting of plasma or serum; or

(18) Xylazine: 200 pg/ml in biological samples consisting of plasma or serum.

(e) Androgenic-Anabolic Steroids (AAS) shall be considered prohibited substances except for the chemicals listed below and their corresponding analogs and metabolites in concentrations not exceeding the listed threshold:

(1) The naturally occurring substance, boldenone, shall be permitted in concentrations not exceeding:

(A) 25 pg/ml in biological samples consisting of plasma or serum for all horses, regardless of sex;

(B) 1 ng/ml in biological samples consisting of urine for fillies, mares, or geldings; or

(C) 15 ng/ml in biological samples consisting of urine for male horses other than geldings.

(2) The naturally occurring substance, nandrolone, shall be permitted in concentrations not exceeding:

(A) 25 pg/ml in biological samples consisting of plasma or serum for fillies, mares, and geldings;

(B) 1 ng/ml in biological samples consisting of urine for fillies, mares, or geldings; or

(C) 45 ng/ml in biological samples consisting of urine for male horses other than geldings.

(3) The naturally occurring substance, testosterone, shall be permitted in concentrations not exceeding:

(A) ~~25 pg/ml~~ 100 pg/ml in biological samples consisting of plasma or serum for fillies, mares, and geldings;

(B) 55 ng/ml in biological samples consisting of urine for fillies, mares (unless in foal); or

(C) 20 ng/ml in biological samples consisting of urine for geldings.

(D) The concentration of testosterone is not regulated or restricted in fillies or mares that are confirmed pregnant on the day of racing or in male horses other than geldings.

(f) ~~Environmental contaminants shall be considered prohibited substances except for the chemicals listed below and their corresponding analogs and metabolites in concentrations not exceeding listed threshold:~~

(1) ~~Arsenic: 0.3 ug/ml total arsenic in biological samples consisting of urine;~~

- (2) ~~Atropine: 70 ng/ml in biological samples consisting of urine;~~
- (3) ~~Gamma Aminobutyric Acid (GABA): 110 ng/ml in biological samples consisting of plasma or serum;~~
- (4) ~~Hydrocortisone: 1 ug/ml in biological samples consisting of urine;~~
- (5) ~~Methoxytyramine: 4 ug/ml, in biological samples consisting of urine;~~
- (6) ~~Salicylate, Salicylic Acid: 750 ug/ml in biological samples consisting of urine or 6.5 ug/ml in biological samples consisting of plasma or serum;~~
- (7) ~~Theobromine: 2 ug/ml in biological samples consisting of urine or 0.3 ug/ml in biological samples consisting of plasma or serum;~~
- (8) ~~Cobalt: 50 ng/ml in biological samples consisting of plasma or serum;~~
- (9) ~~Caffeine: 100 ng/ml in biological samples consisting of plasma or serum; or~~
- (10) ~~Estradiol: 0.045 ug/ml in biological samples consisting of urine for male horses other than geldings.~~
- (g) The use of non-steroidal anti-inflammatories and corticosteroids are subject to the additional conditions:
 - (1) The presence of more than two permitted non-steroidal anti-inflammatories in a biological sample consisting of plasma or serum is prohibited; or
 - (2) The presence of more than two corticosteroids in a biological sample consisting of plasma or serum is prohibited.

325:45-1-9.1. Phenylbutazone use

- (a) Phenylbutazone shall be permitted under the following conditions:
 - (1) Phenylbutazone shall not be administered within twenty-four (24) hours prior to the scheduled post time for the first race in which on the day the horse is entered to race.
 - (2) The concentration of Phenylbutazone in the post-race biological sample consisting of blood or plasma shall not exceed the listed threshold.
- (b) The following penalties shall be imposed for violations of this section when the concentration of Phenylbutazone exceeds 2 ug/ml but does not exceed 5 ug/ml in a biological sample consisting of plasma or serum:
 - (1) For a first offense, the Stewards shall give the trainer a written warning of the violation of this section.
 - (2) For a second offense involving the same horse within a one (1) year period, the Stewards shall impose a fine on the trainer of Two Hundred Fifty Dollars (\$250) and the Stewards may require the horse which is the subject of the second offense to pass an examination by the Official Veterinarian or designee before being eligible to participate in another race.
 - (3) For a third offense or additional offenses involving the same horse within a one (1) year period, the Stewards shall impose a fine on the trainer of Five Hundred Dollars (\$500), the horse shall be disqualified, the owner or owners of the horse shall not participate in any portion of the

purse or stakes, and any trophy or other award, and the Stewards shall require the horse which is the subject of the third or additional offenses to pass an examination by the Official Veterinarian or designee before being eligible to participate in another race.

- (c) The following penalties shall be imposed for violations of this section when the concentration of Phenylbutazone exceeds 5 ug/ml in a biological sample consisting of plasma or serum:

- (1) For a first offense, the Stewards shall impose a fine on the trainer of Five Hundred Dollars (\$500) and the Stewards shall require the horse which is the subject of the first offense to pass an examination by the Official Veterinarian or designee before being eligible to participate in another race.
- (2) For a second offense within a one (1) year period, the Stewards shall impose a fine on the trainer of One Thousand Dollars (\$1,000), the horse shall be disqualified, the owner or owners of the horse shall not participate in any portion of the purse or stakes, and any trophy or other award, and the Stewards shall require the horse which is the subject of the second offense to pass an examination by the Official Veterinarian or designee before being eligible to participate in another race. If the horse which is the subject of the second offense is also the subject of the first offense, the horse shall be placed on the veterinarian's list for forty-five (45) days.
- (3) For a third offense or additional offenses within a one (1) year period, the Stewards shall impose a fine on the trainer of Two Thousand Five Hundred Dollars (\$2,500), the horse shall be disqualified, the owner or owners of the horse shall not participate in any portion of the purse or stakes, and any trophy or other award, and the Stewards shall require the horse which is the subject of the third offense to pass an examination by the Official Veterinarian or designee before being eligible to participate in another race. If the horse which is the subject of the third offense is also the subject of the second offense, the horse shall be placed on the veterinarian's list for sixty (60) days.
- (4) For a fifth offense or additional offenses within a one (1) year period, the trainer shall be referred to the Stewards for disciplinary action.

325:45-1-19. Official testing

- (a) Only laboratories approved by the Commission may be used to test biological samples collected from designated horses.
- (b) Approved primary and referee laboratories shall report directly to the Commission and Stewards.
- (c) The Commission shall publish a list of approved referee laboratories available for split testing.
- (d) Laboratories conducting testing of biological samples shall be accredited by the ~~American Racing Commissioners~~ International Racing Medication and Testing Consortium (RMTC) and approved by the Commission.

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325:45-1-20. Split tests

(a) When the quantity of biological samples collected by operation of Commission rules permits, each test sample shall be divided into two portions so that one portion shall be used for primary testing and the second portion shall, if available, be retained for split testing. OHRC makes no guarantee that the amount of sample it was able to collect will be sufficient for split testing. All samples taken by OHRC personnel are under the jurisdiction of and shall remain the property of OHRC at all times.

(b) Biological sample consisting of blood shall be collected and processed as provided by Commission rules. Biological samples consisting of urine shall be collected if available. Other biological samples may be collected at the direction of the Stewards or the Commission.

(c) The Official Veterinarian or designee shall be responsible for the freezing, storage, safeguarding, and shipment of biological samples to primary or referee laboratories.

(d) When biological samples are available for split testing, ~~an owner or a~~ trainer and/or owner may request a split test, subject to the following conditions:

(1) ~~The owner or~~ trainer and/or owner shall make the request for a split test in writing within ~~forty-eight (48)~~ seventy-two (72) hours following notification of a substance violation.

(2) ~~All costs for split testing, including the shipment and testing of biological samples, shall be the financial responsibility of the requesting trainer or owner.~~ When OHRC is notified by the primary laboratory that a substance violation has occurred, OHRC will submit split testing forms to all approved referee laboratories. If, within the above specified time limits, the trainer and/or owner requests that a split test be performed, a list of all referee laboratories that have agreed to accept the split test shall be presented to the trainer and/or owner. The trainer and/or owner shall then have forty-eight (48) hours to select one of the referee laboratories from the provided list. The trainer and/or owner requesting to have a split sample tested shall be responsible for all charges and costs incurred in shipping and testing the split sample.

(3) ~~Payment for the costs of split testing shall be paid within seventy-two (72) hours following notification of the cost of split testing to the requesting trainer or owner. Failure to make timely payment of split testing costs shall be deemed a waiver of a person's right to conduct a split test.~~ incurred in transporting and testing the split sample must be received by the OHRC within five (5) working days of the trainer and/or owner being provided a list of referee laboratories agreeing to accept said split. If the trainer and/or owner fails to notify the OHRC in writing, of their choice of referee laboratory agreeing to accept the split sample, along with payment within this time, the split sample will not be released or shipped by the OHRC and said trainer and/or owner will have relinquished his/her right to have the split sample tested.

(4) ~~Payment for the costs of split testing shall be in the form of a check from the horseman's bookkeeper account or cashier's check. No other forms of payment shall~~

~~be accepted.~~ Upon verified completion of all prerequisites, OHRC personnel shall ensure that the split sample is sent to the designated laboratory for testing.

(5) The trainer, the trainer's authorized representative or employee, the owner, or other licensed person designated by the owner may witness the packaging and shipping of biological samples. Failure to appear at the appointed time to witness the packaging and shipping of biological samples constitutes a waiver of the right to do so;

(6) Failure of a trainer and/or owner to submit a timely request for split testing or failure to make timely payment for the costs of split testing shall constitute a waiver of any and all rights to have a split test performed.

(e) The results of the split test shall not prohibit the Commission from imposing appropriate penalties for substance violations, including the disqualification of a horse or other penalties imposed against the trainer.

(1) If the primary test results are not confirmed by the split test, the Commission shall reimburse the trainer and/or owner requesting the split test the cost of shipment and testing.

(2) Contradictory split test results or split test results that do not confirm the primary test results may be offered by ~~an owner or a~~ trainer and/or owner as evidence to rebut the prima facie evidence of a substance violation established by the primary test results. However, a request for a split test shall not obligate Commission staff to submit evidence of confirmatory split test results for the purposes of proving that a substance violation occurred.

(f) Nothing in this Section shall prevent the Commission or Executive Director from ordering first use of both sample portions for testing purposes.

325:45-1-24. Substance classification and penalties

Upon a finding of any substance violation, the Stewards shall consider the classification level of the substance violation as currently established by the UNIFORM CLASSIFICATION GUIDELINES OF FOREIGN SUBSTANCES (Version ~~13.4~~ 14.1) as promulgated by the Association of Racing Commissioners International, Inc. and may impose penalties and disciplinary measures consistent with the recommendations contained therein, except not to conflict with the mandates of 325:45-1-9 and 325:45-1-9.1. Provided, however, that in the event a majority of the Stewards determine that aggravating or mitigating circumstances require imposition of a different penalty than the penalty suggested by the guidelines, the Stewards may impose a different penalty. In the event a majority of the Stewards wish to impose a penalty in excess of the authority granted them by 325:1-1-7, the Stewards may impose the maximum penalty authorized by state law and refer the matter to the Commission with specific recommendations for further action.

325:45-1-27. Prohibited practices and certain penalties

The following ~~items~~ substances and/or therapies shall be prohibited within the enclosure:

- (1) Any substance which may endanger the health and welfare of a horse. It is a violation of this regulation to possess or use substances that are detrimental to the health and welfare of a horse, on the premises of a facility under the jurisdiction of the Commission for which a recognized analytical method has not been developed to detect and confirm the administration of such substance;
- (2) Any substance which has not been approved by the United States Food and Drug Administration for use in humans or animals. It is a violation to possess, use, or distribute a substance on the premises of a facility under the jurisdiction of the Commission if there is an FDA approved equivalent of that substance available for purchase;
- (3) Erythropoietin. The administration of Erythropoietin, Darbepoietin, Oxyglobin, and/or Hemopure to a horse;
- (4) Darbepoietin;
- (5) Oxyglobin;
- (6) Hemopure;
- (7) Any substance that abnormally enhances the oxygenation of body tissue;
- (8) Any device or machine which may endanger the health and welfare of a horse or may endanger the safety of a rider;
- (9) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines unless:
- (A) Any treated horse shall not race or receive an official work for a minimum of ten (10) days following treatment.
- (B) The use and possession of Extracorporeal Shock Wave Therapy machines shall be restricted to practicing veterinarians.
- (C) Extracorporeal Shock Wave Therapy machines within the enclosure shall be registered with and approved by the Commission.
- (D) Any treatments administered using a Extracorporeal Shock Wave Therapy machine shall be reported to the Official Veterinarian by the trainer or practicing veterinarian no less than within twenty-four (24) hours following of treatment. The report must include veterinary diagnosis and diagnostic radiographs and/or ultrasound performed within seven (7) days prior to the region receiving the shockwave therapy.
- (10) The administration, within 24 hours prior to at the scheduled post time for the first race on the day the horse is entered to race, of an alkalizing substance that can alter the pH of serum or plasma, concentration of bicarbonates, or total dissolved carbon dioxide in a horse.
- (11) A blood gas machine or ozone generator.
- (12) The use of a nasogastric tube (a tube longer than six inches) for the administration of any substance within 24 hours prior to the scheduled post time of the for the first race in which on the day the horse is entered is prohibited to race.
- (13) The use of a nebulizer for the administration of any substance within 24 hours prior to the scheduled post time for the first race on the day the horse is entered to race.

- (11) No horse shall run in a race within six (6) days after receiving an Intra-articular injection.

325:45-1-29. Environmental contaminants and substances of human use

- (a) The Commission recognizes that testing of biological samples may detect the presence of prohibited substances that are caused by environmental contamination and not through any fault of the trainer. Environmental contaminants are either endogenous to the horse or can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination during the cultivation, processing, treatment, storage, or transportation phases.
- (b) Any biological sample containing an environmental contaminant shall be treated as a substance violation; however, evidence may be presented showing that the substance violation is the likely result of environmental contamination. The Stewards shall consider evidence of environmental contamination as a mitigating or explanatory evidence when making a determination about the appropriate punishment for the substance violation. Substances of human use and addiction may be found in the horse due to its close association with humans.
- (c) If the preponderance of evidence presented in the hearing shows that a positive test is the result of environmental contamination, including inadvertent exposure due to human drug use, or dietary intake, or is endogenous to the horse, those factors should be considered in mitigation of any disciplinary action taken against the affected trainer. Disciplinary action may only be taken if test sample results exceed the regulatory thresholds in version 4.0 of the ARCI Endogenous, Dietary, or Environmental Substances Schedule.

[OAR Docket #20-563; filed 7-7-20]

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 50. HUMAN SUBSTANCE ABUSE TESTING**

[OAR Docket #20-564]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

325:50-1-2. Definitions [AMENDED]

325:50-1-3. Use of controlled dangerous substance or prescription drug substance [AMENDED]

325:50-1-3.1. Prohibited Licensee Activities/Substance Abuse Testing Procedures/Assessment/Treatment/ Penalties [AMENDED]

AUTHORITY:

3A O.S. § 200 et seq.; Oklahoma Horse Racing Commission

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Permanent Final Adoptions

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February 25, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020.

FINAL ADOPTION:

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September 14, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rule amendments add and delete definitions; and update language.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

325:50-1-2. Definitions

In addition to the definitions provided in Section 200.1 of Title 3A, of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise

"Act" means the Oklahoma Horse Racing Act [3A:200 et seq.].

"Commissioner" means a member of the Oklahoma Horse Racing Commission.

"Controlled substance" means any substance included in the five schedules of the Oklahoma Uniform Controlled Dangerous Substances Act.

"Day" means a 24-hour period ending at midnight.

"Medication" means any substance other than food intended to affect the structure or any function of the body of a human or a horse.

"Month" means a calendar month.

"Occupation license" means a state requirement for any person acting in any capacity pursuant to provisions of the Act.

"Organization license" means a state requirement for any person desiring to conduct a race meeting in Oklahoma within the minimum standards as required by the Act and the rules of the Commission.

"Probable cause testing" means a strategy for testing for controlled dangerous substances or alcohol, or any other drug, based on a Commission official's having good reason to believe that an Occupation Licensee who may affect the outcome of race results is possessing or using any controlled dangerous substance or any other drug in violation of any federal or state law. Such human substance abuse testing and the laboratories performing such tests must meet the nationally recognized standards specified in the Mandatory Guidelines for Federal Workplace Drug Testing Programs adopted by the U.S. Department of Health and Human Services.

"Prima Facie evidence" means evidence that, until its effect is overcome by another evidence, will suffice as proof of fact in issue.

"Race" means a contest between horses.

"Race day" means a day during a race meeting when pari-mutuel wagering occurs on live races conducted at that racetrack.

"Random testing" means a strategy for testing for alcohol or controlled substances not based on a reasonable belief that an individual has drugs or alcohol in his/her system. The strategy assures all affected individuals have an equal probability of being selected for testing.

"Reasonable cause/reasonable suspicion testing" means a strategy for testing for alcohol or controlled substances based on a Commission Steward or Law Enforcement Agent having good reason to believe a licensee has alcohol or controlled substances in his/her system.

"Restricted area" means any area within the enclosure where access is limited to licensees whose occupation requires access. Those areas which are restricted shall include but not be limited to the barn area, paddock, test barn, Stewards' tower, racecourse, mutuel line and money rooms, or any other area designated restricted by the organization licensee or the Commission, or both. Signs giving notice of restricted access shall be prominently displayed at all entry points.

"Rules" means the rules adopted by the Commission to implement the provisions of the Act.

"Steward" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"Substance" means any kind of physical matter existing in a solid, liquid, or gaseous state or some combination thereof and includes any drugs or medications referred to under the provisions of the Oklahoma Horse Racing Act, Section 200 et seq. of Title 3A of the Oklahoma Statutes.

"Substantial evidence" means evidence which a reasoning mind would accept as sufficient to support a particular conclusion and consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance.

"Week" means a calendar week.

"Year" means a calendar year.

325:50-1-3. Use of controlled dangerous substance or prescription drug substance

(a) No person holding an occupation license issued by the Commission shall be under the influence of any scheduled "controlled dangerous substance" or synthetic substance as defined in the Uniform Controlled Dangerous Substances Act, 63 O.S., §§ 2-101 through 2-606, or any other intoxicating substance within the enclosure of any racetrack under the control of the Commission.

(b) The fact that any person charged with a violation of this Section is or has been lawfully entitled to use alcohol or a controlled dangerous substance or any other intoxicating substance shall not constitute a defense against any charge of violating this Section.

(c) No person holding an occupation license issued by the Commission shall have in his/her possession within the enclosure of any racetrack under the control of the Commission any

controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act, 63 O.S., § 2-101 et seq.

**325:50-1-3.1. Prohibited Licensee
Activities/Substance Abuse Testing
Procedures/Assessment/Treatment/
Penalties**

(a) All licensees shall be deemed to be exercising the privileges of their license, and to be subject to the requirements of these rules, when engaged in activities that could affect the outcome of a race or diminish the conditions of safety or decorum required in restricted areas.

(b) It shall be a violation to exercise the privileges granted by a license from this Commission if the licensee:

- (1) Is engaged in the illegal sale or distribution of alcohol or a controlled substance;
- (2) Possesses, without a valid prescription, a controlled substance;
- (3) Is intoxicated or under the influence of alcohol or a controlled substance;
- (4) Is addicted, having been determined to be so by a professional evaluation, to alcohol or other ~~drugs~~-substance and not engaged in an abstinence-based program of recovery acceptable to the Commission;
- (5) Has in his/her possession within the enclosure any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled dangerous substance;
- (6) Refuses to submit to ~~drugs~~-substance and/or alcohol testing, when notified that such testing is based on reasonable grounds that the person is using ~~drugs~~-substance or alcohol or is based on the licensee's acting as if in an impaired condition; or
- (7) Presently has ~~drugs~~-(controlled substances)-or alcohol in his or her body. With regard to alcohol, the results of a breathalyzer test showing a reading of more than .05 percent of alcohol in the blood shall be the criterion for a finding of alcohol present in the body. With regard to other controlled substances, presence of the ~~drugs~~-substance in any quantity measured by the testing instrument establishes the presence of the ~~drug~~-substance for purposes of this paragraph.

(c) The fact that a person charged with a violation of this rule is or has been lawfully entitled to use a prescribed substance shall not constitute a defense against any charge of violating this rule.

(d) At its discretion, the Commission may conduct ~~drugs~~-substance and/or alcohol testing in order to ensure safety on the racetrack.

(e) When conducted, ~~drugs~~-substance and/or alcohol testing shall apply, equally, to all licensees who may affect the outcome of a race and are exercising the privileges of their license.

(f) No notice need be given as to onset or cessation of ~~drugs~~-substance and/or alcohol testing.

(g) For licensees who are tested under the provisions in this chapter, and whose testing shows the presence of ~~drugs~~-(controlled substances)-or alcohol, any field screening test results shall be confirmed by a laboratory acceptable to the Commission which shall include Gas Chromatography/Mass Spectrometry (GC/MS) procedures.

(h) When the sample quantity permits, each test sample shall be divided into portions so that one portion may be used for the confirmation procedure and another portion may be utilized for the licensee to obtain an independent analysis of the urine sample through the Commission designated laboratory.

(i) The Commission shall provide for a secure chain of custody for the sample to be made available for ~~drugs~~-substance and/or alcohol testing for the licensee.

(j) All costs for the transportation and testing for the sample portion for the licensee shall be the financial responsibility as follows:

- (1) If the licensee is required by order/ruling by a Board of Stewards or OHRC to obtain testing prior to being eligible for license, all cost associated with ~~drugs~~-substance and/or alcohol testing shall be paid by applicant.
- (2) If the licensee is ordered to obtain a ~~drugs~~-substance and/or alcohol test by an OHRC Representative, all cost associated with testing shall be paid by OHRC.

(k) Payment shall be made prior to ~~drugs~~-substance and/or alcohol testing.

(l) Refusal to submit to a required ~~drugs~~-substance and/or alcohol test will result in an immediate ~~sixty (60)~~one hundred eighty (180) day suspension and require two (2) negative test results thirty (30) days apart prior to reinstatement. However, a licensee penalized or restricted pursuant to this chapter shall retain rights of due process with respect to any determination of alleged violations which may adversely affect the capacity to hold a license.

(m) If there has been a violation, under (b) above, the following additional procedures will be followed:

- (1) The Stewards/Commission may, at its discretion, order the licensee to obtain a professional assessment to determine whether there is a substantial probability that the licensee is dependent on, or abuses, alcohol or other ~~drugs~~-substance or the Stewards/Commission may act on the information at hand.
- (2) Actions in the case of a first violation may include revocation of the license, suspension of the license for up to six ~~(6)~~(6) months, placing the violator on probation for up to ~~ninety (90)~~(90) days and/or ordering formal assessment and treatment.
- (3) Actions in the case of a second violation may include revocation of the license, suspension of the license up to one ~~(1)~~(1) year and/or a professional assessment of the person may be ordered by the Stewards/Commission.
- (4) Treatment or assessment, if ordered, must meet the conditions established in this rule.
- (5) If a professional assessment indicates presence of a problem of alcohol or other ~~drugs~~-substance abuse that is not treatable within the reasonably foreseeable future (360

days) the license may be suspended for a period of up to one (1) year.

(6) If a professional assessment indicates presence of a treatable problem of alcohol or other ~~drug~~ substance abuse or dependence, the Stewards/Commission may order the licensee to undergo treatment as a condition of continuing licensure. ~~Such~~The treatment will be through a program or by a practitioner, acceptable to the licensee and the Stewards/Commission. Required features of any program or practitioner acceptable to the Stewards/Commission will be:

- (A) Accreditation or licensure by an appropriate government agency, if required by state statute;
- (B) A minimum of one (1) year follow-up of formal treatment; and
- (C) A formal contract indicating the elements of the treatment and follow up program that will be completed by the licensee and, upon completion, certified by the program administrator to the Stewards/Commission as completed. To effect the contract, the licensee will authorize release of information by the treating agency, hospital or individual.

(7) When a licensee is determined to have failed in maintaining abstinence, the licensee shall furnish to the Stewards/Commission an assessment by the treating agency, hospital or individual practitioner indicating whether the licensee was compliant with the agreed upon program of recovery.

(8) Persons being reinstated following a violation of these rules who have not successfully completed a rehabilitation program shall submit a negative ~~drug~~ substance and/or alcohol test prior to being licensed.

(9) Actions in the case of a third violation may include revocation of the license and the violator being deemed ineligible for licensure for up to five (5) years.

(10) Prior human substance abuse violation reflected on a person(s) racing records from any racing jurisdiction(s) recognized by the Commission, including Oklahoma, shall be counted as violations when determining appropriate penalties as set forth in this rule.

[OAR Docket #20-564; filed 7-7-20]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 60. RUNNING THE RACE

[OAR Docket #20-565]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

325:60-1-2. Definitions [AMENDED]

325:60-1-24. Returning to the finish after the race [AMENDED]

AUTHORITY:

3A O.S. § 200 et seq.; Oklahoma Horse Racing Commission

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n/a

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GIST/ANALYSIS:

The proposed rule amendments modify definitions; and modify jockey requirements when returning to finish after the race.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 14, 2020:**

325:60-1-2. Definitions

In addition to the definitions provided in Section 200.1 of Title 3A, of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Act**" means the Oklahoma Horse Racing Act [3A:200 et seq.].

"**Assistant Trainer**" means a person qualified as and licensed by the Commission as an Assistant Trainer.

"**Authorized Agent**" means a person licensed by the Commission and appointed by a written notarized affidavit by the Owner, Trainer, Parent or Guardian of a minor on whose behalf the Agent will act, and limited to the actions as specified on the affidavit. ~~Said~~The affidavit ~~must~~shall be on file with the Commission.

"**Bleeder**" means a horse which during or following exercise or the race is observed to be shedding blood from one or both nostrils, or the mouth, or hemorrhaging in the lumen of the respiratory tract.

"**Commissioner**" means a member of the Oklahoma Horse Racing Commission.

"**Day**" means a 24-hour period ending at midnight.

"**Field**" means all horses competing in a race.

"**Foul**" means an action by any horse or Jockey that hinders or interferes with another horse or Jockey during the running of a race.

"**Horse**" means:

(A) any equine including and designated as mare, filly, stallion, colt, ridgeling, or gelding registered for racing;

(B) an ~~entire~~ intact equine male five (5) years of age and older.

"**Inquiry**" means:

(A) an investigation by the Stewards of potential interference in a contest prior to declaring the result of said contest official; or

(B) the Stewards or Commission investigation of a matter alleged to be related to the provisions of the Act or the rules of the Commission.

"**Jockey**" means a rider licensed to race.

"**Objection**" means:

(A) A written complaint made to the Stewards concerning a horse entered in a race and filed not later than two hours prior to the scheduled post time for the first race on the day which the questioned horse is entered.

(B) A verbal claim of foul in a race lodged by the horse's Jockey, Trainer, Owner, or the Owner's licensed Authorized Agent before the race is declared official.

"**Occupation license**" means a state requirement for any person acting in any capacity pursuant to the provisions of the Act.

"**Official order of finish**" means the order of finish of the horses in a contest as declared official by the Stewards.

"**Organization license**" means a state requirement for any person desiring to conduct a race meeting in Oklahoma within the minimum standards as required by the Act and the rules of the Commission.

"**Owner**" means any person who holds in whole or in part, any right, title or interest in a horse or an Organization Licensee or any person who is a Lessee of a horse and has been duly issued a currently-valid Owner license as a person responsible for such horse.

"**Post position**" means the position in the starting gate assigned to the horse for the start of the race.

"**Post time**" means the scheduled time set for the arrival of the horses at the starting gate for the race.

"**Race**" means a contest between horses.

"**Race day**" means a day during a race meeting when pari-mutuel wagering occurs on live races conducted at that racetrack.

"**Races**" mean:

(A) **Allowance.** An overnight race for which eligibility and weight to be carried is determined according to specified conditions which include age, sex, earnings, number of wins, and distance of race.

(B) **Claiming.** A race in which any horse starting may be claimed and purchased for a designated amount in conformance with the rules in this Title.

(C) **Exhibition.** A race on which no wagering is permitted.

(D) **Handicap.** A race in which the weights to be carried by the horses are assigned by the Racing Secretary.

(E) **Invitational.** A race in which the competing horses are selected by inviting their Owners to enter specific horses.

(F) **Maiden.** A race restricted for non-winners.

(G) **Match.** A race contested between two or more horses under conditions agreed to by their Owners.

(H) **Nomination.** A race in which the subscription to a payment schedule nominates and sustains the eligibility of a particular horse. Nominations must close at least seventy-two (72) hours before the first post time of the day the race is originally scheduled to be run.

(I) **Oklahoma-Bred.** A race for which entry may be restricted to accredited Oklahoma-Bred registered horses.

(J) **Overnight (Purse).** A race for which entries close at a time set by the Racing Secretary.

(K) **Progeny.** A race restricted to the offspring of a specific stallion or stallions.

(L) **Schooling.** A preparatory race for entry qualification in official races which conforms to requirements adopted by the Commission.

(M) **Stakes.** A race ~~which is eligible for stakes or "black type" recognition by the particular breed registry~~ in which nomination, entry, or starting fees contribute to the purse.

(N) **Trial.** A race or a series of races in which horses participate for the purpose of determining eligibility for a subsequent contest.

(O) **Walkover.** A race in which only one horse starts or in which all the starters are owned by the same interest. To claim the purse, a horse must start and go the distance of the race.

"**Restricted area**" means any area within the enclosure where access is limited to licensees whose occupation requires access. Those areas which are restricted shall include but not be limited to the barn area, paddock, test barn, Stewards' tower, racecourse, mutuel line and money rooms, or any other area designated restricted by the Organization Licensee or the Commission, or both. Signs giving notice of restricted access shall be prominently displayed at all entry points.

"**Rules**" means the rules adopted by the Commission to implement the provisions of the Act.

"**Starter**" means a horse whose stall door of the starting gate opens in front of such horse at the time the Starter (the Official) dispatches the horses.

"**Safety Steward**" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"**Steward**" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"**Trainer**" means a person qualified and licensed by the Commission as a Trainer.

"**Weight in**" means the presentation of a Jockey to the Clerk of Scales for weighing after a race.

"**Weight out**" means the presentation of a Jockey to the Clerk of Scales for weighing prior to a race.

Permanent Final Adoptions

325:60-1-24. Returning to the finish after the race

After the race, ~~the Jockey shall return the horse to the finish and before dismounting, signal the Stewards by salute that s/he does not wish to claim foul. No~~ person shall assist a Jockey in removing from his/her horse the equipment that is to be included in the Jockey's weight except by permission of the Stewards. No person shall throw any covering over any horse at the place of dismounting until the Jockey has removed the equipment that is to be included in his/her weight.

[OAR Docket #20-565; filed 7-7-20]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 70. OBJECTIONS AND PROTESTS; HEARINGS AND APPEALS

[OAR Docket #20-566]

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RULES:

325:70-1-23. Appeal from decision of the Stewards [AMENDED]

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3A O.S. § 200 et seq.; Oklahoma Horse Racing Commission

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n/a

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The proposed rule amendments update language; and clarify methods of notification of certain appeal.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

325:70-1-23. Appeal from decision of the Stewards

(a) The Commission shall review hearings of any case referred to the Commission by the Stewards or appealed to the Commission from the decisions of the Stewards except as otherwise provided in this Chapter. Upon every appealable decision of the Stewards, the person subject to the decision or order shall be made aware of his/her right to an appeal before the Commission and the necessary procedures thereof. Appeals shall be made no later than 5:00 p.m. on the third calendar day, excluding intermediate Saturdays and Sundays and legal holidays as defined by the Oklahoma Statutes or any other day when the Commission office does not remain open for public business until 5:00 p.m. from the date the applicant or the applicant's attorney of record is notified of the rendering of the decision of the Stewards, excluding the date the decision was rendered, unless the Commission for good cause extends the time for filing not to exceed thirty (30) days from said the rendering date, and shall be filed with the Office of the Commission as specified in 325:1-1-14. Notification may be made by delivery of the decision or order in person, by email, or regular mail to an address listed on the applicant's most recent license application, to the applicant's attorney of record in person, by email, or regular mail to an address listed on the attorney's Entry of Appearance, or by other means if requested in writing or on the record by the applicant or the applicant's attorney of record. When the applicant is notified by mail of the Stewards' decision, three (3) days shall be added to the time within which the application for temporary stay order ~~must~~shall be filed. Action on ~~such a~~the hearing request ~~must~~shall commence by the Commission within thirty (30) days of the filing of the appeal. An appeal shall not affect a decision of the Stewards until the appeal has been sustained or dismissed or a stay order issued.

(b) After the date for an appeal hearing has been set, a party to the hearing may request a hearing continuance if ~~such a~~the request is received in writing by the Commission no later than three (3) days prior to the scheduled date of hearing and as otherwise specified in 325:1-1-14. The request for continuance may be granted or denied by the Executive Director after his/her consultation with three (3) Commissioners; however, ~~such a~~ continuance shall only be considered by the Commission upon a showing of serious circumstances; which in the opinion of the Commission would justify the granting of a continuance.

(c) The form in Appendix A of this Chapter shall be used when filing an appeal petition with the Commission. The petition ~~should~~shall be typed or printed on 8-1/2" x 11" paper with the original and three (3) copies being filed.

[OAR Docket #20-566; filed 7-7-20]

**TITLE 325. OKLAHOMA HORSE RACING
COMMISSION
CHAPTER 75. OKLAHOMA-BRED
PROGRAM**

[OAR Docket #20-567]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

325:75-1-2. Definitions [AMENDED]

325:75-1-13. Change of horse ownership [AMENDED]

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n/a

GIST/ANALYSIS:

The proposed rule amendments add and revise definitions; and provide for payment of awards upon change of horse ownership.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 14, 2020:**

325:75-1-2. Definitions

In addition to the definitions provided in Section 200.1 of Title 3A, of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Act**" means the Oklahoma Horse Racing Act [3A:200 et seq.].

"**Accredit**" means to certify as meeting the standard of eligibility for participation as a broodmare, stallion or racing stock in the Oklahoma-Bred Program.

"**Accreditation**" means the process of verifying and certifying the eligibility of a broodmare, stallion or racing stock for participation in the Oklahoma-Bred Program and adding its name to the official registry.

"**Accredited Oklahoma-Bred horse**" means a broodmare, stallion or racing stock that is eligible pursuant to the Act and Commission rules and whose enrollment in the Oklahoma-Bred Program has been completed by the official Registering Agency.

"**Added money**" means the amount exclusive of trophy added into a stakes by the Organization Licensee, or by sponsors, state-bred programs, or other funds added to those monies gathered by nomination, entry, sustaining and other fees coming from the horsemen.

"**Adoption program**" means a program in which race horses are rehabilitated and/or retrained for other uses, such as, but not limited to, polo, dressage, hunter/jumper and pleasure riding, the goal and purpose of which is the adoption of the race horse after rehabilitation and/or retraining.

"**Age**" means that the age of a horse is recognized as beginning on the first day of January in the year in which the horse is foaled.

"**Authorized agent**" means a person licensed by the Commission and appointed by a written notarized affidavit by the Owner, Trainer, Parent or Guardian of a minor in whose behalf the Agent will act, and limited to the actions as specified on the affidavit. ~~Said~~The affidavit ~~must~~shall be on file with the Commission.

"**Breakage**" means the net pool minus payout.

"**Breeder**" means the Owner of a horse's dam at the time of foaling for Thoroughbreds, and means the Owner of a horse's dam at time of conception for non-Thoroughbreds.

"**Commissioner**" means a member of the Oklahoma Horse Racing Commission.

"**Conditions of a race**" means the qualifications which determine the eligibility of a horse to be entered in a race.

"**Day**" means a 24-hour period ending at midnight.

"**Domicile**" means the permanent dwelling of the horse(s).

"**Donor mare**" means mare which produces an embryo or an oocyte which, after fertilization, is transferred into the uterus of a recipient mare.

"**Embryo transfer**" means the process of transferring a Donor Mare embryo into a recipient mare.

"**Dual breed registered horse**" means an accredited Oklahoma-Bred horse that has filed with the Registering Agency Registration Certificates from more than one national breed registry. A dual breed registered horse may be eligible for dual breed Oklahoma-Bred awards.

"**Eligible**" means a broodmare, stallion, or racing stock horse that can satisfy all of the requirements for participation in the Oklahoma-Bred Program.

"**Enroll**" means to enter the name of an eligible broodmare, stallion, or racing stock horse on the official roll, register, or record as a qualified participant in the Oklahoma-Bred Program.

"**Hardship application**" means that a horse Owner is eligible to complete a Hardship Application if the horse in question is a mare that is accredited as Racing Stock in the Oklahoma-Bred Program, with the proper Oklahoma-Bred stamp, but was not accredited as a Broodmare in the Oklahoma-Bred Program prior to producing a foal.

Permanent Final Adoptions

"Horse" means:

- (A) any equine including and designated as mare, filly, stallion, colt, ridgeling, or gelding registered for racing;
- (B) an entire intact equine male five (5) years of age and older.

"Lessee" means a licensed Owner whose interest in a horse is by virtue of a completed Commission-approved lease form attached to the Registration Certificate and on file with the Commission.

"Lessor" means the Owner of a horse that is leased.

"Nomination" means the naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.

"Nominator" means the person who nominates a horse as a possible contender in a race.

"Occupation license" means a state requirement for any person acting in any capacity pursuant to provisions of the Act.

"Organization license" means a state requirement for any person desiring to conduct a race meeting in Oklahoma within the minimum standards as required by the Act and the rules of the Commission.

"Owner" means any person who holds in whole or in part, any right, title or interest in a horse or an Organization Licensee or any person who is a Lessee of a horse and has been duly issued a currently-valid Owner license as a person responsible for such horse.

"Pension program" means a program for the care and "pasturing" of retired or unwanted horses who, because of their health or condition, are incapable of being rehabilitated/re-trained and adopted.

"Race" means a contest between horses.

"Race day" means a day during a race meeting when pari-mutuel racing occurs on live races conducted at that racetrack.

"Races" mean:

- (A) **Allowance.** An overnight race for which eligibility and weight to be carried is determined according to specified conditions which include age, sex, earnings, number of wins, and distance of race.
- (B) **Claiming.** A race in which any horse starting may be claimed and purchased for a designated amount in conformance with the rules in this Title.
- (C) **Exhibition.** A race on which no wagering is permitted.
- (D) **Handicap.** A race in which the weights to be carried by the horses are assigned by the Racing Secretary or handicapper for the purpose of equalizing the chances of winning for all horses entered.
- (E) **Invitational.** A race in which the competing horses are selected by inviting their Owners to enter specific horses.
- (F) **Maiden.** A race restricted to non-winners.
- (G) **Match.** A race contested between two or more horses under conditions agreed to by their Owners.
- (H) **Nomination.** A race in which the subscription to a payment schedule nominates and sustains the eligibility of a particular horse. Nominations must close at least seventy-two (72) hours before the first

post time of the day the race is originally scheduled to be run.

(I) **Oklahoma-Bred.** A race for which entry may be restricted to accredited Oklahoma-Bred registered horses.

(J) **Overnight (Purse).** A race for which entries close at a time set by the Racing Secretary.

(K) **Progeny.** A race restricted to the offering of a specific stallion or stallions.

(L) **Schooling.** A preparatory race for entry qualification in official races which conforms to requirements adopted by the Commission.

(M) **Stakes.** A race ~~which is eligible for stakes or "black-type" recognition by the particular breed registry in which nomination, entry, or starting fees contribute to the purse.~~

(N) **Trial.** A race or a series of races in which horses participate for the purpose of determining eligibility for a subsequent contest.

(O) **Walkover.** A race in which only one horse starts or in which all the starts are owned by the same interest. To claim the purse, a horse must start and go the distance of the race.

"Recipient mare" means the surrogate mare carrying a Donor Mare's embryo.

"Register" means the official record of names of broodmares, stallions, or racing stock horses that have been approved for participation in the Oklahoma-Bred Program.

"Registration" means placing the name of approved broodmares, stallions, or racing stock horses in the official record of horses approved to participate in the Oklahoma-Bred Program.

"Registration certificate" means the official document from the breed-specific national registry, providing the horse's name, foal date, age, color, sex, pedigree and breeder and confirming the horse's registration with the appropriate national breed registry.

"Rules" means the rules adopted by the Commission to implement the provisions of the Act.

"Stallion Re-certification" means completing a re-certification application annually for Thoroughbred stallions that were previously accredited in the Stallion Registry.

"Safety Steward" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"Steward" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"Stewards' official program" means the program provided by the Stewards which includes the official order of finish and any corrected information.

"Trainer" means a person qualified and licensed by the Commission as a Trainer.

"Unclaimed ticket" means:

- (A) a winning or refundable pari-mutuel ticket which was not cashed during the performance for which it was issued; or
- (B) Proceeds which shall be remitted by the Organization Licensee to the Commission for deposit in the Oklahoma Breeding Development Fund Special

Account in accordance with provisions of statute and as prescribed by the Commission.

"Week" means a period of seven (7) days.

"Year" means a calendar year.

325:75-1-13. Change of horse ownership

(a) Upon transfer of ownership of an accredited Oklahoma-Bred ~~horse~~ Stallion, Broodmare, or Racing Stock which has not earned awards, it is the responsibility of the ~~current~~ new owner (~~purchaser~~) to notify the Oklahoma-Bred Registering Agency of ~~such~~ the change of ownership. The new owner ~~will be required to~~ shall submit a copy of the Certificate of Registration documenting transfer of ownership together with a completed Oklahoma-Bred Program Transfer Request Form accompanied by the required transfer fee.

(b) Upon the transfer of ownership of an accredited Oklahoma-Bred Racing Stock which has earned awards, the Oklahoma-Bred award monies shall be paid to the new owner as listed in the Stewards' official program. A transfer fee of Twenty-Five Dollars (\$25.00) shall be deducted from the award monies prior to distribution to the new owner.

[OAR Docket #20-567; filed 7-7-20]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION

CHAPTER 80. GAMING LICENSING REQUIREMENTS

[OAR Docket #20-568]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

325:80-1-2. Definitions [AMENDED]

Subchapter 13. Requirements for Key Executive License or Gaming Employee License and Amendments to any Employee License

325:80-13-6. Employee Licenses - Refusal to issue or denial and license termination upon loss of employment [AMENDED]

Subchapter 15. Requirements for independent testing laboratory license

325:80-15-1. Application Required [AMENDED]

AUTHORITY:

3A O.S. § 200 et seq.; Oklahoma Horse Racing Commission

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rule amendments add and revise definitions; provide for revocation of certain licenses upon termination of employee; and change date for renewal of certain license applications.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

325:80-1-2. Definitions

Unless otherwise defined below, terms used in this chapter have the same meanings as set forth in the State-Tribal Gaming Act:

"Act" means the State-Tribal Gaming Act enacted by the people with passage of State Question 712.

"Authorized games" means Electronic Amusement Games as defined in the Act, Electronic Bonanza-Style Bingo Games as defined in the Act, Electronic Instant Bingo Games as defined in the Act, Compact Electronic Games as defined in these Rules, and Non-Compact Electronic Games as defined by these Rules.

"Commission" means the Oklahoma Horse Racing Commission.

"Component" means a part of a Gaming Machine that is necessary for the proper operation and essential function of the Gaming Machine, including but not limited to a hopper, coin acceptor, Microprocessor and related circuitry, Program Storage Device, Bill Acceptor, cashless system, progressive system, monitoring system, meter and any other parts the Commission determines are Components; a Component is necessary for the proper operation and essential function of a Gaming Machine if it affects, directly or indirectly, the Gaming Machine's operation, game outcome, security, record-keeping, or communication with the central monitoring system; parts such as light bulbs, buttons, wires, decorative glass, fuses, batteries, handles, springs, brackets, and locks are not Components if they do not directly or indirectly affect the Gaming Machine's operation, game outcome, security, record-keeping, or communication with the central monitoring system.

"Control" when used as a noun, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person or to exercise significant influence over management and policies due to financial investment, assumption of debts or expenses, or other monetary or non-monetary considerations extended to the applicant or Licensee; when used as a verb, "Control" means to exert, directly or indirectly, such power, or to be in a position to exert such power.

Permanent Final Adoptions

"Distributor" means a non-Manufacturer who leases, sells, distributes or markets any Gaming Machine, associated equipment, game program or Program Storage Device to a Racetrack Gaming Operator Licensee in the State of Oklahoma.

"Enclosure" means all areas of the property of an Organization Licensee to which admission can be obtained only by payment of an admission fee or upon presentation of proper credentials and all parking areas designed to serve the facility which are owned or leased by the Organization Licensee.

"Executive director" means the executive director of the Commission.

"Gaming agent" means a Commission employee trained in machine gaming, responsible for on-site enforcement of the Act and these Rules and other regulatory responsibilities as assigned by the Executive Director.

"Gaming employee" means any employee of a Racetrack Gaming Operator Licensee who works in any capacity within the confines of the Gaming Facility.

"Gaming employee license" means a license issued to a Gaming Employee by the Commission.

"Gaming facility" means that area within an Organization Licensee's Racetrack Premises approved by the Commission that has been set aside for the use of Authorized Games and related activities and access to which is limited to patrons 18 years of age or older.

"Gaming machine" means a contrivance designed primarily for gambling purposes which for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance, or any token, chip, paper, receipt or other document which evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet. The fact that the prize is not automatically paid by the device does not affect its character as a gambling device.

"Gaming machine license" means a license issued by the Commission to a Racetrack Gaming Operator Licensee for each Gaming Machine brought into the Racetrack Premises, for any purpose, including but not limited to storage, repair, modification or play.

"Independent testing laboratory" means a laboratory with a national reputation for honesty, independence, competence and timeliness that is demonstrably competent and qualified to scientifically test and evaluate devices for compliance with the Act and to otherwise perform the functions assigned to it in the Act. An Independent Testing Laboratory shall not be owned or Controlled by an Organization Licensee, an Indian tribe, the State, or any Manufacturer, supplier or operator of Gaming Machine. The use of an Independent Testing Laboratory for any purpose related to the operation of Authorized Games by an Organization Licensee under the Act shall be made from a list of one or more laboratories approved by the Commission.

"Key executive" means an executive of a Racetrack Gaming Operator Licensee, Manufacturer, Distributor, Manufacturer/Distributor, Vendor, or Independent Testing Laboratory who supplies goods and/or services which are used in the actual gaming, gaming monitoring or gaming surveillance, including

officers, directors, and other Persons having the power to exercise significant influence over decisions concerning any part of the licensed gaming operations of the licensed employer, which for a Racetrack Gaming Operator Licensee, would include but would not be limited to the General Manager, Comptroller, Director of Finance, Director of Security, Director of Electronic Gaming Operations, and Director of Marketing.

"Key executive license" means a license issued to a Key Executive by the Commission.

"Manufacturer" means a Person who manufactures, fabricates, assembles, produces, programs, refurbishes, or makes Modification to any Gaming Machine or Component thereof, or associated Program Storage Device for sale, lease, distribution, use or play by a Racetrack Gaming Operator Licensee in the State of Oklahoma.

"Manufacturer licensee" means a Manufacturer licensed by the Commission.

"Manufacturer/Distributor" means a Person who is both a Manufacturer and Distributor as defined in these Rules.

"Manufacturer/Distributor licensee" means a Manufacturer/Distributor Licensed by the Commission.

"Modification" means a change or alteration in an approved Gaming Machine or Component thereof that affects the manner or mode of play (including the percentage paid by the Gaming Machine), as well as a change in Control or graphics programs "Modification" does not include a conversion from one approved mode of play to another approved mode of play, replacement of one game for another approved game replacement of one Component with another pre-approved Component, or the rebuilding of a previously approved Gaming Machine with pre-approved Components.

"Occupation gaming license" means any gaming license issued by the Commission other than a Racetrack Gaming Operator License or a Recipient Racetrack Gaming License.

"Occupation gaming licensee" means any Person receiving an Occupation Gaming License issued by the Commission.

"Organization license" means a license issued by the Commission which authorizes the licensee to conduct a race meeting in Oklahoma and accept pari-mutuel wagers on the outcome of live and simulcast horse racing.

"Organization licensee" means any Person receiving an Organization License issued by the Commission.

"Participating tribe" means an Indian tribe which operates a Gaming Facility within a radius of twenty (20) miles from the Enclosure of a Recipient Racetrack Gaming Licensee pursuant to a Model Compact.

"Person" means any individual, partnership, corporation, or other association or entity.

"Program storage device" means an EPROM (Erasable Programmable Read-Only Memory), hard drive, DVD, CD-ROM or other storage medium which is used for storing program instructions in or for a Gaming Machine, system or other associated equipment.

"Racetrack gaming operator license" means a license issued by the Commission which authorizes an Organization Licensee to conduct Authorized Games under the regulation, implementation and enforcement of the Commission.

"**Racetrack gaming operator licensee**" means any Organization Licensee which has been issued a Racetrack Gaming Operator License by the Commission.

"**Racetrack premises**" means the property that is owned or leased by the Organization Licensee that is used for racetrack purposes.

"**Recipient racetrack gaming license**" means a license issued by the Commission which authorizes the licensee to receive the funds authorized in the Act from Participating Tribes.

"**Recipient racetrack gaming licensee**" means any Person receiving a Recipient Racetrack Gaming License issued by the Commission.

"**Rules**" means the Commission's *Rules for Racetrack Gaming*.

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

"**This Title**" means Title 325 of the Oklahoma Administrative Code.

"**Vendor**" means a Person, other than a licensed Manufacturer, Distributor, or Manufacturer/Distributor, who in selling or leasing goods and/or services to a Racetrack Gaming Operator Licensee, conducts operations on-site at a racetrack Gaming Facility provided that attorneys shall be exempt from the licensing requirement herein to ~~be~~the extent that they are providing services covered by their professional licenses.

"**Vendor employee**" means a Person employed by a Vendor and licensed by the Commission as a Vendor Employee.

"**Vendor employee license**" means a license which authorizes any employee to work for a licensed Vendor and supply goods and/or services on-site at the Gaming Facility.

"**Vendor license**" means a license issued by the Commission which authorizes a Vendor to sell goods and/or services to a Racetrack Gaming Operator Licensee.

SUBCHAPTER 13. REQUIREMENTS FOR KEY EXECUTIVE LICENSE OR GAMING EMPLOYEE LICENSE AND AMENDMENTS TO ANY EMPLOYEE LICENSE

325:80-13-6. Employee Licenses - Refusal to issue or denial and license termination upon loss of employment

All employee licenses are the property of the State of Oklahoma. Any employee whose employment is terminated for any reason must surrender his or her license to the Commission within five (5) business days of termination. An application for any type employee license may be denied for any reason that an application for a horse racing Occupation Gaming License may be denied. It may also be denied if an applicant has had a gaming or horse racing license revoked or suspended in any other jurisdiction or has been found guilty or pled guilty or no contest to any felony, or any crime involving gaming or horse racing. The grounds listed above in these Rules may also be used as a basis for refusal to issue or revoke a license.

SUBCHAPTER 15. REQUIREMENTS FOR INDEPENDENT TESTING LABORATORY LICENSE

325:80-15-1. Application Required

Testing laboratories that wish to function as a Commission-approved Independent Testing Laboratory ~~must~~shall apply to be issued an Independent Testing Laboratory License. The application ~~must~~shall be accompanied by the required application fee and an investigation fee in an amount equal to one-half of the license fee. The deadline for renewal license applications is ~~October~~November 1 of the current license year.

(1) In addition to other information required on the application, ~~any~~an applicant ~~must~~shall provide the following information for each of the last three (3) years:

- (A) address of main office and number of square feet used for testing;
- (B) addresses of all satellite offices, if any, and number of square footage;
- (C) number of full-time employees;
- (D) number of machines tested;
- (E) list of states for which the Laboratory has performed tests;
- (F) list of countries for which the Laboratory has performed tests; and
- (G) list of states and countries in which the Laboratory has been licensed or certified.

(2) In addition, the Commission review of consideration of an application for an Independent Testing Laboratory shall include:

- (A) For the testing laboratory and its parent corporation, if any, a complete corporate financial disclosure and review; a complete disclosure and review of any criminal proceedings, civil litigation or investigations by a regulatory entity; and an evaluation of its corporate good standing in the jurisdiction(s) where it is incorporated and/or does business.
- (B) For its principal shareholders (10% or greater) and its officers and directors, a complete individual financial disclosure and review; a complete disclosure and review of any criminal proceedings, civil litigation or investigations by a regulatory entity; and a finding of suitability.
- (C) The testing laboratory will demonstrate its relevant technical skill and capability by providing evidence of suitable testing previously conducted for state or tribal regulatory authorities. The Commission's Law Enforcement Division may conduct an on-site review of the testing laboratory's facilities as part of its evaluation and will be satisfied that the testing laboratory is qualified and competent to perform the testing required before making any recommendation for approval to the Commission. The frequency of the on-site review will be recommended by the Commission Law Enforcement Division's Director to the Commission Executive Director.
- (D) The testing laboratory ~~must~~shall have in-house staff personnel in the following categories:

- (i) Mathematicians,
 - (ii) Mechanical, electrical, and software engineering staff,
 - (iii) Compliance engineering staff,
 - (iv) Accounting system and communication protocol engineering specialists,
 - (v) High-level engineering staff for new and current technology, and
 - (vi) Quality assurance staff.
- (E) The testing laboratory ~~must~~shall have the ability to provide twenty-four hour, seven-day a week support for the Commission, including in-house personnel coverage.
- (F) The testing laboratory ~~must~~shall provide training and support staff for on-site field inspections to assist and/or train Gaming Agents on the security, compliance and accounting/auditing practices that ~~should~~shall be used, with expenses paid by the testing laboratory.
- (G) The testing laboratory ~~must~~shall provide a quality assurance staff that verifies each test result.
- (H) The testing laboratory ~~must~~shall conduct an annual due diligence investigation on each employee of the testing laboratory and maintain such due diligence files on each employee.
- (I) The testing laboratory ~~must~~shall have physical building security in terms of surveillance systems and alarms to protect confidential information.
- (J) The testing laboratory ~~must~~shall demonstrate that it possesses multiple units of the approved signature device(s); that it provides signatures of the approved software with each certification which will assist in the conduct of field audits of the equipment; and that the Laboratory has the ability to provide the specifications on the various software verification methods (i.e., KOBETRON, DataMan and other types of algorithms that allow checking of gaming equipment) to assist the Commission in determining which verification tools will be acceptable.
- (K) The testing laboratory ~~must~~shall have adequate equipment to support the submissions for testing and also, additional units available for on-site inspections when laboratory presence is requested; ~~must~~shall provide the requested signatures by taking those signatures at the Laboratory prior to storage of the storage media independent of the supplier; and a testing laboratory shall not rely on supplier-generated signatures.
- (L) During the detailed communication protocol tests that are performed on the device side and the system side, the testing laboratory ~~must~~shall use testing tools and testing techniques that are developed in compliance with the protocol used. The testing laboratory ~~must~~shall have the ability to develop such tools independently without having to rely on the Manufacturer for the equipment.
- (M) The testing laboratory ~~must~~shall demonstrate that the testing it performs includes complete detailed

tests to examine all external and internal functions, such as examinations of memory and communication protocol with all devices, of the gaming equipment being tested.

(N) The testing laboratory ~~must~~shall have a national reputation for honesty, independence, competence and timeliness.

[OAR Docket #20-568; filed 7-7-20]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION

CHAPTER 85. GAMING MACHINE SPECIFICATIONS AND USE AND OPERATION REQUIREMENTS

[OAR Docket #20-569]

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RULES:

Subchapter 1. General Provisions

325:85-1-2. Definitions [AMENDED]

Subchapter 15. Use and Operation Requirements Applicable to Electronic Amusement Games, Electronic Bonanza-Style Bingo Games and Electronic Instant Bingo Games

325:85-15-14. Logic compartment [AMENDED]

Subchapter 20. Use and Operation Requirements Applicable to Compact Electronic Games and Non-Compact Electronic Games

325:85-20-6. Logic compartment [AMENDED]

Subchapter 25. Transportation, Receipt, Installation and Disposal of Gaming Machines

325:85-25-2. Transportation of gaming machines into the state [AMENDED]

325:85-25-3. ~~Receipt~~Delivery of gaming machines ~~in the state to gaming facilities~~ [AMENDED]

325:85-25-4. Transportation of gaming machines ~~between Commission licensed gaming facilities in the state~~ [AMENDED]

325:85-25-5. ~~Approval to distribute~~Removal of gaming machines ~~outside of the state~~ [AMENDED]

325:85-25-6. On-site testing, installation and placement of gaming machines - including each player terminal and each game [AMENDED]

AUTHORITY:

3A O.S. § 200 et seq.; Oklahoma Horse Racing Commission

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n/a

GIST/ANALYSIS:

The proposed rule amendments revise definitions; clarify language; modify requirements for transportation, delivery, and removal of gaming machines; and conform language.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

325:85-1-2. Definitions

Unless otherwise defined below, terms used in this chapter have the same meanings as set forth in the State-Tribal Gaming Act.

"**Act**" means the State-Tribal Gaming Act enacted by the people with passage of State Question 712.

"**Authorized games**" means Electronic Amusement Games as defined in the Act, Electronic Bonanza-Style Bingo Games as defined in the Act, Electronic Instant Bingo Games as defined in the Act, Compact Electronic Games as defined in these Rules, and Non-Compact Electronic Games as defined in these Rules.

"**Central computer**" means a computer or computers to which Player Terminals may be linked to allow competition in Electronic Bonanza-Style Bingo Games.

"**Commission**" means the Oklahoma Horse Racing Commission.

"**Compact**" means a Model Compact or any other tribal-state compact entered into between the State of Oklahoma and a federally recognized Indian tribe in accordance with the Indian Gaming Regulatory Act, and which has been approved by the United States Secretary of the Interior, as evidenced by publication of the approval in the Federal Register.

"**Compact Electronic Game**" means any Gaming Machine allowed by Oklahoma law that a federally recognized Indian tribe in Oklahoma is authorized to use by virtue of a Compact.

"**Component**" means a part of a Gaming Machine that is necessary for the proper operation and essential function of the Gaming Machine, including but not limited to a hopper, coin acceptor, microprocessor and related circuitry, Program Storage Device, bill acceptor, cashless system, progressive system, monitoring system, meter, and any other parts the Commission determines are Components; a Component is necessary for the proper operation and essential function of a Gaming Machine if it affects, directly or indirectly, the Gaming Machine's operation, game outcome, security, record-keeping, or communication with the central monitoring system; parts such as light bulbs, buttons, wires, decorative glass, fuses,

batteries, handles, springs, brackets, and locks are not Components if they do not directly or indirectly affect the Gaming Machine's operation, game outcome, security, record-keeping, or communication with the central monitoring system.

"**Control**" when used as a noun, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person or to exercise significant influence over management and policies due to financial investment, assumption of debts or expenses, or other monetary or non-monetary considerations extended to the applicant or Licensee; when used as a verb, "Control" means to exert, directly or indirectly, such power, or to be in a position to exert such power.

"**Electronic Amusement Game**" means a game that is played in an electronic environment in which a player's performance and opportunity for success can be improved by skill that conforms to the Standards set forth in the Act.

"**Electronic Bonanza-Style Bingo Game**" means a game played in an electronic environment in which some or all of the numbers or symbols are drawn or electronically determined before the bingo cards for that game are sold that conforms to the Standards set forth in the Act.

"**Electronic Instant Bingo Game**" means a game played in an electronic environment in which a player wins if his or her electronic instant bingo card contains a combination of numbers or symbols that was designated in advance of the game as a winning combination. There may be multiple winning combinations in each game and multiple winning cards.

"**Executive director**" means the executive director of the Commission.

"**Gaming agent**" means a Commission employee trained in machine gaming, responsible for on-site enforcement of the Act and these Rules and other regulatory responsibilities as assigned by the Executive Director.

"**Game play credits**" means a method of representing value obtained from the exchange of cash or cash equivalents, or earned as a prize, in connection with the play of Authorized Games. Game Play Credits may be redeemed for cash or a cash equivalent.

"**Gaming facility**" means that area within an Organization Licensee's Racetrack Premises approved by the Commission that has been set aside for the use of Authorized Games and related activities and access to which is limited to patrons 18 years of age or older.

"**Gaming machine**" means a contrivance designed primarily for gambling purposes which for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance, or any token, chip, paper, receipt or other document which evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet. The fact that the prize is not automatically paid by the device does not affect its character as a gambling device.

"**Independent testing laboratory**" means a laboratory with a national reputation for honesty, independence, competence and timeliness that is demonstrably competent and qualified to scientifically test and evaluate devices for compliance with the Act and to otherwise perform the functions

assigned to it in the Act. An Independent Testing Laboratory shall not be owned or Controlled by an Organization Licensee, an Indian tribe, the State, or any Manufacturer, supplier or operator of Gaming Machines. The use of an Independent Testing Laboratory for any purpose related to the operation of Authorized Games by an Organization Licensee under the Act shall be made from a list of one or more laboratories approved by the Commission.

"Manufacturer" means a Person who manufactures, fabricates, assembles, produces, programs, refurbishes, or makes Modification to any Gaming Machine or Component thereof, or associated Program Storage Device for sale, lease, distribution, use or play by a Racetrack Gaming Operator Licensee in the State of Oklahoma.

"Model Compact" means a tribal-state compact between the State of Oklahoma and an Indian tribe entered into pursuant to 3A., O.S., § 280 and 281.

"Modification" means a change or alteration in an approved Gaming Machine or Component thereof that affects the manner or mode of play (including the percentage paid by the Gaming Machine), as well as a change in control or graphics programs. "Modification" does not include a conversion from one approved mode of play to another approved mode of play, replacement of one game for another approved game, replacement of one Component with another pre-approved Component, or the rebuilding of a previously approved Gaming Machine with pre-approved Components.

"Non-Compact Electronic Game" means any Gaming Machine that a federally recognized Indian tribe in Oklahoma is lawfully permitted to operate without a Compact under the Indian Gaming Regulatory Act. In determining whether a Gaming Machine qualifies as a Non-Compact Electronic Game, it shall be presumed that an Indian tribe is lawfully permitted to operate such Gaming Machine if such Indian tribe is operating such Gaming Machine within the State of Oklahoma and each of the following is true: (a) the National Indian Gaming Commission has not issued a Notice of Violation related to the unlawfulness of the Gaming Machine, instituted a formal action against the Indian tribe seeking to cause the Indian tribe to cease operating the Gaming Machine due to the unlawfulness of such Gaming Machine, issued an Order of Closure related to the Gaming Machine due to the unlawfulness of such Gaming Machine, nor assessed a civil fine related to the unlawfulness of the Gaming Machine; and (b) the Oklahoma Office of State Finance has not sent formal written notice to the Indian Tribe requesting that the Indian tribe cease operating the Gaming Machine due to the unlawfulness of such Gaming Machine. This presumption is a rebuttable presumption, which shall be deemed rebutted if substantial information to the contrary is presented or available to the Commission or its Executive Director.

"Organization license" means a license issued by the Commission which authorizes the licensee to conduct a race meeting in Oklahoma and accept pari-mutuel wagers on the outcome of live and simulcast horse racing.

"Organization licensee" means any Person receiving an Organization License issued by the Commission.

"Person" means any individual, partnership, corporation, or other association or entity.

"Player Terminals" means electronic terminals housed in cabinets with input devices and video screens or electro-mechanical displays on which players play Authorized Games.

"Program storage device" means an EPROM (Erasable Programmable Read-Only Memory), hard drive, DVD, CD-ROM or other storage medium which is used for storing program instructions in or for a Gaming Machine, system or other associated equipment.

"Racetrack gaming operator license" means a license issued by the Commission which authorizes an Organization Licensee to conduct Authorized under the regulation, implementation and enforcement of the Commission.

"Racetrack gaming operator licensee" means any Organization Licensee which has been issued a Racetrack Gaming Operator License by the Commission.

"Racetrack premises" means the property that is owned or leased by the Organization Licensee that is used for race-track purposes.

"Rules" means the Commission's *Rules for Racetrack Gaming*.

"Standards" means the descriptions and specifications of Electronic Amusement Games, Electronic Bonanza-Style Bingo Games, and Electronic Instant Bingo Games, or Components thereof, as set forth in the Act, including technical specifications for Component parts, requirements for cashless transaction systems, software tools for security and audit purposes, and procedures for operation of such games.

"State" means the State of Oklahoma.

"This Title" means Title 325 of the Oklahoma Administrative Code.

"Use and operation requirements" means (a) with respect to Electronic Amusement Games, Electronic Bonanza-Style Bingo Games and Electronic Instant Bingo Games, the use and operation requirements set forth in Subchapter 17, and (b) with respect to Compact Electronic Games and Non-Compact Electronic Games, the use and operation requirements set forth in Subchapter 19.

SUBCHAPTER 15. USE AND OPERATION REQUIREMENTS APPLICABLE TO ELECTRONIC AMUSEMENT GAMES, ELECTRONIC BONANZA-STYLE BINGO GAMES AND ELECTRONIC INSTANT BINGO GAMES

325:85-15-14. Logic compartment

The logic compartment is a locked cabinet area(s) with its own locked door - which houses critical electronic components that have the potential to significantly influence the operation of the Player Terminal. There may be more than one such logic compartment in a Player Terminal.

(1) CPUs and other electronic Components involved in the operation and calculation or display of game play

(e.g., game controller electronics and Components housing the game or system firmware program storage media) ~~must~~shall be housed in a logic ~~component~~compartment.

(2) Communication controller electronics, and Components housing the communication program storage media or the communication board for the on-line system, need not be housed in a logic compartment and may reside outside the Player Terminal.

(3) The logic compartment(s) shall be locked with a separate key kept by a Gaming Agent. A Gaming Agent ~~must~~shall be personally present any time a logic compartment is opened, and only the Gaming Agent ~~may~~shall insert and use the logic compartment key.

SUBCHAPTER 20. USE AND OPERATION REQUIREMENTS APPLICABLE TO COMPACT ELECTRONIC GAMES AND NON-COMPACT ELECTRONIC GAMES

325:85-20-6. Logic compartment

(a) The logic compartment is a locked cabinet area(s) with its own locked door - which houses critical electronic components that have the potential to significantly influence the operation of the Player Terminal. There may be more than one such logic compartment in a Player Terminal. CPUs and other electronic Components involved in the operation and calculation or display of game play (e.g., game controller electronics and Components housing the game or system firmware program storage media) ~~must~~shall be housed in a logic ~~component~~compartment.

(b) Communication controller electronics, and Components housing the communication program storage media or the communication board for the on-line system, need not be housed in a logic compartment and may reside outside the Player Terminal.

(c) The logic compartment(s) shall be locked with a separate key kept by a Gaming Agent. A Gaming Agent ~~must~~shall be personally present any time a logic compartment is opened, and only the Gaming Agent ~~may~~shall insert and use the logic compartment key.

SUBCHAPTER 25. TRANSPORTATION, RECEIPT, INSTALLATION AND DISPOSAL OF GAMING MACHINES

325:85-25-2. Transportation of gaming machines into the state

(a) A Gaming Machine is shipped or transported into the State when the starting point for shipping or transporting begins outside the State and the shipping or transporting terminates in the State.

(b) A licensed Manufacturer ~~shipping or transporting or Distributor shall ship or transport Gaming Machine~~shall ship or transport Gaming Machines into the State ~~for use at a Gaming Facility must provide in a trailer, box truck, or other container which shall be locked~~

and include a numbered shipping seal placed so the Gaming Machines shall not be accessed without breaking the seal.

(c) A licensed Manufacturer or Distributor shall transmit the following information to the Commission, prior to shipment or transport, on forms provided or approved by the Commission:

- (1) the full name, address, and license number of the Person making the shipment;
- (2) the method of shipment and the name of the carrier, if any;
- (3) the full name, address, and license number of the Person to whom the Gaming Machines are being sent and the destination of the shipment, if different from the address;
- (4) the number of Gaming Machines in the shipment;
- (5) the serial number of each Gaming Machine;
- (6) the model number and description of each Gaming Machine;
- (7) ~~the date the shipment will depart and~~ the expected arrival date of the Gaming Machines at their destination within the State;
- (8) the number of the shipping seal placed on the trailer, box truck, or container used for shipping or transport; and
- (9) other information as required by the Commission.

(d) All controlled program devices, software, or other system components certified by a Commission licensed Independent Testing Laboratory that require signature verification prior to installation ~~must~~shall be ~~removed from and~~ shipped separately from all gaming machines ~~being shipped~~.

(9e) All controlled program devices, software, or other system components ~~that are~~ shipped to a ~~Racetrack Gaming Operator Licensee must~~ Commission Licensed Gaming Facility shall arrive at least five (5) business days prior to installation addressed to the Commission Gaming Agents for signature verification, unless a written waiver is given by the Commission; and

(10) ~~such other information as required by the Commission.~~

(11) Gaming Agent due to exigent circumstances. A shipment containing controlled program devices, software, or other system components shall be opened only by a Commission Gaming Agent or an authorized Commission employee.

(f) Non-compliance with the provisions of this section shall result in disciplinary action.

325:85-25-3. ~~Receipt~~Delivery of gaming machines in the state ~~to gaming facilities~~

(a) ~~Any Person in the State that receives a Gaming Machine to be used in a Gaming Facility must, upon receipt of the Gaming Machine, provide the Commission with the following information on forms provided or approved by the Commission~~ Gaming Facilities licensed by the Commission shall take delivery of Gaming Machines in the following manner:

- (1) ~~the full name, address, and license number of the Person receiving the Gaming Machine~~ number of the shipping seal shall be verified by a Commission Gaming Agent;

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- (2) ~~the full name, address, and license number of the Person from whom the Gaming Machine was received~~ serial number of each Gaming Machine shall be compared with the list of serial numbers provided by the Manufacturer or Distributor and verified by a Commission Gaming Agent. A Gaming Machine with an incorrect serial number shall not be accepted into the facility;
- (3) ~~the date of receipt of the each verified Gaming Machine shall be placed on the Gaming Facility floor or in a storage area approved by the Commission until the facility is ready for installation;~~
- (4) ~~the serial number of each a Commission Gaming Machine Agent shall affix a Commission permit/license decal upon each Gaming Machine before it is placed into service; and~~
- (5) ~~the model number and description of each a Gaming Facility shall not exceed the number of Gaming Machine Machines in service as provided in Section 262 of Title 3A of the Oklahoma Statutes;~~
- (6) ~~the Manufacturer of the Gaming Machine;~~
- (7) ~~the location where the Gaming Machine will be placed and the license number of the licensed premises;~~
- (8) ~~the expected date and time of installation of the Gaming Machine at the new location; and~~
- (9) ~~such other information as required by the Commission.~~
- (b) ~~If such Gaming Machine will not be placed in operation within five days of its receipt, the Person who received the Gaming Machine must notify the Commission of the address where the Gaming Machine is warehoused. The warehouse location must be approved in advance by the Commission. At the time such Gaming Machine is removed from inventory and transported to another location within the State, the Racetrack Gaming Operator Licensee must comply with the requirements of these rules. Non-compliance with the provisions of this section shall result in disciplinary action.~~

325:85-25-4. **Transportation of gaming machines between Commission licensed gaming facilities in the state**

- (a) ~~Manufacturer Licensees, Distributor Licensees, Manufacturers and Distributors who are licensed by the Commission and, subject to the limitations set forth in these rules, Racetrack Gaming Operator Licensees~~ Operators are authorized to transport Gaming Machines within the State. Gaming Machines shall be transported in a trailer, box truck, or other container which shall be locked and include a numbered shipping seal placed so the Gaming Machines shall not be accessed without breaking the seal.
- (b) ~~Except as otherwise provided in these rules, any authorized Person transporting a Gaming Machine from one location to another in the State for use by a Gaming Facility licensed by the Commission must notify the Commission before transporting the Gaming Machine and provide~~ A licensed Manufacturer or Distributor or Racetrack Gaming Operator shall transmit the following information to the Commission, prior to transport, on forms provided or approved by the Commission:

- (1) ~~the full name, address, and license number of the Person transporting the Gaming Machine from its current location;~~
- (2) ~~the reason for transporting the number of Gaming Machine Machines being transported;~~
- (3) ~~the full name, address, and license number of the Person to whom the Gaming Machine is being sent and the destination of the Gaming Machine if different from that address;~~
- (4) ~~the name and address of the carrier and the method of transport;~~
- (5) ~~the model number, description, and serial number of the Gaming Machine;~~
- (6) ~~the Gaming Machine License number, if any number of the shipping seal placed on the trailer, box truck, or container used for shipping or transport;~~
- (7) ~~the Manufacturer of the Gaming Machine;~~
- (8) ~~the expected date of transport and time date of expected delivery and/or installation of the Gaming Machine at the new location; and~~
- (8) ~~other information as required by the Commission.~~
- (9c) ~~All controlled program devices, software, or other system components certified by a Commission licensed Independent Testing Laboratory that require signature verification prior to installation must shall be removed from and shipped separately from all gaming machines being shipped.~~
- (10d) ~~All controlled program devices, software, or other system components that are shipped to a Racetrack Gaming Operator Licensee must~~ Commission Licensed Gaming Facility shall arrive at least five (5) business days prior to installation addressed to the Commission Gaming Agents for signature verification, unless a written waiver is given by the Commission; and Gaming Agent due to exigent circumstances. A shipment containing controlled program devices, software, or other system components shall be opened only by a Commission Gaming Agent or an authorized Commission employee.
- (e) ~~If Gaming Machines are being transported from one Commission Licensed Gaming Facility to another Commission Licensed Gaming Facility, all controlled program devices, software, or other system components shall be removed from the Gaming Machines and retained by the Commission Gaming Agent. The Commission Gaming Agent, upon receipt of a prepaid shipping label provided by the entity requesting transport shall package and facilitate the transport.~~
- (11) ~~such other information as the Commission may require.~~
- (12f) ~~Non-compliance with the provisions of this section shall result in disciplinary action.~~
- (e) ~~This section does not apply to the movement of Gaming Machines within the same Gaming Facility. Such relocation is subject to Commission approval pursuant to these Rules.~~
- (d) ~~A Racetrack Gaming Operator Licensee may sell or transfer a Gaming Machine only to another Racetrack Gaming Operator Licensee or to a licensed Distributor, Manufacturer, or licensed Distributor/Manufacturer, or a federally recognized Indian tribe that is operating under a Compact. The Racetrack Gaming Operator Licensee must notify the Commission in advance by providing the information required by this section.~~

325:85-25-5. ~~Approval to distribute~~Removal of gaming machines outside of the state

(a) ~~Manufacturers and Distributors located in the State may not sell, ship, transport, or distribute out of the State a Gaming Machine that has been used or located in a Gaming Facility without the prior approval of the Commission. Applications for approval to sell, ship, transport, or distribute gaming machines out of the State must be made, processed, and determined in such manner and using such forms as the Commission may provide or approve. Each application must include:~~

- ~~(1) the full name, state of residence, and address of the purchaser;~~
- ~~(2) the full name, state of residence, and address of the Person to whom shipment is being made, if different than the purchaser;~~
- ~~(3) the destination;~~
- ~~(4) the number of Gaming Machines to be shipped;~~
- ~~(5) the serial number of each Gaming Machine;~~
- ~~(6) the model number of each Gaming Machine and year manufactured;~~
- ~~(7) the denomination of each Gaming Machine, if applicable;~~
- ~~(8) the expected date and time of shipment;~~
- ~~(9) the method of shipment and name and address of the carrier; and~~

~~(10) a statement by the purchaser under penalty of perjury that the Gaming Machines will be used only for lawful purposes shall remove Gaming Machines from the property of a Commission Licensed Gaming Facility under the following conditions:~~

- ~~(1) A list shall be provided indicating the manufacturer, model, serial number, and destination of each machine being removed;~~
- ~~(2) All controlled program software shall be removed from the machines. Software shall be returned to the proper entity upon receipt of a prepaid shipping label and shipped separately from machines;~~
- ~~(3) Machines shall be transported in a trailer, box truck, or other container which shall be locked and sealed. The removing entity shall provide a numbered shipping seal which shall be placed on the trailer, box truck, or other container in the presence of a Commission Gaming Agent; and~~
- ~~(4) Commission permit/ license decals shall be removed by a Commission Gaming Agent prior to loading of machines into a trailer, box truck, or container. The Commission Gaming Agent shall be present while machines are being loaded.~~

(b) Manufacturers and Distributors may not ship Gaming Machines to any destination where possession of Gaming Machines is illegal.

(c) ~~If the Commission does not deny the application for approval to distribute Gaming Machines outside of the State within 10 business days of receipt of a complete application, the application will be deemed approved. Non-compliance with the provisions of this section shall result in disciplinary action.~~

325:85-25-6. On-site testing, installation and placement of gaming machines - including each player terminal and each game

(a) All Gaming Machines - including each Player Terminal and each game - at a Gaming Facility ~~must~~shall be physically located as follows:

- (1) in an area that is at all times monitored by the Racetrack Gaming Operator Licensee or a Gaming Employee to prevent access or play of the Gaming Machines by Persons under the age of 18;
- (2) in an area that ensures that public access to the Gaming Machines is restricted to Persons legally entitled to play the Gaming Machines at the licensed premises; and
- (3) in the sight and Control of the Racetrack Gaming Operator, Licensee or a Gaming Employee.

(b) The initial installation and placement of each Player Terminal and each game within a Gaming Facility ~~must~~shall take place in the presence of a Gaming Agent who will at the time of installation test each Player Terminal and each game to ensure that each Player Terminal and each game is identical to a prototype that has been certified by an Independent Testing Laboratory. If the on-site test indicates that a Player Terminal or game does not conform to the certified prototype, the Racetrack Gaming Operator Licensee shall remove the game or Player Terminal from the floor and it may not be placed into operation until such time, if any, as a Gaming Agent finds that it is identical to a prototype certification issued by an Independent Testing Laboratory.

(c) If the on-site test by the Gaming Agent demonstrates that the game or Player Terminal is identical to a prototype certification issued by an Independent Testing Laboratory, the Gaming Agent shall seal the ~~Program Storage Device~~logic compartment with a Commission numbered seal.

(d) The Gaming Agent shall also perform a test to ensure that the game and Player Terminal are operating properly, then will conduct a test to determine that they are properly communicating with the Racetrack Gaming Operator Licensee's accounting system(s). Only machines and games that are found to be identical to prototypes certified by an Independent Testing Laboratory and that pass both the operation and communication tests conducted by the Gaming Agent ~~may~~shall be installed and placed into operation.

(e) Once the ~~Program Storage Device~~logic compartment has been sealed by a Gaming Agent, the seal ~~may~~shall only be broken or removed in the presence of a Gaming Agent. The seal may be broken or removed for the purposes of repair or Commission-authorized change to the Program Storage Device or software in the presence of a Gaming Agent, who, after the change or repair, ~~will~~shall verify the new software, if applicable, retest the machine and game and reseal it if the tests show the machine and game are in compliance. If, after retesting, they are found not to be in compliance, the machine or game cannot be placed into operation until such time that the Gaming Agent determines that the machine or game complies with the applicable requirements.

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(f) Any relocation of a Player Terminal or game within the licensed premises requires prior written approval by the Gaming Agent.

(g) Licensed Manufacturers and Distributors ~~may~~shall store and display, and Persons certified pursuant to this Title ~~may~~shall repair, gaming machines or devices only at locations approved in advance by the Commission.

[OAR Docket #20-569; filed 7-7-20]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 90. GAMING OPERATIONS

[OAR Docket #20-570]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Unresolved Patron Disputes

325:90-5-1. Unresolved patron disputes [AMENDED]

AUTHORITY:

3A O.S. § 200 et seq.; Oklahoma Horse Racing Commission

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020.

FINAL ADOPTION:

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EFFECTIVE:

September 14, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rule amendments increase dollar amount of patron disputes to be resolved by Gaming Agent; require certain records to be provided in certain patron disputes; and update language.

CONTACT PERSON:

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2020:

SUBCHAPTER 5. UNRESOLVED PATRON DISPUTES

325:90-5-1. Unresolved patron disputes

(a) This Subchapter deals with disputes between the Racetrack Gaming Operator Licensee and a patron involving a game outcome, prize, fee paid or other aspect of a player's use of an Authorized Game. In the event a dispute arises with a patron and the dispute is not resolved to the patron's satisfaction within two (2) hours, the Racetrack Gaming Operator Licensee ~~must~~shall notify the patron that the patron has a right to contact a Gaming Agent regarding the dispute.

(b) A Racetrack Gaming Operator Licensee ~~must~~shall immediately notify the Gaming Agent if the Racetrack Gaming Operator Licensee refuses to pay alleged winnings to a patron and the Racetrack Gaming Operator Licensee and the patron are unable to resolve the dispute to the patron's satisfaction within two (2) hours. This notice, which ~~must~~shall be in writing, shall include the following information:

- (1) The name, address and phone number of the patron.
- (2) The nature of the dispute.
- (3) The amount of money involved in the dispute.
- (4) The number of machines involved and the name of the game involved.

(c) Upon receipt of such notice, the Gaming Agent ~~may~~shall assist the parties in trying to resolve the dispute. Patron disputes not resolved to the patron's satisfaction within forty-eight (48) hours of the occurrence of the dispute shall be decided by the Commission in the following manner. The initial determination of unresolved disputes involving ~~\$500.00—One Thousand Nine Hundred Ninety-nine Dollars and ninety-nine cents (\$1,999.99)~~ or less will be made by the Gaming Agent. The Gaming Agent will conduct whatever review he/she deems necessary and will determine whether payment should be made to the patron. The determination shall be based on a review of all available surveillance tapes, Gaming Machine records, and required written statements from both the Racetrack Gaming Operator Licensee and the patron. The Racetrack Gaming Operator Licensee shall make all audio/visual ~~tapes and~~ records available to the Gaming Agent with failure to do so resulting in an automatic decision in favor of the patron.

(d) The Gaming Agent's determination shall be made in writing and state the factual and legal basis for the decision unless both the Racetrack Gaming Operator Licensee and the patron waive this requirement and agree to an expedited verbal decision by the Gaming Agent. Expedited, verbal decisions shall be final and unappealable, and the patron shall be advised of this fact before waiving his/her right to a written determination. Written decisions are appealable to the Executive Director, the appeal ~~must~~shall be sent to the Executive Director in writing by the patron and received within ten (10) calendar days of the initial determination by the Agent, and the Executive Director's decision is appealable to the District Court under the provisions of the Oklahoma Administrative Procedures Act.

(e) Unresolved disputes involving more than ~~\$500.00—One Thousand Nine Hundred Ninety-nine Dollars and ninety-nine cents (\$1,999.99)~~ will be initially decided by the Executive Director. The Executive Director's decision in all instances shall be in writing and shall be based on a review of all available ~~surveillance tapes~~audio/visual records, Gaming Machine

records, required written statements from both the Racetrack Gaming Operator Licensee and the patron. The Racetrack Gaming Operator Licensee shall make all audio/visual records available to the Executive Director. Failure to make these records available shall result in an automatic decision in favor of the patron. The Executive Director's decision may be appealed to the Commission and thereafter to the District Court under the provisions of the Oklahoma Administrative Procedures Act.

[OAR Docket #20-570; filed 7-7-20]

**TITLE 330. OKLAHOMA HOUSING
FINANCE AGENCY
CHAPTER 15. SINGLE FAMILY
MORTGAGE LOAN PROGRAM**

[OAR Docket #20-573]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Chapter 15. Single Family Mortgage Loan Program [AMENDED]

AUTHORITY:

Board of Trustees of OHFA; Amended Trust Indenture of OHFA and Bylaws of OHFA; 60 O.S. § 176; 75 O.S. § 250.3(3.)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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SUPERSEDED EMERGENCY RULES:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The amended Single Family Mortgage Program Rules provide for important updates to the single family mortgage loan program administered by OHFA. The proposed amendments provide for updates to definitions, statutory references, and responsible parties for the day-to-day administration of the program. The proposed amendments incorporate updates from the Internal Revenue Code of 1986, as amended and associated regulations (collectively, the "Code") which provides for certain eligibility criteria for the issuance of mortgage revenue bonds, the proceeds of which are used to fund certain mortgage programs of OHFA. In addition, the proposed amendments update the list of eligible underwriters and participating lenders in the mortgage loan program while allowing for continuous mortgage originations which may or may not be associated with a mortgage revenue bond program.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED**

**FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE JANUARY 1, 2021:**

SUBCHAPTER 1. GENERAL PROVISIONS

330:15-1-1. Purpose

The rules of this Chapter have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S., Section 250, et seq. OHFA shall, from time to time as approved by OHFA Trustees, in furtherance of its efforts to provide safe, sanitary and decent housing, implement ~~programs~~ Programs to assist qualified persons in Oklahoma to obtain financing for single family, owner-occupied residences. Such ~~programs~~ Programs may be financed from the proceeds of revenue bonds, notes, mortgage backed securities or other obligations sold by OHFA either on a taxable or tax-exempt basis, or from other sources of money available to OHFA. Implementation of such ~~programs~~ Programs and the issuance of any debt obligations to provide financing therefor which are intended to be tax-exempt shall be subject to provisions of the United States Internal Revenue Code of 1986, as amended and supplemented (referred to herein as the "Code"), and any rules or regulations promulgated or adopted by reference thereunder and the Title 60 Oklahoma Statutes, ~~Supplement 1987-2011~~, Sections 175.1 through 175.54 and 176 through 180.4, as amended and supplemented, and such other provisions of Oklahoma and federal law and the provisions of the Trust Indenture creating the OHFA as may be applicable to such ~~programs~~ Programs and the financing thereof. ~~programs~~ Programs shall be of general applicability to eligible borrowers throughout Oklahoma insofar as possible, provided that from time to time OHFA may implement ~~programs~~ Programs to benefit one or more localized areas within the state depending on a showing of need therefor. The structure and details of any specific ~~program~~ Program shall be determined as needed by the Trustees and/or Staff of OHFA on a case-by-case basis.

330:15-1-2. Authority

The Agency is authorized by its Trust Indenture, Article IV, Sections (2), (3), (4), (5), (8), (14), and Article VII, Sections (7), (9), (13), (17), and (19) through (43), to plan and implement single family mortgage loan ~~programs~~ Programs to provide financing by various means for the construction, acquisition, purchase and/or rehabilitation of single family owner-occupied dwellings located within the State. Specific reference should be made to the Agency's current Trust Indenture for the exact provisions for the specific scope of authorization. The Agency is authorized by Title 60, Oklahoma Statutes ~~Supp. 1987-2011~~ Sections 176, et seq., as amended, to issue its evidences of indebtedness for the purpose of financing housing or housing ~~programs~~ Programs as an authorized and proper public function for public trusts.

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330:15-1-3. Definitions

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

— "**Act**" means Title 60 Oklahoma Statutes, ~~Supplement 1987-2011~~, Sections 175.1-175.54 and 176-180.4, as amended and supplemented.

"**Applicant**" means a person who applies for approval to become a borrower under a ~~program~~ Program.

"**Bond**" means any obligation of OHFA, including bonds, notes or any other form of indebtedness incurred to finance a ~~program~~ Program.

"**Bond indenture**" means ~~the any bond~~ indenture between OHFA as issuer and the Trustee authorizing and securing bonds used to finance a Program, and all amendments or supplements thereto.

"**Mortgage loan**" or "**Mortgage loans**" means the mortgage financing of the acquisition, alterations to, repair, rehabilitation or improvements on single family dwellings (which alterations, repairs, rehabilitation and/or other improvements substantially protect or improve basic livability of the property), which financing is evidenced by the mortgage note(s) and secured by the related mortgage(s), and which are made to borrowers pursuant to the terms and conditions of a ~~program~~ Program.

"**Origination**" means the identification of qualified mortgage loans for provision of financing by OHFA pursuant to the provisions of a ~~program~~ Program.

"**Participating lender** ~~Lender~~" means any state bank, national banking association, savings and loan association, building and loan association, mortgage banker or other financial institution, or holding company thereof, or governmental agency which provides services for, or otherwise aids in, the financing of single family residences by means of mortgage loans and which is approved by OHFA respecting participation in a ~~program~~ Program.

"**Program**" means a single family ~~mortgage~~ home ownership ~~program~~ Program of OHFA instituted for the purpose of providing funds to low and moderate income residents of the State of Oklahoma for the acquisition, alteration, rehabilitation, repair, or improvement of single family, owner-occupied housing.

"**Program documents** ~~Documents~~" means all contracts, agreements, certificates, affidavits and exhibits or similar instruments utilized in connection with a ~~program~~ Program, as may be required from time to time, whatsoever their title, including, but not limited to, the invitation, the offer to originate, notice of acceptance by OHFA, the master mortgage origination agreement, the bond indenture, the bond notice of acceptance, the interest rate notice and the official statement, to the extent deemed applicable by the Trustees and/or Staff of OHFA.

"**Resident**" means any person who, at the time of closing of a mortgage loan, permanently resides within the State of Oklahoma, and intends to use the single family dwelling as his or her principal place of residence.

"**Servicing**" means the administration, collection, and other duties specified in the ~~program documents~~ Program

Documents which may be performed by a ~~participating lender~~ Participating Lender respecting the mortgage loans.

"**Trustee**" means the bank designated by the issuer and appointed under the bond indenture or any successor thereto, as the custodian of funds derived from the issuance of the bonds of a ~~program~~ Program, and performing such other duties as may be designated in the bond indenture.

330:15-1-4. No discrimination

No application for a mortgage loan shall be arbitrarily rejected for residential properties within a specified geographical area of the State because of the location and/or age of the property, or, in the case of a proposed mortgagor, arbitrarily vary the terms of a loan or the application requirements or procedures therefor, or reject a mortgage loan because of the race, color, religion, national origin, ethnic background, age, sex, marital status or disability of any of the applicant(s) for a mortgage loan under a ~~program~~ Program.

SUBCHAPTER 3. SINGLE FAMILY MORTGAGE LOAN PROGRAMS

330:15-3-1. Interest rate and loan structure

OHFA shall endeavor to develop ~~programs~~ Programs in which the interest rate and/or points charged to the borrower will be competitive with, or lower in cost than private financing then reasonably available to the categories of qualifying borrowers to be served. Depending on the particular ~~program~~ Program, loans may be either at a fixed or variable rate, may be secured by a first lien or a second lien mortgage, may be for acquisition, construction or substantial rehabilitation, may be for a term of up to thirty-five (35) years, and, to the extent permitted by bond marketing and other applicable constraints, may be assumable by subsequent qualifying borrowers. Each of these factors shall be determined and announced by OHFA Trustees prior to implementation of the particular ~~program~~ Program. ~~Except to the extent permitted by applicable law, loans shall not be made for the purpose of refinancing existing mortgages.~~

330:15-3-2. Total volume of ~~program~~ Programs to be set by Trustees

Each ~~program~~ Program planned, authorized and implemented by OHFA shall be limited in total dollar amount by resolution of the Trustees. Such volume limitation may be changed from time to time by resolution of the Trustees until finalization of the ~~program~~ Program. In all cases, the volume limitation provided for by the resolution of the Trustees shall be consistent with any independent limitation upon the size of the ~~program~~ Program by reason of any applicable CAP allocation, or similar federal or state limitation.

330:15-3-3. Security for each loan

Each ~~program~~ Program shall provide that the financing to be provided to the borrower shall be a first mortgage loan upon

the borrower's single family dwelling, superior in lien priority to all other encumbrances, and shall not be for a second or other mortgage inferior to any other lien or encumbrance, except in ~~programs~~Programs specifically authorizing and providing for second mortgages, or except for easements, rights of way, or other similar encumbrances not interfering with the use and enjoyment of the single family dwelling as such, and which do not adversely impact upon the value of the single family dwelling.

330:15-3-4. Single family dwellings only

Only ~~single family~~qualifying dwellings shall be eligible for mortgage loan financing under any ~~program~~Program instituted by OHFA under this Chapter.

330:15-3-5. Loan purposes

The purposes for which a borrower may obtain a mortgage loan under any ~~program~~Program shall be limited to the following purposes:

- (1) Acquisition by the borrower of the single family dwelling to be financed by a mortgage loan under the ~~program~~Program.
- (2) Replacement of construction period loans, bridge loans or similar temporary initial financing for the acquisition by borrower of the single family dwelling to be financed by a mortgage loan under the ~~program~~Program.
- (3) Not for general refinancing of any existing loan or to pull out owners equity in the single family dwelling proposed to be mortgaged under the ~~program~~Program.
- (4) Special ~~programs~~Programs for rehabilitation, home improvement, home equity loans, and other special purpose ~~programs~~Programs, or blocking-out of funds in general ~~programs~~Programs, directed toward special limited housing needs and problems of the public or segments thereof.

330:15-3-6. Interest rate

Programs may provide for fixed rate or variable rate loans or both, at discretion of Trustees at time of finalization of ~~program~~Program. Specific interest rate(s) for mortgages under each ~~program~~Program shall be set as the Trustees may determine to be necessary under the market conditions prevalent at the time the ~~program~~Program is being developed and as may be determined by the Trustees at discretion of Trustees at time of finalization of the ~~program~~Program.

330:15-3-7. Assumability of mortgage loans

Program provisions for assumption of mortgage loans, or that loans are due on sale, for mortgages under each ~~program~~Program shall be set as the Trustees may determine to be necessary under the market conditions prevalent at the time the ~~program~~Program is being developed and as may be determined by the Trustees in their discretion at the time of finalization of the ~~program~~Program. A ~~program~~Program may be changed after the commencement of a ~~program~~Program to provide for

assumption of mortgage loans where the ~~program~~Program did not allow for assumption, provided that all necessary parties agree to such change, opinion of bond counsel advising of such changes is not in violation of the bond indenture of the ~~program~~Program, and that all necessary steps are taken as may be necessary to amend the ~~program documents~~Program Documents. In all ~~programs~~Programs providing for assumptions of mortgage loans, all assuming parties must qualify as a borrower under the terms and conditions of the ~~program~~Program in question, except that if the ~~program~~Program is intended to be tax-exempt under the Code, then the qualifications of the assuming borrower must be sufficient to at least satisfy the requirements of the Code in regard to such assumption.

330:15-3-8. Maximum mortgage loan interest rate

Maximum interest rate on all mortgage loans under any first mortgage ~~program~~Program shall be limited to 12% per annum and under any second mortgage ~~program~~Program shall be limited to 15% per annum. The actual interest rate for mortgages under each ~~program~~Program shall be set as the Trustees may determine to be necessary under the market conditions prevalent at the time the ~~program~~Program is being developed and as may be determined by the Trustees at discretion of the Trustees at time of finalization of the ~~program~~Program.

330:15-3-9. Eligible dwellings

Dwellings eligible for mortgage loans under any ~~program~~Program must meet the following minimum requirements, in addition to the specific requirements of the ~~program~~Program specified in the ~~program documents~~Program Documents:

- (1) Must be located entirely within the State;
- (2) Must be owner-borrower occupied, unless approval has been requested and granted by OHFA for a temporary rental or lease of the dwelling permissible under the Code. Such request must be in writing and in a form acceptable to OHFA and must demonstrate extenuating circumstances warranting such approval;
- (3) Must be a single family dwelling;
- (4) May be manufactured housing, condominium units, and planned unit developments (PUDs) provided that:
 - (A) Manufactured housing must be permanently affixed to real property owned by the borrower.
 - (B) All subject to restrictions imposed under the Code.
 - (C) All subject to volume limitations for such housing types for the particular ~~program~~Program to be fixed by Trustees at time of finalization of the ~~program~~Program.
 - (D) If the mortgage loan is to be insured by FHLMC, FNMA, FHA, VA, GNMA, PMI or similar coverages, the dwelling must satisfy the applicable requirements of such insurer.
- (5) Must be reasonably expected to become the principal residence of the mortgagor within a reasonable time, not to exceed sixty (60) days, after the loan is closed.

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- (6) Must not be used in a trade or business, including farming or raising any plants or animals for profit, other than incidentally.
- (7) Property may not be subdivided.
- (8) Property may not be the subject of a zoning, minimum lot size or set back requirements variance for the purpose of obtaining the loan, or for divided sale, rental or lease of any portion of the property.
- (9) Must not be acquired or used, in conjunction with a tax-exempt Program or qualifying tax-exempt Mortgage Loan, in whole or in part, by the mortgagor as an investment property, rental property, or as a recreational, vacation or second home; provided, however, that limited rentals/leases of the dwelling may be permitted by OHFA upon request as provided herein.
- (10) Real estate owned by any of the ~~participants~~ Participating Lenders, Trustee banks or OHFA may be eligible if otherwise qualified or not prohibited by law.

330:15-3-10. Maximum sale price

Maximum sale price and/or appraised value of single family dwellings to be mortgaged under a ~~program~~ Program shall be fixed by Trustees at time of finalization of the ~~program~~ Program in question. In addition, such maximum sale price:

- (1) May be further restricted by provisions of the Code;
- (2) May be set at different amounts for various parts of the State, provided that such different amounts shall be based upon an objective standard generally accepted in the housing industry in the State as identifying the then current or recent per capita income and/or housing costs for the State and/or the various localities within the State;
- (3) Target areas or particular types of properties may be designated for special treatment under a ~~program~~ Program, as may be authorized or required under the Code, or as authorized or required by the final terms of the ~~program documents~~ Program Documents.

330:15-3-11. Program loan origination periods

~~Each program shall specify by dates, time period, or formula, the period of time during which program funds may be used or loans may be originated under the program in question.~~ In order to best serve the citizens of the State, Mortgage Loans shall be originated on a continuous basis and allocated to the Program as applicable. The actual period of time for the use of ~~program~~ Program funds or the origination of mortgages under each ~~program~~ Program shall be set as the Trustees may determine to be necessary under the market conditions prevalent at the time the program is being developed and as may be determined by the Trustees at the discretion of the Trustees at time of finalization of the ~~program~~ Program.

330:15-3-12. Loan origination underwriting standards.

- (a) Loans for all ~~programs~~ Programs shall be underwritten by use and application of the then current mortgage loan

underwriting criteria and/or standards of one or more of the following:

- (1) Federal Home Loan Mortgage Corporation (FHLMC)
 - (2) Federal National Mortgage Association (FNMA)
 - (3) Federal Housing Administration (FHA)
 - (4) Veterans Administration (VA)
 - (5) ~~Farmers Home Administration~~ USDA Rural Development (RD)
 - (6) Such other standards as may be set by the terms of a specific ~~program~~ Program.
- (b) Reference is hereby made to the provisions of the rules, regulations, underwriting handbooks and other official manuals or underwriting guidelines of each of the entities identified in (a) of this Section, and for the purposes expressed herein, said provisions are hereby adopted by this reference as authorized by Section 251(D) of the APA. ~~The specific underwriting materials to be used in each program shall be specified in the program documents for the program in question.~~
- (c) ~~Affidavits~~ Certifications of the following parties pertaining to the compliance of each application and mortgage loan under each ~~program~~ Program must be obtained for the purpose of and used to verify whether or not the application and proposed mortgage loan qualifies under the specific ~~program~~ Program in question:
- (1) ~~Participant~~ Participating Lender
 - (2) Borrower
 - (3) ~~Seller~~ Such other parties as may be required by the Code.
 - (4) ~~Bond Trustee~~
 - (5) ~~Code Compliance Reviewers~~
- (d) The aforementioned ~~affidavits~~ certifications shall be in such form as may be approved from time to time by OHFA with the advice of its counsel in the implementation of the ~~program~~ Program in order to comply with pertinent requirements of the Code, the rules of this Chapter, and the specifics of ~~program documents~~ Program Documents for the ~~program~~ Program in question.

330:15-3-13. Borrower's insurance requirements

The actual insurance requirements for each ~~program~~ Program and for the origination of mortgages under each ~~program~~ Program shall be set as the Trustees may determine to be necessary under the market conditions prevalent at the time the ~~program~~ Program is being developed, and as may be determined by the Trustees in their discretion at the time of finalization of the ~~program~~ Program. Such insurance requirements shall be at least as required by the referenced underwriting standards adopted for the ~~program~~ Program in question. By way of illustration, and not as a limitation, such insurance requirements may include one or more of the following types of insurance on a mortgage loan:

- (1) Mortgage Insurance - FMLMC, FNMA, FHA, VA, FmHA and/or Private Mortgage Insurance (PMI)
- (2) Hazard Insurance
- (3) Flood Insurance, as required in accordance with the Federal Emergency Management Agency (FEMA) Maps and/or Mortgage ~~Insurer~~ Insurer requirements.

~~(4) Municipal Bond Insurance, Interest Rate Caps, Pool Policies and other types of insurance or guarantees required in order to market bonds to finance the program.~~

330:15-3-14. Code compliance

All ~~programs~~ Programs which include provisions for the sale of bonds, notes or other debt obligations by OHFA which are intended to qualify as tax-exempt under the provisions of Section 103 of the Code shall make adequate provision in the documents and procedures for the attainment and requisite maintenance of the intended tax-exempt status of such debt obligations. Reference is hereby made to the provisions of Section 103 of the Code, and for the purposes expressed herein, said provisions are hereby adopted by this reference as authorized by Section 251(D) of the APA. If there is a conflict between the provisions of the Code and the rules of this Chapter, the Code shall prevail unless the rules provide restrictions more severe than those imposed by the Code, in which case the rules shall prevail.

SUBCHAPTER 5. BORROWERS

330:15-5-1. Requirements

(a) **State residency.** All borrowers in each ~~program~~ Program must prove that they are residents of the State or that they will be residents of the State at the time the loan is closed.

(b) **Maximum income limitations.** The maximum income limitations for borrowers for each ~~program~~ Program shall be as authorized under the ~~program~~ Program in question, or the Code, as may be applicable to the ~~program~~ Program, provided, however, that the requirements for each ~~program~~ Program and for the origination of mortgages under each ~~program~~ Program may be lower than required by the Code, and shall be set as the Trustees may determine to be necessary under the market conditions prevalent at the time the ~~program~~ Program is being developed and as may be determined by the Trustees in their discretion at the time of finalization of the ~~program~~ Program. The Trustees, at their discretion, may set lower maximum income limitations for any ~~program~~ Program at time of finalization of the ~~program~~ Program in question. Maximum income limitations must be verified by affidavits of borrowers, and, when applicable, as may be required by the Code.

330:15-5-2. Fees and expenses

(a) **Program specific.** Each ~~program~~ Program shall specify the fees and expenses to be paid by borrowers. By way of illustration, and not as a limitation, such fees and expenses to be paid by borrowers may include one or more of the following:

(1) **Application fees.** Borrowers may be required to pay an application fee to make application for a Mortgage Loan under any ~~program~~ Program. Application fees shall be set for each ~~program~~ Program by the Trustees in their discretion at the time of finalization of the ~~program~~ Program.

(2) **Other fees and expenses.** Borrowers may be required to pay fees and expenses in connection with the

processing of borrowers' application and requested loan for any ~~program~~ Program. By way of illustration, and not as a limitation, such fees and expenses which may be required to be ~~program~~ Program in a ~~program~~ Program may include one or more of the following:

- (A) Survey fees
- (B) Abstracting and title examination and/or title insurance fees and expenses
- (C) Credit checks
- (D) Inspection fees and expenses
 - (i) habitability
 - (ii) structural
 - (iii) termite and insect/rodent infestation
- (E) Employment/income verification fees/expenses
- (F) Insurance escrows
- (G) Document preparation fees
- (H) Loan closing fees
- (I) Tax escrows
- (J) Utilities escrows
- (K) Mortgage insurance premiums or loan guarantee fees
- (L) Program fee
- (M) Loan origination fee
- (N) Such other fees and expenses as may be required by the ~~program~~ Program.

(b) **Requirement Set by Trustees and/or Staff.** The requirements for the payment of any of the particular fees and expenses in ~~each the Program~~ each the Program and for the origination of mortgages under ~~each program~~ the Program shall be set as the Trustees may determine to be necessary under the market conditions prevalent at the time the ~~program~~ Program is being developed and as may be determined by the Trustees and/or Staff in their discretion at the time of finalization of the ~~program~~ Program.

(c) **Borrower Eligibility.** Any additional specific guidelines or criteria for eligibility of borrowers shall be determined and announced by OHFA Trustees and/or Staff for each specific ~~program~~ Program to be implemented. Factors which may be considered, depending on the particular ~~program~~ Program, include family income, family size, location of the residence to be financed (whether in a target or nontarget area) and whether the buyer is a first-time home buyer.

(d) **Preference for low income families.** OHFA shall endeavor to make the benefits of its ~~programs~~ Programs available to all qualifying persons ~~of low income before extending benefits to moderate or higher income persons. Except for the foregoing, OHFA shall endeavor to will~~ make its ~~programs~~ Programs available to all qualified applicants on a first-come, first-served basis, and shall endeavor to make loan funds available across as wide a geographical distribution in Oklahoma as possible.

SUBCHAPTER 7. PARTICIPATING LENDERS

330:15-7-1. ~~Statement of programs~~Programs ~~purposes affecting participating lenders~~ ~~and allocations to participating lenders~~Participating Lenders

In implementing its ~~programs~~Programs, OHFA may endeavor to utilize the services of competent mortgage lending institutions already doing business in Oklahoma at the time the particular ~~programs~~Programs is implemented, ~~subject to any particular conditions imposed by bond rating and marketing considerations~~. Fees paid to ~~participating lenders~~Participating Lenders shall be fair and reasonably commensurate with the type of services rendered.

330:15-7-2. ~~Qualifications of participating lenders~~Participating Lenders in each ~~program~~Program

The qualification requirements for ~~participating lenders~~Participating Lenders in each ~~programs~~Programs shall be set as the Trustees ~~and/or Staff~~ may determine to be necessary under the market conditions prevalent at the time the ~~programs~~Programs is being developed and as may be determined by the Trustees ~~and/or Staff~~ in their discretion at the time of finalization of each ~~programs~~Programs in question. By way of illustration, and not as a limitation, such qualifications for ~~participating lenders~~Participating Lenders may include one or more of the following:

- (1) Minimum net worth;
- (2) Minimum total assets;
- (3) Qualified to issue mortgage backed securities of FNMA, GNMA, FHLMC or other similar issues of mortgage-backed securities;
- (4) Qualified to originate and service mortgage loans for FHA, FNMA, FHLMC, ~~FmHARD~~, and/or VA;
- (5) No defaults in performance under prior ~~programs~~Programs of OHFA;
- (6) No suits pending against it;
- (7) Maximum mortgage loan portfolio default rate on mortgage loans serviced by it; ~~and~~
- (8) A physical place of business within the boundaries of the State accessible to members of the public during normal business hours; and
- (9) Such other criteria as the Trustees ~~and/or Staff~~ may deem in their discretion to be pertinent.

330:15-7-3. ~~Allocation to participating lenders~~Participating Lenders

In the event an allocation process is necessary to divide available loan proceeds among a number of ~~participating lenders~~Participating Lenders or for use within a number of counties or geographic areas, OHFA Trustees ~~and/or Staff~~ shall make such allocations on a fair, reasonable and equitable basis at a public hearing upon proper notice, offering affected persons or institutions an opportunity to be heard on the matter.

330:15-7-4. ~~Blocking-out~~

Blocking-out for ~~participating lenders~~Participating Lenders in each ~~programs~~Programs shall be set as the Trustees

~~and/or Staff~~ may determine to be necessary under the market conditions prevalent at the time the ~~programs~~Programs is being developed and as may be determined by the Trustees ~~and/or Staff~~ in their discretion at the time of finalization of each ~~programs~~Programs.

330:15-7-5. ~~Participating lenders~~Participating Lenders fees

The fee requirements for ~~participating lenders~~Participating Lenders in each ~~programs~~Programs shall be set as the Trustees ~~and/or Staff~~ may determine to be necessary under the market conditions prevalent at the time the ~~programs~~Programs is being developed and as may be determined by the Trustees ~~and/or Staff~~ in their discretion at the time of finalization of each ~~programs~~Programs in question.

330:15-7-6. ~~Origination of program~~Program loans

~~Participating lenders~~Participating Lenders shall originate mortgage loans in accordance with then current loan origination requirements of either FHLMC, FNMA, FHA, ~~FmHARD~~ or VA, as the case may be. Additional origination requirements may be in such form as the Trustees ~~and/or Staff~~ may determine to be required by market conditions prevalent at the time the ~~program~~Program is being developed and as may be determined by the Trustees ~~and/or Staff~~ in their discretion at the time of finalization of the ~~program~~Program.

330:15-7-7. ~~Servicing of program~~Program loans

~~Participating lenders~~Participating Lenders, as applicable, shall service ~~mortgage loans~~Mortgage Loans in accordance with then current loan servicing requirements of either FHLMC, FNMA, FHA, GNMA, ~~RD~~ or VA, as the case may be. Additional servicing requirements may be in such form as the Trustees ~~and/or Staff~~ may determine to be required by market conditions prevalent at the time the ~~program~~Program is being developed and as may be determined by the Trustees in their discretion at the time of finalization of the ~~program~~Program in question.

330:15-7-8. ~~Limitations upon assignability of rights and duties of Participating lenders~~Participating Lenders under programsPrograms

~~Participating lenders~~Participating Lenders in any ~~program~~Program shall not be authorized under ~~program documents~~Program Documents to assign their rights or obligations without the prior express written consent of OHFA ~~and the Bond Trustee for the program in question~~. No contract or agreement or other instrument evidencing, or intended to evidence, the assignment of any of such rights or duties of any ~~participating lenders~~Participating Lenders shall make provision for the release of any of the obligations to OHFA or the Bond Trustee under the ~~program~~Program in question, of the assigning ~~participating lenders~~Participating Lenders, and such restriction may not be waived by any action of the Trustees,

officers or staff of OHFA except by amendment to the rules of this Chapter.

330:15-7-9. ~~Participating lenders~~ Participating Lenders deemed to be fiduciaries of OHFA and bond trustee

All firms which agree to act as ~~participating lenders~~ Participating Lenders under any ~~program~~ Program for the purpose of originating and/or servicing ~~mortgage loans~~ Mortgage Loans shall be deemed to be acting as a fiduciary agent to OHFA ~~and Bond Trustee for the program in question~~, and by accepting and agreeing to so act, such ~~participating lenders~~ Participating Lenders shall be bound to the standards and duties of conduct of a fiduciary agent, as provided by law.

330:15-7-10. Disqualification and/or termination of participating lenders under ~~program~~ Program

The Program ~~documents~~ Documents for each ~~program~~ shall specify the specific grounds for disqualification and/or termination of a ~~participating lender~~ Participating Lender in the ~~program~~ Program in question. By way of illustration, and not as a limitation, such grounds may include one or more of the following:

- (1) Insolvency of a ~~participating lender~~ Participating Lender.
- (2) Breach of any ~~program~~ Program agreement by a ~~participating lender~~ Participating Lender.
- (3) Breach of OHFA Rules by the ~~participating lender~~ Participating Lender.
- (4) Unreasonably high default rate in the portfolio of mortgages being originated and/or serviced by a ~~participating lender~~ Participating Lender.

330:15-7-11. Additional requirements

Additional servicing requirements may be in such form as the Trustees ~~and/or Staff~~ may determine to be required by market conditions prevalent at the time the ~~program~~ Program is being developed and as may be determined by the Trustees ~~and/or Staff~~ in their discretion at the time of finalization of the ~~program~~ Program in question.

330:15-7-12. REOs

A ~~participating lender~~ Participating Lender may be required to:

- (1) Maintain REOs (Real Estate Owned by a prior lender, ~~insurer~~ insurer, or guarantor).
- (2) Handle sale of REOs.

330:15-7-13. Annual audit of ~~program~~ Program accounts with ~~participating lenders~~ Participating Lenders, as necessary

As to each ~~program~~ Program in which a ~~participating lender~~ Participating Lender is originating and/or servicing ~~mortgage loans~~ Mortgage Loans, on or before one hundred twenty (120) days after the end of ~~participating lender's~~ Participating Lender's fiscal year, if requested by OHFA, participating lender Participating Lender, at its expense, shall cause a firm of independent public accountants to furnish a statement of the Program to ~~Bond Trustee for each program, and to OHFA~~, for the preceding fiscal year, to the effect that such firm has examined certain documents and records relating to the servicing of the mortgage loans and that, on the basis of such examination conducted substantially in compliance with the audit ~~program~~ Program for mortgages serviced for FHLMC, FHA, FNMA, GNMA, ~~FmHARD~~ or VA, or such other auditing standards as may be set by the terms of a specific ~~program~~ Program, as the case may be, and such firm is of the opinion that such servicing has been conducted in compliance with such standards except for (i) such exceptions as such firm shall believe to be immaterial and (ii) such other exceptions as shall be set forth in such statement. In addition, if requested by OHFA, on or before one hundred twenty (120) days after the end of ~~participating lender's~~ Participating Lender's fiscal year, ~~participating lender~~ Participating Lender, at ~~participating lender's~~ Participating Lender's expense, shall furnish to the ~~Bond Trustee and to OHFA~~ a copy of ~~participating lender's~~ Participating Lender's financial statement (audited, if available) for its fiscal year which accurately sets out the net worth, shareholders equity or unimpaired capital position (or other equivalent term as used in generally acceptable accounting practice) of the ~~participating lenders~~ Participating Lenders.

330:15-7-14. Effect of default on qualification

Participating ~~lenders~~ Lenders must not be deemed by OHFA ~~or any program Bond Trustee~~ to be in default under any prior OHFA ~~program~~ Program at the time of determining whether ~~participating lenders~~ Participating Lenders are eligible to become a ~~participating lender~~ Participating Lender under the ~~program~~ Program in question.

330:15-7-15. Compliance

Each ~~participating lender~~ Participating Lender shall be obligated to follow State and federal laws and the rules and ~~program documents~~ applicable to ~~participating lenders~~ Participating Lenders in connection with the ~~program~~ Program in question.

SUBCHAPTER 9. BONDS

330:15-9-1. Security

The ~~bonds~~ Bonds for each ~~program~~ Program shall be secured by the portfolio of mortgages originated under the ~~program~~ Program, or mortgage-backed securities covering such

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mortgages, and such additional security, including security other than the mortgages or mortgage-backed securities with respect to the particular ~~program~~Program, in such form as the Trustees may determine to be required by market conditions prevalent at the time the ~~program~~Program is being developed and as may be determined by the Trustees at the discretion of the Trustees at time of finalization of the ~~program~~Program.

330:15-9-2. Limited obligations

All ~~bonds~~Bonds are to be special limited obligations of OHFA and not the obligation of the State. To this end, all Bond or Trust Indentures and all bonds, notes or other evidences of indebtedness of OHFA issued in connection with any ~~program~~Program shall bear a restriction in substantially the following form: THE BONDS ARE SOLELY THE OBLIGATIONS OF THE ISSUER AND NOT OF THE STATE OF OKLAHOMA OR THE PARTICIPANTS. THE BONDS ARE PAYABLE SOLELY OUT OF THE INCOME, REVENUES AND RECEIPTS DERIVED OR TO BE DERIVED FROM THE MORTGAGE LOANS, AND THE FUNDS AND ACCOUNTS AND ADDITIONAL SECURITY HELD UNDER AND PURSUANT TO THE BOND INDENTURE AND PLEDGED THEREFOR OR OTHER INCOME, REVENUES AND RECEIPTS RECEIVED BY THE ISSUER FROM ANY OTHER SOURCES AS A RESULT OF THE INVESTMENT OR EXPENDITURE OF THE PROCEEDS DERIVED FROM THE ISSUANCE OF THE BONDS, INCLUDING, BUT NOT BY WAY OF LIMITATION, CERTAIN INSURANCE PROCEEDS AND OTHER MONEYS WHICH, BY LAW OR CONTRACT, MAY BE MADE AVAILABLE TO THE ISSUER AND PLEDGED UNDER AND IN THE MANNER PRESCRIBED IN THE BOND INDENTURE. THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER AND DO NOT CONSTITUTE AN OBLIGATION, EITHER GENERAL OR SPECIAL, OF THE STATE OF OKLAHOMA OR ANY PARTICIPANT WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER.

330:15-9-3. Special reserves

Provision for special reserves for protection of bondholders in each ~~program~~Program shall be set as the Trustees may determine to be necessary under the market conditions prevalent at the time the ~~program~~Program is being developed and as may be determined by the Trustees at the discretion of the Trustees at the time of finalization of each ~~program~~Program in question.

330:15-9-4. Bond terms

- (a) OHFA, at its discretion, may finance all or a portion of its Single Family ~~Mortgage Loan~~Home Ownership Programs with proceeds of bonds issued and sold by OHFA.
- (b) All bonds for each ~~program~~Program are to be sold in compliance with applicable state and federal laws.
- (c) All bonds for each ~~program~~Program may be tax-exempt or taxable or may be a combination of taxable and tax-exempt

bonds for each ~~program~~Program, as the Trustees may determine to be necessary under the market conditions prevalent at the time the ~~program~~Program is being developed and as may be determined by the Trustees in their discretion at the time of finalization of the ~~program~~Program.

(d) The average coupon rate and the maximum interest rate of the bonds for any ~~program~~Program shall not exceed the maximum rate authorized by state law.

(e) Maximum and average effective interest rates for bonds under each ~~program~~Program shall be set as the Trustees may determine to be necessary under the market conditions prevalent at the time the ~~program~~Program is being developed and as may be determined by the Trustees in their discretion at the time of finalization of the ~~program~~Program in question.

330:15-9-5. Competitive bidding

Competitive bidding as required by 62 O.S., Section 695.1 et seq. Oklahoma Bond Oversight and Reform Act or other state laws shall be complied with for all ~~programs~~Programs. The requirements for particular services or goods for a particular ~~program~~Program shall be set as the Trustees may determine to be necessary under the market conditions prevalent at the time the ~~program~~Program is being developed and as may be determined by the Trustees in their discretion at the time of finalization of the ~~program~~Program in question. By way of illustration, and not as a limitation, such services or goods for a particular ~~program~~Program requiring competitive bidding in some form may include one or more of the following professional services providers:

- (1) Underwriters.
- (2) Bond Trustee.
- (3) Bond Counsel.
- (4) Tax Counsel.
- (5) ~~Cash flow~~certifications Financial Advisor.
- (6) ~~Printing of bonds and official statements, etc.~~Master Servicer.
- (7) ~~Credit enhancements~~Cash Flow Certifications.
- (8) ~~Printing of bonds and official statements, etc.~~
- (9) Credit Enhancements.

330:15-9-6. Volume of bonds

Volume of bonds to be issued for any ~~program~~Program shall not be in excess of amount authorized by CAP Allocation received from the State (when CAP is applicable).

330:15-9-7. ~~Approval of Joint Bond Oversight~~ CommissionsCouncil of Bond Oversight

No bonds shall be issued except after receipt of approval from the ~~Joint Bond Oversight Commissions~~Council of Bond Oversight.

330:15-9-8. Approval of Governor

No bonds shall be issued except after receipt of approval by the Governor of the State of Oklahoma of the ~~program~~Program being financed by the bonds.

330:15-9-9. Trustee action to be taken

Programs shall be developed and implemented only upon the following minimum action of the Trustees:

- (1) The adoption of an initial resolution authorizing the development of a ~~program~~Program:
 - (A) Specifying the maximum size of the ~~pro-~~gramProgram;
 - (B) Directing the staff to seek CAP allocation from the State (when applicable);
 - (C) Directing staff to take such preliminary action as may be required in law to select a ~~managing underwriter and bond counsel~~professional services providers; and
 - (D) Directing staff to take such action as may be necessary to determine the necessity for a ~~pro-~~gramProgram and the size thereof.
- (2) The adoption of resolutions ~~selecting a managing underwriter, financing advisor, placement agent (if any is needed) and bond counsel~~professional services providers; and
- (3) The adoption of a final resolution approving all ~~pro-~~gramProgram Documents, agreements, and procedures, and authorizing the sale of the bonds and the implementation of the ~~program~~Program and specifying the interest rates for ~~mortgages and~~ the bonds and taking such other action as may be necessary to implement the ~~program~~Program if it is the decision of the Trustees in their discretion to implement the program in question.

SUBCHAPTER 11. NO LOANS TO PARTIES WITH POTENTIAL CONFLICT OF INTEREST

330:15-11-1. Parties deemed to be in a conflict of interest

OHFA desires and intends to not allow mortgage loans to be made to parties who have or may appear to have a conflict of interest in the making and/or receipt of a mortgage loan under any of its ~~programs~~Programs. To this end, OHFA declares the following parties to be in a conflict of interest and not eligible to be a borrower pursuant to a mortgage loan financed directly or indirectly by OHFA or any ~~program~~Program of OHFA:

- (1) OHFA affiliates:
 - (A) Trustees;
 - (B) Officers;
 - (C) ~~Employees~~Bond Counsel and attorneys of firm;
 - (D) ~~Father, mother, sisters, brothers, father in law, mother in law, and sisters and brothers in law, lineal heirs and dependents of Trustees and officers~~General Counsel and attorneys of firm;
 - (E) ~~Dependents of employees~~Tax Counsel and attorneys of firm;
 - (F) ~~Bond counsel and attorneys of firm~~;
 - (G) ~~General counsel and attorneys of firm~~; and
 - (H) ~~Tax counsel and attorneys of firm~~.
- (2) Bond Trustee bank affiliates:
 - (A) Officers;

- (B) Directors;
- (C) ~~5% stockholders~~;
- (D) ~~Employees~~;
- (E) ~~Father, mother, sisters, brothers, father in law, mother in law, and sisters and brothers in law, lineal heirs and dependents of officers, directors and 5% stockholders~~; and
- (F) ~~Dependents of employees~~
- (3) Participating lender's ~~Lender's~~Lender's affiliates:
 - (A) Officers;
 - (B) Directors;
 - (C) ~~5% stockholders~~;
 - (D) ~~Employees of the participating lender in question, and each of its originating entities (if applicable), to whom the application is made~~;
 - (E) ~~Father, mother, sisters, brothers, father in law, mother in law, and sisters and brothers in law, lineal heirs and dependents of officers, directors and 5% stockholders~~; and
 - (F) ~~Dependents of employees of the participating lender in question, and each of its originating entities (if applicable), to whom the application is made~~.
- (4) State Officials affiliates:
 - (A) Governor;
 - (B) Governor's staff;
 - (C) ~~Members of Joint Bond Oversight Commissions~~Council of Bond Oversight;
 - (D) ~~Father, mother, sisters, brothers, father in law, mother in law, and sisters and brothers in law, lineal heirs and dependents of Governor, Governor's staff, and members of Joint Bond Oversight Commissions~~; and
 - (E) ~~Staff of Oklahoma Department of Commerce (CAP Allocation)~~.

[OAR Docket #20-573; filed 7-9-20]

**TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY
CHAPTER 36. AFFORDABLE HOUSING TAX CREDIT PROGRAM**

[OAR Docket #20-574]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
 330:36-1-4 [AMENDED]
 Subchapter 2. Allocation Procedures
 330:36-2-13 [AMENDED]
 330:36-2-16 [AMENDED]
 330:36-2-17 [AMENDED]
 Subchapter 4. Development Applications and Selection
 330:36-4-2.1 [AMENDED]
 330:36-4-2 [AMENDED]
 330:36-4-3 [AMENDED]
 Subchapter 6. Program Administration
 330:36-6-7 [AMENDED]
 Subchapter 8. Qualified Contract
 330:36-8-5 [AMENDED]

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AUTHORITY:

These Chapter 36 Rules are authorized by 75 O.S., Section 302; 60 O.S., Section 176 through 180.3; the Board of Trustees of Oklahoma Housing Finance Agency (OHFA), the Amended Trust Indenture, and the Bylaws of OHFA as established by the OHFA Board of Trustees

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 24, 2020

COMMENT PERIOD:

January 24 through March 20, 2020

PUBLIC HEARING:

March 20, 2020

ADOPTION:

March 25, 2020

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 30, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

January 1, 2021

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

Modifications to these Chapter 36 Rules are adopted in response to comments and program changes.

Section 42 of the Internal Revenue Code of 1986, as amended (Code), provides that a federal tax credit (Credit) may be claimed for a period of ten years by qualified owners (as defined by the Code) of residential property rented to qualified low-income tenant at restricted rates, if said owner has been approved for an allocation of Credits by the state housing credit allocating agency. Oklahoma Housing Finance Agency (OHFA) is Oklahoma's allocating agency. The Code further provides that each state's annual Credit authority is to be allocated by that state's allocating agency pursuant to a Qualified Allocation Plan (QAP). Chapter 36 Affordable Housing Tax Credit Program (Rules) is part of Oklahoma's QAP. The purpose of said Rules is to comply with the Code, the Oklahoma Administrative Procedures Act (APA), and to provide guidelines for administering the allocations of Oklahoma's annual Credit authority and OHFA's Affordable Housing Tax Credit Program (Program). The Board of Trustees are also required to administer the Program in a manner consistent with Oklahoma's Housing Antidiscrimination Act, 15 O.S., § 1451-1453 and all federal laws prohibiting discrimination, including 42 U.S.C., § 1983 and the Fair Housing Act, as amended 42 U.S.C., § 3601 et seq.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE JANUARY 1, 2021:

SUBCHAPTER 1. GENERAL PROVISIONS

330:36-1-4. Definitions

The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise. Additional capitalized terms used in these Chapter 36 Rules are defined in the Code and these Chapter 36 Rules. When a conflict exists between the following definitions and the Code the more restrictive meaning shall be applied.

"Affiliate" means any Person that directly or indirectly through one (1) or more intermediaries, Controls, is Controlled By, or is Under Common Control With any other Person.

"Allocation" means the maximum amount of TCAs available to the Development as a result of the approval of an award by the Trustees. The Credit shall be apportioned to each Qualified Building at the time such Qualified Building is Placed-In-Service.

"Applicable Fraction" means the fraction used to determine the qualified basis of a qualified low-income Building which is the smaller of the Unit Fraction or the Floor Space Fraction.

"Applicant" means any individual, Nonprofit Sponsored Development, Nonprofit organization or profit-motivated individual, corporation, general or limited partnership, limited liability company or other legal entity which has submitted an Application to OHFA for a Credit Reservation and Allocation, and its successors in interest. "Applicant" includes the Owner and Owner's predecessor in interest, if any, and includes any successor in interest, Transferee of all or any portion of the Development, and the heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, Transferee, Owner or lessee (other than a Resident) of all or any portion of the Development, and any other Person or entity having any right, title, or interest in the Development.

"Application" means an Application in the form prescribed by OHFA, from time to time, in the Application Packet (AP), including all exhibits and other materials filed by an Applicant with OHFA in support of or in connection with the formal request by the Applicant requesting a TCA.

"Application Packet" (referred to in these Rules as the "AP") means the Application in the form prescribed by OHFA at least annually, together with instructions and such other materials provided by OHFA to any Person requesting the same for the purpose of seeking to obtain from OHFA a TCA. OHFA will solicit formal public input on the Application Packet, and provide explanation of any significant changes. Staff will present the proposed AP to the Trustees for approval at a Trustees meeting. The AP may include definitive statements of what shall constitute Threshold Criteria, Selection Criteria, priorities, preferences, and compliance and monitoring requirements as may be authorized by or provided for in the Code and these Rules, and may include the necessary forms, instructions and requirements for Applications, market studies, Commitments, Agreements, Elections, set-asides, OHFA staff evaluation criteria for Threshold Criteria and Selection Criteria, final ranking, Credit amounts, tax-exempt bond financed projects, compliance monitoring, and other matters deemed by Trustees, in their complete discretion, to be relevant to the process of evaluation of Applications and the Applicants in connection with the award or denial of TCAs.

"Area Median Gross Income" means the median Gross Income adjusted for household size, for the county or counties where each Building in a Development is located as determined and published annually by HUD.

"Building" means a property containing residential Housing Units located on the Land and included in the Development. For purposes of the Credit Program, each Building

is identified by its Building Identification Number (BIN) assigned by OHFA and its street address assigned by the United States Postal Service. The BIN shall control for Tax Credit purposes. In the event more than one Building is located on the Land, each Building must be identified in the manner required by Code Section 42(g) to be treated as part of the Development. Any Allocation of Credit shall be effective only for the Building(s) identified in a Carryover Allocation Agreement, if applicable, or in Exhibit "A" to the Regulatory Agreement.

"Capital Needs Assessment" (CNA) means a qualified professional's opinion of a property's current physical condition determined after a physical inspection of the interior and exterior of the units and structures as set out in the AP.

"Carryover Allocation" means, an Allocation which is made with respect to a Building or Development pursuant to Code Section 42(h)(1)(E) and/or Code Section 42(h)(1)(F), as the case may be, and in conformance with IRS Notice 89-1 and Treasury Regulation Section 1.42-6.

"Carryover Allocation Agreement" means the contract between Owner and OHFA, authorized and approved by the Trustees. A Carryover Allocation is made pursuant to Code Section 42(h)(1)(E) and/or Code Section 42(h)(1)(F), IRS Notice 89-1 and Treasury Regulation Section 1.42-6.

"Certifications" means the representations made under penalties of perjury by the Applicant, Owner, each Developer, each partner or general partner, party to a joint venture, and/or Resident, as applicable, including but not limited to those representations and Certifications set forth in the Applications and the Regulatory Agreement and Exhibits. Certifications also mean any and all representations made under penalties of perjury with respect to the Development at any time from the date of submission of the Application and throughout the Extended Use Period.

"Code" means the Internal Revenue Code of 1986, as amended, together with applicable rules and regulations, revenue rulings, guidelines, releases, pronouncements, notices or procedures promulgated thereunder or referred to therein or in the applicable rules and regulations.

"Commitment" means a representation or agreement of the Owner/Applicant contained in the Application, or otherwise, which in all cases shall be irrevocable and binding upon Owner/Applicant and its Transferees and successors in interest throughout the Development Compliance Period, unless otherwise noted in the Regulatory Agreement, these Rules, the Application, or any other agreements entered into by Owner/Applicant with OHFA in connection with the Credit Program.

"Compliance Period" means with respect to any Qualified Building, the continuous fifteen (15) year period over which the Qualified Building must satisfy all requirements of the Code and the Credit Program. The Compliance Period begins with the first year of the Credit Period.

"Consultant" means any Person (which is not an Affiliate of an Owner of the Development) that provides professional or expert services relating to an Application, a Development, or any activities pertaining to the filing of an Application, the award of a TCA, the Carryover Allocation, or cost Certification documents filings with OHFA.

"Control" (including the terms "Controls", "Controlling", "Controlled By", and/or "Under Common Control With") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any other Person, whether through an ownership interest in the other Person, by contract, agreement, understanding, designation, office or position held in or with the other Person or in or with any other Person, or by coercion, or otherwise.

"Credit" (including the terms Tax Credit and Low-Income Housing Tax Credit) means the Low-Income Housing Tax Credit available for federal income tax purposes under Code Section 42 for a Qualified Building.

"Credit Period" means the ten (10) year period over which the Credit may be claimed for a Building. The Credit Period begins when the Building is Placed-In-Service, for Credit purposes, or if the Owner makes an election under Section 42(f)(1)(B) of the Code, the next year; but only if the Building is a qualified low-income Building within the meaning of Code Section 42(c)(2), by the end of the first year of that period. For an existing Building with Rehabilitation Expenditures, the Credit Period shall not begin before the year that the rehabilitation Credit is allowed under Code Section 42(f)(5).

"Credit Program" means OHFA's program for approving Allocations and includes, without limitation, adopting the Qualified Allocation Plan and OHFA's Credit Program Rules, the AP, and all things contemplated therein or appurtenant thereto, including without limitations, monitoring Developments throughout the Extended Use Period and notifying the IRS of the Building's or a Development's failure to comply with Code requirements.

"Credit Reservation" means the reservation of a maximum amount available for Allocation to such Development and apportioned to each Qualified Building therein upon meeting the requirements of the Credit Program and Code Section 42.

"Developer" means the Person or entity with the responsibility of ensuring the effective construction or rehabilitation of the Development, including any and all responsibilities as outlined in the Development Agreement, which may also be the Applicant and/or Owner of the Development. Developer also includes any other Person or organization affiliated with, Controlled by, in Control of or a related party to, the Developer, as determined by OHFA.

"Development" means the Land and one (1) or more Buildings, structures, or other improvements now or hereafter constructed or located upon the Land. If more than one (1) Building is to be part of the Development, each Building must be financed under a common plan and identified in the manner required under Code Section 42(g).

"Development Compliance Period" means the period beginning with the first day the first Building of the Development is Placed-In-Service and continuing thereafter until the latest to end of the following periods for each Building in the Development: (i) the Compliance Period; (ii) the Extended Use Period; or (iii) the "Three Year Period."

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"Development Team" means the Applicant, architect, attorney, Consultant, Developer, general contractor, market analyst and/or appraiser, property management company, Owner, tax professional, and the principals of each.

"Drug" for purposes of these OAHTC Program Rules, means "a controlled substance" as that term is defined in Section 102 of the Controlled Substances Act, 21 U.S.C., Section 802.

"Drug-Related Criminal Activity" means the illegal manufacture, sale, distribution, or use of a Drug, or the possession of a Drug with intent to manufacture, sell, distribute or use the Drug.

"Due Date" if a Due Date for submission of documents or fees falls on a weekend or a designated Federal holiday, then the Due Date becomes the next business day.

"Elderly" means housing that meets the Elderly exemptions from Fair Housing. For Credit Program purposes these exemptions only apply to household members. Definitions also only apply to Developments Allocated after the effective date of these Chapter 36 Rules.

(A) Provided under any State or Federal program that HUD has determined to be specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

(B) Intended for and solely occupied by persons 62 years of age or older; or

(C) Intended and operated for occupancy by persons 55 years of age or older. In order to qualify for this definition, a facility or community must satisfy each of the following requirements:

(i) At least 80 percent of the units must have at least one occupant who is 55 years of age or older; and

(ii) The facility or community must publish and adhere to policies and procedures that demonstrate the intent to operate as 55 or older housing; and

(iii) The facility or community must comply with HUD's regulatory requirements for age verification of residents.

"Eligible Basis" means generally the depreciable basis in the property.

"Exchange" means returning tax credits allocated from a prior year for a subsequent year's tax credit allocation.

"Extended Use Period" means the continuous period, a minimum of fifteen (15) years, following the close of the Compliance Period during which a Qualifying Building must satisfy all requirements of the Code and the Credit Program. The Extended Use Period for the Development is set forth on Exhibit "A" to the Regulatory Agreement and may not be revoked or terminated prior to said date except as provided in the Code, these Chapter 36 Rules or in the Regulatory Agreement.

"Floor Space Fraction" means the total floor space of the Low-Income Unit in the Building divided by the total floor space of all residential units in the Building (whether occupied or not).

"Gross Rent" means the rent received for a Low-Income Housing Unit, including utility allowances but excluding (i)

any payments under Section 8 or any comparable rental assistance program; (ii) any fees or supportive services (within the meaning of Code Section 42(g)(2)(B)); (iii) paid to Owner (on the basis of the low-income status of the qualified Resident of the Low-Income Unit) by a governmental assistance program or an organization exempt from federal income tax under Code Section 501(c)(3), if such program or organization provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services; and (iv) rental payments to Owner to the extent an equivalent amount is paid to the Rural Housing Service (RHS) under Section 515 of the Housing Act of 1949. Gross Rent includes the minimum amounts paid toward purchase of a Housing Unit as described in Code Section 42(g)(6). The amount of Gross Rent is determined annually based upon the Area Median Gross Income for the locality in which the Development is located. The annual amount may decrease but such amount will not be reduced below the amount of Gross Rent established in the first year of the Credit Period.

"Hard Construction Costs" means the following types of activities, but not limited to, earthwork/site work, on-site utilities, roads and walks, concrete, masonry, metals, carpentry (rough and finish), moisture protection, doors/windows/glass, insulation, roofing, sheet metal, drywall, tile work, acoustical, flooring, electrical, plumbing, elevators, blinds and shades, appliances, lawns & planting, fence, cabinets, carpets, and heat & ventilation. For calculations of contractor fees, a reasonable contingency can be included.

"Homeless" means (1) lacking a fixed, regular and adequate nighttime residence; and has a primary nighttime residence that is a supervised public or private shelter providing temporary accommodations or a public or private place not ordinarily used as sleeping accommodations for human beings, OR (2) displaced as a result of fleeing violence in the home; and has a temporary residence that is a supervised public or private shelter OR (3) certified by an agency involved in regularly determining Homeless status. OR (4) displaced as a result of a major disaster and receiving FEMA assistance. Homeless individuals are considered Homeless for a period of twenty-four (24) months from the date of move-in, according to Section 103 of the Stewart B. McKinney Homeless Assistance Act and 42(i)(3)(B)(iii)(I) of the Code.

"Housing Unit" means a Low-Income Unit and/or Market Rate Unit located in a Building which is available for rent or is rented by Residents. Common area units are not included.

"HUD" means the U.S. Department of Housing and Urban Development.

"Income" means the Income of one or more qualified Residents, as determined in a manner consistent with the methods under HUD's Section 8 Program.

"IRS" means the Internal Revenue Service of the Treasury.

"IRS Form 8609" means the IRS Form entitled "Low Income Housing Credit Certification". The IRS Form 8609 establishes the maximum Credit for a Building.

"IRS Form 8823" means the IRS form entitled "Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition" issued or to be issued by OHFA with

respect to issues of noncompliance with the laws of the IRS and/or the sale or disposition of the Development.

"Land" means the site(s) for each Building in the Development and having the legal description set forth described in the Carryover Allocation Agreement and Exhibit "A" to the Regulatory Agreement.

"Large Development" means a Development with more than sixty (60) units.

"LIHTC Program" means the Credit Program. "LIHTC Program" may be used interchangeably with the term "Credit Program" or "OAHTC Program".

"Low-Income Unit" means a Housing Unit that is both Rent-Restricted and occupied by qualified Residents, provided that: (i) Housing Unit shall constitute a Low-Income Unit only if it is suitable for occupancy taking into account local health, safety and building codes and it is used other than on a transient basis except in the case of Transitional Housing, all as determined under Code Section 42(i)(3); and (ii) Housing Unit in any Building which has four (4) or fewer total Housing Units shall not constitute a Low-Income Unit if any Housing Unit in the Building is occupied by an Owner or a related Person [within the meaning of Code Section 42(i)(3)(C)] unless such Building is described in Code Section 42(i)(3)(E).

"Market Rate Unit" means a Housing Unit that does not meet the definition of a Low-Income Unit.

"Minimum Low-Income Housing Set-Aside" means the minimum percent required under Code Section 42(g) of Housing Units in the Development to be both Rent-Restricted and occupied by qualified Residents, i.e., Residents whose Income is at or below a certain percentage of Area Median Gross Income. For purposes of Code Section 42(g), Owner must have selected either: (i) twenty percent (20%) or more of the total Housing Units to be Rent-Restricted and occupied by Residents whose Income is at or below fifty percent (50%) percent of the Area Median Gross Income; or (ii) forty percent (40%) or more of the total Housing Units to be Rent-Restricted and occupied by Residents whose Income is at or below sixty percent (60%) of the Area Median Gross Income as the Minimum Low-Income Housing Set-Aside. The Applicant may, however, have made a Commitment to provide greater percentages of Housing Units that are both Rent-Restricted and occupied by Residents meeting the above Income limitations and/or making Housing Units available to Residents with Income below the above limitations, i.e., an Additional Low-Income Housing Set-Aside. Owner and all Transferees, and successors in interest shall be bound by all Commitments, including the Minimum Low-Income Housing Set-Aside, or Additional Low-Income Housing Set-Aside made in the Regulatory Agreement, or included in the Carryover Agreement or any of the Resolutions of the Trustees respecting the Application, the Development, or Owner.

"National Non-Metro Area Median Income" means as determined and published annually by HUD.

"Nonprofit" means a private Nonprofit organization that is organized under State or local laws; has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; is neither Controlled By, nor under the direction of, individuals or entities seeking to derive profit

or gain from the organization; has a tax exemption from the Internal Revenue Service under section 501(c) (3) or (4) of the Internal Revenue Code of 1986; does not include a public body; has among its purposes the provision of decent housing that is affordable to low-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws; and, has at least a one year history of providing affordable housing, and is duly qualified to do business within the State.

"Nonprofit Sponsored Development" means and refers to a proposed Development that has or will have a Nonprofit that has a Controlling interest by reason of an ownership interest in a Person that is or will be the Owner of the subject Development, and has materially participated, or will materially participate (within the meaning of the Code) in the Development and operation of the Development throughout the Compliance Period.

"OAHTC Program" means the Credit Program. "OAHTC Program" may be used interchangeably with the term "LIHTC Program" or "Credit Program".

"OHFA" means Oklahoma Housing Finance Agency a State-beneficiary public trust. OHFA is the allocating agency for the State for purposes of the Credit Program.

"One Year Period (1YP)" means period commencing on the date on which OHFA and the Owner agree to the Qualified Contract Price in writing and lasting twelve (12) calendar months.

"Owner" means the legal Owner of record of the Development, as set forth on page one of the Regulatory Agreement, and any and all successor(s) in interest. Owner also means any other Person or entity having or acquiring any right, title, or interest in the Development.

"Person" means, without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, limited liability partnership, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality, Community Housing Development Organization (CHDO), interlocal cooperative, or other organization of any nature whatsoever, and shall include any two or more Persons acting in concert toward a common goal.

"Placed-In-Service" means: (i) the date on which a new Building or existing Building used as residential rental property is ready and available for its specifically assigned function as evidenced by a permanent certificate of occupancy or the equivalent; or (ii) for Rehabilitation Expenditures that are treated as a separate new Building, any twenty-four (24) month period over which such Rehabilitation Expenditures are aggregated.

"Program Rules" means the various written criteria, requirement, rules, and policies adopted from time to time by the Trustees as the State's Qualified Allocation Plan to administer the Credit Program and to provide for Allocations. The Program Rules must be followed by any participant in the Program. The Program Rules may include requirements that are more stringent than those under Code Section 42.

"Qualified Allocation Plan (QAP)" means these Chapter 36 Rules plus the Application Packet (AP) as defined and

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other materials provided by OHFA. The deadline for all informal input sessions and the formal public hearing for changes in the QAP will be published by OHFA Staff.

"Qualified Building" means a Building which meets the terms, conditions, obligations, and restrictions of the Program Rules, Carryover Allocation Agreement, Regulatory Agreement, Resolutions of the Trustees respecting Owner or the Development, and Code Section 42(c)(2) for an Allocation and the issuance by OHFA of IRS Form 8609.

"Qualified Contract" means a bona fide contract to acquire the portion of a Building which is not Rent-Restricted for fair market value and the portion of the Building which is Rent-Restricted for an amount not less than the Applicable Fraction for the Building or the sum of: (i) the portion of outstanding indebtedness secured by, or with respect to the Building which is allocable to such Building; (ii) adjusted investor equity in the Building; and (iii) other capital contributions invested in the Building but not reflected in the amounts described in (i) or (ii) above; reduced by cash distributed from the Development or available for distribution from the Development; provided that in all cases, the purchase price for the Building required for a contract to be a Qualified Contract shall be determined in a manner consistent with the requirements of Code Section 42(h)(6)(F), or such other regulations as prescribed by the Code to carry out this section.

"Qualified Contract Application (QCA)" means an Application containing all information and items required by the OHFA to process a request for a Qualified Contract.

"Qualified Contract Preliminary Application (QCPA)" means a request containing all information and items necessary for OHFA to determine the eligibility of an Owner to submit a Qualified Contract Application.

"Qualified Contract Price (QCP)" means calculated purchase price of the Development as defined within §42(h)(6)(F) of the Code and as further delineated in Chapter 36 Rules.

"Qualified Development" means a Development where the Housing Units are both Rent-Restricted and occupied by Residents whose Income is at or below the level selected as the Minimum Low-Income Housing Set-Aside.

"Qualifying Households" means households whose annual Incomes do not exceed the elected area median family income set-aside required in the Code.

"Regulatory Agreement" means the written and recorded agreement between a recipient of a TCA and the allocating agency, OHFA, placing restrictive covenants upon the Development and the underlying Land for a term of not less than thirty years (30) years, or such other term as may be required from time to time by provisions of the AP, these OAHTC Rules and Section 42 of the Code and the federal rules and regulations promulgated thereunder and containing other restrictions, covenants, warranties and agreements required by State, federal or local law and these OAHTC Rules.

"Rehabilitation Expenditures" means amounts that are capitalized and incurred for the addition to or improvement of an existing Building of a character subject to the allowance for depreciation under Section 167 of the Code. However, it does not include the costs of acquiring a Building or an interest

in it, for example, any Developer Fee properly allocated in acquiring a Building or any other soft costs or any amount not permitted to be taken into account under Section 42(d)(3) or Section 42(d)(4) of the Code.

"Rent-Restricted" means that the Gross Rent with respect to a Low-Income Unit does not exceed thirty percent (30%) of the Income limitations for qualified Residents adjusted by the Imputed Household Size, subject to the exception set forth in Code Section 42(g)(2)(E) (relating to certain Housing Units for which federal rental assistance decreases as Resident Income increases).

"Resident" means an individual or group of individuals (other than an Owner) residing in a Housing Unit.

"Resolution" means an official action of the Trustees and may include all Resolutions adopted by the Trustees with respect to a Development.

"Review Report" means the Threshold Criteria Review and Selection Criteria Review containing the results of OHFA's review of the Application and scoring of the Application. There are preliminary and final versions of the Review Report for each Application.

"Rural Area" means any city, town, village, area or place generally considered rural by the Secretary of Agriculture (RHS) for rural housing programs. Verification will be obtained by OHFA staff.

"Rural Development" means a Development that is, or will be located within a Rural Area as defined by USDA RHS 538 only projects are not eligible for the Rural 515 set aside, but may qualify under other set asides.

"Section 8" means Section 8(c)(2)(A) of the United States Housing Act of 1937, as amended.

"Selection Criteria" means the evaluation criteria, over and above the Threshold Criteria, set out in the AP, which shall be established and may be changed by OHFA from time to time in the AP (using the priorities for the State as they are established from time to time under and pursuant to these Rules and the AP), to determine the Development's qualifications, and which are the basis for ranking Applications and establishing a relative level of acceptability for consideration under the Rules and the AP for the possibility of the award of a TCA by OHFA. Although the Selection Criteria may be given substantial weight by the Trustees in deciding whether or not a particular Application and Applicant shall be awarded a TCA, the Trustees reserve the right to take into consideration such other factors as they, in their complete discretion, deem appropriate.

"Site Control" means the exercise of dominion or Control over the property through the execution of a purchase, sale, or long-term lease agreement (with a lease term that exceeds the Extended Use Period), receipt of a deed or conveyance of the Land where the Development will be located, or an option to purchase the property (where the option is not revocable on the part of the seller). OHFA alone will decide if an Applicant or Owner has obtained Site Control.

"State" means the State of Oklahoma.

"Targeted Populations" means such populations as may be designated from time to time in the AP by official action of

the Trustees, which designations may include, but are not necessarily limited to, the Homeless, the Elderly, Veterans, Youth aging out of Foster Care, persons with mental and physical disabilities and/or disabled persons.

"Tax Credit Allocation (TCA)" means a federal Low-Income Tax Credit Allocation by OHFA to a Development Owner pursuant to Section 42 of the Code, QAP, and formal action by the Trustees.

"Three-Year Period" for a Building means the three (3) year period following: (a) the date of acquisition of such Building by foreclosure or forfeiture under a deed of trust, mortgage or real estate contract or by deed in lieu of foreclosure; or (b) the end of the Extended Use Period, or (c) in the case of the release of the affordability restriction due to the failure of OHFA to present a QC before the expiration of the One Year Period, the recording of a Release of Regulatory Agreement by OHFA. During the Three-Year Period the Owner may not evict or terminate a tenancy of an existing tenant of any Low-Income Unit except for good cause. During the Three-Year Period the Owner may not increase the Gross Rent with respect to any Low-Income Unit except as permitted under Section 42 of the Code.

"Threshold Criteria" means the criteria set out herein and in the AP, which shall be established and may be changed by OHFA from time to time in the AP, to determine the qualifications of the Applicant and the Owner and the proposed Development, presented in each Application that are the minimum level of acceptability for consideration under the Rules and the AP for the possibility of the award of a TCA by OHFA. Failure to satisfy all Threshold Criteria set out in the AP may result in the disqualification of the Application for further consideration, and may require no further action by OHFA Staff except to notify the Applicant of the disqualification.

"Total Development Costs" means the total costs incurred in acquiring and developing the Development as set forth in the proposed budget for the Development included in the Application. Total Development Costs will be certified by an independent certified public accountant's Certification of sources and uses of funds at times prescribed by OHFA.

"Transfer" means any sale, Transfer, merger, consolidation, liquidation, contribution, assignment, exchange or other change in all or part of the Ownership of the Land and/or Development or any Building which is a part thereof, whether voluntary or involuntary, and also includes: a Transfer, sale, contribution or assignment by the Applicant, Owner or Developer of all or any part of its rights, title or interest in the Application, Carryover Allocation Agreement, Credit, Land, Building and/or Development to another party; or a withdrawal, change or addition of any partner to a general partnership, general partner of a limited partnership, any party to a joint venture or the manager of a limited liability company.

"Transferee" means any and all successor(s) in interest of Owner and any other Person or entity having or acquiring any right, title, or interest in the Development.

"Transitional Housing" for purposes of these OAHTC Program Rules means Transitional Housing for the Homeless which meets the requirements of Code Section 42(i)(3)(B)(iii)

"Treasury" means the United States Department of the Treasury.

"Trustees" means the Board of Trustees of OHFA.

"Unit Fraction" means the fraction of a Building devoted to low-income housing, the numerator of which is the number of Low-Income Housing Units in the Building, and the denominator of which is the number of total Housing Units, whether or not occupied, in the Building.

"Violent Criminal Activity" means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

SUBCHAPTER 2. ALLOCATION PROCEDURES

330:36-2-13. Preliminary Review Reports

(a) Upon completion of its review of all Applications, OHFA will forward OHFA's preliminary Review Report to the contact person identified by the Applicant in the Application.

(b) The Applicant must provide OHFA with any information requested by OHFA in the preliminary Review Report or other clarifying information by the deadline given in the cover letter accompanying the preliminary Review Report. Neither the Staff nor the Trustees will be required to consider a late response to the preliminary Review Report.

(c) In the event the Applicant disputes any matter contained in the preliminary Review Report, including without limitation any finding, determination, recommendation or scoring by OHFA, the Applicant's response to the Review Report must identify with specificity the disputed matter, finding, determination, recommendation, scoring, etc., and the Applicant's reason for disputing same, including any evidence which controverts the Review Report. Any applicable statutes, rules, regulations or ordinances should be cited. Documentary evidence should be attached.

(d) Failure to respond or dispute a finding or determination in the preliminary Review Report shall be deemed the acceptance of the finding or determination by the Applicant.

(e) The Applicant's response to the preliminary Review Report must be in writing. ~~Electronically transmitted responses, including fax and e-mail transmissions, are not permitted and will not be reviewed. Applicants are encouraged to use certified mail, Federal Express or another carrier providing proof of timely delivery to OHFA. Refer to the AP for response submittal method.~~

330:36-2-16. Carryover Allocations

(a) **Code reference.** Code Section 42(h)(1)(E) provides that an Allocation may be made to a Qualified Building, as defined by Section 42(h)(1)(E)(ii), which has not yet been Placed-In-Service, provided the Qualified Building is Placed-In-Service not later than the close of the second calendar year following the calendar year of the Allocation.

(b) **Carryover Allocation applications.** Owners must submit a carryover application and required documents at a

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date specified by OHFA staff. The Owner must satisfy all requirements of the Code and OHFA staff.

(c) **Carryover Allocation basis.** To qualify for a Carryover Allocation, the Owner must demonstrate that the Owner's basis in the Development, at one (1) calendar year after the date of Allocation, is more than ten percent (10%) of the Owner's reasonably expected basis in the Development. Developments that fail to meet the ten percent (10%) test will not have a valid Carryover Allocation. The ten percent (10%) test must be certified by the Owner's certified public accountant, in a form acceptable to OHFA. OHFA's determination as to the satisfaction of the ten percent (10%) requirement is not binding upon the IRS and does not constitute a representation by OHFA to the taxpayer or any other party to that effect.

(d) **Carryover Allocation Agreement.** The Owner must submit to OHFA an executed Carryover Allocation Agreement, in a form and at a date specified by OHFA.

(e) **Notification of Placed-In-Service date.** Applicant must notify OHFA within thirty (30) calendar days of the date the Building(s) is/are Placed-In-Service. Notice will consist of submission of copies of the permanent Certificates of Occupancy for each Building and completion of any and all forms as may be required in the AP.

(f) **Development based Allocation.** An Allocation pursuant to Code Section 42(h)(1)(F) must meet the requirements of Code Section 42(h)(1)(F), all applicable Treasury Regulations, and these Chapter 36 Rules.

330:36-2-17. Final Allocations

(a) **Deadline for filing.** Owner's request for approval of the Final Allocation must be received by OHFA at such date as OHFA may specify in writing to the Owner. Failure to file a timely Final Allocation accompanied by all required documentation may result in the denial of the Final Allocation and a determination by the Trustees that the Credits have been returned by the Applicant.

(b) **Complete filing.** The Final Allocation must be accompanied by all evidence or documentation required by the Program Rules then in effect, and such other information or documentation which may be requested by OHFA, in its sole discretion, to verify compliance with the Code, the Program Rules and the Resolutions, and to verify the amount of the Final Allocation. A complete and executed Regulatory Agreement in the form provided by OHFA and ready for filing, together with the appropriate fees, including without limitation applicable filing, must be filed with the Final Allocation. The Regulatory Agreement shall contain provisions for regulation and enforcement by OHFA and such additional provisions as may be necessary to assure compliance with Section 42 of the Code or to give effect to the requirements of OHFA.

(c) **Additional requirements.** In addition to the opinions and Certifications of professionals which may be required to be filed with OHFA pursuant to 330:36-2-16 in connection with a request for a Carryover Allocation, prior to making a Final Allocation, OHFA will require:

(1) An audited Certification of the Total Development Costs, and the Eligible Basis and qualified basis of each Building in the Development and the sources and uses of

funds for the Development prepared by an independent certified public accountant.

(2) All opinions must be in a form satisfactory to OHFA and must indicate that the professional has made an independent inquiry into the matters contained therein.

(d) **Approval.** Upon receipt of a completed Final Allocation, OHFA will conduct a final feasibility analysis. Approval of the Final Allocation is subject to Owner's continued compliance with the Code, the Program Rules, the Resolutions, all terms and conditions of this Agreement, and Owner's payment of all fees required by the Program Rule.

(e) **Issuance of Form 8609(s).** OHFA will issue IRS Form 8609(s) respecting each such Development (or each Building therein) to the extent required by, and in accordance with, the Code and the Program Rules. No Form 8609(s) shall be issued if OHFA has not received an executed Regulatory Agreement and all Exhibits thereto, applicable fees, permanent Certificates of Occupancy for each Building, and resolution of any issues to OHFA's satisfaction.

SUBCHAPTER 4. DEVELOPMENT APPLICATIONS AND SELECTION

330:36-4-2. Selection of Applications for award of TCAs

(a) **General.** For the purpose of selecting Applications for awards of TCAs, OHFA shall develop Threshold and Selection Criteria that conform to the Code, the OAHTC Program purposes and these Chapter 36 Rules for inclusion in the next AP. The number, severity, or value of any one or more of the Threshold or Selection Criteria items may be increased by adoption of an AP for a given year that contains such increased Threshold or Selection Criteria items. However, each AP must contain for any AP, criteria to evaluate set-asides and all Threshold and Selection Criteria.

(b) **Minimum Threshold Criteria.** Failure to meet all Threshold Requirements set forth in the AP upon initial submission of the Application may result in the Application being rejected without further review. The Threshold Criteria may include, but are not necessarily limited to the following:

~~(1) **Notice Requirements.** The provisions of this subsection apply to all Applicants for a TCA. All notice requirements must be satisfied not less than thirty (30) and no more than ninety (90) calendar days prior to submission of an Application. Each Application requires notice. If the Application is considered at a different Trustees meeting than in the notice, this notification requirement is considered to be met. Notice of an Applicant's intent to file an Application shall also be published in the local newspaper of the area wherein the Development will be located. The requirements for the publication notice will be in the AP.~~

~~(2) **Market analysis.** All Applicants must submit a third party, independent housing market analysis conforming to the Threshold Criteria set forth in the AP, demonstrating and documenting the status of the market demand for the type and number of Housing Units proposed to be developed.~~

(32) **Nonprofit Owners.** Applicants proposing Developments under the Nonprofit set-aside must demonstrate and document that the Nonprofit Owner and/or Nonprofit ownership participant meet the definition of a Nonprofit Sponsored Development as defined in Section 42h(5)(C) of the Code and these Chapter 36 rules at 330:36-1-4. Applicants for Nonprofit set-aside TCAs must demonstrate that the Nonprofit participant:

- (A) demonstrates more than fifty percent (50%) Ownership in the general partner or managing member;
- (B) will materially participate, on a regular basis, in the planning and construction of the Development, and in the operation and management of the Development throughout the entire Compliance Period pursuant to 26 CFR § 1.469;
- (C) has a Board of Directors and Officers that are independent from any for-profit Development partner; and
- (D) is duly authorized to do business within the State; and
- (E) has at least one year of affordable housing experience.

(43) **Capacity and prior performance.** Each Applicant must demonstrate and document the degree of expertise of Applicant and Owner, the Development Team, general partner, management, and principals thereof in the use of TCAs in the development, rehabilitation and/or conversion, management and operation of properties related to the type of the proposed Development. Instances of nonperformance include, but are not limited to:

- (A) having been involved in uncured financing defaults, foreclosures, or placement on HUD's list of debarred contractors;
- (B) events of material uncorrected noncompliance with any Federal or State assisted housing programs within the prior seven (7) years;
- (C) the appointment of a Receiver; conviction on a felony criminal charge; or bankruptcy within the prior seven (7) years;
- (D) removal as a general partner/managing member;
- (E) failure to meet and maintain any material aspect of a Development as represented in a Development Application;
- (F) failure to meet and maintain minimum property standards;
- (G) failure to bring any Development back into compliance after receiving written notice from OHFA's Compliance Staff.
- (H) failure to comply with OHFA's requests for information or documentation on any Development funded or administered by OHFA;
- (I) Extension requests depending on number and severity; and/or
- (J) excessive late or incomplete reports to OHFA.

(4) **Waiver of Qualified Contract.** Applicants applying for Affordable Housing Tax Credits must waive their right

to a Qualified Contract. Waiving the right to a Qualified Contract will not prohibit the Applicant from selling the Tax Credit Development after the initial 15-year compliance period. However, it will require the Tax Credit Development itself to remain Affordable for a minimum of 30 years.

(5) **Acquisition Credits.** Applicants requesting acquisition Credits must provide an opinion of independent unrelated counsel, in a form satisfactory to OHFA, that the requirements of Code Section 42(d)(2)(B) have been met or a waiver obtained from the IRS.

(6) **Financial feasibility and viability.** Applicants must demonstrate that there are Commitments to the Development's financial feasibility and viability as a qualified low-income housing Development. Applicants must demonstrate to OHFA's satisfaction that the Applicant has financing Commitments for one hundred percent (100%) of the project's total estimated construction and permanent financing. Items required to be included in financing Commitments will be established in the AP. Requirements set out in 36-4-2.1 (b)(c) and (d) are part of the analysis for financial feasibility.

(7) **Readiness to proceed.** Applicants must demonstrate readiness to proceed in a timely manner should they be awarded a TCA. Factors that may be considered regarding Development readiness may include but not be limited to:

- (A) Site Control;
- (B) preliminary plans or specifications;
- (C) proper zoning for the proposed Development; and

(8) **Certifications.** Refer to the application for required certification attachments to be completed.

(9) **Fair Housing Training.** Refer to the application for details regarding what training sessions OHFA will accept for the Developer, Architectural firm, general contractor, and managers.

(810) **Capital Needs Assessment.** All Applications for rehabilitation will be accompanied by a Capital Needs Assessment as established in the AP.

(912) **Development amenities.** Each Application will be analyzed and evaluated as to Commitments made therein for the provision of amenities. Amenities and documentation requirements will be established in the AP.

(c) **Selection Criteria.** The Selection Criteria, documentation, and points shall be set forth in the AP. Selection may include, but not necessarily be limited to the following:

(1) **Income targeting.** Each Application will be analyzed and evaluated as to the extent to which it is demonstrated therein a Commitment to target lower-income populations.

(2) **Term of affordability.** Each Application will be analyzed on its ability and evaluated as to any Commitments made therein in regard to serving qualified tenants for a period of time longer than the minimum required by the Code.

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- (3) **Development location.** Each Application will be analyzed and evaluated as to the location for the proposed Development.
- (4) **Tenant/Targeted Populations.** Each Application will be analyzed and evaluated as to the extent to which Commitments are made therein to serve such Targeted Populations as are designated in the AP.
- (5) **Tenant Populations of Individuals with Children.** Each Application will be analyzed and evaluated as to the extent to which it serves tenant populations with children.
- (6) **Tenant ownership.** Applicants proposing single family home ownership after the Compliance Period must submit a detailed plan which includes projections on maintenance, tenant reserve funds, etc., which will be evaluated for feasibility.
- (7) **Preservation of affordable housing.** Each Application will be analyzed and evaluated to how an Application is preserving affordable housing.
- (8) **Energy Efficiency/Green Building of a Development.** Applicants are encouraged to provide energy efficient Developments and to utilize green building. This may be a separate point category, or it may be combined within another Threshold or Selection category.
- (9) **Historic Nature of a Development.** This may be a separate point category, or it may be combined within another Threshold or Selection category.
- (10) **Subsidy per Unit- An application is scored on the extent to which it proposes to use the least amount of Federal Affordable Housing Tax Credits per Tax Credit unit.**
- ~~(4011)~~ **Negative Points.** OHFA Staff may deduct points for records of poor performance.
- ~~(4412)~~ **Tie-breaker.** In case there are Applications with the same final score in any set-aside that will affect funding, the tie-breaker procedure will be established in the AP.
- (d) **OHFA Trustee discretion.** Notwithstanding the point ranking under the Selection Criteria set forth above under 330:36-4-2(c), the Trustees may in their sole discretion allocate Credits to a project irrespective of its point ranking, if Allocation is:
- (1) in compliance with Code Section 42;
 - (2) in furtherance of the housing goals set forth herein, in the AP or any formally adopted Resolution of the Trustees; and
 - (3) determined by the Trustees to be in the interests of the citizens of the State.
- 330:36-4-2.1. General program requirements and limitations**
- (a) **General.**
[RESERVED]
- (b) **Developer Fee limitations.** The amount of allowable Developer Fees shall be established in the AP.
- (c) **Contractor Fee limitation.** Allowable contractor fees shall be established in the AP.
- (d) **Underwriting standards.**
- (1) **Total reserves.**
- (A) Minimum reserves must equal the sum of six months of each:
 - (i) projected operating expenses
 - (ii) debt service payments and
 - (iii) replacement reserve payments.
 - (B) Minimum replacement reserves will be established in the AP.
 - (C) Developer guarantees or letters of credit may be accepted in lieu of operating reserves, at the discretion of OHFA. The Developer must demonstrate financial capacity and liquidity. OHFA will also consider the Developer's performance record and the number of other guarantees outstanding.
- (2) **Debt service coverage.**
- (A) Debt service coverage means the ratio of a property's net operating income to debt service obligations.
 - (B) The minimum acceptable debt service coverage ratio will be established in the AP.
- (3) **Projections.** All projections and pro-formas must contain realistic operating expense and vacancy rate projections consistent with prevailing market conditions.
- (4) **Cost limits.** Costs per unit must be realistic. Specific cost per unit criteria will be established in the AP. OHFA encourages cost efficient production, but will not give a preference solely for lowest construction costs.
- (5) **Minimum Hard Construction Costs per unit for rehabilitations.** Minimum Hard Construction Costs will be established in the AP.
- (6) **Buildings designated by OHFA to receive increase in Credit.** OHFA will allow up to one hundred thirty percent (130%) boost for reasons determined and identified in the AP.
- (e) **Progress reports.**
- (1) Progress reports must be filed by the Owner beginning with the calendar quarter following the approval of a reservation of Credits until the Final Allocation Application is submitted to OHFA. Due Dates are January 10, April 10, July 10 and October 10. The report must contain, at a minimum, the status of site preparation and/or construction, including the percentage of completion of each Building, and costs incurred to date. The report must address any other requirements set forth in a Resolution of the Trustees and/or the Carryover Agreement, or as OHFA may designate. Within thirty (30) calendar days after the Certificate of Occupancy is issued for each Building in the project, the Owner must submit a copy of the Permanent Certificate of Occupancy and the Placed-In-Service Acknowledgement for that Building. Remedies for violation of these provisions include those denoted at 330:36-6-3, including but not limited to return of Credits.
 - (2) Compliance progress reports are required as outlined in the compliance manual.
- (f) **Construction time period.** Construction must begin within nine (9) months of the last calendar day of the month of the Credit Reservation, unless extended for cause by OHFA.

Remedies for violation of these provisions include those denoted at 330:36-6-3, including but not limited to return of Credits.

(g) **Additional requirements.** OHFA may, as it deems necessary in its sole discretion, impose additional requirements or Program limitations on any Applicant, Owner, or Development. Said requirements or limitations may be set forth in a Resolution of the Trustees, in any contract between the Applicant or Owner and OHFA, or in any other document deemed acceptable in OHFA's sole discretion.

(h) **Timeliness and completeness of filings.** Deadlines for filing Applications will be established in the AP. Should OHFA request additional information, the deadline for filing same with OHFA will be set forth in the letter requesting same. Applicants/Owners must strictly comply with all deadlines and all filings must be complete when filed.

330:36-4-3. Fees

(a) **General.** Application and TCA Fees will be used to support overall OAHTC Program delivery and operation activities. Fees are nonrefundable.

(1) **Application fees.** All Applications will pay a \$2,000 fee with each submission of an Application.

(2) **Allocation fee.** A nonrefundable Allocation fee shall be paid in an amount equal to eleven percent (11%) of the total TCA, but in any event not less than \$1,000.00. The Allocation fee is due within fourteen (14) calendar days of notification from OHFA of the approval of a TCA. A Carryover Allocation Agreement will not be executed, nor will Form 8609(s) be issued unless this fee has been received by OHFA. Nonpayment may result in revocation of Credits.

(3) **Processing fee.** A nonrefundable processing fee of one percent (1%) of the TCA must accompany the request for a Final Allocation. Form 8609(s) will not be issued unless this fee has been received by OHFA.

(4) **Regulatory Agreement filing fee.** An executed Regulatory Agreement must be submitted to OHFA, as part of the request for Final Allocation, and be accompanied by a check payable to the County Clerk of the county or counties in which the Development is located. The check or checks shall be in an amount sufficient to cover the filing fees of the county or counties.

(5) **Compliance monitoring fees.** In addition to the documentation required by OHFA, an annual compliance monitoring fee shall be paid to OHFA. The compliance fee is payable on or before January 28th for each year during the Compliance Period and Extended Use Period subject to annual adjustment. If the Development includes scattered sites, a compliance monitoring fee for each site shall be paid to OHFA. If the compliance fee is not paid within thirty (30) calendar days of the Due Date, then a Late Fee will be assessed. The Late Fee is equal to twenty five percent (25%) of the compliance fee. Failure to remit timely payment of compliance monitoring fees may result in the filing by OHFA of a lien against the Development. The compliance monitoring fee shall be computed as follows:

(A) For Developments financed by RHS under the Section 515 (and otherwise qualify under the Code) receiving a TCA in 2011 or before where an agreement has been entered into between OHFA and RHS wherein the RHS agrees to provide OHFA with the required information respecting the Income and rent of the tenants in the Development, the fee shall be ~~\$240.00~~ \$315.00 per Development per year, plus ~~42.00~~ \$14.00 per OAHTC unit per year within any Building within the Development;

(B) For single site or contiguous site Developments of four units or less, the fee shall be ~~\$275.00~~ \$350.00 per Development per year.

(C) For all other Developments including those financed by RHS under Section 515 receiving a TCA in 2012 or later the fee shall be ~~\$375.00~~ \$450.00 per Development, plus ~~\$21.00~~ \$23.00 per OAHTC unit per year within any Building within the Development.

(D) Single-family homes or duplexes regardless if scattered or on the same tract of land \$525.00 flat fee + \$30.00 per unit.

(E) Developments selecting Income Averaging as the Minimum-Set- Aside will have an additional flat fee of \$150.00 in addition to the applicable items in (a-d) above.

(6) **Additional monitoring fees.** In the event of non-compliance with the Code or Regulatory Agreement or these Chapter 36 Rules requiring OHFA to conduct an examination of the Owner, any Building within the Development or any documentation to verify correction of said noncompliance, OHFA shall be reimbursed its costs by the Development or Owner for such an examination, including an hourly rate for the OHFA examiner, not to exceed \$35.00 per hour, plus any and all actual travel, lodging and per diem expenses of such examiner. Such reimbursement of expenses and costs shall be paid to OHFA within ten (10) calendar days of receipt of OHFA's statement of same.

(7) **Ownership/General Partner Transfer fee.** In the event that the Owner submits a request for approval of a Transfer of Ownership/general partner of the Development or any of the Buildings therein, a nonrefundable fee of \$7,500.00, shall be imposed to cover OHFA's costs of handling the request. This fee shall accompany the request. If additional transfers are submitted at the same time and are essentially the same parties involved, then each additional transfer will be \$4,000.

(8) **Management Transfer fees.** In the event that the Owner submits a request for approval of a Transfer of the management company of the Development, a ~~\$500.00~~ \$650.00 fee per Development shall be imposed to cover OHFA's costs of handling the request. This fee shall accompany the request and shall be nonrefundable.

(9) **Copies of Rules.** Copies of these Chapter 36 Rules can be accessed via OHFA's website, www.ohfa.org. If a copy is requested, then a charge to defray production will be charged.

~~(10) **Compliance Workshops.** A cost sufficient to defray the total cost of the presentation will be charged for attendance at the Compliance Workshop.~~

~~(11)~~ **Qualified Contract fees.** Submission deadlines for these fees will be established in the Qualified Contract Application (QCA) materials. Qualified Contract Preliminary Application (QCPA) fee shall be \$1,500.00 and is nonrefundable. Additionally, the nonrefundable Qualified Contract Application fee shall be \$12,500.00 plus any third party fees and expenses incurred by OHFA and not paid directly by the Applicant. Third party fees and expenses include but are not limited to appraisals for the entire property, market study, title reports, environmental reports, accountants review and reports, and legal services. This is not an all-inclusive listing. Any third party fees and expenses incurred by OHFA will be identified and Applicants will receive notice of the charge and reason.

~~(12)~~ **Late fees.** The Form 8609(s) will not be issued unless these fees have been received by OHFA.

(A) **Progress reports.** Progress reports as required in 36-4-2.1 when filed late will be assessed a late fee of \$10.00 per calendar day, per each late report.

(B) **Carryover Allocations.** Owners who fail to timely file all requirements in the AP as to Agreement, Application, ten percent (10%) cost Certifications, opinions and documents shall incur \$100.00 late fee per calendar day.

(C) **Final Allocations.** Owners who fail to timely file all requirements in the AP as to the Regulatory Agreement, Application, cost Certifications, opinions and documents shall incur \$100.00 late fee per calendar day.

(D) **Transfer Documents.** Owners who fail to timely file all requirements in regard to the Transfer of Ownership or general partnership interest (or other type of entity) may incur \$25.00 late fee per calendar day.

(E) **Acknowledgment of Placed-In-Service Form.** Owners who fail to timely file an Acknowledgment of Placed-In-Service Form in accordance to timelines established in the AP shall incur \$10 late fee per calendar day.

(F) **Annual Owner Certifications.** Owners who fail to file a complete Annual Owner Certification as required in 36-6-7(c)(4) within thirty (30) days of the Due Date shall incur a \$50 per Development late fee per calendar day for the signed certification and a \$150 per unit late fee for failure to file in the electronic format prescribed by OHFA.

SUBCHAPTER 6. PROGRAM ADMINISTRATION

330:36-6-7. OHFA monitoring procedures

(a) **General.** Section 42(m)(1)(B)(iii) of the Code mandates that state housing Credit agencies monitor all Placed-In-Service tax Credit projects for compliance with the provisions

of Section 42. The Code also mandates that the Internal Revenue Service be notified, by the state housing agencies, of any instances of noncompliance, this includes failure to comply with the Code and federal regulations and these Chapter 36 Rules, as well as failure to pay all compliance fees in a timely manner. OHFA will also monitor for compliance with the Regulatory Agreement provisions which contain additional Owner Commitments made to secure points in the project selection process, e.g. additional Low-Income Units or an Extended Use Period. OHFA has assembled and will make available to the Development Owners, a Compliance Manual explaining the OAHTC monitoring process in detail. An Owner representative and a management agent representative will be required to successfully complete a compliance training session conducted by OHFA or approved by OHFA and submit proof thereof with the first Quarterly report. OHFA will monitor the documents and Certifications set forth in 330:36-6-7(b) and (c) for compliance with the Code.

(b) **Record keeping and record retention provisions.**

(1) The Owner of a low-income housing project is required to keep records for each qualified low-income Building in the project showing:

(A) The total number of residential units in the Building (including the number of bedrooms and the size in square feet of each residential rental unit);

(B) The percentage of residential rental units in the Building that are Low-Income Units;

(C) The rents charged on each residential rental unit in the Building (including any utility allowances);

(D) The number of occupants in each Low-Income Unit;

(E) The Low-Income Unit vacancies in the Building and information that shows when, and to whom the next available units were rented;

(F) The initial Income Certification of each low-income tenant per unit, and any additional recertification that may be required;

(G) Documentation to support each low-income tenant's Income Certification;

(H) The Eligible Basis and qualified basis of the Building at the end of the first year of the Credit period;

(I) The character and use of the nonresidential portion of the Building included in the Building's Eligible Basis under Section 42(d) of the Code (e.g. tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project); and

(J) Copies of all correspondence with the IRS.

(2) The Owner is required to retain the records described in this section for each Building in the project for at least six (6) years after the Due Date (with extensions) for filing the federal income tax return for that year. The records for the first year of the Credit period must be retained for at least six (6) years beyond the Due Date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the Building.

(c) **Certification and review provisions.**

(1) Between the Placed-In-Service date of a Building and the submission of an Application for a final Allocation of Credits, and prior to the issuance of an 8609, OHFA may physically inspect the property. An on-site review will again be conducted within the following year as described in 330:36-6-7 (c) (6) of these Rules.

(2) In accordance with Section 42(l) (1), following the close of the first taxable year in the Credit period, the Owner must certify to the Secretary of the Treasury:

- (i) the taxable year in which such Building was Placed-In-Service,
- (ii) the adjusted basis and Eligible Basis as of the close of the first year of the Credit period,
- (iii) the maximum applicable percentage and qualified basis, and
- (iv) the election made for the low-income targeting threshold.
- (v) This Certification is accomplished by completing Part II of the 8609(s). A copy of the completed 8609(s) must also be submitted to OHFA. The Due Date for submission is May 10, or as extended by The Service or Staff, of the year due to The Service for the first Credit year.

(3) Owners must prepare and submit a quarterly report beginning with the first full calendar quarter after the last Building is Placed-In-Service, and for the subsequent three quarters. This report must be accompanied by copies of the Tenant Income Certifications for each tenant and new move-ins for the appropriate quarter. If a project is determined not to be in compliance with Program requirements or there is indication of possible noncompliance, OHFA, at its discretion, may require reports each quarter until compliance is demonstrated.

(4) The Owner of a low-income housing project is required to certify annually, in a form prescribed by OHFA, that for the preceding 12-month period:

- (A) The project met the requirements of the 20-50 or 40-60 test under Section 42(g)(I) of the Code, whichever Minimum set-aside is applicable to the project, and, if applicable to the project, the 15-40 test under Section 42(g)(4) for "deep rent skewed" projects;
- (B) There was no change in the Applicable Fraction (as defined in Section 42(c) (1) (B)) of any Building in the project, or that there was a change and a description of the change;
- (C) The Owner has received an Income Certification from each low-income tenant and documentation to support that Certification;
- (D) Each Low-Income Unit in the project was Rent-Restricted under Section 42(g) (2);
- (E) All units in the project were for use by the general public and used on a nontransient basis (except for Transitional Housing for the Homeless);
- (F) Each Building in the project was suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards),

and the State or local government unit responsible for making building code inspections did not issue a report of a violation for any Building or Low-Income Unit in the project;

(G) There was no change in the Eligible Basis (as defined in Section 42(d)) of any Building in the project, or that there was a change, and the nature of that change;

(H) All tenant facilities included in the Eligible Basis under Section 42(d) of any Building in the project, such as swimming pool, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the Building;

(I) If a Low-Income Unit in the project became vacant during the year, reasonable attempts were, or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying Income before any units in the project were, or will be rented to tenants not having a qualifying Income;

(J) If the Income of the tenant of a Low-Income Unit in the project increased above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was, or will be, rented to tenants having a qualifying Income;

(K) An extended Low-Income Housing Commitment, as described in Section 42 (h)(6), was in effect;

(L) The project meets the additional requirements contained in the Regulatory Agreements;

(M) There was no change in the Owner entity (for example, Transfer of general partnership interest);

(N) If the Owner received its Credit Allocation from a portion of the State's ceiling set-aside for projects involving "qualified Nonprofit organizations" under Section 42(h)(5) of the Code, the Non-profit organization has materially participated in the operation of the Development (within the meaning of CFR § 1.469) and complete the Nonprofit Addendum or other form prescribed by OHFA;

(O) No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred for this project. A finding of discrimination includes an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 361a(a)(1), or an adverse judgment from federal court; and

(P) An extended Low-Income Housing Commitment as described in Section 42(h)(6) was in effect, that an Owner cannot refuse to lease a unit in a project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s.

(Q) Collect data required by HUD in a form prescribed by OHFA. In no way will the data collection be in violation of Fair Housing.

(5) OHFA will review the Owner Certifications submitted pursuant to 330:36-6-7(c)(4), for compliance with the requirements of Section 42 of the Code.

(6) OHFA must and will conduct on-site inspections of all Buildings in the project by the end of the second calendar year following the year the last Building in the project is Placed-In-Service, and for at least twenty (20) percent of the project's Low-Income Units, inspect the units and review the low-income Certifications, the documentation supporting the Certifications, and the rent records for the tenants in those units.

(7) At least once every three (3) years through the Extended Use Period, OHFA must conduct on-site inspections of all Buildings. Refer to the application for number of units to be inspected based on size of property according to amended compliance monitoring regulation 1.42-.5. ~~in the project and, for at least twenty percent (20%) of the project's Low Income Units.~~ Staff will inspect the units and review the low-income Certifications, the documentation supporting the Certifications, and the rent records for the tenants in those units.

(8) The Certifications and reviews of paragraphs 330:36-6-7(c)(2) and (c)(4) of these Chapter 36 Rules are required to be made at least annually until the end of the Extended Use Period, and the Certifications are to be made under penalty of perjury.

(9) The Owner is required to provide to OHFA, for the first Credit year, a copy of the completed Part II 8609, 8609 Schedule A and Form 8586 that is submitted to the Internal Revenue Service.

(10) The Owner is required to provide to OHFA, as it occurs, copies of all correspondence with the Internal Revenue Service.

(d) **Auditing/compliance provisions.** OHFA has the right to perform an audit and/or compliance inspection of any low-income housing project during the term of the Regulatory Agreement. An audit/compliance inspection includes physical inspection of any Building in the project, as well as a review of the records described in 330:36-6-7(c)(1) of these Chapter 36 Rules. The auditing/compliance inspection provisions of this paragraph is in addition to any inspection of low-income Certifications and documentation under 330:36-6-7(c)(7) of this Chapter 36 Rules.

(e) **Notification of noncompliance provisions.**

(1) OHFA will provide prompt written notice to the Owner of a low-income housing project if OHFA does not receive the Certification described in 330:36-6-7(c)(4) of these Chapter 36, or does not receive, or is not permitted to inspect, the tenant Income Certification supporting documentation and rent records, or discovers on audit, inspection review, or in some other manner, that the project is not in compliance with the Code or these Chapter 36 rules. The Owner shall have a period of time, not to exceed forty-five (45) thirty (30) calendar days, from the date of such notice (the "correction period") to supply any missing Certifications and bring the project into compliance. OHFA may extend, in its own discretion, the correction period for up to an additional thirty (30) calendar days for good cause.

(2) OHFA must file IRS Form 8823 Report of Noncompliance with the Internal Revenue Service no later than

forty-five (45) calendar days after the end of the correction period whether or not the noncompliance or failure to certify is corrected. OHFA will explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the Owner has corrected the noncompliance or failure to certify. Any change in either the Applicable Fraction or Eligible Basis that results in a decrease in the qualified basis of the project under Section 42(c)(1)(A) is an event of noncompliance that must be reported under this paragraph.

SUBCHAPTER 8. QUALIFIED CONTRACT

330:36-8-5. Policies and Procedures

(a) LIHTC Developments that received an Allocation of Credits ~~in between 1990-2018 or subsequent years~~ are eligible to submit a Qualified Contract Preliminary Application (QCPA) after the end of year 14 of the Compliance Period. This is available unless the Owner voluntarily waives the right to a Qualified Contract in the Application.

(b) OHFA will develop a Qualified Contract Application (QCA) process to administer requests from eligible Owners for a Qualified Contract pursuant to Code Section 42(h)(6)(E)(i)(II).

(c) In keeping with the clear purpose of IRS Code Section 42, OHFA will resolve every case of doubt or interpretation in determining the Qualified Contract Price (QCP), both with regard to the overall process and for particular properties, in favor of a lower value.

[OAR Docket #20-574; filed 7-9-20]

TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY CHAPTER 50. SECTION 8 EXISTING HOUSING PROGRAM RULES

[OAR Docket #20-575]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Chapter 50. Section 8 Existing Housing Program Rules [AMENDED]

AUTHORITY:

Board of Trustees of OHFA; Amended Trust Indenture of OHFA and Bylaws of OHFA; 60 O.S. § 176; 75 O.S. § 250.3(3.)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 24, 2020

COMMENT PERIOD:

January 24 through March 20, 2020

PUBLIC HEARING:

March 20, 2020

ADOPTION:

March 25, 2020

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March 30, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

January 1, 2021

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The Section 8 Housing Choice Voucher Program (the Program) is extensively regulated by federal statutes and regulations, which are added to, deleted, or modified from time to time. OHFA must comply with those modifications when they become effective. The amended Section 8 Existing Housing Program Rules provide the Board of Trustees the flexibility to revise the Program by revising the federally-required Administrative Plan rather than by the more cumbersome means of administrative rulemaking. Revisions may be required by changing laws and regulations, by lessons learned, or by external circumstances that make revisions to the Program advisable to make it more effective, efficient, and a better steward of the public resources entrusted to it.

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DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7- 12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT OKLAHOMA HOUSING FINANCE AGENCY, 100 NORTHWEST 63RD STREET, SUITE 200, OKLAHOMA CITY AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):

Subchapter 1. Statement of Policies and Objectives

Part 1. Introduction

Oklahoma Administrative Code (OAC) 330:50-1-1 is amended to indicate that the U.S. Department of Housing and Urban Development (HUD) regulations, 24 C.F.R. §982.54, require the Oklahoma Housing Finance Agency (OHFA) to have an Administrative Plan to administer the Section 8 Housing Choice Voucher Program. This regulation prescribes certain policies that must be in the Administrative Plan as promulgated by federal statutes and regulations, which are added to, deleted, or modified from time to time. In addition, the OHFA Board of Trustees are charged with the general policy-making and superintendence over the Agency and may authorize revisions to the Administrative Plan to ensure OHFA is compliant with the changing laws and regulations. Subchapter 1. Statement of Policies and Objectives

Part 2. OHFA Objectives

OAC 330:50-1-2 is amended to indicate that rather than engaging in extensive and ongoing rulemaking in an attempt to keep up with changes in controlling federal law or circumstances

affecting the Agency and its performance, the Trustees have elected to set forth the federal, state,

and prudential requirements of the Section 8 Program in the Administrative Plan itself, which

may be amended from time to time. The Administrative Plan is available to the public on

OHFA's website and is available for review at OHFA's office in Oklahoma City. Furthermore,

administration of the Section 8 Program and the functions and responsibilities of the Oklahoma

Housing Finance Agency staff shall be in compliance with the Administrative Plan, OHFA's

Personnel Policy and the U.S. Department of Housing and Urban Development's (HUD)

Regulations as well as all Federal, State and local Fair Housing Laws and Regulations as

interpreted and directed by the Trustees and implemented by OHFA staff. If HUD's regulatory

requirements conflict with these rules, HUD regulations will have precedence. Subchapter 1. Statement of Policies and Objectives

Part 3. Purpose

OAC 330:50-1-3 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations have precedence over the policies and objectives governing these programs

and OHFA must comply with HUD requirements. Subchapter 1. Statement of Policies and Objectives

Part 4. Definitions

OAC 330:50-1-4 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations have precedence over the policies and objectives governing these programs

and OHFA must comply with HUD's definitions. Subchapter 1. Statement of Policies and Objectives

Part 5. Fair Housing Policy

OAC 330:50-1-5 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local non-discrimination laws have precedence

over these programs. Subchapter 1. Statement of Policies and Objectives

Part 6. Service Policy/Accommodations

OAC 330:50-1-6 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local reasonable accommodation laws have

precedence over these programs.

Subchapter 1. Statement of Policies and Objectives

Part 7. Translation of Documents

OAC 330:50-1-7 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 1. Statement of Policies and Objectives

Part 8. Family Outreach

OAC 330:50-1-8 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 1. Statement of Policies and Objectives

Part 9. Owner Outreach

OAC 330:50-1-9 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 1. Statement of Policies and Objectives

Part 10. Privacy Rights

OAC 330:50-1-10 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws regarding privacy and confidentially

have precedence over these programs. Subchapter 1. Statement of Policies and Objectives

Part 11. Equal Employment Opportunity

OAC 330:50-1-11 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws regarding employment have

precedence over these programs. Subchapter 1. Statement of Policies and Objectives

Part 12. Rules and Regulations

OAC 330:50-1-12 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs.

Subchapter 1. Statement of Policies and Objectives

Part 13. Jurisdiction

OAC 330:50-1-13 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations, agreements, and state laws govern. Subchapter 1. Statement of Policies and Objectives

Part 14. Monitoring Program Performance

OAC 330:50-1-14 is revoked since the U.S. Department of Housing and Urban Development's

Permanent Final Adoptions

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 3. Eligibility for Admission

Part 1. Introduction

OAC 330:50-3-1 is revoked since the U.S. Department of Housing and Urban Development's (HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 3. Eligibility for Admission

Part 2. Eligibility Factors

OAC 330:50-3-2 is revoked since the U.S. Department of Housing and Urban Development's (HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 3. Eligibility for Admission

Part 3. Family Composition

OAC 330:50-3-3 is revoked since the U.S. Department of Housing and Urban Development's (HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 3. Eligibility for Admission

Part 4. Head of Household

OAC 330:50-3-4 is revoked since the U.S. Department of Housing and Urban Development's (HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 3. Eligibility for Admission

Part 5. Spouse Head

OAC 330:50-3-5 is revoked since the U.S. Department of Housing and Urban Development's (HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 3. Eligibility for Admission

Part 6. Live-In Attendants

OAC 330:50-3-6 is revoked since the U.S. Department of Housing and Urban Development's (HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 3. Eligibility for Admission

Part 7. Split Households Prior to Certificate/Voucher Issuance

OAC 330:50-3-7 is revoked since the U.S. Department of Housing and Urban Development's (HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 3. Eligibility for Admission

Part 8. Multiple Families in the Same Household

OAC 330:50-3-8 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 3. Eligibility for Admission

Part 9. Joint Custody of Children

OAC 330:50-3-9 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 3. Eligibility for Admission

Part 10. Income Limits

OAC 330:50-3-10 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 3. Eligibility for Admission

Part 11. Mandatory Social Security Numbers

OAC 330:50-3-11 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 3. Eligibility for Admission

Part 12. Citizenship/Eligible Immigration Status

OAC 330:50-3-12 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 3. Eligibility for Admission

Part 13. Other Criteria for Admission

OAC 330:50-3-13 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs.

Subchapter 3. Eligibility for Admission

Part 14. Suitability of Family

OAC 330:50-3-14 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 3. Eligibility for Admission

Part 15. Changes in Eligibility Prior to Effective Date of the Contract

OAC 330:50-3-15 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 3. Eligibility for Admission

Part 16. Ineligible Families

OAC 330:50-3-16 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 5. Applying For Admission

Part 1. Introduction

OAC 330:50-5-1 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 5. Applying For Admission

Part 2. How to Apply

OAC 330:50-5-2 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 5. Applying For Admission

Part 3. Opening of Application Taking

OAC 330:50-5-3 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 5. Applying For Admission

Part 4. When Application Taking is Suspended

OAC 330:50-5-4 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 5. Applying For Admission

Part 5. Limits on Who May Apply

OAC 330:50-5-5 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 5. Applying For Admission

Part 6. "Initial" Application Procedures

OAC 330:50-5-6 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 5. Applying For Admission

Part 7. Notification of Applicant Status

OAC 330:50-5-7 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 5. Applying For Admission

Part 8. Time of Selection

OAC 330:50-5-8 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 5. Applying For Admission

Part 9. Completion of a full application

OAC 330:50-5-9 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 5. Applying For Admission

Part 10. Requirement to attend interview
OAC 330:50-5-10 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over
these programs. Subchapter 5. Applying For Admission
Part 11. Selection of certificate or voucher
OAC 330:50-5-11 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over
these programs. Subchapter 5. Applying For Admission
Part 12. Final determination and notification of eligibility
OAC 330:50-5-12 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over
these programs. Subchapter 7. Establishing Preferences and Maintaining the Waiting List
Part 1. Introduction
OAC 330:50-7-1 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over
these programs. Subchapter 7. Establishing Preferences and Maintaining the Waiting List
Part 2. Application pool
OAC 330:50-7-2 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over
these programs. Subchapter 7. Establishing Preferences and Maintaining the Waiting List
Part 3. Special admissions
OAC 330:50-7-3 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over
these programs. Subchapter 7. Establishing Preferences and Maintaining the Waiting List
Part 4. Waiting list preferences
OAC 330:50-7-4 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over
these programs. Subchapter 7. Establishing Preferences and Maintaining the Waiting List
Part 5. Local preferences
OAC 330:50-7-5 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over
these programs. Subchapter 7. Establishing Preferences and Maintaining the Waiting List
Part 6. Exceptions for special admissions
OAC 330:50-7-6 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over
these programs. Subchapter 7. Establishing Preferences and Maintaining the Waiting List
Part 7. Targeted funding
OAC 330:50-7-7 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over
these programs. Subchapter 7. Establishing Preferences and Maintaining the Waiting List
Part 8. Preference eligibility
OAC 330:50-7-8 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 7. Establishing Preferences and Maintaining the Waiting List
Part 9. Order of selection
OAC 330:50-7-9 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over
these programs. Subchapter 7. Establishing Preferences and Maintaining the Waiting List
Part 10. Final verification of preferences
OAC 330:50-7-10 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over
these programs. Subchapter 7. Establishing Preferences and Maintaining the Waiting List
Part 11. Preference denial
OAC 330:50-7-11 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over
these programs. Subchapter 7. Establishing Preferences and Maintaining the Waiting List
Part 12. Removal from waiting list and purging
OAC 330:50-7-12 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over
these programs. Subchapter 9. Subsidy Standards
Part 1. Introduction
OAC 330:50-9-1 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over
these programs. Subchapter 9. Subsidy Standards
Part 2. Determining Certificate/Voucher Size
OAC 330:50-9-2 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over
these programs. Subchapter 9. Subsidy Standards
Part 3. Changes in Certificate/Voucher Size for Applicants
OAC 330:50-9-3 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over
these programs. Subchapter 9. Subsidy Standards
Part 4. Changes in Certificate/Voucher Size for Participants
OAC 330:50-9-4 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over
these programs. Subchapter 9. Subsidy Standards
Part 5. Unit size selected
OAC 330:50-9-5 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over
these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 1. Introduction
OAC 330:50-11-1 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over
these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 2. Income and Allowances
OAC 330:50-11-2 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over
these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination

Permanent Final Adoptions

Part 3. Definition of Temporarily/Permanently Absent
OAC 330:50-11-3 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 4. Absence of Entire Family
OAC 330:50-11-4 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 5. Absence of Any Member
OAC 330:50-11-5 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 6. Absence Due to Medical Reasons
OAC 330:50-11-6 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 7. Absence Due to Incarceration
OAC 330:50-11-7 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 8. Foster Care and Absences of Children
OAC 330:50-11-8 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 9. Absence of Adult
OAC 330:50-11-9 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 10. Visitors
OAC 330:50-11-10 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 11. Reporting Additions to Owner and OHFA
OAC 330:50-11-11 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 12. Reporting Absences to OHFA
OAC 330:50-11-12 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 13. Averaging Income
OAC 330:50-11-13 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 14. Minimum Income
OAC 330:50-11-14 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 15. Income of Person Permanently Confined to Nursing Home

OAC 330:50-11-15 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 16. Regular contributions and gifts
OAC 330:50-11-16 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 17. Alimony and child support
OAC 330:50-11-17 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 18. Lump-Sum Receipts
OAC 330:50-11-18 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 19. Contributions to Retirement Funds - Assets
OAC 330:50-11-19 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 20. Assets Disposed of for Less than Fair Market Value
OAC 330:50-11-20 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 21. Child Care Expenses
OAC 330:50-11-21 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 22. Medical Expenses
OAC 330:50-11-22 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 23. Proration of Assistance for "Mixed" Families
OAC 330:50-11-23 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 24. Reduction in Benefits
OAC 330:50-11-24 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 11. Factors Related To Total Tenant Payment Determination
Part 25. Utility Allowance and Utility Reimbursement Payments
OAC 330:50-11-25 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 13. Verification Procedures
Part 1. Introduction
OAC 330:50-13-1 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 13. Verification Procedures
Part 2. Methods of Verification and Time Allowed
OAC 330:50-13-2 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 13. Verification Procedures

Part 3. Third-Party Written Verification
OAC 330:50-13-3 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 13. Verification Procedures
Part 4. Third-Party Oral Verification
OAC 330:50-13-4 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 13. Verification Procedures
Part 5. Review of Documents
OAC 330:50-13-5 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 13. Verification Procedures
Part 6. Self-Certification/Self-Declaration
OAC 330:50-13-6 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 13. Verification Procedures
Part 7. Release of Information
OAC 330:50-13-7 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 13. Verification Procedures
Part 8. Computer Matching
OAC 330:50-13-8 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 13. Verification Procedures
Part 9. Items to be Verified
OAC 330:50-13-9 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 13. Verification Procedures
Part 10. Verification of Income (Income Types)
OAC 330:50-13-10 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 13. Verification Procedures
Part 11. Income from Assets
OAC 330:50-13-11 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 13. Verification Procedures
Part 12. Verification of Assets
OAC 330:50-13-12 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 13. Verification Procedures
Part 13. Verification of Allowable Deductions from Income
OAC 330:50-13-13 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 13. Verification Procedures
Part 14. Verifying Non-Financial Factors
OAC 330:50-13-14 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 13. Verification Procedures
Part 15. Waiting List Preferences
OAC 330:50-13-15 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 15. Certificate/Voucher Issuance and Briefings
Part 1. Introduction
OAC 330:50-15-1 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 15. Certificate/Voucher Issuance and Briefings
Part 2. Issuance of Certificates/Vouchers

OAC 330:50-15-2 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 15. Certificate/Voucher Issuance and Briefings
Part 3. Initial Applicant Briefing
OAC 330:50-15-3 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 15. Certificate/Voucher Issuance and Briefings
Part 4. Applicant's Required Attendance
OAC 330:50-15-4 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 15. Certificate/Voucher Issuance and Briefings
Part 5. Briefing Packet
OAC 330:50-15-5 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 15. Certificate/Voucher Issuance and Briefings
Part 6. Other Information to be Provided at the Briefing
OAC 330:50-15-6 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 15. Certificate/Voucher Issuance and Briefings
Part 7. Encouraging Participation in Areas without Low Income or Minority Concentration
OAC 330:50-15-7 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 15. Certificate/Voucher Issuance and Briefings
Part 8. Assistance to Families who Claim Discrimination
OAC 330:50-15-8 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 15. Certificate/Voucher Issuance and Briefings
Part 9. Security Deposit Requirements
OAC 330:50-15-9 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 15. Certificate/Voucher Issuance and Briefings
Part 10. Term of Certificate/Voucher
OAC 330:50-15-10 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 15. Certificate/Voucher Issuance and Briefings
Part 11. Suspensions of Certificate/Voucher
OAC 330:50-15-11 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 15. Certificate/Voucher Issuance and Briefings
Part 12. Expirations of Certificate/Voucher
OAC 330:50-15-12 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 15. Certificate/Voucher Issuance and Briefings
Part 13. Extensions of Certificate/Voucher
OAC 330:50-15-13 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 15. Certificate/Voucher Issuance and Briefings
Part 14. Interchangeability Between Certificate and Voucher

Permanent Final Adoptions

OAC 330:50-15-14 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 15. Certificate/Voucher Issuance and Briefings

Part 15. Certificate/Voucher Issuance Determination for Split Households

OAC 330:50-15-15 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 15. Certificate/Voucher Issuance and Briefings

Part 16. Remaining Member of Tenant Family - Retention of Certificate/Voucher

OAC 330:50-15-16 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 17. Request for Lease Approval and Contract Executions

Part 1. Introduction

OAC 330:50-17-1 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 17. Request for Lease Approval and Contract Executions

Part 2. Request for Lease Approval

OAC 330:50-17-2 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 17. Request for Lease Approval and Contract Executions

Part 3. Eligible Types of Housing

OAC 330:50-17-3 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 17. Request for Lease Approval and Contract Executions

Part 4. Lease Review

OAC 330:50-17-4 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 17. Request for Lease Approval and Contract Executions

Part 5. Initial Inspections

OAC 330:50-17-5 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 17. Request for Lease Approval and Contract Executions

Part 6. Rent Limitations

OAC 330:50-17-6 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 17. Request for Lease Approval and Contract Executions

Part 7. Disapproval of Proposed Rent

OAC 330:50-17-7 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 17. Request for Lease Approval and Contract Executions

Part 8. Information to Owners

OAC 330:50-17-8 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 17. Request for Lease Approval and Contract Executions

Part 9. Owner Disapproval

OAC 330:50-17-9 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 17. Request for Lease Approval and Contract Executions

Part 10. Change in Total Tenant Payment (TTP) Prior to Housing Assistance Payment Effective Date

OAC 330:50-17-10 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 17. Request for Lease Approval and Contract Executions

Part 11. Contract Execution Process

OAC 330:50-17-11 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 17. Request for Lease Approval and Contract Executions

Part 12. Change in Ownership

OAC 330:50-17-12 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 19. Housing Quality Standards and Inspections

Part 1. Introduction

OAC 330:50-19-1 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 19. Housing Quality Standards and Inspections

Part 2. Guidelines/Types of Inspections

OAC 330:50-19-2 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 19. Housing Quality Standards and Inspections

Part 3. Acceptability Criteria and Exceptions to HQS

OAC 330:50-19-3 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 19. Housing Quality Standards and Inspections

Part 4. Inspections

OAC 330:50-19-4 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs.

Subchapter 19. Housing Quality Standards and Inspections

Part 5. Emergency Repair Items

OAC 330:50-19-5 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 19. Housing Quality Standards and Inspections

Part 6. Consequences if Owner is Responsible (Non-Emergency Items)

OAC 330:50-19-6 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 19. Housing Quality Standards and Inspections

Part 7. Determination of Responsibility

OAC 330:50-19-7 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 19. Housing Quality Standards and Inspections

Part 8. Consequences if Family is Responsible

OAC 330:50-19-8 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 19. Housing Quality Standards and Inspections

Part 9. Initial HQS Inspection

OAC 330:50-19-9 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 19. Housing Quality Standards and Inspections

Part 10. Annual HQS Inspection

OAC 330:50-19-10 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs.

Subchapter 19. Housing Quality Standards and Inspections

Part 11. Special/Complaint Inspections

OAC 330:50-19-11 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 19. Housing Quality Standards and Inspections

Part 12. Quality Control Inspections

OAC 330:50-19-12 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 21. Owner Rents, Rent Reasonableness, and Payment Standards

Part 1. Introduction

OAC 330:50-21-1 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 21. Owner Rents, Rent Reasonableness, and Payment Standards

Part 2. Owner Payment in the Certificate Program

OAC 330:50-21-2 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 21. Owner Rents, Rent Reasonableness, and Payment Standards

Part 3. Owner Payment in the Voucher Program

OAC 330:50-21-3 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 21. Owner Rents, Rent Reasonableness, and Payment Standards

Part 4. Making Payments to Owners

OAC 330:50-21-4 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 21. Owner Rents, Rent Reasonableness, and Payment Standards

Part 5. Rent Reasonableness Determinations

OAC 330:50-21-5 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 21. Owner Rents, Rent Reasonableness, and Payment Standards

Part 6. Payment Standards for the Voucher Program

OAC 330:50-21-6 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 21. Owner Rents, Rent Reasonableness, and Payment Standards

Part 7. Adjustments to Payment Standards

OAC 330:50-21-7 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 21. Owner Rents, Rent Reasonableness, and Payment Standards

Part 8. Rent Adjustments for Certificate Program

OAC 330:50-21-8 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 21. Owner Rents, Rent Reasonableness, and Payment Standards

Part 9. Rent Adjustments for the Voucher Program

OAC 330:50-21-9 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 23. Recertifications

Part 1. Introduction

OAC 330:50-23-1 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 23. Recertifications

Part 2. Annual Activities

OAC 330:50-23-2 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 23. Recertifications

Part 3. Annual Recertification/Reexamination

OAC 330:50-23-3 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 23. Recertifications

Part 4. Reexamination Notice to the Family

OAC 330:50-23-4 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 23. Recertifications

Part 5. Collection of Information

OAC 330:50-23-5 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 23. Recertifications

Part 6. Requirements to Attend

OAC 330:50-23-6 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 23. Recertifications

Part 7. Failure to Respond to Notification to Recertify

OAC 330:50-23-7 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 23. Recertifications

Part 8. Verification of Information

OAC 330:50-23-8 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 23. Recertifications

Part 9. Tenant Rent Increases

OAC 330:50-23-9 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 23. Recertifications

Part 10. Tenant Rent Decreases

OAC 330:50-23-10 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 23. Recertifications

Part 11. Reporting Interim Changes

OAC 330:50-23-11 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 23. Recertifications

Part 12. Increases in Income

OAC 330:50-23-12 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 23. Recertifications

Part 13. Decreases in Income

OAC 330:50-23-13 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 23. Recertifications

Part 14. OHFA Errors

OAC 330:50-23-14 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 23. Recertifications

Part 15. Other Interim Reporting Issues

OAC 330:50-23-15 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 23. Recertifications

Part 16. Notification of Results of Recertifications

OAC 330:50-23-16 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 23. Recertifications

Permanent Final Adoptions

Part 17. Implementing Changes in Income (and Assets)
OAC 330:50-23-17 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 23. Recertifications
Part 18. Procedures when the Change is Reported in a Timely Manner
OAC 330:50-23-18 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 23. Recertifications
Part 19. Procedures when the Change is Not Reported by the Tenant in a Timely Manner
OAC 330:50-23-19 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 23. Recertifications
Part 20. Procedures when the Change is Not Processed by OHFA in a Timely Manner
OAC 330:50-23-20 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 23. Recertifications
Part 21. Reporting of Changes in Family Composition
OAC 330:50-23-21 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 23. Recertifications
Part 22. Increases in Family Size
OAC 330:50-23-22 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 23. Recertifications
Part 23. Continuance of Assistance for "Mixed" Families
OAC 330:50-23-23 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 25. Moves With Continued Assistance/Portability
Part 1. Introduction
OAC 330:50-25-1 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 25. Moves With Continued Assistance/Portability
Part 2. Allowable Moves
OAC 330:50-25-2 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 25. Moves With Continued Assistance/Portability
Part 3. Restrictions on Moves
OAC 330:50-25-3 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 25. Moves With Continued Assistance/Portability
Part 4. Procedures for Moves
OAC 330:50-25-4 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 25. Moves With Continued Assistance/Portability
Part 5. Portability
OAC 330:50-25-5 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 25. Moves With Continued Assistance/Portability
Part 6. Outgoing Portability
OAC 330:50-25-6 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 25. Moves With Continued Assistance/Portability

Part 7. Incoming Portability
OAC 330:50-25-7 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 27. Contract Terminations
Part 1. Introduction
OAC 330:50-27-1 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 27. Contract Terminations
Part 2. Contract Termination
OAC 330:50-27-2 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 27. Contract Terminations
Part 3. Termination by the Family: Moves
OAC 330:50-27-3 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 27. Contract Terminations
Part 4. Termination by the Owner: Evictions
OAC 330:50-27-4 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 27. Contract Terminations
Part 5. Termination of the Contract by OHFA
OAC 330:50-27-5 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 27. Contract Terminations
Part 6. Terminations Due to Ineligible Immigration Status
OAC 330:50-27-6 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 27. Contract Terminations
Part 7. Termination Due to Owner Disapproval
OAC 330:50-27-7 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 29. Denial or Termination of Assistance
Part 1. Introduction
OAC 330:50-29-1 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 29. Denial or Termination of Assistance
Part 2. Grounds for Denial/Termination
OAC 330:50-29-2 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 29. Denial or Termination of Assistance
Part 3. Family Obligations
OAC 330:50-29-3 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 29. Denial or Termination of Assistance
Part 4. Housing Finance Agency Discretion
OAC 330:50-29-4 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 29. Denial or Termination of Assistance
Part 5. Enforcing Family Obligations
OAC 330:50-29-5 is revoked since the U.S. Department of Housing and Urban Development's
(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 29. Denial or Termination of Assistance
Part 6. Notice of Termination of Assistance
OAC 330:50-29-6 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 29. Denial or Termination of Assistance

Part 7. Procedures for Non-Citizens

OAC 330:50-29-7 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 29. Denial or Termination of Assistance

Part 8. \$0 Assistance Tenants

OAC 330:50-29-8 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 29. Denial or Termination of Assistance

Part 9. Option not to Terminate for Misrepresentation

OAC 330:50-29-9 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 29. Denial or Termination of Assistance

Part 10. Misrepresentation in collusion with owner

OAC 330:50-29-10 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 29. Denial or Termination of Assistance

Part 11. Missed Appointments and Deadlines

OAC 330:50-29-11 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 31. Owner Disapproval and Restriction

Part 1. Introduction

OAC 330:50-31-1 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 31. Owner Disapproval and Restriction

Part 2. Disapproval of Owner

OAC 330:50-31-2 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 31. Owner Disapproval and Restriction

Part 3. Owner Restrictions and Penalties

OAC 330:50-31-3 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 31. Owner Disapproval and Restriction

Part 4. Other Remedies for Owner Violations

OAC 330:50-31-4 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 33. Claims, Move-Out and Close-Out Inspections

Part 1. Introduction

OAC 330:50-33-1 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 33. Claims, Move-Out and Close-Out Inspections

Part 2. Owner Claims

OAC 330:50-33-2 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 33. Claims, Move-Out and Close-Out Inspections

Part 3. Unpaid Rent

OAC 330:50-33-3 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 33. Claims, Move-Out and Close-Out Inspections

Part 4. Vacancy Loss in the Certificate Program

OAC 330:50-33-4 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 33. Claims, Move-Out and Close-Out Inspections

Part 5. Processing Claims

OAC 330:50-33-5 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 35. Owner or Family Debts to OHFA

Part 1. Introduction

OAC 330:50-35-1 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 35. Owner or Family Debts to OHFA

Part 2. Repayment Agreement for Families

OAC 330:50-35-2 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 35. Owner or Family Debts to OHFA

Part 3. Debts Owed for Claims

OAC 330:50-35-3 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 35. Owner or Family Debts to OHFA

Part 4. Debts Due to Fraud/Non-Reporting of Information

OAC 330:50-35-4 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 35. Owner or Family Debts to OHFA

Part 5. Owner Debts to OHFA

OAC 330:50-35-5 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 35. Owner or Family Debts to OHFA

Part 6. Writing off Debts

OAC 330:50-35-6 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 37. Complaints and Appeals

Part 1. Introduction

OAC 330:50-37-1 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 37. Complaints and Appeals

Part 2. Complaints to OHFA

OAC 330:50-37-2 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 37. Complaints and Appeals

Part 3. Preference Denials

OAC 330:50-37-3 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 37. Complaints and Appeals

Part 4. Eligibility for Informal Review

OAC 330:50-37-4 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 37. Complaints and Appeals

Part 5. Informal Review Procedures

OAC 330:50-37-5 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 37. Complaints and Appeals

Part 6. Informal Hearing Procedures

OAC 330:50-37-6 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 37. Complaints and Appeals

Part 7. Notification of Hearing

OAC 330:50-37-7 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 37. Complaints and Appeals

Part 8. OHFA's Hearing Procedures

OAC 330:50-37-8 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 37. Complaints and Appeals

Part 9. Hearing and Appeal Provisions for "Restrictions on Assistance to Non-Citizens"

OAC 330:50-37-9 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over

these programs. Subchapter 37. Complaints and Appeals

Part 10. Mitigating Circumstances for Applicants/Participants with Disabilities

OAC 330:50-37-10 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 39. Program Integrity

Part 1. Introduction

OAC 330:50-39-1 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 39. Program Integrity

Part 2. Criteria for Investigation of Suspected Abuse and Fraud

OAC 330:50-39-2 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 39. Program Integrity

Part 3. Steps OHFA will take to Prevent Program Abuse and Fraud

OAC 330:50-39-3 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 39. Program Integrity

Part 4. Steps OHFA will take to Detect Program Abuse and Fraud

OAC 330:50-39-4 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 39. Program Integrity

Part 5. OHFA's Handling of Allegations of Possible Abuse and Fraud

OAC 330:50-39-5 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 39. Program Integrity

Part 6. How OHFA will Investigate Allegations of Abuse and Fraud

OAC 330:50-39-6 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 39. Program Integrity

Part 7. Placement of Documents, Evidence and Statements Obtained by OHFA

OAC 330:50-39-7 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 39. Program Integrity

Part 8. Conclusion of OHFA's Investigative Review

OAC 330:50-39-8 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 39. Program Integrity

Part 9. Evaluation of the Findings

OAC 330:50-39-9 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 39. Program Integrity

Part 10. Action Procedures for Violations Which Have Been Documented

OAC 330:50-39-10 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 41. Special Housing Types

Part 1. Introduction

OAC 330:50-41-1 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 41. Special Housing Types

Part 2. Verification of Need for Reasonable Accommodation

OAC 330:50-41-2 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 41. Special Housing Types

Part 3. Congregate Housing

OAC 330:50-41-3 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs. Subchapter 41. Special Housing Types

Part 4. Group Homes

OAC 330:50-41-4 is revoked since the U.S. Department of Housing and Urban Development's

(HUD) regulations and other federal, state, and local laws govern and have precedence over these programs.

[OAR Docket #20-575; filed 07-09-20]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 1. FUNCTION AND STRUCTURE OF THE OKLAHOMA DEPARTMENT OF HUMAN SERVICES

[OAR Docket #20-534]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 11. Civil Rights and Nondiscrimination

Part 1. ~~Methods of~~ Administration methods

340:1-11-4 [AMENDED]

(Reference WF 20-1)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (O.S. 56 § 162).

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n/a

GIST/ANALYSIS:

The proposed amendment removes the requirement that the person designated as the Oklahoma Department of Human Services (DHS) Office for Civil Rights (OCR) administrator not be organizationally related to DHS personnel administration.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-693-6542.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2020:

SUBCHAPTER 11. CIVIL RIGHTS AND NONDISCRIMINATION

**PART 1. ~~METHODS OF ADMINISTRATION~~
METHODS**

340:1-11-4. Administration responsibilities

(a) The Oklahoma Department of Human Services (DHS) Director assumes full responsibility for compliance, per Oklahoma Administrative Code (OAC) 340:1-11-1.

(b) The DHS Director designates a staff member ~~not or organizationally related to DHS personnel administration~~ as the Office for Civil Rights (OCR) administrator. The OCR administrator is a person who is knowledgeable of civil rights laws.

(c) The DHS Director assigns full compliance responsibility to all DHS administrators, managers, and supervisors. The administrators, managers, and supervisors maintain essential records and files, per OAC 340:1-11-1.

(d) Administrators, managers, and supervisors avail themselves of the OCR administrator's technical assistance and training. Administrators, managers, and supervisors comply with the Methods of Administration designed and prepared by the OCR administrator.

(e) The OCR administrator is responsible for:

- (1) developing rules, regulations, and compliance programs, per OAC 340:1-11-1, and disseminating those requirements to:
 - (A) staff;
 - (B) clients;
 - (C) contractors, vendors, and sub-grantees;
 - (D) the general public; and
 - (E) customary referral services;
- (2) developing the Methods of Administration;
- (3) keeping the DHS Director, administrators, managers, and supervisors informed of nondiscrimination requirements and responsibilities, per OAC 340:1-11-1;
- (4) monitoring and evaluating DHS nondiscrimination activities, identifying the need for remedial action and appropriate follow-up review, and submitting reports, as required to the DHS Director, the Department

of Health and Human Services-Office for Civil Rights (DHHS-OCR), and the Food and Nutrition Service (FNS);

(5) providing training and technical assistance, and serving as a resource for DHS staff regarding nondiscrimination responsibilities;

(6) assigning OCR personnel to perform compliance reviews and to investigate discrimination complaints;

(7) preparing the annual DHS Affirmative Action Plan;

(8) conducting Americans with Disabilities Amendments Act compliance inspections of DHS facilities and recommending remedial action to the DHS Director and to the facility, when necessary;

(9) receiving ~~appeals~~ of Request Review Committee appeal decisions;

(10) overseeing investigations of discrimination complaints received by the Office for Civil Rights;

(11) acting as the liaison between the DHS Director, DHHS-OCR, FNS, minority and community organizations, and groups advocating for persons with disabilities in all matters concerning nondiscrimination in the DHS delivery of services; and

(12) testifying in matters concerning civil rights before entities, such as boards, commissions, or legislative panels.

[OAR Docket #20-534; filed 7-7-20]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 2. ADMINISTRATIVE COMPONENTS**

[OAR Docket #20-538]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Human Resource Management

Part 5. Administrative Procedures

340:2-1-56 [AMENDED]

Part 7. Recruitment, Selection, and Placement Policy and Procedures

340:2-1-76 [AMENDED]

(Reference WF 20-2D)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162).

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GIST/ANALYSIS:

The proposed amendments to Chapter 2, Subchapter 1 amends the rule to comply with Senate Bill (SB) 830, effective November 1, 2018, Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162) and to add language regarding who within the Oklahoma Department of Human Services (OKDHS) may waive the vacancy posting provisions for positions in the unclassified service.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-693-6542.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2020:

SUBCHAPTER 1. HUMAN RESOURCE MANAGEMENT

PART 5. ADMINISTRATIVE PROCEDURES

340:2-1-56. Criminal history background checks

(a) Criminal history background checks are completed for all employees appointed to or transferring to positions that are sensitive or critical in nature or to positions that work directly with children prior to, and when necessary, during their employment when the scope of employment brings them into direct contact with any vulnerable population, per Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162). The job categories within the Oklahoma Department of Human Services (DHS) subject to background searches prior to employment are determined at the discretion of the DHS Director. Criminal history background checks can include, but are not limited to, a search of:

- (1) Personnel handling restricted data are considered, for purposes of this Section, to be in a sensitive position. Criminal history checks are completed on designated positions within the Field Operations Division, Children and Family Services Division, Support Services Division, and Developmental Disabilities Services Division. Applicants for positions requiring criminal history checks are advised that, if selected for the position, a favorable criminal history check is required. The Oklahoma State Courts Network, including Oklahoma District Court records;
- (2) Divisions are responsible for designation of positions that require criminal history checks. Divisions must consistently obtain criminal histories on any person selected to fill a position requiring criminal history checks. the Restricted Registry maintained by DHS, per 10 O.S. § 405.3;
- (3) Criminal history checks are obtained prior to employment for staff of child care facilities when 24-hour, supervised care is provided, as in group homes, and include a

search of Department of Corrections files maintained pursuant to the Sex Offenders Registration Act. [10 O.S. § 404.1] the Department of Corrections files maintained by DHS, per the Sex Offender Registration Act;

(4) the Oklahoma Department of Corrections Violent Offender Registry, also known as the Mary Rippey Violent Crime Offender Registry;

(5) DHS abuse and neglect records;

(6) all applicable out-of-state child abuse and neglect registries when the subject of the search did not live in Oklahoma continuously for the past five years; and

(7) the Community Services Worker Registry, per 56 O.S. § 1025.3.

(4) Criminal history checks are required only on the applicant who is recommended for the position.

(5) Criminal history checks are also obtained on any Oklahoma Department of Human Services (OKDHS) employee selected for transfer to a position that requires a criminal history check.

(6) Criminal history checks are considered restricted information and are protected accordingly. The results of these investigations are maintained in a separate file and are not made a part of the local or Human Resources Management Division personnel files. The history check is maintained for the duration of employment of the person and for one year from the date of the report for employees who separate from OKDHS.

(7) Certain OKDHS volunteers and health care providers are required to have history checks.

(b) Applicants for positions requiring criminal history background checks are advised any offer of employment is conditional upon completion of a background check that reveals no disqualifying history.

PART 7. RECRUITMENT, SELECTION, AND PLACEMENT POLICY AND PROCEDURES

340:2-1-76. Appointments and changes in employee classification not subject to vacancy posting provisions

The local administrator submits a request to Human Resource Management (HRM) to announce personnel vacancies. Appointments and changes in employee job family descriptor (JFD) and level or position not subject to the vacancy notice posting provisions are:

- (1) temporary appointments;
- (2) detail to special duty or other temporary assignments that do not affect an employee's base JFD and level or classification;
- (3) intra-agency lateral transfer of a permanent employee from one position to another position in the same JFD and level or another JFD in the same pay band;
- (4) voluntary and involuntary demotion to a vacant position;
- (5) direct reclassification made when a new JFD is adopted that better describes an incumbent's job;
- (6) position reallocation;

- (7) career progression promotions;
- (8) positions limited to the prescribed length of time of the course of training or extension study;
- (9) positions where the Oklahoma Department of Human Services (DHS) has elected to establish separate policies or to test pilot rules within specific organizational units, and where such policies are publicized prior to implementation;
- (10) positions converted from the classified to the unclassified service, or from the unclassified to the classified service by appointment, reinstatement, or position reallocation of an incumbent per Merit System of Personnel Administration Rules (Merit Rules) and DHS policy;
- (11) transfer of an employee, position, or both, from one work organization to another; and
- (12) positions in the unclassified service. The DHS Director or designee may waive the vacancy posting provisions of this policy for positions in the unclassified service. ~~Waiver request approval may not be delegated.~~

[OAR Docket #20-538; filed 7-7-20]

TITLE 340. DEPARTMENT OF HUMAN SERVICES

CHAPTER 2. ADMINISTRATIVE COMPONENTS

[OAR Docket #20-540]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 4. The Office of the Public Guardian [NEW]
 340:2-4-1 [NEW]
 340:2-4-3 [NEW]
 340:2-4-5 [NEW]
 (Reference WF 20-2F)

AUTHORITY:

Director of Human Services; Sections 162 and 1020 of Title 56 of the Oklahoma Statutes.

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GIST/ANALYSIS:

The proposed creation of Subchapter 4, implement rules to describe The Office of the Public Guardian and its purpose. The proposed rules, detailing this legislatively created program all the Oklahoma Department of Human

Services follow and maintain records of the placement of a specifically cited group of citizens requiring assistance and their tenure with the State of Oklahoma.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-693-6542.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2020:

SUBCHAPTER 4. OFFICE OF THE PUBLIC GUARDIAN

340:2-4-1. Purpose, legal basis, and definitions

(a) **Purpose.** The Oklahoma Department of Human Services (DHS) Office of the Public Guardian provides guardianship services throughout Oklahoma to criminal defendants, who are deemed incompetent to stand trial due to intellectual disability, per Section 1408 of Title 10 of the Oklahoma Statutes (10 O.S. § 1408), and were found by the Court to be dangerous, per 22 O.S. § 1175.1. The DHS Office of the Public Guardian must place wards in the least restrictive placement, which ensure appropriate levels of supervision and supports, sufficient to keep the ward and public safe.
 (b) **Legal basis.** Statutory authority for the DHS Office of the Public Guardian is derived from 22 O.S. § 1175.6b.
 (c) The following words and terms, when used in this Subchapter shall have the following meanings unless the context clearly indicates otherwise:

- (1) **"Court"** means the district court assigned to hear criminal matters in the jurisdiction where the crime was committed and the ward was charged.
- (2) **"Public guardian"** means the attorney who is the DHS administrator of the Office of the Public Guardian.
- (3) **"Ward"** means a person placed in the custody of the DHS Office of the Public Guardian by court order, per requisite statutory requirements.

340:2-4-3. Ward placement requirements

(a) **Placement requirements.** To place a ward into the Oklahoma Department of Human Services (DHS) Office of the Public Guardian, he or she must be:

- (1) a defendant in a criminal matter, misdemeanor or felony, in any Oklahoma district court;
- (2) found incompetent to stand trial in a criminal matter due to intellectual disability, per Section 1408 of Title 10 of the Oklahoma Statutes (10 O.S. § 1408); and
- (3) deemed dangerous by the court, per 22 O.S. § 1175.1.

(b) **Ward placement procedure.** When a valid order placing an individual in the custody of the DHS Office of the Public Guardian is received by DHS Legal Services (LS), LS forwards the order and all information on him or her to the Office of the Public Guardian.

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(1) When the Office of the Public Guardian receives the information from LS, Office of the Public Guardian staff meets with Developmental Disabilities Services (DDS) staff to begin the evaluation process to determine what level of DDS placement best meets his or her service and supervision needs. Office of the Public Guardian staff accompanies DDS intake staff for the initial assessment, when possible.

(2) Ward placement is at the Office of the Public Guardian's sole discretion, per 22 O.S. 1175.6b(A)(2). All placements must be made within six months of the date of the order placing the ward in the custody of the Office of the Public Guardian.

(3) Any extension past the six months must be approved by the court.

(c) **Public guardian status reports.** The Office of the Public Guardian reports to the court of jurisdiction at least once every six months. The information for these reports are obtained from the individual's DDS case manager and include:

(1) the placement type;

(2) the services provided;

(3) the supervision level;

(4) his or her medical and psychological health;

(5) if he or she would be dangerous if conditionally released into a non-secure environment;

(6) the assistance and services that are required for such conditional release and if he or she has achieved competency; and

(7) other information the Office of the Public Guardian deems important or pertinent.

(d) **Conditional Release.** When a criminal defendant is found incompetent to stand trial due to intellectual disability, per 10 O.S. § 1408, and is deemed not dangerous, per 22 O.S. § 1175.1, he or she may be referred to DHS for consideration of voluntary assistance or conditional release.

(e) **Procedure.** When a valid order for conditional release is entered and received by DHS LS, the order and information pertaining to the individual is forwarded to the Office of the Public Guardian.

(f) **Public guardian role.** When a conditional release individual is in a DDS placement or receives DDS services, the Office of the Public Guardian assists the individual's personal support team, when necessary, regarding the conditional release order or requests to modify orders.

(g) **Conditional release status reports.** The Office of the Public Guardian submits annual reports regarding an individual's compliance with the conditions of release and overall progress. When the individual receives DDS services, the information is obtained from the DDS case manager and, when he or she is in any other placement, the information is obtained from the person responsible for the individual's care. When there are major non-compliances between annual reports, the Office of the Public Guardian notifies the court of jurisdiction.

340:2-4-5. Ward removed from public guardianship

(a) **Regaining competency.** When the Office of the Public Guardian determines a ward has regained competency, the Office of the Public Guardian notifies the court of jurisdiction.

(b) **Conditional Release.** When the Office of the Public Guardian determines a ward is no longer dangerous and release to a private guardian or other caretaker is appropriate, the Office of the Public Guardian notifies the court of jurisdiction.

(c) **Case dismissal by court.** When the court of jurisdiction dismisses the underlying charges, the Office of the Public Guardian no longer has jurisdiction or guardianship of the individual.

[OAR Docket #20-540; filed 7-7-20]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 2. ADMINISTRATIVE COMPONENTS

[OAR Docket #20-535]

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RULES:

Subchapter 25. Legal Services

Part 1. Legal Services [NEW]

Part 3. Rulemaking [NEW]

340:2-25-11 [NEW]

Subchapter 31. Intergovernmental Relations and Policy [REVOKED]

Part 4. Intergovernmental Relations and Policy [REVOKED]

340:2-31-10 [REVOKED]

Part 5. Rulemaking Petition [REVOKED]

340:2-31-31 through 340:2-31-33 [REVOKED]

(Reference WF 20-2A)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); and 75 O.S. §§ 250 through 323.

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EFFECTIVE:

September 15, 2020

SUPERSEDED EMERGENCY ACTIONS:

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendments are made to: (1) reflect reorganization within the Oklahoma Department of Human Service (OKDHS); (2) clarify and simplify rules for clients, OKDHS staff, and the public; (3) remove unnecessary, incorrect, or obsolete information; (4) and update terminology. Chapter 2, Subchapter 25 creates a rule to: (1) reflect reorganization within OKDHS; and (2) reorganize and make non-substantive changes to improve rule clarity. Subchapter 31 is revoked to remove obsolete Sections.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-693-6542.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2020:

SUBCHAPTER 25. LEGAL SERVICES

PART 1. LEGAL SERVICES

PART 3. RULEMAKING

340:2-25-11. Rulemaking

(a) **Legal authority.** Oklahoma Department of Human Services (DHS) rules are promulgated, per the Oklahoma Administrative Procedures Act (APA), Sections 250 through 323 of Title 75 of the Oklahoma Statutes (75 O.S. §§ 250 through 323) and O.S. 56 § 162.

(b) **Rulemaking petition.**

(1) **Submission.** Any individual may petition DHS in writing to request rule promulgation, amendment, or repeal. The rulemaking petition is submitted to DHS Legal Services (LS) Policy by:

- (A) mail, to PO Box 25352, Oklahoma City, Oklahoma 73125, Attention: Legal Services Policy; or
- (B) delivery, to the Sequoyah Memorial Office Building, 2400 North Lincoln Boulevard, Oklahoma City, Oklahoma.

(2) **Form and content.** The rulemaking petition must, at a minimum, contain:

- (A) a clear statement of the requested action and the petitioner's proposed desired relief or solution;
- (B) the Title, Chapter, Subchapter, and Section, when known, or a copy of the existing rule proposed for promulgation, amendment, or repeal;
- (C) a statement of supporting facts; including legal grounds including, but not limited to, federal or state statutes, and House of Representatives or Senate bills; and other relevant information or views on which the petitioner relies.
 - (i) A copy of references or sources cited in the statement is submitted with the rulemaking petition.
 - (ii) When a petition requests more than one rule revision, a single statement that supports and justifies each proposal meets the requirements of this paragraph;
- (D) a description of the class or classes of persons, when known, who will most likely be affected by the proposed revision; and
- (E) the petitioner's or authorized representative's printed name, address, phone numbers, and signature.

(c) **Consideration and disposition of rulemaking petition.**

(1) **Rulemaking petition denial.** A rulemaking petition is considered denied when DHS does not initiate rulemaking proceedings within 30-calendar days after the petition is submitted, per 75 O.S. § 305. The rulemaking petition is denied, in whole or in part, when the petition:

- (A) requests promulgation of a rule that DHS is clearly without authority to promulgate;
- (B) requests a promulgation, amendment, or revocation inconsistent with, or in violation of, any applicable constitutional or statutory authority;
- (C) requests promulgation, amendment, or revocation of a rule that does not constitute a rule, per 75 O.S. § 250.3(17);
- (D) is frivolous or not proposed in good faith; or
- (E) proposes a new or amended rule that is not feasible based on available or anticipated DHS resources. When denial is based on feasibility, LS Policy notifies the petitioner of the denial.

(2) **Rulemaking petition approval.** DHS rulemaking proceedings are initiated when LS Policy submits the approved rulemaking petition to the leadership of any division that may be impacted or affected by the proposed rule promulgation, amendment, or repeal.

(d) **Rulemaking petitioner notification.**

(1) **Rulemaking petition receipt.** LS Policy provides written notification of the petition receipt to the petitioner.

(2) **Rulemaking petition action.** After any action is taken related to the petition, LS Policy provides written notification to the petitioner of:

- (A) rulemaking petition denial, in whole or in part; or
- (B) initiation of DHS rulemaking proceedings including, but not limited to:
 - (i) the substance of comments received and any revisions made, including a copy of the revisions; and
 - (ii) any actions taken.

SUBCHAPTER 31. INTERGOVERNMENTAL RELATIONS AND POLICY [REVOKED]

PART 4. INTERGOVERNMENTAL RELATIONS AND POLICY [REVOKED]

340:2-31-10. Intergovernmental relations and policy [REVOKED]

(a) **Purpose.** The Office of Intergovernmental Relations and Policy (OIRP):

- (1) serves as the liaison between the Oklahoma Department of Human Services (OKDHS) and the state legislature and state agencies;
- (2) chairs and staffs the OKDHS Committee on Rates and Standards;
- (3) manages OKDHS rules, policy, and procedures; and

- (4) ensures policy and other forms of communication comply with federal and state statutes.
- (b) **Legal authority.** OKDHS rules are promulgated per the Administrative Procedures Act, Sections 250.1 through 323 of Title 75 of the Oklahoma Statutes.

PART 5. RULEMAKING PETITION [REVOKED]

340:2-31-31. Rulemaking petition [REVOKED]

(a) **Submission.** Any person may petition the Oklahoma Department of Human Services (OKDHS) in writing to request the promulgation, amendment, or repeal of a rule.

- (1) The rulemaking petition is submitted to the OKDHS Office of Intergovernmental Relations and Policy (OIRP) by:
 - (A) mail to PO Box 25352, Oklahoma City, Oklahoma 73125, Attention, Office of Intergovernmental Relations and Policy; or
 - (B) delivery to the Sequoyah Memorial Office Building, 2400 N. Lincoln Blvd., Oklahoma City, Oklahoma.
- (2) The rulemaking petition is considered submitted upon OIRP receipt.
 - (A) OIRP date stamps the rulemaking petition to document receipt date.
 - (B) A rulemaking petition submitted to the Director of Human Services (Director) is forwarded to and considered submitted, upon OIRP receipt.
- (b) **Form and content.** The rulemaking petition must contain:
 - (1) a clear statement of the requested action and the desired relief or solution;
 - (2) the Title, Chapter, Subchapter, and Section, if known, or a copy of the existing rule proposed for revision;
 - (3) a statement of supporting facts, including legal grounds, and other relevant information or views on which the petitioner relies.
 - (A) A copy of references or sources cited in the statement are submitted with the rulemaking petition.
 - (B) When a petition requests more than one rule revision, a single statement that supports and justifies each proposed revision meets the requirements of this subsection;
 - (4) a description of the class or classes of persons, if known, who will most likely be affected by the proposed revision; and
 - (5) the petitioner or authorized representative's signature, printed name, address, and day time telephone numbers.

(e) **Incomplete or revised petition.**

- (1) When the rulemaking petition does not contain the required information, the petitioner or authorized representative is sent a written request for additional information specifying how the rulemaking petition is deficient.
- (2) The petitioner or authorized representative may supplement or revise the rulemaking petition prior to

the Director's approval; however, significant revisions may result in withdrawal of the rulemaking petition and require re-initiation of the rulemaking process with a new rulemaking petition.

340:2-31-32. Consideration and disposition of rulemaking petition [REVOKED]

(a) **Rulemaking petition review.** Within 15 calendar days after receipt of a rulemaking petition to promulgate, amend, or repeal a rule, the Office of Intergovernmental Relations and Policy (OIRP) reviews the petition and after consultation with the Director of Human Services (Director) denies, requests additional information, or initiates rulemaking proceedings.

(b) **Rulemaking petition denial.** The rulemaking petition is denied, in whole or in part when the petition:

- (1) requests promulgation of a rule that Oklahoma Department of Human Services (OKDHS) is clearly without authority to promulgate;
- (2) requests a new rule or rule revision inconsistent with or that violates any applicable statutory or constitutional authority;
- (3) requests promulgation, amendment, or repeal of an OKDHS policy that does not constitute a rule as defined in the Oklahoma Administrative Procedures Act per Section 250.3(17) of Title 75 of the Oklahoma Statutes;
- (4) is frivolous or not proposed in good faith; or
- (5) proposes a new or revised rule that is not feasible based on available or anticipated OKDHS resources. When denial is based on feasibility, the OIRP coordinator or designee notifies the petitioner of the denial per OAC 340:2-31-33.

(c) **Rulemaking petition approval.** OKDHS rulemaking proceedings are initiated when OIRP submits the approved rulemaking petition to the appropriate division director for action.

- (1) Within 60 calendar days after the affected division receives the rulemaking petition, the division director places the proposal into the proper rulemaking format, and submits it to OIRP.
- (2) The proposal is submitted to the Director within 45 calendar days after OIRP receipt.
- (3) Within 30 calendar days after the Director's receipt, the Director recommends approval, disapproval, or amendment of the proposal.

340:2-31-33. Rulemaking petitioner notification [REVOKED]

Within five working days of receipt of the rulemaking petition, the Office of Intergovernmental Relations and Policy (OIRP) coordinator or designee provides written notification to the petitioner of the petition receipt. Within five working days after any action taken related to the petition, OIRP provides written notification to the petitioner of:

- (1) rulemaking petition denial, in whole or in part, including the reasons for the denial;
- (2) initiation of Oklahoma Department of Human Services (OKDHS) rulemaking proceedings, including the

proposed rule revision submission date to the Director of Human Services (Director) for approval;
(3) the substance of comments received and any revisions made including a copy of the revised rule proposed by the division; and
(4) any Director action on the proposed rule revision.

[OAR Docket #20-535; filed 7-7-20]

TITLE 340. DEPARTMENT OF HUMAN SERVICES

CHAPTER 2. ADMINISTRATIVE COMPONENTS

[OAR Docket #20-539]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 28. Office of Administrative Hearings: Child Support

340:2-28-3.1 [NEW]

340:2-28-11.1 [NEW]

340:2-28-17.2 [AMENDED]

340:2-28-22.1 [NEW]

340:2-28-25 [AMENDED]

340:2-28-25.1 [NEW]

340:2-28-25.2 [NEW]

340:2-28-55 [AMENDED]

(Reference WF 20-2E)

AUTHORITY:

Director of Human Services; 56 O.S. §§ 162 and 237; 12 O.S. §§ 32.1 and 3226(C)(2); 51 O.S. §§ 24A.2, 24A.5, 24A.25, 24A.29, and 24A.30; 56 O.S. §§ 237.9a and 240.3; Code of Judicial Conduct, Rule 2.9, Appendix 4 of Title 5 of the Oklahoma Statutes; and OAC: 340:2-28-1, *et seq.*

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The changes to Office of Administrative Hearing's court rules and operational procedures are implicitly mandated, in part, by legislative amendments, and the remainder are needed to address changing concerns and advances, in step with Oklahoma's trial and appellate courts.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-693-6542.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2020:

SUBCHAPTER 28. OFFICE OF ADMINISTRATIVE HEARINGS: CHILD SUPPORT

340:2-28-3.1. Waiver

Upon a finding by the Office of Administrative Hearings: Child Support (OAH) that any rule in this Subchapter works a manifest injustice, the same rule may be waived for that particular instance. An express finding of manifest injustice on the record is not required for such waiver. All parties and attorneys will be given notice and an opportunity to respond before a decision is made.

340:2-28-11.1. Ex parte communication

Ex parte communications are governed by Rule 2.9, Appendix 4 of Title 5 of the Oklahoma Statutes. Communication with the Office of Administrative Hearings: Child Support (OAH) regarding scheduling and procedural matters is permitted and includes physical and/or technical requirements, preferences, or requested accommodations regarding the hearing setting and/or arrangement, per Rule 2.9. Child Support Services (CSS) and OAH are permitted to communicate regarding the creation/existence of a CSS family violence indicator in a particular case, per Rule 2.9.

340:2-28-17.2. Pleadings and motion practice

(a) Signatures on documents Document signatures.

(1) **Signing of pleadings.** Every pleading and motion filed with the Office of Administrative Hearings: Child Support (OAH) must be signed by an attorney of record, whose Oklahoma Bar Association (OBA) identification number must be stated, or, ~~if when~~ the party is not represented by an attorney, must be signed by the party. A pleading is any document that contains statements or allegations that constitute a cause of action or defense. Each pleading and motion must include the ~~address of the signer~~ signer's address and telephone number, if any. ~~Except as provided by rule or statute, pleadings~~ Pleadings need not be supported by affidavit except as provided for by rule or statute. ~~A pleading is any document that contains statements or allegations that constitute a cause of action or defense.~~

(2) **Signing of other documents.** Other documents, such as legally-mandated administrative notices issued by ~~the Child Support Enforcement Division (CSED)~~ Child Support Services (CSS) to notify obligors of proposed enforcement actions, ~~to be taken by CSED~~ do not require an attorney's signature.

(3) ~~Electronic signatures~~ Signatures submitted through electronic means. Secured electronic mediums, approved by OAH that attach an electronic signature or

~~notary stamp are acceptable to meet the signature requirements.~~ Electronic mediums that attach an electronic signature are acceptable to meet signature requirements. In addition to electronic transmittals of documents and electronic signatures, signatures on any document transmitted by electronic means including, but not limited to, facsimile, scan, or email have the same force and effect as an original, physical signature, per Section 237.9a of Title 56 of the Oklahoma Statutes. This provision does not authorize filing documents through email.

(b) **Practice.**

(1) **Form, filing, and service.**

~~(A) The original and copies of all pleadings in proceedings and matters presented to All documents, other than exhibits, are filed in the case, prior to consideration by an administrative law judge (ALJ) must be filed with OAH. All OAH retains all paper produced originals are retained by OAH. Electronic filed in paper form and maintains electronic submissions are digitally maintained by OAH pursuant to per state record requirements. All paper or electronically submitted pleadings A pleading or motion must be filed prior to any administrative proceedings proceeding being docketed.~~

~~(B) Pleadings and motions Documents filed in OAH, in paper form, must be typewritten or legibly hand-written on white paper, size 8½ by 11 inches. Both paper and electronically submitted pleadings and motions must have the proper style of the case indicating the parties' names, OAH number, and IV-D case number, or family group number (FGN). All documents, other than exhibits, must contain a case style, which is a document heading containing the name of this administrative court, the parties' names, appropriate roles, and assigned case numbers. The party filing the initial request for action by OAH is generally designated as the petitioner or petitioner/plaintiff. The opposing party is usually named as the respondent or respondent/defendant. The custodian(s) must be listed, when not already included in the style as a party, under the case numbers. The case numbers listed in the style must include the OAH number and the Title IV-D, family group number (FGN), or CSS number. The associated district court case number is included, when available. Both conventional and "in re" styles are permitted. Parties are encouraged to maintain a consistent style, similar to one that may have been used in prior child support-related actions, between the same parties, provided the information is complete and accurate.~~

~~(i) #When filed by an attorney, the name, OBA number, address, and telephone number preferred phone numbers must be shown on the last signature page of the instrument document.~~

~~(ii) #When filed by a party not represented by a lawyer, that the party is considered a pro se party, and must sign his or her name and type or legibly print his or her name, mailing address, zip Zip~~

~~code, and telephone number preferred phone numbers on the last signature page of the instrument filed document.~~

~~(iii) A notice of paternity and support obligations must be titled In the Interest of the Children of _____ and _____, and must list the names of both the mother and the father or alleged father. The party filing the proceeding is the petitioner. The names of the obligor and the custodians must be listed under the case numbers.~~

~~(iv) A notice of a support debt to establish current support and support owed for past months in accordance with the child support guidelines must be titled In the Interest of the Children of _____ and _____, and must list the names of both the mother and the father. The party filing the proceeding is the petitioner. The names of the obligor and the custodians must be listed under the case numbers.~~

~~(C) All documents in a proceeding, whether produced on paper or electronically submitted other than exhibits, must be served as required by rule or statute. Proof of service must be filed with OAH for each service made and must establish on its face that regulatory and statutory requirements for service are satisfied.~~

~~(D) Parties or attorneys filing motions or pleadings, produced on paper or electronically submitted, after the filing of the notice initiating the action must file the original with A copy of all documents, other than exhibits, filed in OAH or submit it electronically and deliver or mail a paper or electronic copy to the opposing party or counsel of record must be provided to all other pro se parties and attorneys of record. A certificate of mailing, delivery, or service must be filed with OAH.~~

~~(E) Upon failure to comply with the requirements in this Section, the ALJ may, among other sanctions, continue the cause of action until satisfactory compliance or deny the requested relief.~~

~~(F) Requests that do not comply with the requirements of (A) through (E) of this paragraph are considered only at the ALJ's discretion of the ALJ.~~

~~(G) Documents submitted through a secured secure electronic means approved by OAH will meet the requirement of original documents as set forth in this Section.~~

(2) **Motions.**

~~(A) This paragraph does not prohibit oral motions; however written motions are preferred.~~

~~(A)B) An original motion, produced on paper or in an electronic document submitted through a secured electronic means approved by OAH, must be filed with OAH with copies, on paper or electronically, served upon opposing parties. Motions All motions must be in writing, stating state the legal basis for supporting the motion, relief or action requested,~~

and ~~whether~~ if the opposing party objects, ~~if~~ when known.

(i) ~~The name, OBA identification number, address, and phone number of the attorney must be shown on the last page of the instrument.~~

(ii) ~~If a person filing the pleading is not represented by a lawyer, that party must sign his or her name and type or legibly print his or her name, address, business and home telephone numbers and zip code.~~

(~~BC~~) The ALJ determines ~~whether or~~ if a hearing or oral argument is necessary on a motion and, if so, provides pro se parties and all attorneys of record with notice of the specific hearing date, time, and place.

(~~CD~~) Briefs or responses that do not comply with this paragraph are considered only at the ALJ's discretion ~~of the ALJ~~.

(~~D~~) ~~This paragraph does not prohibit oral motions. The preferred method of filing documents, including motions, is through an electronic means approved by OAH.~~

(3) **Briefs.** ~~Briefs and responses must comply with applicable statutes and deadlines.~~

(A) Reply and response briefs must be ~~delivered to the ALJ at least three working~~ filed three-business days prior to any hearing. Each brief must be clearly styled to show:

- (i) ~~whether~~ if it is in support of a motion, in opposition of a motion, or a reply brief;
- (ii) the particular application or proceeding to which it relates; and
- (iii) the party or parties on whose behalf it is presented.

(B) Briefs, ~~if~~ when required, must not exceed 20 pages in length without prior ALJ permission ~~of the ALJ~~.

(C) Reply briefs must be limited to five pages in length, without prior ALJ permission.

(D) No further briefs may be filed without ALJ permission ~~of the ALJ~~.

(E) Briefs and responses that do not comply with this paragraph are considered only at the ALJ's discretion ~~of the ALJ~~.

(4) **Extensions of time** Time extensions. Except at the ALJ's discretion ~~of the ALJ~~, all requests for extensions of time must contain:

- (A) the original due date for the response;
- (B) the amount of additional time requested;
- (C) the reason for the request;
- (D) the current status of the case, including the next hearing date, ~~if~~ when a hearing ~~has been~~ is scheduled; and
- (E) a statement that the opposing pro se party or the opposing party's counsel ~~has been~~ was contacted regarding the extension and either consents or objects to the extension; or in the alternative, a statement that

a good faith effort was made to comply but the opposing pro se party or the opposing party's counsel was unavailable.

(5) **Discovery not to be filed.** ~~Depositions, interrogatories, requests for admissions, requests~~ Requests for production of documents, and responses ~~the purpose of discovery~~ must not be filed with OAH, unless the discovery document accompanies a pleading, motion, a response to a motion ~~the administrative notice, or is an attachment to a motion or response to a motion~~, or is ordered by the ALJ. ~~A motion~~ Motions to compel discovery or discovery ~~motion~~ motions for protective order ~~must include either a verbatim recitation or a copy of the interrogatory, question, request, answer, response, or objection which is the subject of the motion~~ are permitted.

(A) Any discovery that contains ~~confidential in-~~ formation ~~personal identifiers, such as bank account numbers, routing numbers, taxpayer identification, or Social Security numbers, may be redacted by the party submitting the documents. If~~ When the numbers are relevant to the case, redacting all numbers except for the last four digits is acceptable. The party submitting the redacted documents must not redact the originals; the redaction is made on copies of the originals, with the redacted copies submitted in substitution for the originals.

(B) It is the responsibility of the party submitting the documents to redact any sensitive material.

(C) The originals with the redacted information intact may be required for viewing by the ALJ assigned to the case.

(6) **Disputed discovery motions.** ~~No~~ A hearing on a discovery dispute may not be set unless the moving party ~~or counsel~~ advises the ALJ in the motion that the party ~~or counsel~~ has conferred or has attempted to confer, in good faith, about the dispute, with the ~~opposing party or opposing party's counsel, non-movant~~ but ~~has been and was unable to resolve the dispute.~~

(7) **Withdrawal of counsel** Counsel withdrawal. When submitting an application ~~or motion~~ to withdraw and a proposed order allowing withdrawal, counsel must comply with ~~the requirements in this paragraph~~ (A) through (B) of this paragraph.

(A) Every application to withdraw as counsel must contain:

- (i) a statement of grounds for withdrawal;
- (ii) the current case status ~~of the case~~, including the next hearing date, ~~if~~ when a hearing ~~has been~~ is scheduled;
- (iii) ~~whether~~ if new or substitute counsel ~~has been~~ was obtained by the client and entered an appearance; and
- (iv) a certificate of mailing, delivery, or service to the party or custodian showing the last known mailing address ~~client~~ and to all other pro se parties and attorneys of record ~~in the case~~.

Permanent Final Adoptions

(B) No application to withdraw may be considered unless it is submitted to the ALJ at least ten days prior to the date on which a hearing is scheduled.

(C) Every proposed order allowing withdrawal must contain a statement of the case's current status, including the next hearing date, if when a hearing has been scheduled, and a certificate of mailing, delivery, or service to the party or custodian, showing the last known mailing address, movant's client, and to all other pro se parties, and attorneys of record.

340:2-28-22.1. Use of devices at hearings

(a) Audio or video recordings including photography, not made by an administrative law judge (ALJ) or court clerk, and broadcasting, of any type or means, during hearings is prohibited.

(b) The ALJ may:

(1) allow the use of personal phones, wireless laptops, or other electronic communication devices at his or her discretion;

(2) allow limited use of devices for a particular purpose;

(3) allow the devices to remain within the hearing room only when turned off; or

(4) prohibit such devices being physically present during a hearing.

(c) Persons violating this rule may be excused from the hearing or denied further participation in proceedings.

340:2-28-25. Record for appeal

The certified transcript, exhibits, briefs, memorandum of law, and any written orders constitute the record for appeal to the district court. Parties must file a designation of record with the Office of Administrative Hearings: Child Support indicating which documents in the administrative record are to be sent to the appellate court. The record for appeal prepared and sent by Office of Administrative Hearings: Child Support (OAH) to the appellate court is those documents included in the designation(s) and counter-designation(s) of record.

340:2-28-25.1. Privacy and confidentiality

(a) **Filings under seal.** Although the Office of Administrative Hearings: Child Support (OAH) court records are public records, per Section 32.1 of Title 12 of the Oklahoma Statutes (12 O.S. § 32.1) and 51 O.S. § 24A.30, OAH may order any material in the record sealed, per 12 O.S. § 3226(C)(2) and 51 O.S. § 24A.29.

(1) Materials are not sealed when the administrative law judge (ALJ) determines that a reasonable redaction resolves the issue or that the request is overbroad, such as an attempt to seal a general category of materials. When the motion to seal is denied, OAH directs that the materials are stricken or unsealed, with or without redaction as directed by the ALJ.

(2) Any protective order that authorizes materials to be filed or admitted under seal identifies those materials. The

protective order is accessible to the same extent as any other document in the OAH court record.

(3) When the motion to seal is granted, OAH retains authority to unseal the material or order the person who initially submitted the material to OAH to submit a redacted version into the record. This authority may be exercised either upon the court's own motion or pursuant to a party's written motion, served upon all non-moving pro se parties and attorneys of record, and subsequently approved after an ALJ hearing.

(b) **Redaction.** It is solely the responsibility of counsel and the parties to ensure that all filed pleadings, papers, exhibits, or other documents are redacted as permitted by these rules or the assigned ALJ. The party submitting the redacted documents must not redact the originals; the redaction is made on copies of the originals, with the redacted copies submitted in substitution for the originals. OAH personnel, including clerks and administrative law judges, do not review any document to verify redaction and have no duty to do so.

(1) The parties may refrain from including or may redact all but the last four digits, when inclusion is necessary, of the personal identifiers from any submission, such as Social Security, taxpayer identification, routing, or financial account numbers.

(2) When a filer includes personal information, such as Social Security numbers, tax identification numbers, routing numbers, financial account numbers, driver license numbers, dates of birth, addresses, or other sensitive information, in any document filed with OAH, electronically or otherwise, the document becomes a public record as filed.

(c) **Filing errors.**

(1) Filers make every effort to ensure they do not file a document other than the one intended to be filed, that it is filed in the correct case, and the document does not contain information that must be filed under seal or with redaction.

(2) When a document is filed into the wrong case, the OAH clerk is notified by submitting a "Notice of Erroneous Filing" in paper form into the correct case. The OAH clerk is authorized to move the document after inspection, without alteration; however, the OAH clerk may impose the correct OAH case number on the document in the upper right hand corner when necessary. The OAH clerk may move the document through electronic, mechanical, or a combination of the two means. The filer does not refile the document unless directed to do so. Alternatively, the OAH clerk, after inspection of the document, may decline to move the document when the "Notice of Erroneous Filing," itself, is in error. The "Notice of Erroneous Filing" may be obtained from the OAH clerk or found on the Oklahoma Department of Human Services website. The filer is required to provide copies of the "Notice of Erroneous Filing" to all other parties and attorneys and to file a certificate of mailing, delivery, or service in OAH.

(3) When the OAH clerk determines the requesting party's "Notice of Erroneous Filing" is in error and declines to move the document, he or she notifies the

requesting party by correspondence, with a copy of the correspondence filed in the same case as the "Notice of Erroneous Filing." The requesting party may be required to provide copies of such correspondence to the other pro se parties and attorneys of record and file a certificate of mailing, delivery, or service in OAH.

(4) When OAH discovers a filing error, the OAH clerk may enter a "Notice of Erroneous Filing," move the document, notify the original filer, and file a certificate of mailing, delivery, or service. The original filer may be required to provide copies to the other pro se parties and attorneys of record and file a certificate of mailing, delivery, or service in OAH.

(d) **Confidentiality.** Nothing in this rule impacts the confidentiality of juvenile records or any other records the Legislature determined are confidential.

340:2-28-25.2. Redaction of original paper documents

Any original paper document maintained in the Office of Administrative Hearings: Child Support redacted by nontransparent tape, ink, or other media or means is deemed permanently redacted.

340:2-28-55. Appeal from administrative order

(a) Appeals from an administrative order ~~must be~~ are in accordance with Section 240.3 of Title 75 ~~and Sections 318 through 323 of Title 75 of the Oklahoma Statutes~~ 56 of the Oklahoma Statutes (56 O.S. § 240.3).

(b) ~~Specifically, only~~ Only final orders of the Office of Administrative Hearings: Child Support (OAH); may be appealed to the district court. ~~Orders of OAH final orders~~ are not stayed pending an appeal ~~unless the except by~~ district court ~~orders order~~.

(c) ~~Notice of the appeal must be filed with~~ A copy of appellant's petition in error and designation of record, identical to the originals filed in district court to commence the appeal, is mailed by regular mail to OAH and sent to the child support district office that handled the case at the time the order being appealed was issued for filing. A copy of the appellee's counter-designation of record, identical to the original filed in district court, is mailed by regular mail to OAH for filing. No other form of service for a petition in error, a designation of record, counter-designation of record, or request for a transcript upon OAH is permitted, including hand-delivery or digital means.

(d) OAH prepares or directs preparation of the official transcript by a licensed court reporter, when a transcript is requested. A transcript may be obtained when the requesting party submits a written request to OAH by regular mail for the transcript(s) and pays the deposit. OAH responds by letter to the requesting party, specifying the amount of the required deposit and acceptable forms of payment.

(e) After OAH receives the request and deposit, OAH prepares or directs preparation of the official transcript by a licensed court reporter.

(f) OAH notifies the requesting party when the transcript is complete and of the balance due that must be paid in full before the certified copy is mailed to the district court or to the parties.

[OAR Docket #20-539; filed 7-7-20]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 2. ADMINISTRATIVE COMPONENTS

[OAR Docket #20-536]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 33. Rates and Standards

340:2-33-1 [AMENDED]

340:2-33-2 through 340:2-33-3 [REVOKED]

(Reference WF 20-2B)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); and 74 O.S. §§ 85.1 et seq.

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendments to Chapter 2, Subchapter 33 amend the rules to: (1) remove instructions to staff in the rules; (2) reorganize and make non-substantive changes to improve rule clarity; and (3) revoke obsolete Sections.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-693-6542.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2020:

SUBCHAPTER 33. RATES AND STANDARDS

Permanent Final Adoptions

340:2-33-1. Purpose Rates and standards

(a) The purpose of this Subchapter is to describe the process the Oklahoma Department of Human Services (OKDHS) uses for establishing and modifying fixed rates and service levels for service provider contracts.

(a) Legal basis. Section 85.1 et seq. of Title 74 of the Oklahoma Statutes (74 O.S. §§ 85.1 et seq.) is the legal basis for establishing fixed and uniform rates.

(1) 74 O.S. § 85.7 requires agencies desiring to have a service qualified for a fixed and uniform rate, or an established rate modified, submit a written request and all supporting documentation to the Office of Management and Enterprise Services Division of Capital Assets Management (OMES DCAM). When OMES DCAM qualifies such service for a fixed and uniform rate, the rate must be approved in a public hearing, before the Oklahoma Department of Human Services (DHS) can enter into a legal contract.

(2) Within two weeks after the Legislature convenes, each state agency provides the Speaker of the House of Representatives and the President Pro Tempore of the Senate a complete list of all services paid for by fixed and uniform rates and, the number of contracts in existence for each type of service.

(b) Rate approval or disapproval. The DHS Rates and Standards Committee (Committee) is comprised of DHS executive-level staff designated by the Director of Human Services (Director). The Committee conducts public hearings where the public, vendors, and DHS staff are afforded the opportunity to provide testimony and documented evidence regarding the rate recommendation. The Committee approves or disapproves the rate and makes a recommendation to the Director. The Director of Human Services (Director) sets the rates for OKDHS administered programs.

(c) The policies and procedures in this Subchapter describe how information and recommendations are collected and provided to the Director for use in establishing service rates and standards.

340:2-33-2. Legal basis and role of the Department of Central Services [REVOKED]

(a) The Oklahoma Central Purchasing Act found at Section 85.1 et. seq. of Title 74 of the Oklahoma Statutes is the legal basis for establishing fixed and uniform rates.

(b) The statute requires agencies desiring to have a service qualified for a fixed and uniform rate, or an established rate modified, submit a written request and all supporting documentation to the Office of Management and Enterprise Services Division of Capital Assets Management (DCAM). If DCAM qualifies such service for a fixed and uniform rate, the rate must then be approved in a public hearing before the agency can enter into a legal contract.

(1) The agency notifies the DCAM Director at least 30 days in advance of the scheduled hearing. The agency delivers the notice, a copy of the agenda items relating to the proposed rate, and all supporting documentation.

(2) The DCAM Director communicates a recommendation to the agency in advance of the hearing or at the

time of the hearing. Whether made in person or in writing, any comment made by the DCAM Director is, by law, included in the hearing minutes.

(c) Within two weeks after the Legislature convenes, the administrative officer of each state agency provides the Speaker of the House of Representatives and the President Pro Tempore of the Senate a complete list of all services paid for by uniform fixed rates and the number of contracts in existence for each type of service.

340:2-33-3. Committee on Rates and Standards [REVOKED]

(a) The Committee on Rates and Standards (Committee) is comprised of Oklahoma Department of Human Services (OKDHS) administrative and executive level staff designated by the Director of Human Services (Director).

(b) The Director sets OKDHS rates.

(c) The Committee serves the rate setting process by conducting public hearings where the public, vendors, and OKDHS staff are afforded the opportunity to provide testimony and documented evidence in support of rate recommendations.

(1) The Committee, by majority vote, records a recommendation to the Director setting forth specific payment rates for specific services. If the Committee determines additional information is needed, the chair may recess the meeting until a later date to allow interested parties or staff additional time to secure the information.

(2) Once the Committee reaches a recommendation, the Director reviews and approves or disapproves the rate.

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TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 2. ADMINISTRATIVE COMPONENTS

[OAR Docket #20-537]

RULEMAKING ACTION:

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RULES:

Subchapter 39. ~~Planning, Research, and Statistics~~ Innovation Services

Part 1. ~~Office of Planning, Research, and Statistics~~ Innovation Services

340:2-39-1 [AMENDED]

Part 3. Oklahoma Department of Human Services Institutional Review Board (DHSIRB)

340:2-39-5 through 340:2-39-11 [AMENDED]

340:2-39-11.1 [NEW]

340:2-39-12 [AMENDED]

340:2-39-12.1 [NEW]

340:2-39-12.2 [NEW]

340:2-39-13 [AMENDED]

(Reference WF 20-2C)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes; and Sections 46.108(a)(3) and § 46.116 of Title 45 of the Code of Federal Regulations.

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n/a

GIST/ANALYSIS:

The proposed amendments to Chapter 2, Subchapter 39 are to: (1) change the Office of Planning, Research, and Statistics name to Innovation Services; (2) expand Oklahoma Administrative Code (OAC) 340:2-39-1 to include a function presently defined in OAC 340:2-39-6; and (3) provide that Innovation Services (IS) carries out Office of Planning, Research, and Statistics functions. The proposed amendments to Subchapter 39, Chapter 2: (1) implement policy changes that conform to new federal regulations for the protection of human research subjects; and (2) improve the Oklahoma Department of Human Services (DHS) Institutional Review Board (DHSIRB) operations.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-693-6542.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2020:

SUBCHAPTER 39. PLANNING, RESEARCH, AND STATISTICS INNOVATION SERVICES

PART 1. OFFICE OF PLANNING, RESEARCH AND STATISTICS INNOVATION SERVICES

340:2-39-1. Office of Planning, Research, and Statistics Innovation Services (IS)

(a) **Purpose.** ~~The Office of Planning, Research, and Statistics (OPRS)~~ IS:

- (1) conducts data-driven research and statistical analysis of Oklahoma Department of Human Services ~~(OKDHS)~~ (DHS) programs and services, including grant evaluation;
- (2) collaborates with ~~(OKDHS)~~ (DHS) divisions to communicate and disseminate information regarding ~~(OKDHS)~~ (DHS) research, programs, and services;
- (3) provides technical assistance in the design, development, implementation, and evaluation of projects, programs, and grants conducted or supported by DHS;
- (34) serves as the official DHS clearinghouse for language translation, forms, and appendices ~~for (OKDHS);~~

(45) provides technical assistance in designing, developing, and implementing DHS strategic planning ~~for (OKDHS); and~~

(56) ~~maintains program statistics and prepares policy-related analysis and a variety of complex state reports.~~

(6) provides leadership for developing and implementing quality and performance improvement strategies and initiatives; and

(7) works to build a culture of continuous improvement.

(b) **Reports.** ~~OPRS prepares and files~~ IS assists with the preparation of the DHS:

(1) ~~OKDHS~~ Annual Report, required by Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162), each year to the Governor on or before November 1; and

(2) ~~OKDHS~~ Strategic Plan, required by 62 O.S. § 45.3, every two years, ~~as described in OAC~~ per Oklahoma Administrative Code 340:1-1-18.

PART 3. OKLAHOMA DEPARTMENT OF HUMAN SERVICES INSTITUTIONAL REVIEW BOARD (DHSIRB)

340:2-39-5. Purpose, scope, and authority

(a) **Purpose.** The purpose of the Oklahoma Department of Human Services (DHS) Institutional Review Board (DHSIRB) is to ~~protect the rights and welfare of human participants involved in research and assist the investigator and the institution in their mutual obligation to comply with all applicable federal, state, and local laws, rules and regulations, including internal policies of the Oklahoma Department of Human Services (DHS), with respect to the research participants and investigators;~~

(1) protect the rights and welfare of DHS employees and DHS clients and/or patients, including individuals receiving DHS benefits or services provided at DHS- operated facilities, who participate in a research activity as a "research subject" or "human subject" as defined in this Part; and

(2) assist the investigator and DHS in their mutual obligation to comply with all applicable federal, state, and local laws, rules, and regulations, including DHS internal policies, with respect to the research participants and investigators.

(b) **Scope.** ~~The DHSIRB operates,~~ per Part 46 of Title 45 of the Code of Federal Regulations and applicable state laws. Unless the research meets the criteria for review exemption, per Oklahoma Administrative Code (OAC) 340:2-39-12(b) 340:2-39-11(d), DHSIRB reviews research ~~and program evaluation projects involving~~ including program evaluation projects with a human subjects research component that involve:

(1) direct interaction between the investigator and the research subject, including:

- (A) experimentation, such as experimental medication or treatment, involving the research subject;
- (B) surveys or interviews with research subjects;

- (C) interaction with research subjects beyond normal service delivery; and
 - (D) performance of any procedures not performed for the sole benefit of the person involved, and any procedures in which either a primary or secondary purpose, or objective, is the collection of data for research analysis;
- (2) any research ~~or evaluation program~~ intended to contribute to generalized knowledge; and
- (3) the collection of protected information about research subjects from third parties for research analysis ~~of program evaluation~~.
- (A) Research involving human subjects is not limited to deliberate experimentation with human subjects. It also includes the performance of any procedures not performed for the sole benefit of the person involved and any procedures in which either a primary or secondary purpose or objective is the collection of data for research analysis.
- (B) The scope of research involving human subjects covered by this Part not only involves physical, chemical, electrical, or psychological stimulation of responses within the human body, but also includes:
- (i) interviews;
 - (ii) observation of behavior in which an investigator interacts with human subjects;
 - (iii) ~~test administration of tests~~; or
 - (iv) other measurement techniques of measurement.
- (C) Some research involving human subjects may be exempt from on-going DHSIRB review. Authority for the decision on whether a research or evaluation project is exempt resides with ~~the~~ DHSIRB. Research involving human subjects is not intended to cover data obtained as part of the teaching or training of individuals in which the performance of therapeutic procedures is for the direct and sole benefit of the person involved, or for any area of investigation of individuals as part of the performance of professional services.
- (D) All activities related to human ~~participant~~ subject research, regardless of funding source, is guided by the ethical principles in The Belmont Report.
- (c) **Authority.**
- (1) ~~The DHSIRB receives its authority from the DHS Director of Human Services. The DHSIRB is registered with the federal Department of Health and Human Services (DHHS) and has approved the Federalwide Assurance of Protection for Human Subjects submitted to United States Department of Health and Human Services DHHS.~~
- (2) DHSIRB has the authority to review any research funded through DHS or that ~~involves~~ focuses on DHS staff or human participants ~~individuals~~ receiving DHS benefits or services provided at DHS operated facilities. In addition, DHSIRB has the authority to:

- (A) approve, disapprove, or order research modification ~~of research~~ based upon consideration of the risks and benefits to the human ~~participants~~ subjects;
- (B) oversee the conduct of the research and require periodic progress reports from research investigators;
- (C) suspend or terminate prior approval of a research project;
- (D) place restrictions on a research project;
- (E) require research investigators to ~~promptly~~ report breaches of confidentiality, within five-business days; and
- (F) require research investigators to ~~promptly~~ report ~~if~~ within five-calendar days of discovery when any researcher or research participant is endangered physically or psychologically during the data collection period of the study.

340:2-39-6. Definitions

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

"Children" ~~means persons under 18 years of age.~~

"The Belmont Report" means a statement of basic ethical principles governing research involving human subjects issued by the National Commission for the Protection of Human Subjects in 1978.

"Child" means an individual, who has not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law of the jurisdiction in which the research is conducted. For research conducted in Oklahoma, where federal regulations and Oklahoma law both apply, an unmarried or unemancipated individual younger than 18 years of age meets the definition of "child." For research conducted outside of Oklahoma or in a jurisdiction where Oklahoma law does not apply, individuals who meet the definition of a child are those individuals described under the applicable jurisdiction law where the research is conducted.

"Clinical trial" means a research study in which one or more human subjects are prospectively assigned to one or more interventions, which may include placebo or other control, to evaluate the effects of the interventions on biomedical or behavioral health-related outcomes, per Section 46.102(b) of Title 45 of the Code of Federal Regulations (45 C.F.R. § 46.102(b)).

"Cognitively impaired" means a person with:

- (A) ~~a psychiatric disorder, for example, psychosis, neurosis, personality or behavior disorders;~~
- (B) ~~dementia;~~
- (C) ~~a developmental disorder for example, mental retardation affecting cognitive or emotional functions to the extent that capacity for judgment and reasoning is significantly diminished; or~~
- (D) ~~a compromised ability to make decisions in his or her best interest, for example:~~
 - (i) ~~persons under the influence of or dependent on drugs or alcohol;~~
 - (ii) ~~those suffering from degenerative diseases affecting the brain;~~

- (iii) ~~terminally ill patients; and~~
- (iv) ~~persons with severely disabling physical handicaps.~~

"Confidentiality" means the treatment of information an individual discloses in a relationship of trust with the expectation that it is not divulged to others or in ways inconsistent with the understanding of the original disclosure without his or her permission.

"Demonstration project" means a project, deliberately small in scale and limited in scope ~~project~~, usually with a short project cycle.

"Department of Human Services Institutional Review Board (DHSIRB)" means a specially constituted review body established or designated by the Oklahoma Department of Human Services (DHS) to protect the welfare of human subjects recruited to participate in ~~biomedical or behavioral~~ research, per Sections 46.102(g), 108, and 109 of Title 45 of the Code of Federal Regulations (45 C.F.R. §§46.102(g), 46.108, and 46.109).

"The Belmont Report" means a statement of basic ethical principles governing research involving human subjects issued by the National Commission for the Protection of Human Subjects in 1978.

"Director" means the DHS Director, per Chapter 1 of this Title.

"Federalwide Assurance (FWA)" means a formal, written, binding commitment an institution submits to the United States (U.S.) Department of Health and Human Services (DHHS), U.S. Office for Human Research Protections (OHRP), in which it commits to DHHS compliance with the requirements set forth in the regulations for the protection of human subjects, per 45 C.F.R. § 46.

"Generalizable knowledge" means information where the intended use of the research findings can be applied to populations or situations beyond those being studied. In practice, generalizable knowledge refers to research results that are:

- (A) published, including research papers published as a thesis or dissertation;
- (B) presented to the public; or
- (C) developed for others to build upon. Generalizable knowledge may include theses, dissertations, and some oral histories.

"~~Human Protections Administrator~~ protections administrator (HPA)" means the person designated by the DHS ~~Office of Planning, Research and Statistics~~ Innovation Services director, who provides administrative support to the DHSIRB, serves as the ~~Office of Human Research Protection's~~ OHRP primary institutional contact, and has the administrative responsibility for the program. The HPA:

- (A) has comprehensive knowledge of all aspects of the DHS system of protections for human subjects;
- (B) is familiar with the institution's commitments under the ~~Human Subject Assurance (HSA)~~ FWA; and
- (C) plays a key role in ensuring the institution fulfills its responsibilities under the ~~HSA~~ FWA.

"Human subject" means a living individual about whom an investigator, whether professional or student, conducting research obtains:

- (A) ~~data through intervention or interaction with the individual~~ obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or
- (B) ~~identifiable private information per 45 C.F.R. § 46.102(f). DHSIRB extends the definition to include deceased individuals about whom an investigator conducting research obtains identifiable private information~~ uses, studies, analyzes, or generates identifiable, private information or identifiable biospecimens.

"~~Human Subject Assurance (HSA)~~" means a formal, written, binding commitment an institution submits to the United States Department of Health and Human Services (DHHS), Office for Human Research Protections (OHRP), in which it promises to comply with applicable regulations governing research with human subjects and stipulates the procedures through which compliance is achieved per 45 C.F.R. § 46.103.

"Identifiable biospecimen" means a biospecimen for which the identity of the subject is, or may readily be, ascertained by the investigator or associated with the biospecimen.

"Identifiable private information" means private information for which the identity of the subject is, or may readily be, ascertained by the investigator or associated with the information.

"Individual with impaired decision-making capacity" means an individual with a compromised ability to make decisions in his or her own best interest, such as individuals:

- (A) under the influence of, or dependent on, drugs or alcohol;
- (B) suffering from degenerative diseases affecting the brain;
- (C) terminally ill patients;
- (D) with severely disabling physical handicaps including, but not limited to:
 - (i) a psychiatric disorder, such as psychosis, neurosis, or personality or behavior disorders;
 - (ii) dementia; or
 - (iii) a developmental disorder, such as an intellectual disability affecting cognitive or emotional functions to the extent that capacity for judgment and reasoning is significantly diminished.

"Informed consent" means a person's voluntary agreement, based upon adequate knowledge and understanding of relevant information, to participate in research or to undergo a diagnostic, therapeutic, or preventive procedure. In giving informed consent, subjects may not waive or appear to waive any of their legal rights, or release or appear to release the investigator, the sponsor, the institution, or agents thereof from liability for negligence, per 45 C.F.R. § 46.116 and 21 C.F.R. §§ 50.20 and 50.25, and ~~Form 21AD084E, Application to the Oklahoma Department of Human Services Institutional Review Board (DHSIRB).~~

Permanent Final Adoptions

"Innovation Services (IS)" means the DHS office that provides technical assistance in the design, development, implementation, and evaluation of projects, programs, and grants conducted or supported by DHS. IS conducts data-driven research and statistical analysis of programs and services, and disseminates information and results.

"Institution" means DHS unless the context clearly indicates otherwise.

"Interaction" means communication or interpersonal contact between investigator and subject.

"Intervention" means physical procedures by which information or biospecimens are gathered, such as venipuncture because it is a physical procedure to gather a biospecimen, as well as manipulations of the subject or his or her environment that are performed for research purposes.

"Investigator" means a scientist or scholar, who may be a professional or a student, with primary responsibility for the design and conduct of research.

"Legally-authorized representative" means an individual, judicial entity, or other body authorized under applicable law to consent on behalf of a prospective subject to his or her participation in the procedure(s) involved in the research. When there is no applicable law addressing this issue, legally-authorized representative means an individual recognized by DHS policy as acceptable to provide consent in the non-research context on behalf of the prospective subject to his or her participation in the procedure(s) involved in the research.

"Minimal risk" means the probability and magnitude of harm or discomfort anticipated in the proposed research are not greater, in and of themselves, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests, per 45 C.F.R. § 46.102(i). For example, the risk of drawing a small amount of blood from a healthy individual for research purposes is no greater than the risk of doing so as part of routine physical examination.

"Office of Human Research Protection (OHRP)" means a federal agency that provides leadership in the protection of the rights, welfare, and well-being of subjects involved in research conducted or supported by DHHS. OHRP ensures this by:

- (A) providing clarification and guidance;
- (B) developing educational programs and materials;
- (C) maintaining regulatory oversight; and
- (D) providing advice on ethical and regulatory issues in biomedical and social-behavioral research.

"Office of Planning, Research and Statistics (OPRS)" means the DHS office that provides technical assistance in the design, development, implementation and evaluation of projects, programs, and grants conducted or supported by DHS. OPRS conducts data-driven research and statistical analysis of programs and services and disseminates information and results.

"Principal investigator (PI)" means the research investigator who is ultimately responsible for assuring-ensuring compliance with applicable federal, state, and local laws, rules, and regulations, and the conduct of the research.

"Privacy" means having control over the extent, timing, and circumstances of sharing one's self physically, behaviorally, or intellectually with others.

"Private information" means information, such as medical records, about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place. Information is provided for specific purposes, and he or she can reasonably expect the information is not made public.

"Research" means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge, per 45 C.F.R. § 46.102(l).

"Research subject" means a DHS employee, client, and/or patient:

- (A) who is voluntarily participating as a human subject in a research project;
- (B) who is voluntarily participating in a survey or interview conducted as part of a research or program evaluation project; and/or
- (C) whose protected information is disclosed to, and used by, an investigator during a research or program evaluation project. The words "subject" and "participant" are used interchangeably.

"Research" means a systematic investigation, including development, testing, and evaluation, designed to develop or contribute to generalizable knowledge per 45 C.F.R. § 46.102(d).

"Risk" means the probability of harm or injury whether physical, psychological, social, or economic occurring as a result of participation in research. Both the probability and magnitude of possible harm may vary from minimal to significant.

"Systematic investigation" means an activity that involves a prospective plan incorporating data collection, either quantitative or qualitative, and data analysis to answer a question, such as systematic investigations that include surveys and questionnaires, interviews and focus groups, analyses of existing data or biological specimens, epidemiological studies, evaluations of social or educational programs, cognitive and perceptual experiments, and medical chart review studies.

340:2-39-7. ~~Principle~~Principles and Policiespolicies

(a) **Ethical principles.** The Oklahoma Department of Human Services Institutional Review Board (DHSIRB) is guided by the ethical principles regarding research involving human subjects set forth in the report of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research entitled, "Ethical Principles and Guidelines for the Protection of Human Subjects of Research" or the "The Belmont Report." The DHSIRB recognizes the principles of respect for persons; beneficence, including minimization of harms and maximization of benefits; and justice as stated in The Belmont Report and strives to apply these principles in all research covered by this Part. In addition, DHSIRB makes all reasonable efforts ~~are made~~ to comply with the requirements in Part 46 of Title 45 of the Code of Federal Regulations

(45 C.F.R. Part 46) for all research ~~conducted or funded by DHSIRB~~ subject to its review.

(b) **Institutional policies.**

(1) DHSIRB acknowledges and accepts its responsibility for protecting the rights and welfare of human research subjects.

(2) DHSIRB acknowledges that it, and its investigators, accept those responsibilities necessary for the performance of all research covered by this Part including compliance with applicable federal, state, and local laws; ~~if any.~~

(3) DHSIRB works to ~~assure~~ ensure that, before subjects are involved in research, the requirements ~~listed in (A) - (G) of this paragraph~~ are met.

(A) Risks to participants are minimized by:

(i) using procedures consistent with sound research design that do not unnecessarily expose participants to risks; and

(ii) employing procedures already being performed on ~~the~~ participants for prevention, diagnostic, or treatment purposes, when appropriate.

(B) Risks to ~~participants~~ human subjects are reasonable relative to anticipated benefits, if any, to human subjects, and the importance of the knowledge that may reasonably be expected to result.

(C) Selection of ~~participants~~ human subjects is equitable.

(D) ~~Participants~~ Human subjects, or the ~~participant's~~ their legally authorized ~~representative~~ representatives, provide voluntary informed consent for participating in research, unless otherwise exempted by state or federal law, per Oklahoma Administrative Code 340:2-39-11.1.

(E) There are adequate provisions for ensuring ~~the human subjects'~~ the human subjects' safety ~~of participants.~~

(F) There are adequate provisions to protect ~~the human subjects'~~ the human subjects' privacy ~~of participants~~ and maintain ~~the data~~ the data confidentiality ~~of data.~~

(G) When necessary, appropriate additional safeguards are included in research involving subjects who are likely to be vulnerable to coercion or undue influence, such as children, including those who are wards of the state or any other agency, prisoners, ~~pregnant women, cognitively impaired persons,~~ individuals with impaired decision-making capacities, or economically or educationally disadvantaged persons.

(4) DHSIRB encourages and promotes constructive communication among its administrators, research supervisors, research investigators, and all other relevant parties as a means of maintaining a high level of awareness to safeguard the rights and welfare of research subjects.

(5) DHSIRB exercises appropriate administrative oversight to ~~assure~~ ensure its practices and procedures designed for the protection of the rights and welfare of human subjects are effectively applied.

(7) DHSIRB serves in a collaborative relationship with research investigators to ensure that research with human

subjects is conducted in accordance with legal requirements and ethical principles of respect for persons, beneficence, and justice.

(6) DHSIRB provides each individual conducting or reviewing human subject research, such as research investigators, research supervisors, research reviewers, and division directors with a copy of this Section.

(8) Per 45 C.F.R. § 46.108(a)(3), DHSIRB is responsible for:

(A) conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and to appropriate Oklahoma Department of Human Services (DHS) managers, supervisors, and directors;

(B) determining which projects require review more often than annually and which projects need verification from sources other than the investigators when no material changes occurred since the previous DHSIRB review; and

(C) ensuring prompt reporting by investigators to DHSIRB of proposed changes in a research activity; and ensuring investigators conduct the research activity in accordance with DHSIRB terms of approval until any proposed changes are reviewed and approved by DHSIRB, except when necessary to eliminate apparent immediate hazards to the subject.

(9) DHSIRB is responsible for ensuring prompt reporting by investigators to DHSIRB; appropriate DHS officials; the department or agency head; and the Office for Human Research Protections, the Department of Health and Human Services (DHHS), or any successor office, or the equivalent office within the appropriate federal department or agency of any:

(A) unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with this policy or the DHSIRB requirements or determinations; and

(B) DHSIRB suspension or termination of approval.

(c) **Support for DHSIRB functions and operations.**

(1) In order to ensure that DHSIRB has the necessary resources to carry out its duties, DHS provides sufficient:

(A) staff support, which includes at a minimum, the human protections administrator (HPA). The HPA provides administrative support to DHSIRB, serves as the Office of Human Research Protection's primary DHS contact, and has the administrative responsibility for DHSIRB functions and operations; and

(B) meeting space for the Board to convene.

(2) Additional necessary resources, such as filing space, reproduction equipment, and computers for DHSIRB are provided by DHS through the Innovation Services (IS) division.

340:2-39-8. Membership

(a) **Requirements for membership of the Oklahoma Department of Human Services Institutional Review Board (DHSIRB) membership requirements.**

(1) The DHSIRB is comprised of at least seven members. Membership criteria includes, but is not limited to, consideration of earned degrees, representative capacity, and indications of experience, such as board certifications or licenses sufficient to describe each member's chief anticipated contributions to DHSIRB deliberations.

(2) Prior to serving on the DHSIRB, all members submit certificates of completed Human Subject Assurance Training offered by the federal Office for Human Research Protections (OHRP), ~~and sign a statement that they have received and reviewed the DHSIRB rules. The federal OHRP training is available at <http://ohrp.ed.od.nih.gov/CBTs/Assurance/login.asp>.~~

(3) Prior to serving on the DHSIRB, all members must sign the ~~an Acknowledgments~~ Acknowledgment of Receipt that ~~states~~ stating they have received and reviewed the DHSIRB rules.

(4) ~~The~~To the greatest extent reasonably possible, the DHSIRB members of the DHSIRB have varying academic, professional, and personal backgrounds to promote complete and adequate review of research activities commonly conducted by the institution.Oklahoma Department of Human Services (DHS) or at state-operated facilities. In addition to possessing the experience and expertise necessary to review specific research activities, the members are ~~able~~ expected to ascertain the acceptability of proposed research in terms of institutional DHS commitments and rules and regulations, applicable law, and standards of professional conduct and practice.

(5) ~~DHSIRB includes members with consideration of race, gender, cultural, and professional backgrounds, and sensitivity to issues, such as community attitudes. The DHSIRB does not consist entirely of men or women. There is at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas. In addition, DHSIRB includes at least one member who is not otherwise affiliated with the Oklahoma Department of Human Services (DHS) and who is not part of the immediate family of a person who is affiliated with the institution. The DHSIRB similarly strives, through member experience, expertise, and diversity, including race, gender, cultural backgrounds, and sensitivity to issues, such as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects.~~

(A) **Scientific background.** The DHSIRB includes at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas.

(B) **A member not affiliated with DHS.** The DHSIRB includes at least one member who is not otherwise affiliated with DHS and who is not an immediate family of a person who is affiliated with DHS.

(C) **Ad hoc members with special competence.** The DHSIRB may, in its discretion, invite individuals with competence in special areas to assist in the review of issues that require expertise beyond, or in

addition to, that normally available to DHSIRB members. These individuals may not vote on any DHSIRB matter.

(6) DHSIRB membership consists of at least a member of DHS:

~~(6A) A member of DHS Office of Client Advocacy (OCA) serves on the DHSIRB.~~

~~(7B) A member of DHS Legal Services serves on the DHSIRB.~~

~~(8C) A member of DHS Child Welfare Services serves on the DHSIRB.~~

~~(9D) A member of DHS Community Living and Support Services serves on the DHSIRB.~~Children's Services;

~~(10E) A member of DHS Adult and Family Services serves on the DHSIRB.~~

(F) Adult Services;

(G) Information Security; and

~~(11H) A member of DHS Office of Planning, Research and Statistics serves on the DHSIRB.~~Innovation Services. The Innovation Services member serves on the DHSIRB representing scientific areas.

~~(12I) The DHS Director of Human Services (Director) approves the selection of DHSIRB members, including that of the Chair, Vice-Chair, and alternates, and is notified by the Chair of any studies that are disapproved by the DHSIRB.~~

(b) **Alternate members.**

(1) ~~Alternate members are designated by the DHSIRB members and approved by the Director to serve as voting members in the event the primary member is not available to attend the regularly scheduled meeting. Primary DHSIRB members may designate an alternate member from his or her respective programs or divisions, who subject to Director approval, serves as a voting member in the event the primary member is not available to attend any regularly scheduled meeting. Alternate members complete the any primary DHSIRB member required training, and may then vote on any new submission, when needed. Alternate members receive meeting documents, such as agendas, minutes, and protocols for review and are encouraged to attend all meetings.~~

(2) An alternate member-at-large is designated and approved by the Director to serve ~~if~~when both a voting member and his or her alternate are not available to attend a regularly scheduled meeting. The alternate member-at-large ~~may not serve as an alternate for a representative of particularly vulnerable subjects~~is approved based on the same criteria per (a)(5), of this Section.

(c) **Ad hoc members.**

(1) ~~When the DHSIRB reviews research applications involving particularly vulnerable subjects including, but not limited to, children, including those who are wards of the state or any other agency, prisoners, pregnant women, or cognitively impaired persons, prospective research subjects who have impaired decision-making capacity or who otherwise are considered vulnerable to coercion or undue influence, consideration is given to the~~

~~inclusion of~~including one or more individuals who are knowledgeable about, and experienced in, working with these ~~participants~~prospective subjects.

(2) DHSIRB may, at its discretion, invite individuals with competence in specific areas to assist in the review of issues that require expertise beyond or in addition to that available on the DHSIRB.

(3) Ad hoc members are non-voting members.

(4) No person outside of the DHSIRB may override a ~~not approved~~not approved vote.

(d) **Roles and responsibilities.**

(1) ~~The~~ DHSIRB Chair:

(A) is appointed by the DHS Director;

(B) serves for a minimum of one year, with the possibility of reappointment;

(C) does not resign when the majority of the DHSIRB membership consists of new members who have served for less than one year;

(D) serves as a member of the DHSIRB in addition to his or her authority as Chair;

(E) prepares for, and convenes meetings with, the assistance of the ~~Human Protections Administrator~~human protections administrator (HPA);

(F) ensures meeting coverage by the ~~vice-chair~~Vice-Chair when not able to serve as chair;

(G) ensures a quorum is present for all meetings;

(H) carries out an initial assessment of submissions with the Vice-Chair and the OCA member of ~~OCA~~;

(I) carries out an expedited review of submissions that qualify under such ~~condition, or designates one or more experienced reviewers from among members of the DHSIRB~~conditions by convening a DHSIRB subcommittee to complete the expedited review, per Oklahoma Administrative Code 340:2-39-12(d);

(J) ~~delegates review responsibilities as necessary and applicable;~~

~~(K)~~ distributes copies of the submissions to the appropriate DHSIRB members with the HPA assistance of the ~~HPA~~;

~~(L)~~(K) ensures adequate expertise for review and determinations;

~~(M)~~ consults with investigators as necessary;

~~(N)~~(M) assists the reviewers and other members with any concerns in preparing for the meeting;

~~(O)~~(N) ensures assigned reviewers present a clear and concise review of research materials;

~~(P)~~(O) votes on each DHSIRB action;

~~(Q)~~(P) is temporarily removed in the event of a conflict of interest;

~~(R)~~(Q) is permanently removed in the event of termination of employment or at the Director's discretion of the ~~Director~~; and

~~(S)~~(R) notifies the Director of any ~~disapproval~~disapproval.

(2) ~~The~~ DHSIRB Vice-Chair:

(A) is appointed by the Director;

(B) serves for a minimum of one year, with the possibility of reappointment;

(C) serves as a member of the DHSIRB in addition to his or her DHSIRB authority as Vice-Chair;

(D) assists or acts on behalf of the Chair in particular DHSIRB matters and at DHSIRB meetings;

(E) carries out an initial assessment of submissions with the Chair and the OCA member of ~~OCA~~;

~~(F)~~(E) carries out an expedited review of submissions that qualify under such conditions by participating on a DHSIRB subcommittee to complete the expedited review, per OAC 340:2-39-12(d);

~~(G)~~(F) is temporarily removed in the event of a conflict of interest;

~~(H)~~(G) is permanently removed in the event of termination of employment or at the Director's discretion of the ~~Director~~.

(3) ~~The~~ DHSIRB members:

(A) are approved by the Director;

(B) serve at least one year with the option of rotating with designated alternate;

(C) do not resign from the DHSIRB, ~~if without good cause, when~~ the majority of the members are in their first year of serving;

(D) are responsible for reviewing research protocols submitted for full DHSIRB review;

~~(E)~~(D) are responsible for reviewing research protocols submitted when designated for an expedited review;

~~(F)~~(E) are responsible for attending all scheduled meetings;

~~(G)~~(F) are removed from the DHSIRB ~~if when~~ more than two consecutive meetings are missed without having the designated alternate attend;

~~(H)~~(G) are temporarily removed in the event of a conflict of interest; and

~~(I)~~(H) are permanently removed in the event of termination of employment or at the Director's discretion of the ~~Director~~.

(4) DHSIRB Chair, Vice-Chair, and members:

(A) ~~annually, July 1 – June 30, submit training certificates from the Assurance Training Modules on the OHRP website. Training certificates are not required for ad hoc members~~ensure any required IRB training is completed and sufficient IRB training certification is submitted as necessary;

(B) ~~annually submit signed acknowledgements of reading the DHSIRB procedures and supporting documents. Supporting documents are not required for ad hoc members~~ensure DHSIRB primary members and designates submit signed acknowledgments affirming the DHSIRB procedures and that supporting documents were reviewed and submitted as necessary;

(C) have access to the reference materials available through the DHSIRB HPA-maintained library ~~maintained by the HPA~~;

(D) receive no compensation for serving as members of the DHSIRB;

- (E) conduct reviews of submitted research proposals as delegated, mandated, or requested;
- (F) provide written responses to the research investigator and organization containing ~~the DHSIRB findings of the DHSIRB;~~
- (G) determine which research requires review more often than annually;
- (H) determine which research needs verification that ~~no~~ material changes have not occurred since previous DHSIRB review, from sources other than the investigators;
- (I) advise research investigators to promptly report changes to the approved research activities;
- (J) advise research investigators that changes in approved research are not initiated without DHSIRB review and approval, except when necessary to eliminate apparent immediate hazards; and
- (K) advise research investigators to promptly, within ~~five business~~ five-business days, report to DHSIRB and appropriate ~~institutional DHS~~ officials of:
 - (i) unanticipated problems involving risks to research participants, interviewers, or others;
 - (ii) serious or continuing noncompliance with ~~the DHSIRB requirements of the DHSIRB;~~
 - (iii) suspension or termination of DHSIRB approval; or
 - (iv) disapproval of other DHSIRB submissions.
- (5) Consultants ~~are may~~ be invited to review submissions and attend meetings when a ~~submitted~~ proposal contains information outside of the scope of the DHSIRB members' collective knowledge. No individual with an interest or involvement in the research study application under DHSIRB consideration is utilized in any consultative capacity.
- (6) ~~The Office of Planning, Research and Statistics Performance Outcomes and Accountability provides administrative support for the DHSIRB.~~
- (7) ~~Resources for the DHSIRB, for example filing space, reproduction equipment, and computers are provided by DHS.~~
- (8) ~~Meeting areas are provided by DHS.~~
- (e) **Conflict of Interest.** No DHSIRB member votes on a submission ~~if when~~ there is an actual or potential conflict of interest with regard to ~~the member's~~ professional or personal interests, including financial interests ~~of the member.~~ Every DHSIRB member recuses himself or herself from consideration of any research study application in which that member or the member's immediate family has any involvement or interest in the study or its outcome.
 - (1) ~~DHSIRB members are not selected by potential investigators. Based on a DHSIRB majority vote, any DHSIRB member may be excluded from participating in an initial or continuing review of any project in which the member has an actual, apparent, or potential conflicting interest.~~
 - (2) ~~When a member is directly involved with a research, the member recuses himself or herself from the~~

~~meeting while the submission is reviewed and abstains from voting on the submission. A conflict of interest exists when any DHSIRB member, including alternate members and ad hoc members, has an interest sufficient to influence, or appear to influence, the objective exercise of his or her official duties. A conflicting interest may:~~

- ~~(A) be personal in nature or may result from divergent professional responsibilities;~~
- ~~(B) arise when a DHSIRB member is involved with a research project as an investigator, a researcher, a director, an assistant, an advisor, or as another type of stakeholder;~~
- ~~(C) arise when any DHSIRB member or the member's immediate family has a financial interest in the outcome of the research. Immediate family includes spouses/domestic partners, siblings, parents, and dependent minors and adult children; and~~
- ~~(D) be recognized for any other reason that is considered to be an unacceptable conflict of interest by the member or by DHSIRB.~~
- (3) When a DHSIRB member has a conflict of interest, the member:
 - (A) discloses his or her conflict of interest; and
 - (B) recuses himself or herself from participation in the meeting while the submission is reviewed or discussed, and
 - (C) abstains from voting on the submission.
- (4) Recusal means the member with a conflict of interest:
 - (A) refrains from discussing any research project in which he or she has a conflict of interest;
 - (B) does not seek to influence other DHSIRB members prior to a vote; and
 - (C) removes himself/herself from the meeting room while the discussion and DHSIRB vote takes place, except to provide DHSIRB-requested information.
- (5) It is each DHSIRB member's duty to ensure participant protection, DHSIRB review integrity, and that research projects conducted are not jeopardized by an undisclosed, unidentified, or unmanaged conflict of interest.

340:2-39-9. Meetings

- (a) ~~The Oklahoma Department of Human Services Institutional Review Board (DHSIRB) meetings are held monthly. If there is insufficient business, the meeting is cancelled. Full actions of the DHSIRB require a quorum of the voting members.~~
- (a) **Oklahoma Department of Human Services Institutional Review Board (DHSIRB) meetings general rules.**
 - (1) DHSIRB meetings are scheduled monthly.
 - (2) A DHSIRB meeting can be held when there is a quorum of voting members and sufficient business to conduct a meeting. The decision to conduct a meeting is left to the discretion of a majority determination by the DHSIRB Chair, Vice-Chair, and an OCA member. A DHSIRB meeting may be cancelled when there is insufficient business, when a quorum is not available, or for other unforeseen reasons.

- (3) DHSIRB meetings require a quorum of the voting members.
- (b) **Quorum.** A quorum is defined as 50 percent plus one of all primary DHSIRB voting members, including the at least one member whose primary concerns are in nonscientific areas.
- (1) DHSIRB member refers to the primary members and alternate members who are approved by the Director and are eligible to vote.
- (2) If at any time during a meeting the members who are eligible to vote on a matter fail to constitute a quorum, then the matter is tabled for consideration until the next meeting.
- (A) Ad hoc members do not count toward the quorum requirement because they are not eligible to vote.
- (B) A member who is recused from discussion and voting on any item is not counted toward the quorum requirement while the item is under consideration.
- (3) The determination of a quorum sufficient to convene and conduct a meeting of the DHSIRB is left to the sole discretion of the DHSIRB Chair.
- (e) A majority vote is required of those present for approval of a motion.
- (c) **Majority vote required.** For approval of a motion, a majority vote of those present and eligible to vote is required.
- (1) A member who is eligible to vote has a right to abstain and cannot be compelled to vote. An abstention does not count toward the majority required to approve a motion.
- (2) DHSIRB does not recognize voting by proxy. All voting occurs in person at the time of the meeting by the member or his or her designated alternate.
- (d) **Prior to the meeting.** One week prior to the meeting, DHSIRB members and alternates receive:
- (1) a reminder of the upcoming meeting, including the date, location, and time;
- (2) minutes from the previous meeting;
- (3) an agenda for the upcoming meeting; and
- (4) all new submissions for review at the upcoming meeting including:
- (A) survey instruments;
- (B) consent, assent, and permission forms, when applicable;
- (C) letters from other IRBs, Institutional Review Boards and agency directors, if when applicable; and
- (D) the assigned unique identifier DHSIRB number.
- (e) **Other requirements.** At a minimum:
- (1) the Chair convenes and conducts the meetings;
- (2) the minutes of the prior meeting are approved by an open, recorded vote of the members;
- (3) all actions taken require an open, recorded vote of the members following discussion and the making and seconding of a motion; and
- (4) meeting minutes are recorded by the Human Protections Administrator or a designated individual.

340:2-39-10. Record requirements

(a) The Oklahoma Department of Human Services Institutional Review Board (DHSIRB) prepares and maintains documentation of its activities, per Section 46.115 of Title 45 of the Code of Federal Regulations (45 C.F.R. § 46.115) and 21 C.F.R. § 56.115, including:

- (1) a list of the DHSIRB members identified by:
- (A) name;
- (B) earned degrees;
- (C) representative capacity, including a brief statement of competence, scientific concerns, and affiliation;
- (D) indications of experience, such as board certifications and licenses, sufficient to describe each member's anticipated contributions to DHSIRB deliberations; and
- (E) any employment or other relationship between each member and the ~~institution~~ Oklahoma Department of Human Services (DHS), including whether the member is a full-time or part-time employee, member of a governing panel or board, or a paid or unpaid consultant;
- (2) copies of:
- (A) all research proposals reviewed;
- (B) scientific evaluations, if any, that accompany the proposals;
- (C) approved sample consent documents;
- (D) progress reports submitted by investigators; and
- (E) reports of injuries to subjects;
- (3) DHSIRB meeting minutes ~~which shall~~ to document:
- (A) attendance;
- (B) actions taken by the DHSIRB;
- (C) the vote on actions including the number of members voting for, against, and abstaining;
- (D) declarations of any DHSIRB member's conflict of interest with regard to any research projects;
- (E) any recusal of a member with a brief explanation why recusal was necessary;
- (~~DF~~) the basis for requiring changes in or disapproving research; and
- (~~EG~~) a written summary of the discussion of contro-
versial/controverted issues and their resolution;
- (4) records of continuing review activities, including the rationale for conducting continuing review of research that otherwise would not require continuing review, per 45 C.F.R. § 46.109(f)(1);
- (5) copies of all correspondence between the DHSIRB and investigators; and
- (6) written procedures and guidelines for records documenting DHSIRB activities, per Oklahoma Administrative Code 340:2-39-7(b)(8).
- (A) conducting initial and continuing review of research and reporting the findings and actions to the investigator and the institution;
- (B) determining which research requires review more often than annually;

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- (C) determining which research needs verification that no material changes have occurred since the previous DHSIRB review from sources other than the investigators;
 - (D) prompt reporting to the DHSIRB of proposed changes in an approved research;
 - (E) initiating proposed changes in an approved research only after DHSIRB review and approval, except when necessary to eliminate apparent immediate hazards to the subject; and
 - (F) prompt reporting to the DHSIRB of any:
 - (i) unanticipated problems involving risks to subjects or others;
 - (ii) serious or continuing noncompliance with this Part or the requirements or determinations of the DHSIRB; and
 - (iii) suspension or termination of DHSIRB approval.
- (b) Records are retained:
- (1) for at least three years from the date of creation for general administrative record; and
 - (2) for at least three years after research completion.
- (c) All records are accessible for inspection and copying by authorized representatives of the United States Department of Health and Human Services (DHHS) or the Office of Human Research Protection (OHRP) at reasonable times and in a reasonable manner, per 45 C.F.R. § 46.115(b).
- (d) DHSIRB submits a list of current DHSIRB members, and any changes in membership, to OHRP, DHHS per 45 C.F.R. §§ 46.103(b)(3) and 115(a)(5). DHS or the DHSIRB may maintain the records in printed form or electronically.

340:2-39-11. Application procedures

~~(a) A completed Oklahoma Department of Human Services Form 21AD084E, Application to the Oklahoma Department of Human Services Institutional Review Board (DHSIRB), is submitted with each new research proposal.~~

(a) General requirements.

- (1) Investigators or researchers wanting to conduct research focused on Oklahoma Department of Human Services (DHS) employees or DHS clients must first secure written approval from the Department of Human Services Institutional Review Board (DHSIRB).
 - (2) Investigators submit an application to the DHSIRB before initiating any part of a research project, including subject recruitment.
 - (3) Permission requests may be made through the application procedures described in this rule.
- (b) Previously approved research must request to continue beyond any one year period of time. Re review and re approval of research occurs on or before the one year anniversary of the initial Oklahoma Department of Human Services Institutional Review Board (DHSIRB) approval date, unless the degree of risk, complaints about the research, or investigator non-compliance necessitate more frequent re review. Research found exempt is reviewed annually.
- (b) New research proposals.

(1) The DHSIRB provides DHS Form 20AD085E, Application and Instructions, for investigators who want to submit a research proposal to DHSIRB.

(2) The application and all required attachments must be submitted to DHSIRB. When received 14 or more calendar days prior to the next meeting, the application is reviewed at the next regularly scheduled DHSIRB meeting. When received 13 or fewer calendar days prior to the next meeting, the application is reviewed at the following regularly scheduled DHSIRB meeting. No application is considered for approval until it is fully completed and submitted along with any required attachments.

(3) Information provided to the DHSIRB in Form 20AD085E includes, at a minimum:

(A) the professional qualifications of the principal investigator as well as co-investigators;

(B) a description of necessary support services and facilities;

(C) a description of the research protocol, including and addressing the:

(i) research title;

(ii) research purpose, including identifying any expected benefits as a consequence of doing the research;

(iii) research sponsor;

(iv) results of previous, related research;

(v) research participant inclusion or exclusion criteria;

(vi) justification for the use of special or vulnerable participant populations;

(vii) research design including appropriateness of research methods discussion;

(viii) description of procedures to be performed;

(ix) potential risks and a discussion of their relationship to potential participant benefits;

(x) circumstances surrounding consent procedure, including the:

(I) setting;

(II) participant autonomy concerns;

(III) language difficulties;

(IV) reading level; and

(V) particularly vulnerable subjects;

(xi) procedures for documentation of informed consent, including any procedures for obtaining assent from minors, using witnesses, translators, and document storage;

(xii) compensation to participants for their involvement;

(xiii) compensation for injured research participants;

(xiv) provisions for protection of subjects' privacy;

(xv) extra costs to participants for their involvement in the research; and

(xvi) extra costs to third-party payers because of participant's involvement;

(D) investigator's brochure, when one exists;

(E) informed consent document; and

- (F) each application must include a description of how the investigator obtains human subject consent, including a copy of the investigator's proposed consent document. For further guidance, refer to Oklahoma Administrative Code (OAC) 340:2-39-11.1.
- (4) The DHSIRB makes a determination on the request using procedures, per OAC 340:2-39-12.
- (e) ~~If the research departs from the original proposal, the DHSIRB is advised and a new application is submitted for DHSIRB approval.~~
- (c) **Requesting a determination that a proposed research project is not human subject research.**
- (1) The principal investigator is responsible for obtaining the DHSIRB determination on whether a proposed project does or does not qualify as human subject research. A determination includes, whether human subjects, as defined in OAC 340:2-39-6, are involved.
- (2) To receive a determination that a research project does not constitute human subject research, the investigator must submit a request in writing to DHSIRB. The request must include:
- (A) a completed Form 20AD085E, as described in (b) of this Section; and
- (B) the proposed justification for determining the research does not constitute human subjects research.
- (3) The DHSIRB makes a determination on the request using procedures, per OAC 340:2-39-12(b).
- (d) ~~In general, action on all proposals is taken within two months after submission. Investigators are notified in writing of the DHSIRB decisions within two weeks of board action.~~
- (d) **Requesting a determination that a proposed research project is exempt from review.**
- (1) In some limited circumstances, per this Section and in federal regulations, per Title 45 of the Code of Federal Regulations, an investigator may request that DHSIRB recognizes his or her proposed research project as a project exempt from DHSIRB review and oversight.
- (2) To receive a determination that a research project is exempt from review, the investigator must submit a request in writing to DHSIRB. The request must include a completed Form 20AD085E, per (b) of this Section, and written justification why the investigator is seeking an exemption determination.
- (3) The DHSIRB makes a determination on the request using the procedures, per OAC 340:2-39-12(c).
- (e) ~~Decisions to disapprove are accompanied by reasons for the decision.~~
- (e) **Requesting an expedited review.**
- (1) An expedited review may be requested if the principal investigator submits to the DHSIRB that the proposed research project involves no more than minimal risk and:
- (A) the proposed research falls within a category of research, as determined by the U.S. Secretary of Health and Human Services and is specifically identified in the DHSIRB application, that it is eligible for expedited review by the DHSIRB;
- (B) minor changes in previously approved research during the period for which approval is authorized; or
- (C) the proposed research for which limited DHSIRB review is sought qualifies as a condition of exemption, per Title 45 C.F.R. 46.104(d)(2)(iii), (d)(3)(i)(C), and (d)(7) and (8).
- (2) The investigator must submit a request in writing to the DHSIRB to ask for an expedited review of his or her proposed research project. The request must include a completed Form 20AD085E, per (b) of this Section, and written justification why the investigator is seeking an expedited review.
- (3) The DHSIRB makes a determination on the request, per OAC 340:2-39-12(d).
- (f) Information provided to the DHSIRB by the investigator is the:
- (f) **Cooperative research projects.**
- (1) ~~DHSIRB application Form 21AD084E, Application to the Oklahoma Department of Human Services Institutional Review Board (DHSIRB);~~ A cooperative research project is a research project that involves DHS and at least one other institutional review board, per 45 C.F.R. § 46.114.
- (2) ~~professional qualifications to do the research, including a description of necessary support services and facilities;~~ An investigator, in limited circumstances, may request the DHSIRB recognize his or her proposed research project as a cooperative research project, per 45 C.F.R. § 46.114.
- (3) ~~research protocol including and addressing the:~~ In the conduct of cooperative research projects, each institutional review board including the DHSIRB, is responsible for safeguarding the rights and welfare of human subjects.
- (A) ~~title of the research;~~
- (B) ~~purpose of the research, including the expected benefits obtained by doing the research;~~
- (C) ~~sponsor of the research;~~
- (D) ~~results of previous related research;~~
- (E) ~~research participant inclusion or exclusion criteria;~~
- (F) ~~justification for use of any special or vulnerable participant populations;~~
- (G) ~~research design, including, as needed, a discussion of the appropriateness of research methods;~~
- (H) ~~description of procedures to be performed;~~
- (I) ~~potential risks, and a discussion of their relationship to the potential benefits to the participants;~~
- (J) ~~circumstances surrounding consent procedure, including the:~~
- (i) ~~setting;~~
- (ii) ~~participant autonomy concerns;~~
- (iii) ~~language difficulties;~~
- (iv) ~~reading level; and~~
- (v) ~~particularly vulnerable subjects;~~
- (K) ~~procedures for documentation of informed consent, including any procedures for obtaining assent from minors, using witnesses, translators, and document storage;~~
- (L) ~~compensation to participants for their involvement;~~

- (M) compensation for injured research participants;
- (N) provisions for protection of subjects' privacy;
- (O) extra costs to participants for their involvement in the research; and
- (P) extra costs to third-party payers because of participant's involvement;
- (4) investigator's brochure, when one exists; To receive recognition that a research project is a cooperative research project, the investigator must submit a request in writing to the DHSIRB. The request must include:
 - (A) a completed Form 20AD085E, per OAC 340-2-39-11(b)(1);
 - (B) identifying information about the other institution, including a reliable point of contact; and
 - (C) a description of the other institution's proposed role in the cooperative research project.
- (5) informed consent document. The DHSIRB makes a determination on the request, per OAC 340:2-39-12(f).
 - (A) Per Section 50.23 of Title 21 of the Code of Regulations (21 C.F.R. § 50.23) and 21 C.F.R. § 50.24, except in situations of medical emergency or active military, no investigator may involve human subjects as participants in research covered by this Part unless the investigator has obtained the legally effective informed consent of the participant or the participant's legally authorized representative. An investigator seeks such consent only under circumstances that provide the prospective participant or the representative sufficient opportunity to consider whether to participate and that minimize the possibility of coercion or undue influence. The information given to the participant or the representative is in language understandable to the participant or the representative. No informed consent, whether oral or written, may include any exculpatory language through which the participant or representative is made to waive or appear to waive any of the participant's legal rights or releases or appears to release the investigator, sponsor, institution, or its agents from liability for negligence.
 - (B) The proposed informed consent document contains the elements listed in (A) of this paragraph.
 - (C) When necessary, a translated version of the informed consent is provided to the participant;
- (6) requests for changes in research after initiation;
- (7) reports of unexpected adverse events, including events involving research participants or interviewers;
- (8) periodic progress reports if the research has continued past the approval period; and
- (9) final report stating the closure of the research and findings.

340:2-39-11.1. Informed consent standards

(a) Informed consent general requirements.

- (1) Research studies submitted for Oklahoma Department of Human Services Institutional Review Board

(DHSIRB) consideration must adhere to those requirements necessary to obtain informed consent, per 45 C.F.R. § 46.116. Requirements include, but are not limited to:

- (A) obtaining consent prior to involving a human subject in any research study;
- (B) providing sufficient time that allows a human subject the opportunity to consider and discuss whether to participate;
- (C) presenting sufficient information about the research study in an understandable and comprehensible format; and
- (D) information that must begin with a concise and focused presentation of the key information that is most likely to assist a prospective subject or legally authorized representative in understanding the reasons why one might or might not want to participate in the research.

(i) The manner in which the key information is described and presented is reasonably determined by the complexity of the research project. Key information elements may include:

- (I) a statement that the project is research and participation is voluntary;
- (II) a summary of the purpose of the research, procedures, and duration of participation;
- (III) reasonable, foreseeable risks or discomforts;
- (IV) reasonable, expected benefits; and
- (V) alternative procedures or course of treatment, if any.

(ii) The key information elements of the informed consent must be organized and presented in a way that facilitates comprehension.

(iii) Informed consent must present information in sufficient detail relating to the research, and must be organized and presented in a way that does not merely provide lists of isolated facts, but rather facilitates the prospective subject's or legally authorized representative's understanding of the reasons why one might or might not want to participate.

(2) Informed consent may not include any exculpatory language through which the subject or the legally authorized representative is made to waive or appear to waive the subject's legal rights or releases or appears to release the investigator or other party associated with the research study from liability for negligence.

(3) Basic elements of informed consent include:

- (A) a statement that the study involves research, an explanation of the research purposes and the expected duration of the subject's participation; a description of the procedures to be followed; and identification of any procedures that are experimental;
- (B) a description of any reasonably foreseeable risks of discomforts to the subject;

(C) a description of any benefits to the subject or to others that may reasonably be expected from the research;

(D) a disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject;

(E) a statement describing the extent, if any, to which confidentiality of records identifying the subject are maintained;

(F) an explanation for research involving more than minimal risk, whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of or where further information may be obtained;

(G) an explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights and in the event of a research-related injury to the subject;

(H) a statement that participation is voluntary, refusal to participate involves no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled; and

(I) one of the following statements about any research that involves the collection of identifiable private information or identifiable biospecimens:

(i) a statement that identifiers might be removed from the identifiable private information or identifiable biospecimens and that, after such removal, the information or biospecimens could be used for future research studies or distributed to another investigator for future research studies without additional informed consent from the subject or the legally authorized representative, if this might be a possibility; or

(ii) a statement that the subject's information or biospecimens collected as part of the research, even when identifiers are removed, is not used or distributed for future research studies.

(4) DHSIRB enforces the general requirements for informed consent, per 45 C.F.R. § 46.116.

(5) Except as described in (b) and (c) of this Section, before involving a human subject in research covered by this Part, an investigator obtains the subject's or the subject's legally authorized representative's legally effective informed consent. The minimum requirements of legally effective informed consent are given in the federal regulations at 45 C.F.R. § 46.116(a) through 45 C.F.R. § 46.116(d).

(A) Informed consent must begin with a concise and focused presentation of the key information that is most likely to assist a prospective subject or legally authorized representative in understanding the reasons why one might or might not want to participate in the research. This part of the informed consent must be organized and presented in a way that facilitates comprehension.

(B) Informed consent must present information in sufficient detail relating to the research, and must be organized and presented in a way that does not merely provide lists of isolated facts, but rather facilitates the prospective subject's or legally authorized representative's understanding of the reasons why one might or might not want to participate.

(C) An investigator seeks informed consent only under circumstances that provide the prospective subject or the legally authorized representative sufficient opportunity to discuss and consider whether to participate and that minimize the possibility of coercion or undue influence.

(D) The information that is given to the subject or the legally authorized representative is in language understandable to the subject or the legally authorized representative.

(E) The prospective subject or the legally authorized representative must be provided with the information that a reasonable person would want to have in order to make an informed decision about whether to participate, and an opportunity to discuss that information.

(6) On a case-by-case basis, the DHSIRB may determine that other information, in addition to that specifically mentioned in the federal regulation at 45 C.F.R. § 46.116, is given to the subjects when in the DHSIRB's judgment the additional information would meaningfully add to the subjects' protection of the rights and welfare.

(A) The DHSIRB makes this determination based on the nature of the research as well as the local research context.

(B) If the DHSIRB determines that additional elements are appropriate, this additional information is considered as essential as the basic elements of informed consent described in the federal Department of Health and Human Services (HHS) regulations at 45 C.F.R. § 46.116(b).

(b) **Broad consent in lieu of informed consent.** The DHSIRB may permit broad consent for the storage, maintenance, and secondary research use of identifiable private information or identifiable biospecimens, collected for either research studies other than the proposed research or nonresearch purposes, when the:

(1) application specifically declares it is seeking broad consent and contains an adequate description of the broad consent process; and

(2) proposed research project satisfies the requirements of Title 45 C.F.R. § 46.116(d).

(c) **Waiver or alteration of consent.** When appropriate, an application for a proposed research study may seek a waiver from the requirements to obtain informed consent or it may seek permission to alter the informed consent requirements. Such a waiver or alteration may be permitted by the DHSIRB when the requirements of 45 C.F.R. § 46.116(e) & (f) are met.

(d) **Informed consent documentation.**

(1) **Use of a written informed consent form.** Except as provided in (3) of this subsection, informed consent

is documented by the use of a written informed consent form, approved by the DHSIRB and signed, including in an electronic format, by the subject or the subject's legally authorized representative. A written copy is given to the person signing the informed consent form.

(2) **Written consent form options.** Except as provided in (3) of this subsection, the informed consent form may be either (A) or (B).

(A) A written informed consent form that meets the requirements of this Section. The investigator gives the subject or the subject's legally authorized representative adequate opportunity to read the informed consent form before it is signed; alternatively, this form may be read to the subject or the subject's legally authorized representative.

(B) A short written consent form stating the elements of informed consent required by this Section were presented orally to the subject or the subject's legally authorized representative, and that the key information required by 45 C.F.R. § 46.116(a)(5)(i) was presented first to the subject, before other information, if any, was provided.

(i) Informed consent must begin with a concise, organized, and focused presentation of the key information most likely to assist a prospective subject or legally authorized representative understand the reasons why one might, or might not, want to participate in the research. This portion of the informed consent process must be organized and presented in a way that facilitates comprehension.

(ii) The DHSIRB approves a written summary of what is said to the subject or the legally authorized representative. When the short form method is used, there must be a witness to the verbal presentation. Only the short form itself is signed by the subject or the subject's legally authorized representative. The witness signs the short form and a copy of the summary, and the person obtaining consent signs a summary copy.

(iii) Summary and short form copies are given to the subject or the subject's legally authorized representative.

(3) **Documentation waiver requirement.**

(A) In certain defined circumstances, the DHSIRB may waive the requirement for the investigator to obtain a signed informed consent form for some or all subjects.

(i) The requirement may be waived if the DHSIRB makes a determination that the only record linking the subject and the research would be the informed consent form, and the principal risk would be potential harm resulting from a breach of confidentiality. Each subject or legally authorized representative is asked if the subject wants documentation linking the subject with the research. The subject makes the decision.

(ii) The requirement may be waived if the DHSIRB makes a determination that the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context.

(iii) The requirement may be waived if the DHSIRB makes a determination that the subjects or legally authorized representatives are members of a distinct cultural group or community in which signing forms is not the norm. The DHSIRB must also determine that the research presents no more than minimal risk of harm to subjects, and there is an appropriate alternative mechanism for documenting that informed consent was obtained.

(B) In cases in which the documentation requirement is waived, the DHSIRB may require the investigator to provide subjects or legally authorized representatives with a written statement regarding the research.

340:2-39-12. Review and approval process

(a) **Submission requirements and initial assessment.** ~~Pre-liminary review and assessment.~~

(1) ~~The proposed research is submitted to the Oklahoma Department of Human Services Institution Review Board (DHSIRB) no less than 14 calendar days prior to the next regularly scheduled meeting. Upon receipt of a completed application for a proposed research project, a preliminary assessment of the application is performed by the Oklahoma Department of Human Services Institution Review Board (DHSIRB).~~

(2) ~~The Chair completes an initial assessment of submissions with the Vice Chair and the assigned member of the Office of Client Advocacy. The initial assessment includes: The preliminary assessment is completed by the chair or the Chair's designee. The assessment determines if the applicant is seeking a full review, an expedited review, or an exemption from review and ensures the provided documentation complies with the pertinent application, per Oklahoma Administrative Code (OAC) 340:2-39-11.~~

(A) ~~determining whether the research requires review and contains all supporting documents;~~

(B) ~~assigning a unique identifier number;~~

(C) ~~determining whether the submission:~~

(i) ~~is exempt from review;~~

(ii) ~~meets the requirements for an expedited review; or~~

(iii) ~~requires a full review by the DHSIRB; and~~

(D) ~~distributing copies of the submissions to the appropriate DHSIRB members for:~~

(i) ~~an expedited review by a subcommittee of no less than two voting members of the DHSIRB. The subcommittee includes:~~

(I) ~~a scientific member; and~~

(II) ~~a non-scientific member; or~~

- (ii) a full DHSIRB review by all voting members and their alternates.
- (3) When the application is incomplete in any way, the Chair or the Chair's designee notifies the applicant and explains any deficiencies. The applicant is invited to re-submit the application with deficiencies corrected.
- (4) When the application is determined to be complete, the Chair or the Chair's designee assigns a unique identifier number to the proposed research project. This number is used in all future correspondence with the applicant and/or investigator.
- (5) When the chair determines the application satisfactorily seeks an expedited review or exemption review, the application and its materials are presented to the Vice-Chair and the DHSIRB Office of Client Advocacy member for review.
- (6) When the chair determines the application requires a full review, the application and its materials are presented to all DHSIRB members for review and consideration at the next DHSIRB meeting.
- (7) When it is determined that additional information and/or clarification is needed for an application's review, the Chair or the Chair's designee notifies the applicant. The applicant has 90-calendar days to respond.
 - (A) When the applicant does not respond in a satisfactory manner to the request for additional information and/or clarification within 90-calendar days, the DHSIRB notifies the applicant that the application was administratively closed.
 - (B) An application that is administratively closed may not be re-opened; however, a new application may be submitted.
- (b) **Requirements for exempt submissions.** DHSIRB does not review activities that do not involve the disclosure of protected information to non-DHS staff, and do not involve greater than minimal risk. Research involving human subjects in one or more of the categories listed in (1)–(5) of this subsection, are exempt from DHSIRB review per Section 46.101(b) of Title 45 of the Code of Federal Regulations (45 C.F.R. 46.101(b)).
- (b) **Determination that a proposed research project is not human subjects research.**
 - (1) Research conducted in established or commonly accepted education settings, involving normal educational practices, such as research on:When an investigator or researcher submits an application with a request for a determination of not human subjects research, the DHSIRB chair follows the procedures described in (A) and (B) of this paragraph.
 - (A) regular and special education instructional strategies; orThe Chair convenes a subcommittee consisting of the Chair, the Vice-Chair, and the Office of Client Advocacy member.
 - (B) the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.The subcommittee reviews completed Form 0AD085E and the principal investigator's justification why the proposed research does not qualify as human subjects research.

- (i) Based on this review, if the subcommittee determines the proposed research project does not constitute human subjects research, the Chair or the Chair's designee informs the applicant, in writing, of the DHSIRB decision.
- (ii) When the subcommittee determines that the proposed research project does constitute human subjects research, the Chair or the Chair's designee informs the applicant, in writing, of the DHSIRB subcommittee decision. The applicant is directed to re-submit the application with a request for an exempt, expedited, or full board review.
- (2) Research involving the use of educational tests such as, cognitive, diagnostic, aptitude, and achievement, survey procedures, interview procedures, or observations of public behavior unless DHSIRB members are notified each time a research proposal is determined to not constitute human subjects research. The information is presented electronically or in hard copy format at the earliest possible DHSIRB regular meeting.
 - (A) information obtained is recorded in such a manner that human participants can be identified, directly or through identifiers linked to the study participants; and
 - (B) any disclosure of the human participants' responses outside the research could reasonably place the participants at risk of criminal or civil liability or be damaging to the participants' financial standing, employability, or reputation.
- (3) Research involving the use of educational tests such as, cognitive, diagnostic, aptitude and achievement, survey procedures, interview procedures, or observations of public behavior that is not exempt under (2) of this subsection, if:If the investigator or researcher disagrees with the DHSIRB decision, a request for reconsideration may be submitted, per OAC 340:2-39-13(c).
 - (A) the human participants are elected or appointed public official or candidates for public office; or
 - (B) federal statute requires without exception that the confidentiality of the personally identifiable information is maintained throughout the research and thereafter.
- (4) Research involving the collection or research of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in such a manner that participants cannot be identified, directly or through identifiers linked to the participants.
- (5) Research and demonstration projects conducted by or subject to the approval of department or agency heads, and designed to research, evaluate, or otherwise examine:
 - (A) public benefit or services programs;
 - (B) procedures for obtaining benefits or services under those programs;
 - (C) possible changes in or alternatives to those programs or procedures; or

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- (D) possible changes in methods or levels of payment for benefits or services under those programs.
- (6) Per 45 C.F.R. 46, Subparts C and D, sometimes exemptions do not apply to research involving vulnerable subjects, such as prisoners, pregnant women, fetuses, children, or cognitively impaired persons.
- (e) **Requirements and procedures for expedited review.** DHSIRB may use an expedited procedure to review research that presents no more than minimal risk to participants per 45 C.F.R. 46.110. Additionally, an expedited review may be used when:
 - (c) **Applications with an exemption request.**
 - (1) minor changes have been made to previously approved research during the period of one year or less for which approval is authorized; When an investigator or researcher submits an application with a request for recognition that his or her project is exempt from review, the DHSIRB chair follows the procedures in (A) and (B) in this paragraph.
 - (A) The chair convenes a subcommittee consisting of the Chair, the Vice-Chair, and the Office of Client Advocacy member.
 - (B) The subcommittee reviews the completed application and materials supporting the justification why the research project is exempt from review.
 - (i) Based on this review, if the subcommittee determines that the proposed research project is properly exempt from any review, the Chair or the Chair's designee informs the applicant, in writing, of the DHSIRB decision.
 - (ii) If the subcommittee determines that the proposed research project is conditionally exempt from DHSIRB review, the subcommittee must also conduct a limited review, per (g) of this Section.
 - (I) The subcommittee conducts a limited review when the proposed research is of a type described in the federal regulations at Title 45 C.F.R. § 46.104(d)(2)(iii), (d)(3)(i)(C), (d)(7) or (8).
 - (II) The subcommittee may conduct a limited review when the subcommittee believes a limited review is necessary in order to protect the privacy of subjects or to maintain the confidentiality of data or to ensure broad consent was properly obtained and documented.
 - (iii) If the subcommittee determines that the proposed research project is not exempt from a review, the subcommittee proceeds with an expedited review of the project using the procedures in (e) of this Section.
 - (2) enrollment of new subjects is permanently closed and no additional risks have been identified; all subjects have completed all research-related interventions; and the research remains active only for long-term follow up of subjects; Within 14-calendar days after the DHSIRB action on the exemption request, the Chair or Chair's designee sends a written notification informing the applicant of the determination. The written notification includes:
 - (A) the unique identifier DHSIRB number;
 - (B) research name; and
 - (C) reason(s) the exemption request was approved or denied.
 - (3) remaining research activities are limited to data analysis; If the investigator or researcher disagrees with the DHSIRB decision, a request for reconsideration may be submitted, per OAC 340:2-39-13(c).
 - (4) research appears in the list of categories published as a Notice in the Federal Register per 63 C.F.R. 60364–60367, that include: The DHSIRB members are notified each time a research proposal is approved through exemption. The information is presented electronically or in hard copy format at the earliest possible DHSIRB regular meeting.
 - (A) collection of data from voice, video, digital, or image recordings made for research purposes; and
 - (B) research on individual or group characteristics or behavior including, but not limited to, research on perception, cognition, motivation, identity, language, communication, cultural beliefs or practices, and social behavior or research employing survey, interview, oral history, focus group, program evaluation, human factors evaluation, or quality assurance methodologies;
 - (5) the review process ensures the research meets the requirements for an expedited review; and
 - (6) proposals reviewed under the expedited procedure may be approved, conditionally approved, or referred for full DHSIRB review if not approved as proposed. The reviewers may exercise all of the authority of the DHSIRB except the reviewers may not disapprove the research. Research may be disapproved only after a full DHSIRB review.
- (d) **Applications with a request for an expedited review.**
 - (1) When an investigator or researcher submits an application with a request for an expedited review, the DHSIRB Chair follows the procedures described in this paragraph.
 - (A) The chair convenes a subcommittee consisting of the Chair, Vice-Chair, and Office of Client Advocacy member. The subcommittee reviews the completed application and assesses the proposed research project based upon the criteria for an expedited review, per OAC 340:2-39-11(e).
 - (i) Based on this review, if the subcommittee determines that the proposed research project satisfies the criteria for an expedited review, the subcommittee carries out the proposed project initial review.
 - (I) The subcommittee may exercise all DHSIRB authorities except disapproving research.
 - (II) When the subcommittee fails to accept the research project for an expedited review, then the proposed research project is reviewed in accordance with the non-expedited procedures described in (e) of this Section.

- (III) A research project may be disapproved only after review in accordance with the non-expedited procedure.
- (ii) If the subcommittee determines that the proposed research project does not meet the criteria for an expedited review, the Chair presents the application to the DHSIRB for a non-expedited review at the next scheduled meeting.
- (B) The Director may restrict, suspend, terminate, or choose not to authorize the DHSIRB's use of this expedited review procedure.
- (2) The DHSIRB members are notified each time a research proposal is approved through the use of this expedited process. Information about each expedited approval is given to the DHSIRB members in a written report of expedited actions. The report is presented in written or electronic form and disseminated to all board members or at the earliest possible DHSIRB regular meeting. DHSIRB members are given an opportunity to review the report of expedited actions. The review must include an opportunity for members to ask questions or raise concerns about any expedited action. A motion to accept or approve the report may be entertained.
- (e) **Full DHSIRB review.** Full review of new research projects, non-exempt, non-expedited.
- (1) **Review at a convened meeting.** Proposals are reviewed at regularly scheduled meetings of the DHSIRB and investigators are informed in writing of the results of the review. Each proposed research project includes: Except when an expedited review procedure is used, per (d), the DHSIRB performs an initial review of proposed new research projects at a convened meeting when a quorum is present. In order for the research to be approved, it must receive the approval of a majority of those members present at the meeting.
- (A) a detailed description of the research design and procedures as they affect human subjects;
- (B) a list of precautions necessary to safeguard the subjects' welfare;
- (C) a precise description of the subject population involved in the research;
- (D) a description of the informed consent process and all consent forms used; and
- (E) methods used to protect data confidentiality and subject privacy.
- (2) **Reliance on the written application.** Proposals are assigned to one of the four categories listed in (A)–(D) of this paragraph. To complete its review, the DHSIRB may choose to rely solely on the written application, including attachments submitted by the applicant.
- (A) Approved. Research is approved as submitted. Investigators whose proposals are approved can begin work immediately.
- (B) Conditionally approved. Research is conditionally approved until investigators comply with items identified by the DHSIRB for final approval. There are no structural problems with the study.
- (C) Deferred. DHSIRB does not have enough information to make a determination. Investigators whose proposals receive a deferral must resubmit the entire application to address the required changes.
- (D) Not approved. The magnitude and/or number of concerns is such that conditional approval is not appropriate. Investigators whose work is disapproved cannot conduct the research or resubmit their proposals.
- (3) **Optional review of other information.** In addition to its review of the written application, including attachments, the DHSIRB may also choose to invite:
- (A) the primary investigator to provide additional information;
- (B) subject matter experts to assist in the review; or
- (C) experts and guests to attend the meeting when the review takes place.
- (4) **Review criteria.** In order to approve new research covered by this subsection, the DHSIRB determines, per 45 C.F.R. § 46.111 that the requirements in (A) through (G) are satisfied.
- (A) Risks to subjects are minimized by using procedures:
- (i) consistent with sound research design and that do not unnecessarily expose subjects to risk; and
- (ii) already performed on the subjects for diagnostic or treatment purposes, whenever appropriate.
- (B) Risks are reasonable in relation to anticipated benefits to subjects, if any, and the importance of the knowledge that may be expected to be gained. In evaluating risks and benefits, DHSIRB considers only those risks and benefits that may result from the research as distinguished from risks and benefits of therapies subjects would receive even if not participating in the research. Per 45 C.F.R. § 46.111(a)(2), DHSIRB does not consider possible long-range effects of applying the knowledge gained in the research.
- (C) Selection of subjects is equitable. In making this assessment the DHSIRB takes into account the research purposes and the setting in which the research is conducted. Additionally, the DHSIRB is particularly cognizant of the special problems of research involving subjects who are likely to be vulnerable to coercion or undue influence, such as children, prisoners, economically or educationally disadvantaged persons, or individuals with impaired decision-making capacities.
- (D) The proposed research includes a plan to seek informed consent from each prospective participant or the subject's legally authorized representative, per OAC 340:2-39-11.1.
- (E) Informed consent is appropriately documented or appropriately waived, per OAC 340:2-39-11.1.

(F) When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the subjects' safety.

(G) When appropriate, there are adequate provisions to protect the subjects' privacy and maintain the confidentiality of data.

(5) **Additional requirements.** In order to approve new research projects covered by this subsection the DHSIRB reviews the investigator's qualifications to conduct and supervise the proposed research. This process may include:

(A) reviewing the investigators', sub-investigators', and other necessary research staffs' resumes, verifying professional associations and licenses and may include a review of the investigators' previous specific experience as demonstrated by recent presentations or publications;

(B) using previous DHSIRB experience with the investigators; and

(C) requesting additional information confirming the investigators' qualifications from an administrator of the investigators' institutions.

(f) **Review criteria.** In order to approve research covered by this Part, DHSIRB reviews the investigator's qualifications to conduct and supervise the proposed research. This process may include:

(f) **Review and approval of cooperative research projects.**

(1) reviewing the curriculum vitae of the investigator, sub-investigators, and other necessary research staff, verifying professional associations and licenses. It may also include a review of the investigator's previous specific experience as demonstrated by recent presentations or publications; Cooperative research projects are those projects that involve the Oklahoma Department of Human Services (DHS) as well as one or more additional institutions.

(A) In the conduct of cooperative research projects, DHSIRB and the other institution(s) are responsible for safeguarding the rights and welfare of human subjects.

(B) DHSIRB makes arrangements with the other institution(s) to avoid duplication of efforts.

(C) When a cooperative research project is sponsored by a federal department or agency that is supporting or conducting the research, DHSIRB relies on the federal department or agency to identify the reviewing Institution Review Board (IRB).

(D) Consistent with the federal regulations, per Title 45 C.F.R. § 46.114(b), DHSIRB recognizes that any institution located in the United States (U.S.) engaged in cooperative research must generally rely upon approval by a single IRB for the portion of the research conducted in the U.S., unless:

(i) more than a single IRB review is required by law, including tribal law passed by the official governing body of an American Indian or Alaska Native tribe;

(ii) a federal department or agency supporting or conducting the research determines and documents that the use of a single IRB is not appropriate for the particular context; or

(iii) the cooperative research project does not have a federal sponsor.

(2) using previous DHSIRB experience with the investigator; and When DHSIRB participates with another institution in a cooperative research project that does not have a federal sponsor, DHSIRB seeks to avoid duplication of effort by:

(A) entering into a joint review agreement with the other institution;

(B) relying on the review of the other institution's IRB; or

(C) making similar arrangements for avoiding duplication of effort.

(3) requesting additional information confirming the investigator's qualifications from an administrator of the institution.

(g) **Additional requirements.** DHSIRB determines whether all of the additional requirements listed in (1) — (9) of this subsection are met.

(g) **Limited reviews.**

(1) Risks to participants are minimized by using procedures. If the DHSIRB affirms that a research proposal meets the criteria for a conditional exemption from review, per OAC 340:2-39-12(c), the DHSIRB performs a limited review of the proposal.

(A) consistent with sound research design; and

(B) already being performed on the participants for diagnostic or treatment purposes, whenever appropriate.

(2) Risks are reasonable in relation to anticipated benefits to participants, if any, and the importance of the knowledge that may be expected to be gained. In evaluating risks and benefits, DHSIRB considers only those risks and benefits that may result from the research as distinguished from risks and benefits of therapies that participants would receive even if not participating in the research. Per 45 CFR 46.111(a)(2), DHSIRB does not consider possible long range effects of applying the knowledge gained in the research. The scope of the limited review depends on the type of research proposal. The four types of research are in (A) through (D).

(A) Mildly obtrusive interactions research, per 45 C.F.R. § 46.104(d)(2)(iii), is defined as research with features in (i) and (ii) of this subparagraph.

(i) Mildly obtrusive interactions research only includes interactions involving:

(I) educational tests, such as cognitive, diagnostic, aptitude, and achievement tests;

(II) survey procedures;

(III) interview procedures; or

(IV) observation of public behavior, including visual or auditory recording; and

(ii) the information obtained is recorded by the investigator so the human subjects' identity can

readily be ascertained, directly or through identifiers linked to the subjects.

(B) Benign behavioral interventions, per 45 C.F.R. § 46.104(d)(3)(i)(C), is defined as research with features in (i) and (ii) of this subparagraph.

(i) Benign behavioral interventions involves interventions in conjunction with the collection of information from an adult subject through verbal or written responses, including data entry, or audiovisual recording if the subject prospectively agrees to the intervention and information collection.

(ii) The information obtained is recorded by the investigator so the identity of the human subjects can readily be ascertained, directly or through identifiers linked to the subjects.

(C) Storage or maintenance for secondary research for which broad consent is required, per 45 C.F.R. § 46.104(d)(7), is defined as research involving the storage or maintenance of identifiable private information or identifiable biospecimens for potential secondary research use.

(D) Secondary research for which broad consent is required, per 45 C.F.R. § 46.104(d)(8), is defined as research involving the use of identifiable private information or identifiable biospecimens for secondary research use, when the conditions in (i) through (iii) are present.

(i) Broad consent for the storage, maintenance, and secondary research use of the identifiable private information or identifiable biospecimens was obtained.

(ii) Documentation of informed consent or waiver of documentation of consent was obtained, per OAC 340:2-39-11.1.

(iii) The investigator does not include returning individual research results to subjects as part of the study plan.

(3) Selection of participants is equitable. In making this assessment the DHSIRB takes into account the purposes of the research and the setting in which the research is conducted and is particularly cognizant of the special problems of research involving particularly vulnerable subjects, such as children, prisoners, pregnant women, or cognitively impaired persons. For mildly obtrusive interactions research and for benign behavioral interventions, the DHSIRB review is limited to determining that there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

(4) Informed consent is sought from each prospective participant or the participant's legally authorized representative and contains: For storage or maintenance for secondary research for which broad consent is required, and for secondary research for which broad consent is required, the DHSIRB review is limited to determining that:

(A) an explanation of the purposes of the research; broad consent for storage, maintenance, and

secondary research use of identifiable private information or identifiable biospecimens is obtained, per OAC 340:2-39-11.1(b);

(B) an expected duration of the participant's involvement in the research; broad consent is appropriately documented or waiver of documentation is appropriate, per OAC 340:2-39-11.1(d); and

(C) a description of the procedures to be followed; if there is a change made for research purposes in the way the identifiable private information or identifiable biospecimens are stored or maintained, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

(D) identification of any experimental procedure;

(E) a description of any reasonably foreseeable risks or discomforts to the participant;

(F) a description of any benefits to the participant or to others that may reasonably be expected from the research;

(G) disclosure of appropriate alternative procedures or courses of treatment, if any, that may be advantageous to the participant;

(H) a statement describing the extent, if any, to which confidentiality of records identifying the participant is maintained;

(I) an explanation for research involving more than minimal risk:

(i) whether any compensation is available if injury occurs;

(ii) whether medical treatment is available if injury occurs, and if so, what it consists of; or

(iii) where further information can be obtained;

(J) an explanation of whom to contact:

(i) for answers to pertinent questions about the research;

(ii) to discuss research participant's rights; and

(iii) in the event of a research-related injury to the participant;

(K) a statement that:

(i) participation is voluntary;

(ii) refusal to participate involves no penalty or loss of benefits to which the participant is otherwise entitled; and

(iii) the participant may discontinue participation at any time without penalty or loss of benefits to which the participant is otherwise entitled; and

(L) when appropriate, one or more of the elements of information listed in (i) – (viii) of this subparagraph is provided to each participant.

(i) Statement that the particular treatment or procedure may involve unforeseeable risks to the participant or to the embryo or fetus, if the participant is or may become pregnant.

(ii) Anticipated circumstances under which the participant's involvement in the research may be terminated by the investigator without regard to the participant's consent.

- (iii) Any additional costs to the participant that may result from involvement in the research.
 - (iv) Consequences of a participant's decision to withdraw from the research and procedures for orderly termination of involvement by the participant.
 - (v) Statement that significant new findings developed during the course of the research, that may relate to the participant's willingness to continue, are provided to the participant.
 - (vi) Approximate number of participants involved in the research.
 - (vii) Research treatment(s) and the probability of random assignment to a placebo or control group, or to each treatment.
 - (viii) Other information the DHSIRB determines that would meaningfully add to the protection of the rights and welfare of the participants.
- (5) Informed consent is appropriately documented by the use of a written form approved by DHSIRB and signed and dated by the participant or the participant's legally authorized representative at the time of consent. Per 45 C.F.R. 46.117(a), a copy is given to the person signing the form. Except as provided by 45 C.F.R. 46.117(e), consent form may be either of the following:
- (A) a written consent document that embodies the elements described above. The consent document may be read to the participant or the participant's legally authorized representative; however, the investigator provides either the participant or the representative opportunity to read the document before it is signed; or
 - (B) a short form written consent document stating the required elements of informed consent were presented orally to the participant or the participant's legally authorized representative. When this method is used, there is a witness to the oral presentation. The DHSIRB approves a written summary of what is to be said to the participant or the representative. Only the short form is signed by the participant or the representative. However, the witness signs both the short form and a copy of the summary, and the person actually obtaining the consent signs a copy of the written summary. A copy of the summary is given to the participant or the representative in addition to a copy of the short form.
- (6) When appropriate, there are adequate provisions to obtain affirmative agreement from children to participate in research and the permission of their parents or guardians.
- (7) When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of participants.
- (8) When appropriate, an advocate for children participating as subjects in research is appointed by the DHSIRB, in addition to any other individual acting on behalf of the child as guardian or in loco parentis. The advocate acts in

the best interests of the children for the duration of their participation in the research (45 C.F.R. 46.409 (b)).

(9) When appropriate, there are adequate provisions to protect the privacy of participants and maintain the confidentiality of data.

(A) When some or all of the participants, such as children, prisoners, pregnant women, or cognitively impaired persons, are likely to be vulnerable to coercion or undue influence, additional safeguards are included in the research to protect the rights and welfare of these participants.

(B) To approve research in clinical settings in which some or all of the participants are children, DHSIRB shall take steps to ensure all research is in compliance with the federal Food and Drug Administration's regulations regarding children per 21 C.F.R. § 50(D).

(10) For some or all participants, DHSIRB may waive the requirement that the participant or the participant's legally authorized representative, sign a written consent form if it finds the research presents no more than minimal risk of harm to participants and involves no procedures for which written consent is normally required outside the research context.

(11) If the submission falls under the jurisdiction of an IRB other than DHSIRB, the approval letter from the other IRB is included in the original submission.

(h) **Communication from DHSIRB for exempt submissions.** For exempt research, the Chair:

(h) **Review and approval notification.**

(1) **Approval categories.** presents the submission finding to the DHSIRB members at the next scheduled meeting; As a result of the DHSIRB review, each research proposal is assigned to one of the categories in (A) through (E) of this paragraph.

(A) **Not human subjects research.** Proposal determined to not constitute human subjects research. Investigators whose proposals receive this determination may begin work immediately.

(B) **Approved.** Research is approved as submitted. Investigators whose proposals are approved may begin work immediately.

(C) **Conditionally approved.** Research is conditionally approved, but research may not begin until investigators comply with items identified by the DHSIRB for final approval.

(D) **Deferred.** DHSIRB does not have enough information to make a determination. Investigators whose proposals receive a deferral must resubmit the entire application to address the required changes.

(E) **Not approved.** The magnitude and/or number of concerns are such that conditional approval is not appropriate. Investigators whose work is disapproved may not conduct the research or resubmit their proposals.

(2) **Notification required.** writes a letter to the investigator within 14 days of DHSIRB action. The letter contains: The DHSIRB notifies investigators and appropriate

managers, supervisors, and directors within DHS in writing of its decision regarding the proposed research activity, including any modifications or conditions required to secure DHSIRB approval of the research activity.

(A) **Approved applications.** ~~the unique identifier DHSIRB number;~~

- (i) At a minimum, the approval letter contains:
 - (I) the unique identifier DHSIRB number;
 - (II) the research name;
 - (III) the date of approval;
 - (IV) all reviewed and approved DHSIRB documents;
 - (V) the duration of the approval; and
 - (VI) circumstances, such as adverse events or closure of the research, for which DHSIRB must be contacted.

(ii) The approval date is the date when the application is approved.

(iii) Continuing review is not required except when there is a good reason for doing so, per OAC 340:2-39-12.2(c).

(B) **Conditionally approved applications.** ~~name of the research;~~

(i) A letter describing the concerns of the DHSIRB is sent to the investigator. The letter makes it clear the research may not begin until DHSIRB issues a letter of approval.

(ii) Investigators have 90-calendar days from the day they are notified about the conditionally approved research to respond. If a response is not received during this period, investigators must re-submit the entire application.

(iii) To review the investigator's response, the chair convenes a subcommittee consisting of the Chair, the Vice-Chair, and the Office of Client Advocacy member. The subcommittee reviews the investigator's response for appropriateness.

(iv) The subcommittee makes a determination as to whether the response adequately addresses the DHSIRB concerns.

(v) A DHSIRB final approval letter is sent to the investigator when the response is approved. At that time, the research may begin. The approval date is the date the investigator's response is approved. Continuing review is not required except when there is a good reason for doing so, per OAC 340:2-39-12.2(c).

(C) **Deferred.** ~~reasons the research is exempt from DHSIRB review; and~~ A letter describing the determination is sent to the investigator.

(D) **Not approved.** ~~signature of the DHSIRB chair or vice Chair; and~~ A designation of not approved indicates the magnitude and/or number of concerns is such that conditional approval is not appropriate, as determined by the DHSIRB.

(i) A letter describing the DHSIRB decision and concerns is sent to the investigator. The investigator is notified of the opportunity to respond to

the DHSIRB, in writing or in person, regarding the determination, per OAC 340:2-39-13.

(ii) The DHSIRB accomplishes any reconsideration in the same manner as the preliminary review and assessment described in (a) of this Section.

(iii) The investigator is not advised to resubmit disapproved research without consulting the DHSIRB.

(iv) In the event of a resubmission, the DHSIRB submission is given a new number and addressed as a completely new submission.

(3) files a copy of the letter in the DHSIRB file with the submission. ~~In general, action on all proposals is taken within two months after submission. Investigators are notified, in writing, of the DHSIRB decisions within two weeks of board action.~~

(4) **Communication from DHSIRB for non-exempt but expedited review submissions.** ~~For expedited review submissions approved or conditionally approved, a letter is written to the investigator(s). At a minimum, the letter contains the:~~

(i) **Further reviews by DHS.** Research covered by this Part approved by the DHSIRB may be subject to further appropriate review and approval or disapproval by DHS officials. However, DHS officials may not approve the research if it was not approved by the DHSIRB.

(1) ~~unique identifier DHSIRB number;~~

(2) ~~name of the research;~~

(3) ~~date of approval or conditional approval;~~

(4) ~~duration of the approval;~~

(5) ~~circumstances for which DHSIRB must be contacted, such as adverse events or closure of the research; and~~

(6) ~~signature of the DHSIRB Chair or Vice Chair.~~

(5) **Communication from DHSIRB for non-exempt and non-expedited review submissions.**

(1) ~~The submission is forwarded to the Chair and all voting members. If a voting member is not available to attend the meeting to review the submission, he or she forwards the submission to his or her alternate member.~~

(2) ~~The DHSIRB determines if the submission meets the criteria for approval.~~

(6) **Quorum requirements.**

(1) ~~A quorum of the DHSIRB includes a majority of voting members, for example five members plus one if DHSIRB has 10 members.~~

(2) ~~Any quorum must include one non-abstaining outside member.~~

(3) ~~An investigator may be a member of the DHSIRB so long as the investigator as member does not participate in any review and approval process for any research in which he or she has an actual or potential conflict of interest.~~

(A) Any investigator as member with a conflict of interest is allowed to be present only to provide information requested by the DHSIRB.

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- (B) The investigator member is absent from the meeting room during the discussion and voting phases of the review and approval process.
- (C) DHSIRB minutes reflect whether these requirements are met.
- (l) **Voting requirements.** After appropriate research discussion, the Chair calls for a vote and announces each vote option. Each member votes in only one category.
- (1) **Abstain.** A DHSIRB member declares an abstain vote if the member:
- (A) is helping to direct the research;
 - (B) is an investigator or co-investigator of the research;
 - (C) has any significant financial interest in the outcome of the research; or
 - (D) has what he, she, or the DHSIRB considers an unacceptable conflict of interest for other reasons. The minutes of the DHSIRB meeting reflect a vote of abstention. In addition to abstaining from voting on the research, a DHSIRB member with a conflict of interest related to a research does not attend the meeting scheduled to review the research unless requested by the DHSIRB to answer specific questions per (k)(3) of this Section. If the DHSIRB requests the investigator as member with a conflict of interest to attend the meeting to provide information, this is reflected in the DHSIRB minutes.
- (2) **Approved.** The approval date is the date of the DHSIRB meeting. The approval is valid for one year unless the committee designates a shorter period based on the risk of the research. An approval letter is sent to the investigator. At a minimum, the approval letter contains:
- (A) the unique identifier DHSIRB number;
 - (B) the name of the research;
 - (C) the date of approval;
 - (D) all documents reviewed and approved by the DHSIRB;
 - (E) the duration of the approval;
 - (F) circumstances for which the DHSIRB must be contacted, such as adverse events or closure of the research; and
 - (G) signature of the DHSIRB Chair or Vice Chair.
- (3) **Conditionally Approved.**
- (A) A letter describing the concerns of the committee is sent to the investigator. The letter makes it clear the research may not begin until DHSIRB issues a letter of approval.
 - (B) Investigators have 90 calendar days from the day they are notified about the conditionally approved research to respond. If no response is received during this period of time, investigators must resubmit the entire application.
 - (C) The investigator's response is reviewed for appropriateness by the Chair or designated DHSIRB member(s).
 - (D) A final approval letter from the DHSIRB is sent to the investigator once the response is approved.
- At that time, the research may begin. The approval date is the date of the original DHSIRB meeting at which the conditional approval determination was made. DHSIRB approval is valid for one year unless the committee designates a shorter period based on the risk of the research.
- (4) **Deferred.** A letter describing the determination is sent to the investigator.
- (5) **Not Approved.** A designation of not approved indicates the magnitude and/or number of concerns is such that conditional approval is not appropriate.
- (A) A letter describing the decision and concerns of the DHSIRB is sent to the investigator. The investigator is notified of the opportunity to respond to the DHSIRB in writing or in person regarding the determination.
 - (B) The DHSIRB accomplishes any reconsideration in the same manner as an initial review.
 - (C) The investigator is not advised to resubmit disapproved research without consulting the DHSIRB.
 - (D) In the event of a resubmission, the DHSIRB submission is given a new number and addressed as a completely new submission.
- (6) **DHSIRB does not recognize voting by proxy.** All voting occurs in person at the time of the meeting by the member or his or her designated alternate.
- (7) **A deferral decision is reviewed as a new submission.** The voting occurs independent of the prior voting.
- (8) **Research including particularly vulnerable subjects.** For a research including particularly vulnerable subjects, such as children, prisoners, pregnant women, or cognitive impaired persons, a quorum includes an advocate representing those subjects.
- (m) **Approval.** For a research to receive approval, it must obtain an approval vote from the members attending the meeting. A decision for each category is determined using the process listed in (1)–(2) of this subsection:
- (1) Approved (A) and conditionally approved (CA) versus not approved (NA). The NA vote is compared with the sum of the A and CA vote. If the sum (A + CA) is greater than the NA votes, the conditions of approval are refined using the approach described. If the NA vote is greater than the sum (A + CA), the research is not approved. If the NA vote and the (A + CA) vote are tied, the research is not approved.
 - (2) Approved (A) versus conditionally approved (CA). If the CA vote is greater than (A + NA), the research is conditionally approved. If the CA vote is less than or equal to (A + NA), a second vote is taken with the choices limited to approved, conditionally approved, and abstain. If the A vote and CA votes are tied, the research is conditionally approved.
- (n) **Communication from the DHSIRB.**
- (1) Assigned DHSIRB member reviewers presenting the submission may contact the investigator with questions regarding the submission.

(2) The investigator is notified of the review decision within 14 business days following the meeting. This notification may be done electronically with a signed letter to follow.

(3) All parties, including funding agencies, facility directors, and other IRBs with jurisdiction to review the submission, are sent a copy of the signed response letter.

(4) Discussion and individual votes are confidential. Votes by individual members may not be discussed or divulged outside the DHSIRB meeting.

(e) **Continuing review.**

(1) All research is reviewed by DHSIRB until it is completed. This happens when the analysis of data has ended and reports have been written.

(2) Approval for a research project is valid for no more than one year.

(3) DHSIRB is required to conduct continuing reviews of research at intervals appropriate to the degree of risk, but not less than once a year per 45 C.F.R. § 46.109(e).

(4) The principal investigator is responsible for the timely submission of a continuation application to the DHSIRB that previously reviewed the protocol.

(5) Research protocols that initially required full DHSIRB review and that have not completed data collection generally require full DHSIRB review for continuation. The review takes place at a convened DHSIRB meeting, and action on the research must be approved by a majority of the members present. The DHSIRB's stipulations, if any, must be met before approval for continuation is granted.

(6) Research protocols initially approved as exempt need to submit a request for continuation if the research extends beyond the approval period.

(7) Research protocols that initially required full DHSIRB review, that have completed data collection, and are in the process of analyzing data, may be reviewed using the expedited process. Research protocols that were initially reviewed using the expedited process may be re-reviewed using the expedited process as long as the degree of risk associated with the research has not changed. A continuation request must include a:

- (A) request to continue the research project;
- (B) copy of all currently approved informed consent forms if subjects are still involved;
- (C) brief report on the status of the research project including:
 - (i) the protocol's progress to date;
 - (ii) the reasons for continuing the research;
 - (iii) plans for the next approval period;
 - (iv) a description of any adverse events or unanticipated problems involving risks to participants or others;
 - (v) a discussion of the number of refusals, withdrawal of participants from the research or complaints about the research;
 - (vi) a summary of any recent literature;
 - (vii) findings obtained thus far; and
 - (viii) modifications to the research.

340:2-39-12.1. Research project changes after Oklahoma Department of Human Services Institution Review Board (DHSIRB) approval

(a) After initial approval of a research project by the DHSIRB, the investigator conducts the research activity in accordance within the terms of the DHSIRB approval.

(b) The investigator may not make changes in an approved research activity until the proposed changes are submitted to the DHSIRB for review and approval, except when necessary to eliminate apparent immediate hazards to the subject.

(c) When the investigator encounters any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with this Part or with DHSIRB requirements or determinations, those problems and difficulties must be immediately reported to the human protections administrator.

(d) An investigator may ask the DHSIRB to review and approve a proposed change by submitting a completed DHS Form 20AD085E, Oklahoma Department of Human Services Institutional Review Board (DHSIRB) Application and Instructions, per OAC 340:2-39-11(b).

(1) Form 20AD085E and all required attachments must be received by the DHSIRB. When Form 20AD085E and all required attachments are received 14 or more calendar days prior to the next meeting, the application is reviewed at the next regularly scheduled DHSIRB meeting. When Form 20AD085E and attachments are received 13 or fewer calendar days prior to the next meeting, the application is reviewed at the following regularly scheduled DHSIRB meeting.

(2) The investigator may request an expedited review for minor changes in a research activity.

340:2-39-12.2. Continuing review requirements

(a) Except as provided for in (b) of this Section, the DHSIRB conducts continuing review of any research study it approved at intervals appropriate to the degree of risk, but not less than once per year. Principal Investigators are responsible for submitting a continuing review application at annual intervals unless directed by the DHSIRB to submit more frequently.

(b) Unless the DHSIRB determines otherwise, continuing review of research is not required in the circumstances in (1) through (3). The:

- (1) research was eligible for expedited review, per Oklahoma Administrative Code (OAC) 340:2-39-12(c);
- (2) proposed research was reviewed by the DHSIRB using one of the limited review procedures, per OAC 340:2-39-12(g); or
- (3) research progressed to the point that it involves only:
 - (A) data analysis, including analysis of identifiable private information or identifiable biospecimens; or
 - (B) accessing follow-up clinical data from procedures that subjects would undergo as part of clinical care.

(c) Notwithstanding the provisions of (b) of this Section, the DHSIRB may require a continuing review of any research

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when it determines there is a good reason for doing so. A determination to conduct a continuing review must be made in a DHSIRB-convened meeting, and a rationale for conducting continuing review of research must be stated. DHSIRB requires the investigator to submit a continuation request that must include a:

- (1) specific request to continue the research project;
- (2) copy of all currently approved informed consent forms when subjects are still involved; and
- (3) brief status report on the research project including:
 - (A) the protocol's progress to date;
 - (B) the reasons for continuing the research;
 - (C) plans for the next approval period;
 - (D) a description of any adverse events or unanticipated problems involving risks to participants or others;
 - (E) a discussion of the number of refusals, withdrawal of participants from the research, or complaints about the research;
 - (F) a summary of any recent literature;
 - (G) findings obtained thus far; and
 - (H) modifications to the research.
- (d) The continuing review by the convened DHSIRB may be supplemented by other review activities, as determined appropriate by the DHSIRB, such as:
 - (1) progress report(s) submitted by the principal investigator; or
 - (2) compliance report(s), if any, prepared by the human protections administrator or others, including:
 - (A) reports on observations of the consent process, per 45 C.F.R. § 46.109(g);
 - (B) reports on observations of the research, per 45 C.F.R. § 46.109(g);
 - (C) reports on any material changes that occurred in the research project since the previous DHSIRB review; per 45 C.F.R. § 46.108(a)(3)(ii);
 - (D) any complaints received from human subjects, legally authorized representatives, or others; and
 - (E) any findings of serious or continuing noncompliance with this Part or the DHSIRB requirements or determinations, per 45 C.F.R. § 46.108(a)(4)(i).
- (e) As a result of its continuing review, the DHSIRB may suspend or terminate approval of research that is not conducted in accordance with the DHSIRB's requirements or that was associated with unexpected serious harm to subjects. Any suspension or termination of approval includes a statement of the reasons for the DHSIRB action and is reported promptly to the investigator, appropriate DHS officials, and others as appropriate, per 45 C.F.R. § 46.113.
- (f) When the DHSIRB decides to suspend or terminate research activity approval, it includes, in its written notification, a statement of the reasons for its decision and gives the investigator an opportunity to respond in person or in writing, per 45 C.F.R. § 46.109(d).

340:2-39-13. Appeal process

- (a) ~~Institutional~~ Oklahoma Department of Human Services officials may not approve research disapproved by the Oklahoma Department of Human Services Institutional Review Board (DHSIRB), per Section 46.112 of Title 45 of the Code of Federal Regulations.
- (b) There is no mechanism for an appeal of DHSIRB decisions to other departmental components. DHSIRB is an autonomous entity and its decisions are binding.
- (c) Principal investigators may request reconsideration of a DHSIRB decision regarding a research protocol. The request ~~is must be~~ submitted in writing and ~~includes must include~~ any pertinent information ~~relative~~ relevant to the decision. The reconsideration is accomplished in the manner described for ~~initial review~~ preliminary review and assessment, per Oklahoma Administrative Code 340:2-39-12(a). Upon reexamination and reconsideration of its actions, the subsequent DHSIRB decision of the DHSIRB is final.

[OAR Docket #20-537; filed 7-7-20]

TITLE 340. DEPARTMENT OF HUMAN SERVICES

CHAPTER 10. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

[OAR Docket #20-541]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
 - 340:10-1-3 [AMENDED]
 - Subchapter 2. Temporary Assistance for Needy Families (TANF) Work Program
 - 340:10-2-5 [AMENDED]
 - 340:10-2-7 through 340:10-2-8 [AMENDED]
 - Subchapter 3. Conditions of Eligibility - Need
 - Part 1. Resources
 - 340:10-3-1 through 10-3-2 [AMENDED]
 - 340:10-3-5 [AMENDED]
 - 340:10-3-9 through 340:10-3-10 [AMENDED]
 - Part 3. Income
 - 340:10-3-28 [AMENDED]
 - 340:10-3-32 [AMENDED]
 - 340:10-3-39 through 340:10-3-40 [AMENDED]
 - Part 5. Assistance Payments
 - 340:10-3-58 through 340:10-3-59 [AMENDED]
 - Part 7. Transitional Benefits
 - 340:10-3-75 [AMENDED]
 - Subchapter 4. Conditions of Eligibility - Mandatory Drug Screening
 - 340:10-4-1 [AMENDED]
 - Subchapter 7. Conditions of Eligibility - Residence
 - 340:10-7-1 [AMENDED]
 - Subchapter 10. Conditions of Eligibility - Deprivation
 - 340:10-10-2 [AMENDED]
 - Subchapter 22. Temporary Assistance for Needy Families (TANF) Supported Permanency Program
 - 340:10-22-1 [AMENDED]
- (Reference WF 20-10)

AUTHORITY:

Director of Human Services; Section 162, 165, 230.52, and 230.57 of Title 56 of the Oklahoma Statutes; and Sections 601, 602, and 608 of Title 42 of the United States Code.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 18, 2019

COMMENT PERIOD:

January 15, 2020 through February 14, 2020

PUBLIC HEARING:

February 24, 2020

ADOPTION:

March 2, 2020

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 3, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 15, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendment to Chapter 10, Subchapter 1 amends the rule to add information regarding programs that help reduce teen pregnancy.

The proposed amendments to Chapter 10, Subchapter 2 amend the rules to: (1) clarify that the earned income disregard period available to working Temporary Assistance for Needy Families (TANF) clients runs concurrently with Subsidized Employment Program (SEP) disregards; (2) update Work Opportunity Tax Credit information; (3) remove reference to a form that is no longer used for job search; (4) add examples of in-demand occupations for training purposes; (5) remove career readiness certificates from allowed achievement bonus activities; (6) update terminology; and (7) add a policy citation.

The proposed amendments to Chapter 10, Subchapter 3 amend the rules to: (1) reorganize, simplify, and clarify information regarding resources, family relations, lump sum payments, and funds held in trust by the Bureau of Indian Affairs (BIA); (2) remove the resource limit amount and refer to an appendix for this information; (3) add information about how to consider funds deposited in charitable accounts; (4) remove retirement benefits from lump sum payment consideration; (5) clarify when rental income is considered as earned or unearned income and how business expenses are considered; (6) update profit sharing income to indicate how to consider profit sharing for shareholders in S corporations and partners in partnerships; (7) add S corporation income and distinguish when income from this source is considered as earned income or unearned profit-sharing income; (8) update legal citations regarding Title III and V funds excluded under the Older Americans Act and the organizations that receive the funds; (9) exclude military combat pay from income consideration; (10) update terminology; (11) add and update policy and legal citations; (12) change the date required information must be reported for continued medical benefits (CMB); and (13) clarify and simplify language.

The proposed amendments to Chapter 10, Subchapter 4 amend the rules to update: (1) terminology; and (2) when an observed urinalysis (UA) must be completed.

The proposed amendments to Chapter 10, Subchapter 7 amend the rules to: (1) clarify and simplify procedures to determine Oklahoma residence at application and when a TANF assistance unit member temporarily leaves Oklahoma after certification; (2) add that TANF Work participants may be sanctioned if they temporarily leave the state and do not participate in work activities during their absence unless good cause reason exists; and (3) add policy citations.

The proposed amendments to Chapter 10, Subchapter 10 amend the rules to: (1) update terminology and form numbers; (2) reorganize, simplify, and clarify information regarding procedures to determine incapacity at application and after certification; (3) remove obsolete information regarding a specialist's exam; and (4) add a policy citation.

The proposed amendment to Chapter 10, Subchapter 22 amends the rules to: (1) update TANF Supported Permanency Program (SPP) rules regarding guardianship and how a relative is referred to apply for TANF SSP; (2) update terminology; (3) add a policy citation and form; and (4) add clarifying language.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-693-6542.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

340:10-1-3. State Plan for Temporary Assistance for Needy Families (TANF)

The State Plan (Plan) covering TANF encompasses the requirements listed in paragraphs (1) through ~~(13)~~(14) of this Section.

(1) **State-wide operation.** The ~~plan~~Plan is in effect in all counties of the state as a state-administered program.

(2) **Financing.** The Oklahoma State Legislature appropriates funds for financing the TANF program. Federal money is provided by block grant funding, per federal laws and regulations relating to the TANF program. These state and federal funds are used for assistance and administration under the ~~plan~~Plan.

(3) **Designated state agency.** The state TANF program is administered by the Oklahoma Department of Human Services (DHS), with at least one county office in each county in the state, operating under federal regulations, per Sections 261.1 through 261.80 of Title 45 of the Code of Federal Regulations (45 §§ C.F.R. §§ 261.1 through 261.80), Sections 230.50 through 230.78 of Title 56 of the Oklahoma Statutes (56 §§ O.S. §§ 230.50 through 230.78) and DHS rules, per Oklahoma Administrative Code (OAC) 340:10 and 340:65.

(4) **Appeal rights.** Individuals applying for or receiving TANF cash assistance have the right to appeal any action relating to the application for or receipt of TANF benefits. An applicant may also appeal a delay in processing an application timely.—Refer to OAC 340:2-5 for fair hearing procedures.

(5) **Proper and efficient administration.** DHS operates under the State Merit System, which establishes and maintains personnel standards on a merit basis for certain federal grant-in-aid agencies, including DHS. ~~Employees of DHS employees engaged in the administration of the TANF State Plan~~ administration are covered by the State Merit System.

(6) ~~Reports as required~~**Required reports.** DHS Financial Services:

(A) assists in fulfilling the requirements of state and federal laws by making necessary reports;

(B) cooperates with various federal agencies by providing current and special reports; and

(C) furnishes DHS with ~~data~~ necessary data for the operation of its programs.

(7) ~~Safeguarding of information.~~ Federal and state laws and DHS rules restrict the use or disclosure of information concerning TANF applicants ~~for~~ or recipients ~~of~~

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TANF to purposes directly connected with the ~~program~~ administration of the program.

(8) **Right to apply.** An individual has the right to:

- (A) ~~make application apply~~ for TANF;
- (B) expect an investigation of eligibility; and
- (C) a prompt decision by ~~DHS in regard to~~ the regarding his or her application.

(9) **Assistance under only one program.** The needs of an eligible person must only be included in one cash assistance program; the State Supplemental Payment (SSP) or TANF payment.

(10) **Standards for determining eligibility and amount of payment.** Uniform standards for determining eligibility and ~~policies rules~~ and procedures for such determination are provided in OAC 340:65, and this Chapter. As a means of promoting uniformity and accuracy in determining the basic needs, such as food, clothing, basic drugs, personal items, shelter, utilities, and household equipment of each TANF assistance unit, a flat grant consisting of these requirements is used.

(11) **Income and resources.** ~~When determining need for TANF, DHS considers any available~~ The income and resources of an individual when requesting assistance, except income and resources available to the assistance unit are considered in determining its eligibility for TANF unless they are required to be disregarded by federal or state law or by DHS rules. Income and resources received on behalf of a member of the assistance unit by another individual that include, but are not limited to, a guardian or conservator, is considered available to the assistance unit.

(12) **Civil rights.** The TANF program is administered, per the provisions of Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1975, as amended; the Age Discrimination Act of 1975; the Americans with Disabilities Act of 1990; and Title IX of the Education Amendments of 1972, as amended.

(13) **Electronic benefit transfer (EBT) restrictions.** ~~Per Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012, Section 608(a)(12) of Title 42 of the United States Code (42 U.S.C. § 608(a)(12)),~~ States are required to maintain policies and practices as necessary to prevent TANF cash assistance from being used in any EBT transaction in certain prohibited businesses, per Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012, Section 608(a)(12) of Title 42 of the United States Code (42 U.S.C. § 608(a)(12)). ~~Section 241.4 of Title 56 of Oklahoma Statutes (56 O.S. § 241.4)~~ also restricts the use of EBT transactions in these businesses and adds one additional prohibited business.

(A) Prohibited businesses include any:

- (i) liquor store. The term liquor store means any establishment that sells exclusively or primarily intoxicating liquor. The term does not include a grocery store that sells both intoxicating liquor and groceries, including staple foods, per 7 U.S.C. § 2012;

(ii) casino, gambling casino, or gaming establishment except for:

- (I) a grocery store that sells groceries, including staple foods, per 7 U.S.C. § 2012, and also offers, or is located within the same building or complex as an establishment offering casino, gambling, or gaming activities; or
 - (II) any other establishment offering casino, gambling, or gaming activities incidental to the principal purpose of the business;
- (iii) retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; or
- (iv) retail establishment whose principal business is that of selling cigarettes, cigars, or tobacco products. This type of retail establishment is prohibited, ~~only by state statute per~~ 56 O.S. § 241.4 but not by federal law.

(B) EBT transaction means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or service.

(C) DHS informs applicants and recipients of this prohibition by including information about the prohibition in:

- (i) Form 08MP003E, Rights, Responsibilities, and Signature for Benefits, of the application;
- (ii) ~~a poster posters~~ displayed in the county office ~~lobby lobbies~~;
- (iii) the certification notice; and
- (iv) a sign sent to identified prohibited businesses ~~for use in educating to educate~~ staff and customers that the ~~DHS issued~~ DHS-issued debit card is not accepted at their ~~business businesses~~.

(D) Refer to OAC 340:10-3-57(h) for recipient benefit reduction penalties when DHS determines a recipient used his or her debit card in a prohibited business.

(E) Refer to OAC 340:65-3-6 for debit card and direct deposit procedures, including information about accessing benefits, free services, and fees.

(14) **Teen Pregnancy.** DHS has youth mentoring contracts throughout Oklahoma. These programs provide a safe environment for at-risk and low-income youth and teens. Teens attending youth mentoring are less likely to become involved in risky behavior as their after school hours are filled with sponsored/monitored activities, life skills, mentoring, nutrition, and programs designed for the teen population to make smart decisions in every area of their lives including relationship decisions that help the teen population learn how to prevent unwanted teen pregnancies.

SUBCHAPTER 2. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) WORK PROGRAM

340:10-2-5. Job search activities

The primary objective of all job search activities is for applicants and recipients of Temporary Assistance for Needy Families (TANF) to obtain employment through personal contacts with employers. The worker and the participant jointly determine the number of employer contacts based on availability of child care, financial resources, jobs in the community, skills and abilities, and any other factors which affect or influence the participant's ability to obtain employment.

(1) An employer contact is defined as a face-to-face interview with an employer, the completion and return of any application to an employer, including an on-line application, or the completion of tests required for employment with the state, local, or federal government. ~~Referrals to employers are made on Form 08TW011E, Employment Referral.~~ The participant records employer contacts on Form 08TW010E, Employer Contact List.

(2) Job search is defined as the participant's job seeking efforts. Persons in job search activities are eligible for participant allowances and may be eligible for child care for the time they are actively looking for a job or in a group activity.

(A) The participant is given Form 08TW013E, TANF Time and Progress Report, to complete and return to the worker by the time frame shown on the form.

(i) Additional job search may be required as a part of another work activity ~~if when~~ it would improve the participant's employment prospects.

(ii) The number of employer contacts to be made each week is included in the employability plan.

(B) ~~If When~~ the participant has ~~been unsuccessful in obtaining~~ not obtained a job after a reasonable amount of time, the worker and the participant review the employability plan to determine if another activity is more appropriate.

(C) The maximum amount of time spent in job search activities cannot exceed 240 hours at 20 hours per week or 360 hours at 30 hours per week for the preceding 12-month period for any person.

340:10-2-7. Training

(a) **Scope.** Job skills training activities include vocational training and hands-on work experience to develop technical skills, knowledge, and abilities in specific occupational areas. All training programs must include qualitative measures, such as competency gains or proficiency levels, to evaluate a participant's progress and reasonable time limits for completion. Referrals are made to appropriate training facilities on Form 08TW003E, Interagency Referral and Information.

(b) **Assignments.** Any training to which the participant is assigned must meet the criteria in (1) through (4) of this subsection.

(1) The hours of any training activity are governed by the training facility but must not exceed 40 hours per week.

(2) The training is preparation for a job that meets the criteria for appropriate employment.

(3) The quality and type of training must meet local employers' requirements so participants are in a competitive position with the local labor market.

(4) Training is related to in-demand occupations that are likely to become available in Oklahoma, such as health care, geriatric care, and other career paths found at <https://oklahomaworks.gov/>.

(c) **Job Corps non-resident training program (Job Corps II).** Oklahoma's four Job Corps centers provide a nonresident Job Corps program to Temporary Assistance for Needy Families (TANF) participants who can commute to their sites. Participants referred must be between 16 and 24 years of age. The Adult and Family Services (AFS) worker completes Form 08MP013E, ~~Information/Referral~~ Referral for ~~Other~~ Services to refer the TANF participant to Job Corp. It is the AFS worker's responsibility to coordinate with the Job Corps center to arrange for child care.

(1) By special agreement with the Job Corps centers, Job Corps II students are provided Job Corps participant training allowances designed to meet training costs not covered by the TANF cash assistance. These allowances are not considered as income.

(2) The worker coordinates with the centers and other designated agencies, such as the Oklahoma Employment Security Commission (OESC) and Workforce Innovation and Opportunity Act (WIOA) partners, to ensure Job Corps II students leaving the center are placed in an appropriate work activity. When a Job Corps II student leaves the center, the worker meets with the Job Corps II student to make immediate plans for further implementation of the employability plan.

(d) **Vocational training.** Up to 12 months of participation in a vocational certificate, associate's degree, bachelor's degree, or advanced degree program may count as vocational training when it qualifies a participant to obtain immediate employment in a specific field.

(1) When the institution of higher education has a TANF-funded contract, the participant must attend through the contracted provider.

(2) The participant is required to participate the minimum number of hours in a TANF activity, ~~per OAC~~ Oklahoma Administrative Code 340:10-2-1(2) or as mandated by the TANF-contracted provider.

(3) The participant must maintain satisfactory academic progress with a minimum grade point average of 2.0 and verify progress at mid-term, when possible, and at the end of the semester. Progress may be verified by a grade report, transcript, or a statement from the contracted provider or other school official.

(4) When satisfactory progress is not met, the AFS worker submits Form 08TW008E, Higher Education Probationary Approval Request, to AFS TANF ~~program field representative~~ staff to request a probationary approval period. When the probationary approval period is not approved, the participant is placed in another TANF Work activity.

(5) Participants participating in a vocational certificate, associate's degree, bachelor's degree, or advanced degree

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program as part of the employability plan may count homework or study time up to one hour for each class hour, when the participant provides, at the beginning of each new class or semester; a class syllabus or a statement from the instructor, professor, or advisor that states the additional time is:

- (A) a class requirement;
- (B) above and beyond work normally completed during class hours; and
- (C) not used to make up missed class hours.

(e) **Special programs and demonstration efforts with other agencies.** The Oklahoma Department of Human Services (DHS) may enter into special education, training, or employment efforts with federal, state, and local governments; and with private for-profit; and private not-for-profit organizations; and agencies. When this occurs, involved county office staff is expected to comply with the terms of those agreements.

(f) **Job skills training.** Training directly related to job skills required by an employer or that provides a participant with the ability to obtain employment or to advance or adapt to the changing demands of the workplace.

- (1) Time spent in vocational training in excess of 12 months that is an approved part of the participant's employability plan may be counted toward the required work activity hours, when the participant also participates in a different approved core activity for a minimum of 20 hours per week.
- (2) Homework or study time may count up to one hour for each class hour, when the participant provides, at the beginning of each new class or semester; a class syllabus or a statement from the instructor, professor, or advisor that states the additional time is:
 - (A) a class requirement;
 - (B) above and beyond the work normally completed during class hours; and
 - (C) not used to make up missed class hours

340:10-2-8. Temporary Assistance for Needy Families (TANF) Work support services

(a) **Scope.** The worker provides or arranges payments and services for the participant to ensure successful completion of the participant's employability plan to become self-supporting.

- (1) Payments are authorized for items or services directly related to employment as an outcome.
- (2) When support services are available and part of the employability plan, the participant's failure to cooperate in obtaining the support services constitutes a failure to participate in the TANF Work program.
- (3) Items and services covered by the participant's medical card are not paid for by the support service fund.
- (4) The only support services available to an applicant are the participant allowance and work activity payment.
- (5) Payments are not authorized for reimbursement of expenses already paid by client or others.

(b) **Flexible funds.** The intent of flexible funds is to provide a participant with the necessary support services needed to accomplish his or her employment goals.

- (1) Flexible funds are not available to the applicant.
- (2) To be eligible for flexible funds, the participant must:

- (A) otherwise be ready to participate in a required work activity for the minimum number of hours;
- (B) have a guaranteed offer of employment; or
- (C) be employed.

(3) Payments for the services through flexible funds are not an automatic entitlement to the participant.

(4) Flexible funds are not used for fines including traffic fines or any cost related to a criminal offense, such as legal fees or court costs.

(5) Designated county staff or the career development specialist has final authority to determine authorizations.

(6) One-time payments of specific services are not approved for reimbursement of expenses already paid by the participant or others.

(7) Ongoing maintenance payments are not allowed.

(8) Relatives of the client are not eligible for payment. Refer to Oklahoma Administrative Code (OAC) 340:10-9-1 for degree of relationship.

(c) Other support services.

(1) **Work activity payments.** Work activity payments are issued to purchase specific items, such as a tank of gas, clothing, or personal items, when needed to participate in assigned work activities. The maximum amount approved cannot exceed \$40 per month.

(2) **Participant allowances.** Daily cash allowances, up to a \$13 maximum per day, are made to participants in assigned scheduled, structured, and supervised work activities.

(A) Lunch hours and travel time are not included as actual attendance hours.

(B) For persons in Job Search, travel time between job interviews and job applications is included as actual attendance hours.

(C) The participant makes appropriate daily entries on Form 08TW013E, Time and Progress Report, to document actual attendance hours and submits it to the worker by the time frame shown on the form.

(D) The daily allowance paid is:

- (i) \$8 per day when the work activity equals four hours or less; or
- (ii) \$13 per day when the work activity equals more than four hours.

(3) **Oklahoma State Bureau of Investigations (OSBI) background checks.** OSBI background checks may be requested for a participant who is placed in job skills training that requires an OSBI background check as a prerequisite for employment. The job skills training may include vocational training, hands-on work experience, or public or private sector work experience.

(4) **Child care.** Child care arrangements are made for each ~~child (ren)~~ child in the home ~~under~~ younger than 13 years of age, or younger than 19 years of age when the child is mentally or physically incapable of self-care, or under court supervision, per Oklahoma Administrative Code (OAC) 340:40-7-3. The ~~plans for~~ worker includes

the child care ~~are included~~ plan on Form 08TW002E, TANF Work/Personal Responsibility Agreement. When the person begins active participation in TANF Work activities, the worker and client complete a child care application based on the TANF Work plan, per OAC 340:40.

(5) **Transportation contracts.** Transportation contracts are initiated to provide transportation for TANF recipients who have no means of transportation to access required TANF Work training activities. To initiate a transportation contract, designated county office staff contact the Adult and Family Services (AFS) TANF staff.

(6) **Disability Advocacy Program (DAP).** DAP is available to assist a TANF Work participant or a child(ren) receiving a TANF benefit, who has an application for disability pending with the Social Security Administration (SSA) or who the Oklahoma Department of Human Services (DHS) determines has a potentially meritorious claim for such benefits.

(A) The worker makes a referral to the ~~DHS contracted~~ DHS-contracted law firm to assist the recipient(s) with the:

- (i) application;
- (ii) reconsideration;
- (iii) Administrative Law Judge hearing; and
- (iv) review by the SSA Appeals Council.

(B) The evaluation of merit determines ~~whether~~ if the appropriate SSA test for disability would be met if evidence was available to prove all conditions claimed by the TANF recipient. When the evaluation of merit determines there is:

(i) sufficient evidence, the law firm represents the TANF recipient.

(I) Statewide representation consists of assisting the recipient with the application through an unfavorable SSA Appeals Council decision.

(II) In counties in which representation by a lawyer or experienced non-lawyer advocate is not available without advance payment, the contracted law firm assists with the pending application for disability through an unfavorable decision by the SSA Appeals Council; or

(ii) insufficient evidence to prove conditions claimed by the TANF recipient, no further services are provided by DAP. Representation by the law firm ceases at any time the law firm determines there is insufficient evidence to support the TANF recipient's claim for disability benefits.

(7) **Achievement bonuses.** TANF recipients participating in TANF Work are eligible for bonuses related to achievement of certain goals when funding is available. TANF recipients may receive one bonus payment per achievement, for activities in (A) of this paragraph.

(A) Achievements are completion of a:

- (i) high school diploma; ~~or~~
- (ii) ~~general educational development~~ high school equivalency certificate (GED); or

(iii) ~~career readiness certificate (CRC) per OAC 340:10-2-3(b).~~

(B) Refer to DHS Appendix H-4-C for bonus payment amounts.

SUBCHAPTER 3. CONDITIONS OF ELIGIBILITY - NEED

PART 1. RESOURCES

340:10-3-1. Resources defined

~~The term~~ For the purposes of the Temporary Assistance for Needy Families Program, resources is a general-term representing defined as any form of real and personal property which that has an available money/monetary value. All available resources, except those required to be disregarded by federal law or by policy rules of the Department per Oklahoma Administrative Code 340:10-3-1 through 340:10-3-10 are considered.

340:10-3-2. General provisions regarding resources

(a) ~~Every time eligibility is determined. The value of each capital countable resource is available to the assistance unit must be evaluated and verified at application and renewal. The maximum allowable resource amount is \$1000 for a family to be eligible to receive Temporary Assistance for Needy Families (TANF). Refer to Oklahoma Department of Human Services (DHS) Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule IX.C regarding the maximum resource standard.~~

(b) ~~In establishing eligibility and who is included in the TANF assistance unit, only those~~ Only available resources which the applicant/client or another assistance unit member owns, wholly or in part, are considered. If/When an adult or child is receiving/receives Supplemental Security Income (SSI), his or her resources are not considered in determining Temporary Assistance for Needy Families (TANF) eligibility for TANF.

(c) ~~Capital resources are evaluated on a monthly basis in determining eligibility for TANF. An applicant is determined The assistance unit is ineligible for TANF for any month that its resources exceed the maximum resource standard, at any time during that month per DHS Appendix C-1, Schedule IX.C. When a recipient has the assistance unit's resources which exceed the resource standard, the worker closes the TANF cash assistance is terminated for the next possible advance notice effective date, per DHS Appendix B-2, Deadlines for Case Actions.~~

(d) ~~The recipient/client may change the form of capital resources from time to time as long as the resources are not in excess of the maximum resource standard, per DHS Appendix C-1, Schedule IX.C.~~

(e) In determining eligibility based on resources, only ~~those~~ resources available for current use or those which resources that the client can has the legal ability to convert to cash for current

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use with no legal impediment involved are considered as countable resources. ~~A resource is considered available when actually available and when the client has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance. Under this provision, a resource is considered available if the client has the legal ability to convert the resource to cash for his or her own use. Legal ability is explained in (f) of this Section.~~

(f) ~~Generally, a~~ resource is considered unavailable ~~if when~~ there is a legal impediment to overcome. ~~However, When there is a legal impediment,~~ the client must agree to pursue all reasonable steps to overcome the impediment and ~~is responsible for taking necessary steps to initiate legal action within 30-calendar days. While the legal action is in process, the resource is considered unavailable. If a determination is made and documented that~~ When the cost of making a resource available exceeds the gain, the client is not required to pursue action to make it available.

340:10-3-5. Personal property

(a) This subsection describes personal property and how it is considered in determining eligibility for Temporary Assistance for Needy Families (TANF).

(1) **Household goods and equipment.** Items essential to day-to-day living, such as clothing, furniture, and other similarly essential items of limited value, are excluded as resources.

(2) **Livestock and equipment used in a business enterprise.** A person's equity in livestock, equipment, or ~~inventory of~~ merchandise in a business enterprise is considered as a resource only when the person is not actively engaged in the business enterprise. Equity is not counted when the person actively participates in the business or is only temporarily inactive, ~~for example, such as when the person is becomes~~ incapacitated and ~~can~~ reasonably ~~expect~~ expects and ~~has~~ plans to resume the business enterprise upon recovery. Equity is established ~~on the basis of oral~~ based on verbal or written information ~~which that~~ the person has at hand and counsel with or by obtaining information from persons ~~who have~~ with specialized knowledge about the particular resources.

(3) **Livestock and home produce used for home consumption.** Any livestock or produce grown and used by the assistance unit for home consumption is exempt.

(4) **Cash savings and bank accounts.** Available cash and money in a financial institution is considered as a resource. The person's statement that he or she does not have cash on hand or in a financial institution is sufficient unless there are indications to the contrary. When there is information to the contrary or when the person does not have records to verify the amount on deposit, verification is obtained from bank records. Section 167.1 of Title 56 of the Oklahoma Statutes (O.S. 56 § 167.1) provides that financial records obtained for the purpose of establishing eligibility for assistance or services must be furnished without cost to the person or the Oklahoma Department of Human Services (DHS).

(A) Checking accounts may or may not represent savings. Current bank statements are evaluated with the person to establish what, if any, portion of the account represents savings. Any income deposited during the current month is not considered savings.

(B) Jointly-owned accounts are considered available to the person unless it can be established what part of the account belongs to each of the owners, the money is separated, and the joint account is dissolved.

(C) Per 56 O.S. § 4001.1, money and assets deposited into or withdrawn from an individual savings or trust account owned by the designated beneficiary of the account and established to pay qualified disability expenses are excluded under the Oklahoma Achieving a Better Life Experience (ABLE) Program or an ABLE program in any other state for the purpose of determining eligibility to receive, or the amount of, any assistance or benefits from local or state means-tested programs. A person may have only one ABLE account. The client must provide documents to verify that the account meets exemption criteria before the funds are exempted from resource and income consideration. When verified, the exclusion applies to money:

(i) deposited in the account up to the annual federal gift tax exclusion, per Section 2503(b) of Title 26 of the United States Code. Any money deposited in the account in a calendar year that is in excess of the annual federal gift tax exclusion is considered a countable resource and income in the month deposited; or

(ii) withdrawn to pay qualified disability expenses. Money withdrawn for reasons other than to pay qualified disability expenses is considered as income for the month of withdrawal.

(D) In certain instances, a client may receive and access funds from a charitable account in a TANF assistance unit member's name or in a third party's name.

(i) Charitable accounts are typically set up for a specific purpose, such as to help pay for medical expenses not covered by SoonerCare (Medicaid) or the person's insurance, funeral expenses, or living expenses while a person is unable to work. Medical expenses may include travel expenses to obtain treatment, such as fuel, meals, lodging, and incidentals.

(ii) The worker must verify:

(I) the purpose of the account;

(II) the name(s) on the account;

(III) the person(s) who is authorized to withdraw funds from the account;

(IV) the dates and amounts of any deposits into or withdrawals from the account within the most recent 12-month period; and

(V) any limitations or restrictions placed on the access to account funds.

(iii) When the account is in the name of a TANF assistance unit member and there are no restrictions on accessing funds, the funds in the account are considered as a countable resource. When funds are periodically withdrawn from the account, the amount withdrawn is considered as unearned income in the month withdrawn.

(iv) When the account is in the name of an assistance unit member and funds are restricted for non-elective medical expenses or funeral expenses, the funds in the account are exempt from resource and income consideration. When the restricted funds can be released to the client for other purposes such as living expenses, the funds are considered as unearned income in the month released.

(v) When the account is held and managed by a third party on the client's behalf and the client does not have direct access to the funds, the account is not considered as an available resource to the client. When the third party disburses funds from the account to:

(I) vendors on the client's behalf, the released funds are not considered as countable income; or

(II) the client for purposes other than non-elective medical bills or funeral expenses, the funds are considered as unearned income in the month received.

(vi) When charitable funds are collected and released to the client in a one-time payment for non-elective medical expenses or funeral expenses, the funds are exempt. When released for other purposes, the one-time payment is considered as a nonrecurring lump sum payment, per Oklahoma Administrative Code (OAC) 340:10-3-28.

(5) **Insurance policies and prepaid funeral benefits.**

(A) **Life insurance policies.** The cash surrender value (CSV) less any loans or unpaid interest of life insurance policies owned by members included in the TANF cash assistance is counted as a resource. Dividends that accrue and remain with the insurance company increase the amount of the resource. Dividends paid to a person are considered as income. Assignment of the face value of a life insurance policy to fund a prepaid burial contract is not counted as a resource. In this instance, the amount of the face value of the life insurance is evaluated according to (C) or, when applicable, (D) of this paragraph.

(B) **Burial spaces.** The value of a burial space for each family member whose needs are included in the cash assistance or whose income and resources are considered when computing the cash assistance is excluded from resources.

(C) **Burial funds.** Revocable burial funds not in excess of \$1500 for each person included in the assistance unit are excluded as a resource when the

funds are specifically set aside for the burial arrangements of the person, per 56 O.S. § 165. Any amount in excess of \$1500 for each person included in the assistance unit is considered as a resource. Burial policies that require premium payments and do not accumulate cash value are not considered prepaid burial policies.

(i) The term burial funds means a prepaid burial contract or trust with a funeral home or burial association that is set aside to pay for the person's burial expenses.

(ii) The face value of a life insurance policy, when properly assigned by the owner to a funeral home or burial association, may be used for purchasing burial funds as described in (i) of this subparagraph.

(iii) The burial fund exclusion must be reduced by the face value of life insurance policies owned by the person and by the amounts in an irrevocable trust or other irrevocable arrangement.

(iv) Interest earned or appreciation on the value of any excluded burial funds is excluded when left to accumulate and become a part of the burial fund.

(v) When the person did not purchase the prepaid burial contract or trust, even when the person's money was used for the purchase, the person is not the owner and the prepaid burial funds are not considered a resource to the person.

(D) **Irrevocable burial contract.** Oklahoma law provides that a purchaser of a prepaid burial contract may elect to make the contract irrevocable. Irrevocability becomes effective 30-calendar days after the contract is signed.

(i) When the irrevocable election was made prior to July 1, 1986, and the person received assistance on July 1, 1986, the full amount of the irrevocable contract is excluded as a countable resource. This exclusion applies only when the person does not add to the amount of the contract. Interest accrued on the contract is not considered as ~~added~~ added to the contract. Any break in assistance requires that the contract be ~~evaluated~~ reevaluated at the time of reapplication.

(ii) When the effective date for the irrevocable election or application for assistance is July 1, 1986, or later, the amount in any combination of an irrevocable contract, revocable prepaid burial contract or trust, and the cash value of unassigned life insurance policies cannot exceed \$10,000, per 56 O.S. § 165. ~~When the principal amount exceeds \$10,000, the person is ineligible for assistance.~~ Any amount in excess of \$10,000 is considered a countable resource. Accrued interest is not counted as a part of the \$10,000 limit, regardless of when it is accrued.

(iii) For an irrevocable contract to be valid, the election to make it irrevocable must be made by the

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purchaser or the purchaser's guardian or a person with power of attorney for the purchaser.

(E) **Medical insurance.** When a person has medical insurance, payments made to the medical provider or directly to the person and the payments are applied to the cost of medical services, they are excluded from resource consideration. Any amount remaining after payment for medical services is considered a resource.

(6) **Stocks, bonds, mortgages, and notes.** The person's equity in stocks, bonds, including United States Savings Bonds Series A through EE, mortgages, and notes are considered as resources.

(A) The current market value less encumbrances is the equity of stocks or bonds.

(B) The amount that can be realized from notes, mortgages, and similar instruments, when offered for immediate sale, constitutes a resource.

(7) **Non-negotiable resources.** Installment payments received on a note, mortgage, and similar instruments, for which a buyer cannot be found, are considered as monthly income.

(8) **Vehicles.** ~~For each vehicle, the~~ The market value of each year's make and model vehicle owned by the person is established on the basis of ~~based on~~ the average trade-in value listed in the National Automobile Dealers Association (NADA) books, other blue books, or one of the Internet websites that provide data on the market value of used vehicles at no cost to the user. When the person states the vehicle is worth less than the average trade-in value, the person secures written appraisals from two persons familiar with current values. The appraisals must state the appraised value of the vehicle and why it is worth less than the average trade-in value. When there is a substantial unexplained difference between the appraisals or between the blue book value and one or more of the appraisals, the worker and the person jointly arrange for a third ~~person~~ party familiar with current values and acceptable to both, to establish the true market value of the vehicle.

(A) **Exempt vehicles.** The equity value of up to \$5,000 in one vehicle is exempt from resource consideration. The amount of the equity in excess of \$5,000 is considered against the resource limit.

(B) **Other vehicles and personal property.** The equity in other vehicles and personal property including boats, travel trailers, motorcycles, motor homes, and campers is considered against the resource limit. The current market value less encumbrances is the equity. Only encumbrances that are verified are considered in computing equity.

(9) **Lump sum payments.** A lump sum settlement that compensates for the loss of a resource, such as an automobile, may be disregarded in the amount used to replace the loss.

(A) ~~The person is given a reasonable amount of time~~ has up to 30-calendar days to replace the loss ~~not to exceed 30-calendar days~~. Extension beyond 30-calendar days may be ~~justified in special instances~~

granted when completion of the transaction is beyond the person's control.

(B) Any amount remaining after the replacement of the loss is considered as income.

(C) Income tax refunds, except for the portion representing an earned income tax credit (EITC), must be treated as a resource and considered available to the person upon receipt. Per the Tax Relief, Unemployment Insurance Authorization, and Job Creation Act of 2010 Public Law 111-312, EITC payments received after December 31, 2009, as a result of filing a federal or state tax return are exempt as a resource for 12 months following receipt.

(D) Retirement benefits received as a lump sum payment at employment termination ~~of employment~~ are considered a resource. These benefits are not treated as income because the retirement contribution was regarded as income in the month earned and withheld by the employer.

(10) **Individual Development Accounts (IDAs)** ~~(IDA)~~. IDAs are dedicated savings accounts that are used for a qualified purpose, such as purchasing a first home, education or job training expenses, capitalizing a small business, or other purposes designated by the IDA administrative entity.

(A) IDAs are managed by community organizations and accounts are held at local financial institutions.

(B) Cash deposits and interest accrued from the deposits made by a person in an IDA up to \$2,000 are not considered as income or resources in determining TANF eligibility, per 56 O.S. § 230.54.

(C) The account deposits must be made from earned income, EITCs, or tax refunds.

(11) **Saving For Education, Entrepreneurship, and Downpayment (SEED) Initiative accounts.** SEED accounts are dedicated savings accounts for persons 13 through 18 years of age that are used for a qualified purpose, such as purchasing a first home, education or job training expenses, capitalizing a small business, or other purposes designated by the administrative entity. SEED accounts are managed by community organizations and accounts are held at local financial institutions. Cash deposits and interest accrued from the deposits made by a person in a SEED account up to \$2,000 are not considered as income or resources in determining TANF eligibility.

(b) ~~This subsection describes resources~~ Resources ~~disregarded in determining need. Disregarded resources are include:~~

(1) income disregarded, per Oklahoma Administrative Code OAC 340:10-3-40;

(2) trusts of a child(ren) included in a TANF benefit when the funds are used for educational purposes for a child(ren). Any court established trust must be examined to determine if the court restricted the trust for other purposes. The client must verify at application and renewal if funds were withdrawn. Withdrawn funds are treated as lump sum unearned income unless documentation shows

the funds were used for the child(ren)'s educational purposes;

(3) any accounts, stocks, bonds, or other resources held under the control of a third party when the funds are:

(A) designated for educational purposes for a child(ren) eligible for receiving TANF, even when a child(ren)'s name is on the account and the third party holder is required to access the funds; or

(B) established to pay for non-elective medical expenses or funeral expenses for an assistance unit member;

(4) a migratory migrant farm worker's out-of-state homestead if home property when the farm worker's intent is worker intends to return to the homestead home after the temporary absence;

(5) a non-recurring retroactive, nonrecurring lump sum Supplemental Security Income (SSI) retroactive payment, made to a TANF recipient, in the month paid and the next following month. The amount remaining in after the second month after the month of receipt is a countable resource;

(6) funds in education accounts established, per Sections 529 and 530 of the Internal Revenue Code or exempted by O.S. 56 § 4000; and

(7) child support collected from a child support tax intercept for the month received. The amount remaining in the second month after the month of receipt is a countable resource.

340:10-3-9. Family relations as a resource

State law is specific on the mutual responsibility of spouses for each other and of a parent for his or her child(ren). If the husband and wife are living together When two persons are married and live together, a resource, whether income or capital resources available to one spouse constitutes a resource is considered available to the other. When there is a break in the family relationship, and the husband and wife are separated spouses separate, but are not divorced or legally separated, they constitute a possible resource to each other and this possible resource is must be explored to determine what, if any, resource can income or resources may be made available.

(1) It is the legal responsibility of the natural or adoptive parent(s) to support his or her minor child(ren) to the extent that he or she is able to do so. For Temporary Assistance for Needy Families (TANF), a minor is defined as a child younger than 18 years of age, regardless of his or her marital status. A minor may also be considered a person younger than 19 years of age when he or she attends high school and is scheduled to graduate before his or her 19th birthday.

(2) This responsibility is not affected by any action of either parent affecting the marriage relationship of the parents or by a change in legal custody of the child(ren). A natural or adoptive parent living in the home is responsible for the support of his or her minor child(ren) even though the parent has remarried and the stepparent is ~~also~~ in the home.

(23) When a minor with a child(ren) applies for ~~Temporary Assistance for Needy Families (TANF)~~ and lives in the same home with the minor's natural or adoptive parent(s), the income of the minor's parent(s) is considered available and ~~is computed the same as stepparent liability, per Oklahoma Administrative Code 340:10-3-57(e). [OAC 340:10-3-57(f)] Stepparent's~~ When the minor parent's stepparent lives in the home, the stepparent's income is not considered. ~~In regard to this Chapter, a minor is defined as anyone under 18 years of age, regardless of marital status.~~

(34) ~~If When~~ a minor child(ren) ~~is living lives~~ in a relative's home, separated from his or her parent(s), the parent(s) continue continues to be responsible for ~~his or her the~~ minor child's support, ~~but The worker only such~~ considers financial support as actually income when it becomes available to the child(ren) is considered. Support offered by When the parent(s) but conditioned on the child(ren)'s moving offers support only when the child(ren) moves back to the parent(s)' home, it is considered available only when such a move is in the child(ren)'s best interest.

(45) An adult child(ren) has a moral, but not a legal, obligation to support his or her parent(s) to the extent of his or her ability. The individual's oral statements person's statement that he or she does not receive contributions are not received from an adult child(ren) and or other relatives not living with the individual constitute acceptable substantiation concerning contributions if him or her is sufficient when the statements are pertinent and it is consistent with other known facts. If When the individual person states that such he or she receives contributions are received, verification of verbal or written statements from the persons providing the contributions regarding the frequency and amounts amount of such contributions is are required.

340:10-3-10. Maximum resources

Maximum resources is a term used to designate the largest amount an individual can hold in one or more capital countable resources and still be considered eligible for Temporary Assistance for Needy Families (TANF) from the standpoint of need. Resources may be held in any form or combination of forms of capital resources real or personal property.

(1) **Maximum TANF resource standard.** ~~The maximum resource standard is shown on OKDHS Refer to Oklahoma Department of Human Services (DHS) Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule IX.C to determine the maximum resources a family may have and be eligible for TANF.~~ The resources of all members ~~whose needs are~~ included in the TANF cash assistance benefit are considered in determining the maximum resources for the family. For resources of a needy caretaker ~~see refer to~~ paragraph (2) of this Section.

(A) When both parents are in the home and one parent receives Supplemental Security Income (SSI) and is included in a State Supplemental Payment (SSP)

~~ease benefit~~ and the ~~spouse~~ other parent is included in a TANF ~~ease benefit~~ with the children, the resources of both parents are evaluated in relation to determine eligibility for Supplemental Security Income (SSI) and therefore are not considered on for the TANF ease benefit.

(B) ~~If When~~ a natural or adoptive parent or dependent child is not included in the assistance unit because of alien status, his or her resources are considered with the resources of the eligible children in computing ~~the maximum resources~~ TANF resource eligibility.

(2) **Consideration of resources of a relative-payee other than a natural or adoptive parent.** A relative-payee ~~can may~~ only be included in the cash assistance benefit when the natural or adoptive parent is not in the home and the relative-payee ~~also~~ meets the definition of a needy caretaker, per Oklahoma Administrative Code (OAC) 340:10-3-30 and inclusion of his or her resources does not exceed the resource standard, per DHS Appendix C-1, Schedule IX.C. A stepparent may be included in the cash assistance benefit when the natural or adoptive parent is incapacitated or not in the home.

(A) ~~If When~~ a relative-payee is not eligible to be included in the TANF assistance unit or is eligible but does not ~~request want~~ to be included, ~~consideration is not given to his or her resources or the resources of the relative-payee or his or her spouses~~ spouse's resources are not considered in determining the children's eligibility of the children.

(B) A relative-payee is considered resource eligible as a needy caretaker ~~if when the his or her resources for the case does do~~ not exceed the maximum resource standard.

(C) Only one needy caretaker may be included in the TANF assistance unit when the child's parent(s) is not in the home. ~~If When~~ the needy caretaker has a spouse who is not an SSI recipient, one-half of their combined resources are considered as the needy caretaker's resources. ~~If When~~ the spouse of the needy caretaker is an SSI recipient, ~~consideration is not given to his or her resources~~ are not considered.

PART 3. INCOME

340:10-3-28. Lump sum payments

Lump sum payments received from any source are considered as income. Changing a resource from one form to another is not considered a lump sum payment.

(1) **Recurring lump sum payment.** ~~A nonrecurring lump sum payment considered as income includes payments based on accumulation of income and payments which are considered windfall in nature. Retirement benefits received at time of retirement in a lump sum are considered as unearned income. A non-recurring lump sum Supplemental Security Income (SSI) retroactive payment, made to a Temporary Assistance for Needy Families~~

~~(TANF) recipient who is not currently eligible for SSI, is not counted as income or a resource for TANF purposes in the month paid and the following month. The amount remaining in the second month after the month of receipt is a countable resource. A recurring lump sum payment is a payment received from any source on a regular basis. A recurring lump sum payment, including income from earnings, is averaged over the period it is intended to cover beginning with the month received.~~

(A) Examples of recurring lump sum payments include income from surface or mineral rights, oil and gas production, or cash winnings resulting from an established pattern of gambling.

(B) When, after averaging, the monthly income from the lump sum payment is in excess of the Temporary Assistance for Needy Families (TANF) cash assistance benefit, per Oklahoma Department of Human Services (DHS) Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule IX, the worker denies the application or closes the TANF benefit for the next effective month, per DHS Appendix B-2, Deadlines for Case Actions. The income is considered available for the period of time it is intended to cover, even when it is depleted in less time.

(C) When an applicant receives a recurring lump sum payment before applying for TANF, any amount remaining at application after income averaging is considered as a resource.

(2) **Nonrecurring lump sum payment.** A nonrecurring lump sum payment is any money the client receives one time or that he or she does not expect to receive regularly from that source. Retirement benefits received at time of retirement in a lump sum are considered as a resource in the month received. The worker calculates how receipt of a nonrecurring lump sum affects the recipient's continued eligibility for TANF per the lump sum rule at (5) of this Section.

(A) Examples of nonrecurring lump sum payments considered as income include, but are not limited to:

- (i) retroactive Veterans' (VA) or Social Security benefits or worker's compensation payments;
- (ii) insurance settlements or death benefits;
- (iii) personal injury awards or settlements;
- (iv) monetary inheritances or gifts;
- (v) cash winnings from gambling or the lottery that are not the result of an established pattern of gambling; and
- (vi) wage bonuses or one-time earnings.

(B) When a TANF recipient is approved for Supplemental Security Income (SSI) and receives a retroactive, lump sum SSI payment, it is not counted as income or a resource for the month received and the following month. The amount remaining in the second month after the month received is a countable resource.

(C) When a nonrecurring lump sum payment is from a disregarded income source per OAC 340:10-3-40, it is not counted as income.

(D) Refer to OAC 340:10-3-5(a)(9) for lump sum payments considered as resources.

(E) Refer to OAC 340:10-10-7 when DHS Child Support Services receives a lump sum child support payment.

(23) **Worker responsibilities.** The worker gives—the person explains the information contained on Form 08TA006E, Important Notice About the Effect of Lump Sum Payments on TANF Benefits, to ensure he or she has knowledge of the effect of lump sum receipt on eligibility, asks the client to sign the form, and provides a copy to the client. When the worker:

(A) learns from a client or a third party that the assistance unit received or expects to receive a lump sum payment, the worker is responsible for informing the recipient of the lump sum rule per (5) of this Section within five-calendar days; and

(B) has sufficient information to compute the ineligibility period, the worker provides the client with Form 08TA007E, Lump Sum Termination or Denial Notice.

(3) A recipient who returns the cash assistance for the same month a lump sum is received is not considered a recipient for that month. The recipient must report the lump sum within 10 calendar days of receipt. The cash assistance must be returned within 10 calendar days from the date the lump sum is reported.

(4) **Allowable deductions.** A person who receives a lump sum payment may request his or her needs be removed from the assistance unit if, in accordance with OAC 340:10-3-56, the person is not required to be in the assistance unit. If this person requests his or her needs be removed, the lump sum rule does not apply. If the person does not request his or her needs be removed from the assistance unit, the lump sum rule applies to the entire assistance unit. Allowable deductions are expenses earmarked in the settlement or award to be used for a specific purpose. Examples include payment of a court judgment, including attorney fees and costs directly related to the lump sum settlement or paying medical or funeral expenses for an immediate family member. For earned income received in a lump sum, work related expenses and one-half of the remainder are allowed as deductions for each month the earned income accumulated per OAC 340:10-3-33.

(5) **Lump Sum Rule.** When a member of the TANF cash assistance unit receives a nonrecurring lump sum payment, it may cause the assistance unit to become ineligible for TANF for a number of future months. This is called the Lump Sum Rule. The effect the lump sum payment on the assistance unit's eligibility for TANF is calculated by:

(A) subtracting allowable deductions from the lump sum payment, per (4) of this Section;

(B) adding the remaining lump sum payment to all other countable monthly income. This includes

any non-excluded child support payments received by Child Support Services per OAC 340:10-10-7(b)(2). It does not include the TANF benefit; and

(C) dividing the income by the monthly TANF need standard for the assistance unit's family size to determine the number of months the assistance unit is ineligible for TANF. Refer to Oklahoma Department of Human Services Appendix C-1, Schedule IX for the TANF need standard per family size.

(6) **When the Lump Sum Rule does not apply.** The Lump Sum Rule does not apply:

(A) to an applicant when the applicant:

(i) receives the lump sum payment prior to the application date. In this instance, any amount remaining on the application date is considered a resource; or

(ii) reports receipt of the lump sum payment within 10-calendar days of receipt and requests the TANF application be denied;

(B) to a recipient when:

(i) he or she anticipates receipt of the lump sum and requests the TANF benefit be closed prior to the anticipated lump sum receipt month;

(ii) he or she reports receiving the lump sum payment within 10-calendar days of receipt and repays the TANF cash assistance payment for the receipt month within 10-calendar days of timely reporting receipt of the lump sum payment;

(iii) the lump sum payment is less than the TANF cash assistance payment. In this instance, the lump sum payment is considered as income in the receipt month. The worker completes an overpayment referral per 340:65-9 unless the recipient repays the TANF payment in the amount received; or

(iv) the person who expects to receive a lump sum payment is not required to be included in the assistance unit per OAC 340:10-3-56 and has his or her needs removed prior to receiving the lump sum payment;

(C) when the lump sum was received and the ineligibility period was determined by another state prior to the person establishing residence in Oklahoma; or

(D) when the lump sum payment is received by a stepparent not included in the TANF cash assistance unit. When this occurs, the stepparent's countable income including the lump sum is computed per OAC 340:10-3-57(e)(1) for the receipt month. Any portion of the lump sum income retained after the receipt month represents a resource to the stepparent per OAC 340:10-3-57(e)(2).

(57) **Ineligibility period.** Ineligibility due to a lump sum payment received by a person required to be in the assistance unit in accordance with OAC 340:10-3-56 The worker closes the TANF benefit and starts the ineligibility period for the next advance notice effective date per DHS Appendix B-2, Deadlines for Case Actions, and sends the client Form 08TA007E. The ineligibility period applies to

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~~all members of persons included in the assistance unit, including at the time the lump sum is received. This includes those not required to be in the assistance unit included and those that may be included per OAC 340:10-3-56.~~

~~(6) Any remaining part of a lump sum payment received by a non-recipient prior to the date of application is considered as a resource.~~

~~(7) The lump sum rule is not applicable if the period of ineligibility was determined by another state prior to the person establishing residence in Oklahoma.~~

~~(8) Lump sum payments minus allowable deductions related to establishing the lump sum payment received by persons are considered as income. Allowable deductions are expenses earmarked in the settlement or award to be used for a specific purpose. Earmarked means an expense specifically set forth in the settlement or award. For earned income received in a lump sum, work-related expense and one-half of the remainder are allowed as deductions for each month the earned income accumulated. The lump sum payment is added to all other countable monthly income considered in determining the amount of the TANF benefit including non-excluded child support payments received by the Child Support Enforcement Division. The TANF benefit is not included. If the total equals or exceeds the payment standard for the assistance unit size, the case is determined ineligible. The case remains ineligible for the number of months derived by dividing the total amount of monthly countable income plus the lump sum payment by the need standard for the assistance unit size.~~

~~(9) The lump sum payment is considered whether depleted or not until the ineligibility period of ineligibility has expired expires or is shortened per (8) of this Section. The period of ineligibility begins with the next possible effective date. Any income remaining is treated as other income received in the first month following the ineligibility period of ineligibility.~~

~~(10) If the lump sum is received by a stepparent not included in the TANF unit, the stepparent's countable income including the lump sum is computed in accordance with the stepparent policy at OAC 340:10-3-57(f). Any portion of the lump sum income retained after the month of receipt represents a resource to the stepparent. The resource is considered in determining TANF eligibility only to the extent of the amount actually contributed to the assistance unit.~~

~~(11) In all cases where a lump sum payment has been or is expected to be received, the person must be advised of the lump sum rule. In all cases where the Oklahoma Department of Human Services (OKDHS) learns from a third party that a lump sum payment has been or is expected to be received, the person is advised within five calendar days of the lump sum rule.~~

~~(128) **Shortening the ineligibility period.** The ineligibility period of ineligibility may be recalculated and shortened when a member of the assistance unit verifies and informs the worker that one or more circumstances described in (A) through (D) of this subsection occurred. Circumstances may include when:~~

~~(A) an event occurs which, had the assistance unit been receiving TANF, would change the need requirement and the amount of payment including revision of the TANF Need Standard the cash assistance unit's family size increases;~~

~~(B) the income lump sum becomes unavailable due to circumstances beyond the person's control. Examples may include when:~~

~~(i) someone steals all or part of the lump sum;~~

~~(ii) a natural disaster occurs and the assistance unit uses all or part of the lump sum to replace items lost in the disaster;~~

~~(iii) the assistance unit uses the lump sum to pay overdue rent or late mortgage payments owed at the time the lump sum is received; or~~

~~(iv) the assistance unit uses the lump sum to pay overdue utility bills owed at the time the lump sum is received;~~

~~(C) a member of the TANF assistance unit has incurred, incurs, owes or becomes responsible for and pays for an immediate family member's medical or funeral expenses; or~~

~~(D) funds from the person uses the lump sum are expended to enhance employment. Examples include:~~

~~(i) buying or repairing a car to keep or look for employment;~~

~~(ii) paying moving expenses to relocate for better job opportunities; or~~

~~(iii) buying necessary clothing for job search or employment.~~

~~(13) Recurring lump sum income received from any source for a period covering more than one month is prorated over the period of time it is intended to cover, beginning with the month of receipt of a lump sum payment. On applications and active cases, it is considered as available for the period of time it is intended to cover even though it is depleted in less than that time. If the lump sum closes a case and the person later reapplies for TANF, the prorated amount is considered as income for the period of time it was intended to cover even if it has been depleted. Any remaining part of a recurring lump sum payment received by a non-recipient prior to the date of application is considered a resource.~~

340:10-3-32. Determination of earned income

Earned income results from self-employment or other employment sources.

~~(1a) **Self-employment income determination.** Self-employment income received by a member of the assistance unit whose income is derived from a self-employment business enterprise owned solely or in part by the person; or when the person works for an employer, but is considered self-employed, per Oklahoma Administrative Code (OAC) 340:10-3-31(a), is considered per the procedures listed in (2)(b) of this Section. Other types of self-employment income are listed in (1) through (3) of this subsection.~~

~~(A1) **Room or board.** Earned income from When a person:~~

(A) ~~rents a room rented in the client's home, is determined by considering the worker subtracts 25 percent of the gross earned income amount received as a business expense;~~ or

(B) ~~Earned income from pays for room and board paid by a person in the client's home, is determined by considering the worker subtracts 50 percent of the gross earned income received as a business expense.~~

(B2) **Rental property.** Income from rental property is considered ~~income from earned~~ self-employment if ~~income when~~ none of the activities associated with renting the property is conducted by an outside person or agency. When the client does not manage the rental property, it is considered unearned self-employment income. When the client incurs business expenses, such as a mortgage payment, the worker subtracts 50 percent of the client's rental property income as a business expense.

(C3) **Profit sharing.** Households who operate S corporations, general or limited partnerships, or limited liability companies (LLC) may receive profit sharing that is reported on the household's personal income tax return. When a household member:

- (i) ~~actively participates in the operations, the income from profit sharing is considered part of the household's self-employed earned income; or~~
- (ii) ~~does not actively participate in the operations, the income from profit sharing is considered part of the household's unearned income.~~

(A) ~~S corporation profit sharing is considered unearned profit sharing income. Refer to (c)(3) of this Section and OAC 340:10-3-39(o) for information regarding S corporations.~~

(B) ~~Partnerships are unincorporated businesses with two or more partners. When a household member is a partner in a business, he or she is considered self-employed and not an employee of the business. Each partner receives a profit share from the business.~~

When a business is considered a:

- (i) ~~general partnership or LLC with a member-manager, each partner's share of the business income is shown as self-employment income on his or her federal income tax form; or~~
- (ii) ~~limited partnership or other LLC member, each partner's share of the business income is shown as self-employment income or unearned profit sharing income on his or her federal income tax form.~~

(2b) **Self-employment income procedures.** Self-employment income that represents the person's annual support is prorated over a 12-month period, even when the income is received in a shorter period of time. The worker uses the gross self-employment shown on the person's most recent federal tax return, when filed, or computes the person's gross self-employment income from the person's business or employer records. When the person claimed business expenses, the worker subtracts 50 percent of the person's gross self-employment income as business expenses and divides the remaining income by the

number of months to be averaged to arrive at the person's net monthly self-employment income.

(A1) **New income source.** When self-employment income was received for less than a year, the income must be averaged over the period of time received and the monthly income projected for the coming year.

(B2) **Averaged over period of time received.** When there is insufficient data to make a reasonable income projection from this income source, the worker does not consider income from this source until the six-month renewal. At renewal, the worker averages the income over the number of months received until a full year's data information is available.

(C3) **Substantial increase or decrease in income.** When the person who would normally have the self-employment income annualized experiences a substantial increase or decrease in income, the worker does not calculate self-employment income on the basis of prior earnings, such as income tax returns. Instead, the worker calculates the self-employment income using only the income that can reasonably be anticipated to project future earnings.

(3c) **Earned income from sources other than self-employment.**

(A1) **Earned income from wages, salary, or commission.** ~~When~~ the income is from wages, salary, ~~or~~ commission, ~~or contract employment,~~ the earned income is the gross income prior to payroll deductions and withholdings. ~~This includes earned income from contract employment.~~ Money from the sale of whole blood or blood plasma is ~~also~~ considered as earned income.

(B2) **Earned income from work and training programs.**

(iA) **Workforce Innovation and Opportunity Act (WIOA) of 2014.** Per Section 181 of WIOA, earned income ~~from WIOA~~ is exempt.

(iiB) **On-the-job training (OJT).** Earned income from ~~regular employment for~~ OJT is considered as any other earned income.

(3) **S corporations.** When a household member is a shareholder in an S corporation, he or she may receive profits from the business in two ways: as a salary and/or as a profit share of the business. Both types of income are reported on the household member's personal income tax return. Salary income is considered as earned income and profit share income is considered as unearned income.

340:10-3-39. Income other than earned income

(a) **Capital investments.** Proceeds from interest or dividends from capital investments, that include savings accounts, bonds, other than United States (U.S.) Savings Bonds, notes, and mortgages received subsequent to certification constitute income.

(b) **Real property held as a resource.** ~~When~~ the ~~individual~~ client has income from property held as a resource, only the income after deducting the actual business expense is considered.

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(c) **Life estate and homestead rights.** For income from life estate and homestead rights, refer to Oklahoma Administrative Code (OAC) 340:10-3-4(d).

(d) **Minerals.** ~~If~~ When the individual client owns minerals, but not the surface rights, only actual income from minerals, delayed rentals, and production is considered. ~~Evidence is obtained~~ The worker obtains income verification from documents which that the individual client has in hand, when available. When the individual has no client does not have documentary evidence of the income amount of income, the evidence is secured worker or client obtains income verification from the firm or person who is making the payment.

(e) **Home produce.** Any home produce from garden, livestock, and poultry utilized by the individual client and his or her household for their consumption represents resourcefulness on the part of the individual in improving his or her situation, and is not considered in determining the Temporary Assistance for Needy Families (TANF) benefit amount of benefit.

(f) **Contributions.** Appreciable contributions recurrently received in cash are considered income except when the contribution is not made directly to the recipient.

(g) **Child support.** The Oklahoma Department of Human Services (DHS) Child Support Services (OCSS) may send the client child support in excess of the monthly court ordered amount. When the client receives this excess amount, it is considered as unearned income. When the TANF payee is a minor parent and lives with an adult relative who receives child support for the minor parent, the child support is considered as income for the minor parent.

(h) **Retirement, disability, and unemployment benefits.** Income received monthly from annuities, pensions, retirement, veterans' or disability benefits, workers' or unemployment compensation, survivors' or Social Security benefits are considered unearned income. ~~Information as to present receipt and amount of current benefits is obtained from the individual's~~ The worker verifies the income by obtaining a copy of the person's award letter or benefit verification statement, by viewing the warrant, or by use of the data exchange files. Retirement benefits received as a lump sum payment at termination of employment upon retirement are considered as a resource, per OAC 340:10-3-5(a)(9)(D). Supplemental Security Income (SSI) does not fall under these types of benefits.

(i) **Military benefits.** ~~Life~~ When the client or his or her spouse is or was in the military, he or she may be eligible to receive life insurance, pensions, compensation, servicemen dependents' allowances, and similar benefits, ~~are sources of income which the individual and dependents may be eligible to receive. In each case, information is obtained concerning the military service of the individual's son, daughter, spouse, or parent. Clearance is made~~ When the client states that any member of the assistance unit, former spouse, or a non-custodial parent is or was in the military, the worker checks with the proper state and federal veterans' agencies, both state and federal, to determine whether they any benefits are available to the assistance unit.

(j) **Income from any agency or organization.** Financial aid provided to individuals persons by agencies or organizations which that base their payment on financial need is not

considered in determining the TANF benefit amount of the benefit provided duplication does not exist between such other assistance and that provided by the Oklahoma Department of Human Services (OKDHS) DHS. Financial aid given by other agencies or organizations does not constitute duplication if when the financial aid is given:

(1) for a different purpose than that provided by OKDHS DHS;

(2) for goods and services that are not included in the Temporary Assistance for Needy Families (TANF) need standard, per OAC 340:10-1-3(10); or

(3) in an amount sufficient to make it possible for the individual person to have the amount of money as determined by the TANF need standard, per DHS Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule IX. In this instance, the non-duplicated amount is the difference between the monthly payment standard and the monthly need standard, per DHS Appendix C-1, Schedule IX. Any amount of financial aid that exceeds that difference is considered as unearned income.

(k) **Income from Vocational Rehabilitation Program through the Oklahoma Department of Rehabilitation Services (DRS).** Assistance or services received by a TANF recipient When the client receives assistance or services from the Department of Rehabilitation Services which are DRS that is allocated to for items not covered in the TANF standards, are it is disregarded in determining the amount of the assistance payments TANF benefit amount. Examples of disregarded assistance or services are car fare to a rehabilitation center, extra clothing, lunches, grooming needed for a training program, and any other such complementary payments.

(l) **Casual and inconsequential gifts.** Monetary gifts which, such as Christmas, birthday, or graduation gifts that do not realistically represent income to meet living expenses, for example, Christmas, graduation, and birthday gifts, not to exceed \$30 per calendar quarter for each individual person, are disregarded as income.

(1) ~~The amount of the gifts is~~ Gift amounts are disregarded as received during the calendar quarter until the aggregate total amount has reached reaches \$30. At that time the portion exceeding When the amount received exceeds \$30 per quarter, it is counted as lump sum income unearned income.

(2) ~~If the amount of~~ When a single gift exceeds \$30, the entire amount is not inconsequential and the total amount is counted as unearned lump sum income, per OAC 340:10-3-28.

(3) ~~If~~ When the recipient claims that the gift is intended for more than one person in the assistance unit, it can be divided among these persons. Gifts between members of the assistance unit are not counted.

(m) **Grants.** Grants which that are not based on financial need are considered income to the extent the grant is available for current maintenance.

(1) Any portion of the grant that is expended, designated, or intended for items not included in current maintenance is excluded provided documentation is provided to justify the exclusion.

(2) ~~Any remaining portion of a grant excluded as not for current maintenance must have detailed case documentation to justify the exclusion.~~

(3) ~~The countable amount of a grant received for a period covering more than one month is prorated over the period it is intended to cover.~~

(n) **Funds held in trust by Bureau of Indian Affairs (BIA).** ~~The BIA frequently puts an individual's a person's trust funds in an Individual Indian Money (IIM) account. To determine the availability of funds held in trust in an IIM account, the worker must contact BIA in writing and ascertain if the funds, in total or any portion, are available to the individual. If any portion of the funds is disbursed to the individual client, guardian, or conservator, such funds are considered in determining eligibility. Funds held in trust by BIA and not disbursed are considered unavailable.~~

(1) ~~When the BIA determines the account is unavailable and releases a certain amount of funds each month to the individual, the monthly disbursement is considered as unearned income. If is disburseddisburses any portion of the fundsto the individualclient, guardian, or conservator, such funds are considered as available unearned income unless the income is disregarded, per OAC 340:10-3-40.~~

(A) When countable funds are disbursed on a monthly basis, the income is treated as unearned income in the month received.

(B) When countable funds are disbursed on a regular basis, less often than monthly, the income is averaged over the number of months it is intended to cover, per OAC 340:10-3-28(1).

(C) When countable funds are disbursed in a one-time payment, the income is considered a nonrecurring lump sum payment in the month received, per OAC 340:10-3-28(2).

(D) If BIA determines the funds are not available, they are not considered in determining eligibility. Funds held in trust byWhen the BIA states that the funds are unavailable and are not disbursed, the funds are not consideredunavailablein determining eligibility.

(2) ~~When the BIA has statedstates that the account is unavailable and the account does not have a monthly disbursement plan, but a review of the account reveals a recent history of disbursements to the individualclient, guardian, or conservator, these disbursements must be resolved with BIA. These disbursementsthis may indicate that all or a portion of the account may beis available to the individual, guardian, or conservator. The availability of the funds must be resolved with the BIA. When the worker is unable to resolve the situation with BIA, the worker submits a referral to the Family Support Services Division (FSSD). When a referral is sent to FSSDthis occurs, the funds are considered as unavailable withbecause of a legal impediment until the worker is notified otherwise situation is resolved.~~

(3) ~~When the BIA makes disbursements have been made, a determination is made whether such disbursements were made to the individual or to a third party~~

~~vendor in payment for goods or services. Payments made directly from BIA to vendors, the disbursements are not considered as countable income to the individual. Services rendered and payment made by BIA is documented.~~

(4) ~~Amounts disbursed directly to the individual are counted as non-recurring lump sum payments in the month received. Some trusts generate income on a regular basis and the income is sent to the beneficiary. In those instances, the income is treated as unearned income in the month received.~~

(o) **Profit sharing.** When a household member is a shareholder in an S corporation or a partner in a limited partnership or limited liability company, he or she may receive a distribution or profit share of the business. This is considered unearned income.

340:10-3-40. Income disregards

Income that is disregarded in determining eligibility for Temporary Assistance for Needy Families (TANF) is:

(1) the food benefit allotment under the Food and Nutrition Act of 2008;

(2) any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(3) educational assistance,including such as grants, work study, scholarships, fellowships, educational loans on which payment is deferred, and veterans education benefits,and the like. When the educational assistance is serving the same purpose as TANF cash assistance, such as when the client receives a stipend for living expenses, the stipend is countable income. The student's classification as a graduate or undergraduate is not a factor;

(4) loans, regardless of use, ifwhen a bona fide debt or obligation to pay can be established.

(A) Criteria to establish a loan as bona fide includes an acknowledgment of obligation to repay or evidence that the loan was from a person or financial institution in the loan business.

(B) When the loan was from a person(s) not in the loan business, the client's acknowledgment of obligation to repay, with or without interest, is required to indicate that the loan is bona fide.

(C) When the loan agreement is not written, the client and lender must complete and sign Form 08AD103E, Loan Verification, or a written statement, attesting that the loan is bona fide and verifying the date and amount of loan.

(D) When the client receives loans on a recurrent or regular basis from the same source to meet expenses, the client and lender must sign an affidavit that states the payments are loans that must be repaid or that payments will be made in accordance with an established repayment schedule;

(5) Indian payments, including judgment funds or funds held in trust, distributed per capita by the Secretary of the Interior, Bureau of Indian Affairs (BIA) or distributed by the tribe subject to approval by the Secretary of

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the Interior. For purposes of this paragraph, per capita is defined as each tribal member receiving an equal amount.

- (A) Any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest, or investment income accrued on such funds is disregarded.
 - (B) Any income from mineral leases or from tribal business investments is disregarded as long as the payments are paid per capita.
 - (C) Any interest or income derived from the principal or produced by purchases made with the funds after distribution is considered as any other income;
- (6) special allowance(s) for school expenses made available upon petition in writing from trust funds of the student;
- (7) income from trusts of a child(ren) included in a TANF benefit when the worker determines that funds are to be used for educational purposes for a child(ren). Any court-established trust must be examined to determine if the court restricted the trust for other purposes. The worker must verify at application and renewal if funds were withdrawn. Any funds withdrawn are treated as lump sum unearned income unless it is documented the funds were used for a child(ren)'s educational purposes;
- (8) income from accounts, stocks, and bonds held under the control of a third party when the funds are:
- (A) designated for educational purposes for a child(ren) in a TANF benefit even when a child(ren)'s name is on the account and the third-party holder is required to access the funds; or
 - (B) established to pay for non-elective medical expenses or funeral expenses for an assistance unit member, per OAC 340:10-3-5(a)(4)(D);
- (9) ~~benefits from state and community programs on aging from per Title III and Title V. Title III and Title V are under of the Older Americans Act (OAA) of 1965 as amended by Public Law (P.L.) 100-175, to become the OAA as amended 2000 Older Americans Act Amendments of 1987, and P.L. 114-144, Older Americans Reauthorization Act of 2016.~~ Each state and various organizations receive Title V funds. These organizations include:
- (A) Experience Works;
 - (B) National Council on Aging;
 - (C) National Council of Senior Citizens;
 - (D) American Association of Retired Persons (AARP) Foundation;
 - (E) ~~U.S.~~United States Forest Service;
 - (F) National Association for Spanish Speaking Elderly;
 - (G) National Urban League;
 - (H) National Council on Black Aging; ~~and~~
 - (I) National Council on Indian Aging;
 - (J) Asociacio'n Nacional Pro Personas Mayores;
 - (K) Associates for Training and Development, Inc.;
 - (L) American Samoa;
 - (M) Easter Seals Inc.;
 - (N) Goodwill Industries International, Inc.;

- (O) Institute for Indian Development;
- (P) National Able Network;
- (Q) National Asian Pacific Center on Aging;
- (R) National Caucus and Center on Black Aged, Inc.;
- (S) National Older Worker Career Center;
- (T) Operation A.B.L.E. of Greater Boston, Inc.;
- (U) Senior Service America, Inc.;
- (V) SER-Jobs for Progress National, Inc.;
- (W) Workplace, Inc.; and
- (X) VANTAGE Aging;

- (10) unearned income received by a child(ren) in a TANF benefit, such as a needs based payment, cash assistance, compensation in lieu of wages, or allowance from a program funded by the Workforce Innovation and Opportunity Act (WIOA) of 2014 including Job Corps income and earned income received as wages;
- (11) payments for supportive services or reimbursement for out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE);
- (12) payments to volunteers under the National and Community Service Trust Act of 1993 (NCSTA), such as AmeriCorps VISTA;
- (13) the value of supplemental food assistance received under the Child Nutrition Act or the special food service program for children under the National School Lunch Act;
- (14) any portion of payments, made under the Alaska Native Claims Settlement Act to an Alaska Native that are exempt from taxation under the Settlement Act;
- (15) any income of an adult or a child(ren) in the family group living in the home and receiving Supplemental Security Income (SSI) is not considered in determining the TANF benefit. The individual's income is considered by the Social Security Administration in determining eligibility for SSI and includes any payment made by Developmental Disabilities Services through the Family Support Assistance Payment Program on behalf of a child(ren) receiving SSI and any other earned or unearned income of the person;
- (16) Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the US Housing Act of 1937, as amended;
- (17) earnings of a child(ren) in a TANF benefit who is a full-time student;
- (18) government rental or housing subsidies by governmental agencies, such as Housing and Urban Development (HUD) received in-kind or in cash for rent, mortgage payments, or utilities;
- (19) reimbursements from an employer, the Department of Labor, or the Bureau of Indian Affairs, for out-of-pocket expenditures and allowances for travel, training, meals, or supplies including uniforms, to the extent the funds are

used for expenses directly related to such travel, training, meals or supplies;

(20) Low Income Home Energy Assistance Program (LIHEAP) payments for energy assistance and payments for emergency situations under Emergency Assistance to Needy Families with Children;

(21) refunds of federal or state Earned Income Tax Credit (EITC) received after December 31, 2009, as a result of filing a federal or state tax return are exempt as income for 12 months following receipt per the Tax Relief, Unemployment Insurance Authorization, and Job Creation Act of 2010, Public Law P.L. 111-312;

(22) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

(23) payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;

(24) federal major disaster and emergency assistance provided by Section 5515(d) of Title 42 of the United States Code (42 U.S.C. § 5515(d)) and comparable disaster assistance provided by states, local governments, and disaster assistance organizations;

(25) interests of individual Indians in trust or restricted lands;

(26) income up to \$2,000 per calendar year received by individual Indians derived from leases or other uses of individually-owned trust or restricted lands. Any remaining disbursements from the trust or the restricted lands are considered unearned income;

(27) payments received under the Civil Liberties Act of 1988. These payments are made to persons of Japanese ancestry who were detained in internment camps during World War II;

(28) payments made to persons because of their status as victims of Nazi persecution;

(29) interest accrued from deposits made by a person into an Individual Development Account (IDA) up to \$2,000;

(30) stipends paid to students participating in the Indian Vocational Education Program (IVEP) through the Carl D. Perkins Vocational and Applied Technology Education Act;

(31) payments made from the crime victims compensation program as amended in Section 1403 of the Victims of Crime Act of 1984, 42 U.S.C. § 10602;

(32) reimbursements made to a foster care parent(s) or a potential foster care parent(s);

(33) payments as described in 38 U.S.C. § 1823(c) provided to certain persons who are children of Vietnam War veterans;

(34) allowances, stipends, earnings, compensation in lieu of wages, or other payments made for participation in WIOA or other federally-funded grants and workforce training programs paid to persons of all ages and student status;

(35) child support judgments or arrearage payments received for a child no longer age-eligible for the TANF cash benefit; ~~and~~

(36) money deposited into or withdrawn from a qualified Oklahoma Achieving a Better Life Experience (ABLE) Program account, per Sections 4001.1 through 4001.5 of Title 56 of the Oklahoma Statutes or a qualified ABLE Program account set up in any other state per the ABLE Act of 2014, 26 U.S.C. § 529A is excluded as income or a resource when the client:

(A) provides documents to verify the account meets exemption criteria;

(B) verifies money deposited in the account does not exceed the annual federal gift tax exclusion amount, per 26 U.S.C. § 2503(b). Any money deposited in the account in the calendar year that is in excess of the annual federal gift tax exclusion amount is considered as countable income in the amount deposited; and

(C) verifies withdrawals from the account were used to pay qualified disability expenses. Money withdrawn for reasons other than to pay qualified disability expenses is considered as income for the month of withdrawal; and

(37) income received by a member of the United States Armed Forces, per 37 U.S.C. Chapter 5 and Section 273.9(c)(20) of Title 7 of the Code of Federal Regulations that is:

(A) received in addition to the service member's basic pay during combat deployment;

(B) received as a result of the service member's deployment or service in an area designated as a combat zone as determined, per Executive Order or P.L.; and

(C) not received by the service member prior to the service member's deployment to or service in a federally designated combat zone.

PART 5. ASSISTANCE PAYMENTS

340:10-3-58. Income determination procedures

(a) The Temporary Assistance for Needy Families (TANF) cash assistance benefit amount is determined based on actual income received for the current or past month, when known, and the best estimate of the amount of income that can be anticipated to be received for future months.

~~(1) Income received When the client receives income in varying amounts, is averaged to establish the amount to be anticipated and considered in determining eligibility. The the past 30-calendar days of income is averaged to indicatedetermine what income can be anticipated. The available paystubs which accurately reflect the amount the individual earns on an ongoing basis are used unless:~~

~~(A) the individual has client starts new employment and paystubs are not available. In this instance, When pay stubs are not available, the employer's statement is obtained and must include regarding the client's~~

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hourly wage, number of hours worked, and frequency of pay is obtained;

(B) ~~there has been a change in the hourly wage changed.~~ The new hourly wage is verified by a paystub(s) ~~which that~~ includes the new hourly wage. ~~If/When~~ a paystub reflecting the hourly wage change is not available, the employer is contacted for verification;

(C) ~~there has been~~ is a change in the number of hours worked. When paystubs are not available, the increase or decrease in hours is verified with the employer and then multiplied by the hourly wage to ~~arrive at the pay for the period—anticipate the next paycheck amount;~~

(D) the individual client obtains a second job. The monthly earnings from each job is computed separately and then added together for the total month's gross; or

(E) paystubs are not representative of the normal circumstances. ~~The case record is documented to show why the current pay stubs are not representative of the normal work week and, therefore, not used in the computation.~~ In this instance, income is anticipated by using only the paystubs that are representative.

(2) Income received more often than monthly must be converted to a monthly amount as described in (A) - (D) of this paragraph. ~~The worker must exercise extreme caution when determining whether income is received twice a month or biweekly, every two weeks.~~

(A) Income received on a daily basis is converted to a weekly amount, then multiplied by 4.3.

(B) Income received weekly is multiplied by 4.3.

(C) Income received twice a month is multiplied by 2.

(D) Income received every two weeks is multiplied by 2.15.

(b) ~~In the process of determining the amount of~~ When income verification is needed, it is important to define time frames for verification. The individual is advised in writing concerning the agreed upon verification to be provided within the time frame the worker gives or sends Form 08AD092E, Client Contact and Information Request, to the client specifying the income verification needed and gives the client at least 10-calendar days to provide the verification.

(1) ~~If/When~~ a certification is for a past month, then actual income, ~~if/when~~ known, is used ~~when determining the amount to be considered into~~ to determine income eligibility for the past month.

(2) Once acceptable verification is provided, no further information is required unless a change occurs or the renewal is due.

(3) ~~If an individual~~ When the client reports new employment and representative pay periods ~~have not been completed~~ has not been received yet, the best estimate is determined from the information provided by the individual client and the employer.

(c) ~~Some case closures~~ The TANF cash assistance benefit may be closed based on actual or anticipated income. ~~If/When~~ the TANF cash assistance payment is closed based on anticipated income and the individual client reports within 30-calendar days of the effective termination closure date that the anticipated income was not received or was received in a lesser amount ~~which that~~ does not cause ineligibility, the ~~case~~ TANF cash assistance benefit is ~~recertified by the re-~~opened using the administrative error process, per Oklahoma Administrative Code 340:65-5-6.

(d) ~~An individual~~ A client is responsible for reporting changes within 10-calendar days of when the change ~~took~~ takes place. ~~Action taken by the~~ The worker is responsible for taking timely ~~if taken~~ action within 10-calendar days of the reporting of the date the client reports the change. All client notices must include the timely reporting requirement.

340:10-3-59. Assistance benefits

(a) **Availability of funds.** The Oklahoma Department of Human Services (DHS) Temporary Assistance for Needy Families (TANF) Cash Assistance Program is funded by a federal TANF block grant. In the event of insufficient block grant funds, the program may be terminated or benefits not paid during the insufficiency period.

(b) **Maximum benefits.** The maximum benefit a TANF assistance unit is eligible to receive cannot exceed a nine-person payment standard, per DHS Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule IX. A TANF eligible child(ren) who is not a blood-related sibling to the other TANF eligible child(ren) must receive benefits in a separate case, per Oklahoma Administrative Code (OAC) 340:10-3-56(a).

(c) **Minimum payments.** The minimum TANF benefit paid to a recipient is \$10 ~~except for recoupment of~~ unless the payment is reduced to recoup an overpayment, per OAC 340:65-9-6. ~~The~~ When the TANF ~~case~~ cash assistance benefit would be less than \$10, a benefit does not issue. The TANF benefit remains in open status and, when applicable, per OAC 340:10-2, the parent or needy caretaker is subject to TANF Work participation rules. The assistance unit remains eligible for SoonerCare (Medicaid) and may continue to receive food benefits in this case, when eligible.

(d) **Payment to minors.** Minors may be considered as the adult payee for TANF on behalf of others when the minor is ~~assuming~~ assumes the responsibilities of an adult and meets all conditions of eligibility for TANF. ~~Refer to OAC 340:10-3-56(a)(3)(O) for~~ For rules regarding when a minor parent may not be considered part of the assistance unit, refer to OAC 340:10-3-56(a)(3)(O).

(e) **Overpayments.** When the recipient received assistance but did not meet all conditions of eligibility, refer to OAC 340:65-9 for overpayment procedures.

(f) **Flat grant system and use of benefits.** The flat grant system of budgeting was developed to determine the extent of need based on the number of eligible persons.

(1) A flat grant precludes any agreement on the part of Oklahoma Department of Human Services (DHS) to pay

or guarantee payment for goods or services provided to recipients by vendors in lieu of a ~~money~~ monetary payment.

(2) ~~Per OAC 340:65-3-6~~, DHS issues TANF cash assistance by debit card or direct deposit, per OAC 340:65-3-6.

(3) ~~Except per OAC 340:10-1-3(13)~~, DHS does not restrict where the recipient uses the TANF benefit, except per OAC 340:10-1-3(13).

PART 7. TRANSITIONAL BENEFITS

340:10-3-75. Continued medical benefits (CMB)

(a) **Conditions for CMB.** ~~When a~~The Temporary Assistance for Needy Families (TANF) ~~benefit closes due to the receipt of child or spousal support, or new or increased earnings of the natural or adoptive parent or caretaker relative, referred hereafter as payee, medical benefits are continued when assistance unit is eligible to receive CMB for the time period described in (b) and/or (c) of this Section following TANF benefit closure due to child or spousal support receipt or new or increased earnings of the TANF payee provided the payee is included in the benefit, per Section 408 of the Social Security Act, Section 608 of Title 42 of the United States Code. The medical benefits coverage for CMB recipients is of the same amount and scope as if the assistance unit continued receiving for TANF recipients. CMB eligibility begins effective the TANF benefit closure date or the effective date of closure had the income been reported timely. Only persons included in the assistance unit when the TANF benefit is closed are eligible for CMB. To be eligible for CMB the assistance unit must meet all of the requirements listed in (1) - (5) of this subsection.~~

(1) At least one member received TANF in at least three of the six months immediately preceding the month the TANF benefit closed.

(2) The payee must be included in the TANF benefit in the month of closure and remain as payee during CMB receipt.

(3) The assistance unit did not fraudulently receive TANF benefits in the six months preceding TANF closure. Refer to Oklahoma Administrative Code (OAC) 340:65-9-4 for fraudulent receipt rules.

(4) The assistance unit must include an eligible child.

(A) An eligible child is a child who is included in the TANF cash assistance benefit ~~at~~ in the time of closure month and continues to meet age requirements, per OAC 340:10-5-1 and relationship requirements, per OAC 340:10-9-1 while receiving CMB.

(B) A child who is not included in the TANF cash assistance benefit because of Supplemental Security Income receipt is also considered an eligible child when he or she is the only child in the home meeting age and relationship requirements.

(C) The eligible child must have met deprivation requirements, per OAC 340:10-10-1 prior to TANF benefit closure but is not subject to deprivation requirements during the CMB eligibility period.

(5) The payee must comply with Soonercare (Medicaid) citizenship and identity verification rules, per OAC 317:35-5-25.

(b) **Closure due to child support or spousal support.** Medical benefits are continued for up to four months when the TANF closure is due to the receipt of new or increased child support or ~~payments for~~ spousal support in the form of alimony.

(c) **Closure due to new or increased earnings of payee.** Medical benefits may be continued for up to 12 months when the closure is due to the payee's new or increased earnings ~~of the payee~~. When the payee is the natural or adoptive parent and deprivation is due to the other parent's absence, he or she is required to cooperate with Oklahoma Child Support Services (CSS) while receiving CMB.

(1) **Eligibility.** The CMB eligibility period is divided into two, six-month periods with eligibility requirements and procedures for each period.

(A) **Initial six-month period.** The assistance unit is eligible for CMB when:

- (i) an eligible child remains in the home per (a)(4) of this Section;
- (ii) the payee remains the same; and
- (iii) the assistance unit remains in Oklahoma.

(B) **Additional six-month period.** Medical benefits are continued for the additional six month period when:

- (i) an eligible child remains in the home per (a)(4) of this Section;
- (ii) the payee remains the same;
- (iii) the assistance unit remains in Oklahoma;
- (iv) the assistance unit was eligible for and received CMB for each month of the initial six month period;
- (v) the assistance unit complied with reporting requirements in (4) of this subsection;
- (vi) the assistance unit's average monthly earned income does not exceed the income standard, per the Oklahoma Department of Human Services (DHS) Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule I. The income standard is based on 185 percent of the federal poverty level; and
- (vii) the payee had earnings in each month of the three-month reporting period, unless the lack of earnings was due to an involuntary loss of employment, illness, or other good cause.

(C) **Income eligibility for additional six-month period.** The worker determines income eligibility for the additional six-month period per rules in (i) through (iii) of this subparagraph.

- (i) The worker disregards the assistance unit's:
 - (I) unearned income;
 - (II) a child's earned income when the child is a full time student; and
 - (III) resources.

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- (ii) The gross earnings of all assistance unit members minus the payee's child care expenses incurred for employment purposes must not exceed the income standard per household size on DHS Appendix C-1, Schedule I. To determine income eligibility over the three-month reporting period, the worker averages the:
- (I) entire assistance unit's gross monthly earnings;
 - (II) family size when changes occurred per (D) of this subsection; and
 - (III) child care expenses. There is no maximum amount for this deduction.
- (iii) The earnings of an additional family member ~~is~~are considered only when the member is a natural or adoptive parent. When the additional family member's earnings are considered, he or she is included in the household size for the income test.
- (D) **Additional members.** After the CMB begins, the worker:
- (i) does not add family members who move into the home to the CMB coverage. This includes siblings and a natural or adoptive parent(s). When the additional member needs medical services, the worker refers the payee to the Oklahoma Health Care Authority (OHCA) online enrollment system at www.mysooner.org to complete an application for the additional member. The payee may also complete an application at the local health department, Indian clinic, participating health care provider, or county office; and
 - (ii) adds a child younger than one year of age to the CMB coverage when the child is deprived of parental support, per OAC 340:10-10-1 and the child's mother is included in the CMB coverage.
- (E) **Assistance unit member leaves home and returns.** When an assistance unit member included in the CMB leaves the home and then returns, he or she may be added back to the CMB coverage when all conditions of eligibility are met, provided the member is not the payee.
- (F) **Third party liability.** The assistance unit remains eligible for CMB when it obtains health insurance coverage ~~and third party liability must be considered~~. However, the assistance unit is responsible for reporting all insurance coverage and any changes in the coverage as third party liability must be considered. The worker is responsible for explaining third-party liability and the necessity for filing medical claims with the private insurance before filing with OHCA.
- (G) **CMB closure.** The worker closes the CMB any time the assistance unit fails to meet the eligibility requirements included in this Section. When the worker closes the CMB for the assistance unit or any member of the assistance unit, the worker informs the payee that the assistance unit or the member

may complete an application for medical benefits under the regular SoonerCare (Medicaid) Program by accessing OHCA's online enrollment system at www.mysooner.org or ~~complete~~completing an application at the local health department, Indian clinic, participating health care provider, or county office.

- (2) **Notification.** DHS sends notices to the assistance unit when CMB is approved and throughout the CMB period. The notices are sent at specific times and inform the assistance unit of its rights and responsibilities. When a TANF benefit closes and the assistance unit is eligible for CMB, the computer-generated closure notice includes notification of the continuation of medical benefits. DHS sends another computer-generated notice at the same time to ~~advise~~inform the assistance unit of the reporting requirements and under what circumstances the medical benefits may be discontinued. Each notice listed in (A) through (C) of this paragraph includes specific information about the assistance unit's reporting responsibilities and serves as the required advance notification in the event benefits are closed because of the information furnished in response to these notices or because the payee does not respond to the notices.

(A) **Notice # 1.** PSNCM1 issues in the third month of the initial continued medical eligibility period.

This notice ~~advise~~informs the assistance unit of the additional six-month period of CMB, the eligibility conditions, reporting requirements, and appeal rights.

(B) **Notice # 2.** PSNCM2 issues in the sixth month of the continued medical eligibility period, ~~but~~ only when the assistance unit is eligible for the additional six-month period. This notice ~~advise~~informs the assistance unit of the eligibility conditions, reporting requirements, and appeal rights.

(C) **Notice # 3.** PSNCM3 issues in the ninth month of the continued medical eligibility period, ~~or which~~ is the third month of the additional six-month period. This notice ~~advise~~informs the assistance unit of the eligibility conditions, the reporting requirements, appeal rights, and the expiration of CMB coverage.

- (3) **Notices not received.** ~~In some instances~~When the assistance unit does not receive all of the notices listed in (2)(A) through (C) of this subsection, ~~the~~the notices and report forms are not issued retroactively. When the payee notifies the worker he or she did not receive a notice or report form, the worker obtains required information necessary to establish the assistance unit's continued eligibility from the payee and informs ~~the payee he or she must~~him or her to provide earned income proof for the appropriate reporting period.

- (4) **Reporting.** The assistance unit is required to periodically report specific information necessary to determine the assistance unit's continued eligibility for CMB. To assist the unit, computer-generated Form 08TA018E, Continued Medical Benefit Reply Form, is sent to the assistance unit with the notices generated during the CMB period. Though preferred, it is not mandatory that Form

08TA018E be returned. The payee may report the information ~~may be reported~~ by phone, in an office interview, or by letter. The payee must provide proof of all gross earnings for the three-month reporting period.

- (A) The assistance unit must report:
- (i) the gross earned income of the entire assistance unit for the appropriate three-month period;
 - (ii) employment-related child care expenses ~~paid by the payee~~ for the appropriate three-month period, ~~necessary for the caretaker relative's continued employment~~;
 - (iii) any changes in the members of the assistance unit;
 - (iv) any residency changes; and
 - (v) third party liability insurance coverage information.

(B) The reporting requirement time frames are explained in this subparagraph.

(i) The payee must report required information ~~requested~~ in the third month and return ~~required~~ earned income proof by the 24st12th day of the fourth month. The worker evaluates the information provided to determine the assistance unit's eligibility for the additional six-month period. Even though the payee is required to report required information in the fourth month, no negative action occurs during the initial six-month period for failure to report. When the:

- (I) assistance unit returns required information and no longer meets eligibility conditions per (1) of this subsection, the worker closes CMB effective the first day of the seventh month; or
- (II) payee fails to report required information and submit earned income proof, CMB automatically suspend effective the first day of the seventh month. When the worker does not reinstate CMB by the advance notice deadline of the suspension month, per DHS Appendix B-2, Deadlines for Case Actions, CMB automatically closes effective the next month.

(ii) The payee must report required information requested in the sixth month and return required earned income proof by the 24st12th day of the seventh month. When the:

- (I) assistance unit returns required information and no longer meets eligibility conditions per (1) of this subsection, the worker closes CMB effective the first day of the eighth month; or
- (II) payee fails to report required information and submit earned income proof, CMB automatically suspends effective the first day of the eighth month. When the worker does not reinstate CMB by advance notice deadline of the suspension month, per DHS Appendix B-2 CMB automatically closes effective the next month.

(iii) The payee must report required information requested in the ninth month and return required earned income proof by the 24st12th day of the tenth month. When the:

- (I) assistance unit returns required information and no longer meets eligibility conditions per (1) of this subsection, the worker closes CMB effective the first day of the eleventh month; or
- (II) payee fails to report required information and return required earned income proof by the 24st12th day of the tenth month, CMB automatically suspends effective the first day of the eleventh month. When the worker does not reinstate CMB by advance notice deadline of the suspension month, per DHS Appendix B-2, CMB automatically closes effective the next month.

(5) **CMB reinstatement.** When the assistance unit subsequently reports the necessary information following suspension, the worker determines eligibility. When all eligibility factors are met during and after the suspension period, the worker reinstates the medical benefits effective the date of the suspension so the assistance unit has continuous medical coverage until the CMB period ends.

(d) **Receipt of medical benefits after CMB ends.** ~~To ensure continued medical coverage, a~~ computer-generated expiration notice is mailed to the assistance unit ~~during the third month of CMB for benefits closed due to the receipt of child or spousal support or the 11th month of CMB for benefits closed due to new or increased earnings. The expiration notice explains before the CMB period ends to explain~~ how to apply for continued medical benefits. When the assistance unit applies and is determined eligible, medical benefits continue as regular SoonerCare (Medicaid) benefits, not CMB.

SUBCHAPTER 4. CONDITIONS OF ELIGIBILITY - MANDATORY DRUG SCREENING

340:10-4-1. Mandatory Drug Screening

(a) Per Section 230.52 of Title 56 of the Oklahoma Statutes, adult parents, or needy caretakers who apply for Temporary Assistance for Needy Families (TANF) cash assistance are required to be screened for illegal use of a controlled substance or substances. TANF child only cases and minor ~~parent~~ parents under ~~the age of 18~~ years of age are exempt from the provisions in this Section.

(b) At any point the Oklahoma Department of Human Services (~~OKDHS~~DHS) has reasonable cause to believe the adult parent or needy caretaker currently receiving TANF cash assistance is engaged in the illegal use of a controlled substance or substances, the adult parent or needy caretaker is required to be screened. ~~OKDHS~~DHS is authorized to request administration of a chemical drug screen, such as an observed urinalysis (UA). Behaviors observed by ~~OKDHS~~DHS or observed and reported by community resource partners that might indicate

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illegal use of a controlled substance or substances include, but are not limited to:

- (1) slurred speech;
- (2) unsteady gait;
- (3) inability to focus;
- (4) lethargy;
- (5) excessive nervousness or agitation;
- (6) showing flat affect or no emotion;
- (7) inappropriate responses to questions;
- (8) inappropriate anger or hostility;
- (9) excessive worry;
- (10) facial tics or muscle spasms;
- (11) erratic attendance in TANF Work activities;
- (12) lack of follow through with agreed upon plans; or
- (13) government or law enforcement documents indicating the person was engaged in the illegal possession or use of a controlled substance or substances within the last 30-calendar days.

(c) The minimum drug screening includes a Substance Abuse Subtle Screening Inventory (SASSI). Additional screening methods may be used that include, but are not limited to, a clinical interview, consideration of the person's history with ~~OKDHS~~DHS, and an Addictions Severity Index (ASI). ~~Additional screening and UA~~An ASI must be completed when the results of the initial SASSI screening are high probability, high defense, invalid, or the client self-declares a substance abuse problem. When the ASI indicates a need for treatment, a UA must be completed.

(d) The TANF application is approved with the adult parent or needy caretaker's needs included when all other factors of eligibility are met and ~~the substance abuse:~~

- (1) drug screening result indicates low probability of illegal use of controlled substance or substances; or
- (2) assessment result is a recommendation for alcohol and/or prescription drug abuse treatment.

(e) The TANF application is denied or benefits are closed ~~if when~~ the adult parent or needy caretaker refuses to comply or fails to follow through with the screening.

(f) When the adult parent or needy caretaker applicant screens positive for the illegal use of a controlled substance or substances, the worker denies the TANF application or closes the TANF benefit for the adult parent or needy caretaker. The parent or needy caretaker may choose to receive child only benefits ~~if when~~ all other factors of TANF eligibility are met. ~~If the choice is~~When the parent or needy caretaker chooses to receive child only benefits, the worker approves or continues child only benefits using the current TANF application. The worker also:

- (1) provides the denied applicant or adult recipient with a list of substance abuse treatment programs available at minimal or no cost to the applicant or recipient;
- (2) makes a referral to the Child Abuse Hotline at 1-800-522-3511 ~~of the~~when there is a positive screen for illegal drug use; and
- (3) determines eligibility of all household members for other requested program benefits.

(g) ~~If When~~ the adult parent or needy caretaker is ineligible ~~as a result because~~ of a positive screen for illegal use of a

controlled substance or substances, he or she is not eligible for TANF benefits until:

- (1) one year ~~has passed since~~after the date of the first ineligibility determination;
 - (2) six months ~~have passed since~~after the date of the first ineligibility determination ~~and when~~ the adult parent or needy caretaker ~~has~~ complied with a substance abuse treatment plan; or
 - (3) three years ~~have passed since~~after the date of the second or subsequent ineligibility determination.
- (h) At the end of an ineligibility period, a new application is required and all factors of eligibility determined. The steps described at (a) and (c) through (f) are followed.

SUBCHAPTER 7. CONDITIONS OF ELIGIBILITY - RESIDENCE

340:10-7-1. Residence

To be eligible to receive Temporary Assistance for Needy Families (TANF), a person must be making his or her home in Oklahoma. ~~A person whose residence has been~~Once established ~~in Oklahoma a person~~ does not lose Oklahoma residency status when he or she is removed from Oklahoma against his or her will and held in another state, for example, in federal prison, or ~~has been~~goes out-of-state to ~~make use of a federal facility, or look for a job or to attend school.~~

(1) A person's statement that he or she is ~~residing in an~~ Oklahoma voluntarily resident and is not residing in Oklahoma for a temporary purpose is acceptable if it is sufficient when consistent with other known facts. ~~If~~ When the statement is inconsistent with other known facts, further substantiation is necessary.

(2) ~~A When a person applying for TANF after living~~lived in another state or states at any time ~~must not be certified until the state or states of former residence is contacted that he or she lives in another state before applying for TANF in Oklahoma, the worker must contact the other state(s) to determine how many months, if any, the person has already received TANF and if cash assistance is currently being received from that state open. If so, planning must be done with that state so approval and closure are simultaneously effected in the respective states.~~

(A) When TANF is open in the other state, the closure date is coordinated between states to ensure the applicant does not receive TANF cash assistance in Oklahoma and the other state for the same month.

(B) When the person already received 60 months of TANF cash assistance TANF is not approved in Oklahoma unless a hardship extension is approved, per Oklahoma Administrative Code (OAC) 340:10-3-56(a)(2)(E).

(3) Continuous residence is established when the case record and contact with the person show no evidence of absence from Oklahoma.

(A) **Temporary residence.** For purposes of TANF eligibility, a person is considered a resident of Oklahoma ~~if when~~ he or she is ~~living in Oklahoma voluntarily or~~ plans to reside in Oklahoma temporarily because ~~of~~ has a job commitment or is ~~seeking to seek employment, even though the intent is to stay only temporarily,~~ as long as the person does not receive cash assistance ~~is not being received from another state.~~ This includes migrant and itinerant workers who ~~are temporarily residing in Oklahoma but~~ maintain a homestead in another state. A person traveling through the state or visiting relatives in this state is not considered a resident.

(B) **Out-of-state visits.** ~~A temporary absence from~~ When a member of the TANF assistance unit temporarily leaves the state ~~with subsequent returns to the state or intent for a purpose described in OAC 340:10-3-56(b) and intends to return to Oklahoma when the purposes purpose of the absence have been is accomplished, it does not interrupt Oklahoma residence. When the purpose is temporary in nature, the person~~ The recipient is responsible for ~~information regarding informing the worker which member(s) of the assistance unit is visiting plans to visit out-of-state, for what purpose, and the plan and date of the planned departure; and the planned date of return dates.~~

(i) ~~An absence~~ When a person included in a TANF assistance unit is temporarily absent from the state, ~~he or she may not continue beyond to be included in the assistance unit for at least three months without a specific and current determination of the unless~~ circumstances of ~~unrelated to the temporary absence occur, whether the purposes purpose of the absence have been is accomplished, and the person's statement as to his or her residence or a longer period of absence is permitted, per OAC 340:10-3-56(b).~~ The person is considered ~~as residing in an~~ Oklahoma resident until there is substantial factual evidence he or she ~~has chosen~~ chooses to establish residence in another state.

(ii) When the TANF Work participant is the person that temporarily leaves the state and does not participate in TANF Work activities during the absence, he or she may be sanctioned, per OAC 340:10-2-2 unless a good cause reason exists.

(iii) ~~If~~ When the person applies for cash assistance in another state and is determined eligible by that state, the ~~case record must document the facts used to establish that the closure~~ effective date of closure in Oklahoma ~~corresponds is~~ coordinated with the effective date of certification in the other state, ~~thus ensuring to ensure~~ there is no interruption in the assistance payment or duplication of benefits.

SUBCHAPTER 10. CONDITIONS OF ELIGIBILITY - DEPRIVATION

340:10-10-2. Physical or mental incapacity of the natural or adoptive parent

(a) **Scope and applicability.** The physical or mental incapacity of a natural or adoptive parent exists when one parent has a physical or mental ~~defect,~~ illness, or impairment that substantially reduces or eliminates the parent's ability to support or care for ~~the otherwise eligible his or her child(ren).~~ To be considered incapacitated, the parent's illness or impairment must be expected to last for at least a 30-calendar day period. The physical or mental incapacity must be supported by competent medical and social evidence.

(1) Both parents may be included in the assistance unit ~~if when~~ either parent is incapacitated ~~due to a reduced ability to provide support or care,~~ regardless of whether the parent who is not incapacitated is employed, ~~and regardless of or~~ the incapacitated parent's usual function as a homemaker or wage earner.

(2) The reduction of the ability to provide support to an eligible child is not the same as the inability to perform work. A parent may be working or capable of work but still be incapacitated for the purposes of establishing eligibility for Temporary Assistance for Needy Families (TANF). The criterion is the reduced ability of the parent to provide support or care, not the parent's employability.

(b) **Determination of substantial reduction or elimination of ability to provide support or care.** The factors in (1) - (8) of this subsection are considered evidence of a substantial reduction or elimination of a parent's ability to provide support or care. One factor by itself does not automatically determine ~~whether an individual that a parent is incapacitated, rather, these.~~ These factors are indicators to the Oklahoma Health Care Authority, Level of Care Evaluation Unit (~~LCEU~~) (LO-CEU) of the various ways a physical or mental impairment affects a parent's ability and the extent ~~to which that~~ such ability is affected. Any factor considered must exist as a result of the parent's physical or mental impairment and must be supported by specific medical information or social facts. Factors include the:

- (1) parent's inability to perform any type of gainful employment;
- (2) parent's ability to provide care for the child(ren) is substantially impaired without help from others;
- (3) parent qualifies for placement in a job that is rehabilitative or therapeutic, or for work in a sheltered workshop that is not considered to be a competitive full-time job;
- (4) number of hours the parent is able to work is substantially reduced;
- (5) wages the parent is able to earn are substantially reduced;
- (6) parent is unable to work in his or her customary occupation, but is able to work at employment ~~for which her that he or she is equipped by education, training, and experience to perform, but~~ that pays substantially less than his or her customary employment;

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- (7) parent is incapable of accomplishing as much on the job as an unimpaired worker and is or would be paid on a reduced basis even though able to work full-time; or
- (8) employer's refusal to hire the parent due to of the nature of the parent's physical or mental impairment. This includes behavioral disorders and disabling conditions.
- (c) **Determination of incapacity at the time of application.** When the deprivation at application for TANF is based on the incapacity of a parent who is ~~currently receiving~~ receives Social Security Administration (SSA) disability benefits, Supplemental Security Income (SSI) due to disability or blindness, or State Supplemental Payment (SSP) for the blind or disabled, the determination of disability or blindness that established SSA, SSI, or SSP eligibility establishes incapacity for TANF. ~~If~~When disability or blindness ~~has~~was not been predetermined by the previous criteria, a referral is ~~made~~sent to LCEU ~~for a LOCEU to make an incapacity decision on incapacity for TANF eligibility.~~
- (1) **Determination of incapacity by LCEU.** MedicalThe worker obtains medical information is obtained by the social services specialist from the client or, with the client's permission, from the relevant health professional and ~~sends~~the medical information and a completed Form 08MA022E, Medical Social Summary, to LCEU~~LOCEU~~ for use in determining incapacity. The medical information must be less than 90-calendar days old in order for LOCEU to make an incapacity decision, per OAC 317:35-5-4(2)(C).
- (2) **Payment**When existing medical information cannot be obtained without cost to the client, payment may be authorized for existing medical information or one general physical examination by a medical or osteopathic physician of the parent's choice, transportation, or subsistence can be authorized. The physician cannot be in an intern, residency, or fellowship program of the medical facility, or in the full-time employment of the Veterans Administration, Public Health Service, or other agency. Refer to OAC 317:35-3-2 for information regarding transportation and subsistence assistance.
- (3) The Form ABCDM 80-D, Medical Social Summary, submitted to the LCEU by the county office 08MA022E, completed with the client, along with medical documentation provides sufficient medical and social information to enable that unitLOCEU staff to make a prompt and proper decision. ~~On~~Upon receipt of the medical documentation and Form ABCDM 80-D08MA022E, a medical review team within LCEU-LOCEU is responsible for:
- (A) ~~determining~~making an incapacity decision;
 - (B) setting ~~an~~the incapacity eligibility effective dateof eligibility for incapacity;
 - (C) requesting additional medical and social information when it is necessary for a decision;
 - (D) ~~authorizing specialists' examinations, if needed;~~
 - (E) setting ~~at~~the date when ~~another~~a re-examination and medical social summary is needed or stating no further medical social summary is needed; and;

(F) recommending the advisability of a training plan, when advisable.

- (2) **Specialist's examination.** If, on receipt of the medical information and medical social summary, the LCEU needs additional medical information, that unit makes the appointment for the specialist's examination. The medical member of the team selects a physician and authorizes the examination. The parent is immediately notified by the social services specialist of the appointment and advised that failure to keep the appointment without good cause will result in denial of the application or case closure when redetermining continuing incapacity. Good cause is determined by the social services specialist if the parent notifies the social services specialist at least 24 hours prior to the date of the examination that the appointment cannot be kept. If the parent notifies the social services specialist he or she has no intention of keeping the appointment or fails to keep the appointment, the reason is documented and LCEU is immediately notified by memo and the decision of good cause is made by LCEU. If the appointment was missed due to illness of the parent, the illness must be supported by a written statement from a doctor or if missed for another reason, the reason must be supported by an affidavit signed by someone other than the parent or his or her representative and sworn to before a notary public or other person authorized to administer oaths. If LCEU determines good cause, another appointment is arranged by LCEU. If good cause is not established by LCEU, a decision regarding incapacity cannot be made. The social services specialist is responsible for explaining to the parent that eligibility cannot be determined without additional information, giving the parent the opportunity to reconsider, to withdraw his or her application, or request closure of the TANF case in writing. If the parent still refuses a specialist's examination and does not wish to withdraw the TANF application or request closure of the case, the application is denied or the case is closed as incapacity cannot be established.
- (d) **Incapacity not established.** LCEU makes the determination whetherLOCEU determines if incapacity can be established based on the medical and social information provided. ~~If~~When incapacity cannot be established, LCEU LOCEU describes the specific factors upon which they relied on to make the decision. The worker denies the application is denied or the case is closedcloses the TANF benefit as incapacity was not established.
- (e) **Determination of incapacityIncapacity determination at renewal or other specified times other than at the time of applicationafter certification.** WhetherWhen the parent's initial incapacity was based on an SSA determination of blindness or disability or by LCEU~~LOCEU~~ the steps outlined in (1) - (5)(6) of this subsection are followed. ~~If~~When incapacity is no longer determined by either SSA or LCEU~~LOCEU~~ no longer consider the parent incapacitated, the case is closedworker closes the TANF benefit.

SUBCHAPTER 22. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) SUPPORTED PERMANENCY PROGRAM

340:10-22-1. Temporary Assistance for Needy Families (TANF) Supported Permanency Program (SPP)

(a) **Scope.** ~~In an effort~~ The TANF SPP was developed to promote permanency for a child(ren) who is in the custody of the Oklahoma Department of Human Services (~~OKDHS~~)(DHS) and placed with a relative(s) residing in Oklahoma, who is a paid kinship relative foster home, ~~the Supported Permanency Program has been developed.~~ Supported permanency ~~The SPP~~ is considered appropriate when the:

- (1) child meets age requirements described on Schedule XVII of DHS Appendix C-1, Maximum Income, Resource, and Payment Standards, or has a sibling residing in the same relative foster home who meets age requirements ~~described on Schedule XVII of Appendix C-1, and resides in the same relative foster home;~~
- (2) child(ren) in DHS custody is placed in a paid kinship foster home with a relative(s), who resides in Oklahoma and meets the specified degree of relationship, as defined in per Oklahoma Administrative Code (OAC) 340:10-9-1;
- (3) ~~court has made a finding~~ finds that reasonable efforts to reunite the child(ren) with his or her parent(s) are not required or have been made and failed, and guardianship is the permanency plan of reunification has been ruled out for the child(ren);
- (4) child(ren) currently resides with the relative(s) in Oklahoma and ~~has~~ resided with the relative(s) four of the last six months;
- (5) relative(s) ~~has~~ completed all requirements to be ~~an~~ approved ~~OKDHS~~ DHS foster care home;
- (6) relative(s) is willing to assume legal responsibility for the child(ren); and
- (7) court and, ~~if when~~ appropriate, the child(ren), are in agreement with the plan for the relative(s) to obtain legal responsibility for the child(ren).

(b) **Eligibility.** ~~Once the Supported Permanency Program~~ Child Welfare Services (CWS) specialist determines that a referral to the TANF SPP is determined appropriate by the Child Welfare (CW) worker per (a)(1) of this Section and the transfer of legal responsibility has been is approved by the court, the CW worker makes a referral for Temporary Assistance for Needy Families (TANF) to the appropriate Family Support Services worker in the human services center CWS specialist refers the relative to apply for TANF SPP at the local county office within five-business days of the relative obtaining legal responsibility for the child(ren) using Form 04PP006E, Supported Permanency Referral. When the child(ren) is approved for the TANF ~~supported permanency~~ SPP benefit, he or she is eligible for SoonerCare (Medicaid) and child care benefits, ~~if when~~ appropriate.

- (1) ~~Income of this child(ren)~~ The child(ren)'s income is considered the same as it is for any other TANF eligible child.

(1) ~~If~~ No further incapacity determination is required when the parent continues to receive SSI based on disability or blindness or SSA disability benefits, ~~no further determination of incapacity is made as long as this individual continues eligible for SSA disability benefits or SSI based on disability or blindness.~~

(2) ~~If~~ When the parent ~~no longer receives~~ stops receiving SSA or SSI because SSA ~~has determined~~ determines the ~~individual~~ parent no longer meets the disability or blindness definition and the parent states he or she is still incapacitated, an incapacity decision must be made by LOCEU. Form ABCDM 80-D08MA022E, Medical Social Summary, is completed and submitted to LCEU LOCEU for a determination of continuing incapacity for TANF, ~~in accordance with per subparagraph (c)(2) of this Section.~~

(3) ~~If~~ When SSA discontinues disability benefits or SSI benefits for a reason other than failure to meet the definition of disability or blindness and the assistance unit meets all other conditions of TANF eligibility, continuing incapacity is determined by ~~LCEU~~ LOCEU per (c) of this Section.

(4) ~~If~~ When the parent continues to receive SSP on the basis of ~~an~~ LOCEU decision ~~by LCEU~~, no further determination of incapacity is made as long as the parent continues to be eligible for SSP because of disability or blindness.

(5) ~~If LCEU~~ When LOCEU determines ~~that the individual~~ person no longer meets the definition of disability or blindness but the assistance unit meets all other conditions of TANF eligibility, ~~continuing the worker requests that LOCEU determine incapacity, is determined in accordance with per (c)(2) of this Section.~~

(6) When LOCEU staff determined initial incapacity and includes a date when a new Form 08MA022E is due, the worker completes Form 08MA022E with the client and begins gathering new medical information per (c) of this Section the month before a new incapacity decision is due.

(f) ~~Determination of incapacity~~ **Incapacity determination at the time of reapplication.** ~~When TANF based on~~ An incapacity determination is not needed at reapplication when TANF was previously denied or terminated closed for reasons other than incapacity, ~~and the parent reappears within 12 months of the date on which LCEU made an incapacity decision, it is not necessary to have incapacity redetermined at the time of reapplication if LCEU had approved;~~

(1) parent's incapacity previously for a period extending was established prior to denial or closure, and the incapacity approval date extends beyond the reapplication date of reapplication; or

(2) If the TANF reapplication is based on the incapacity of a parent who is currently receiving receives SSP or SSI benefits based on disability or blindness or SSA disability benefits, it is not necessary to have incapacity determined at the time of reapplication.

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(2) Food benefit eligibility is dependent on the eligibility of the household.

(3) ~~Benefit reduction as a result of program violation is applicable for~~ The Adult and Family Services (AFS) worker reduces the TANF SPP benefit when the child(ren) fails to meet the school attendance and requirement, per OAC 340:10-13-1 or the immunization requirement, per OAC 340:10-14-1.

(4) ~~If When the child(ren) leaves the home to reside elsewhere, the Supported Permanency Program AFS worker closes the TANF SPP benefit is terminated for the child(ren).~~

(5) ~~If When, following closure, the child(ren) returns to this the relative's home, he or she the child(ren) may be eligible for TANF cash assistance but not for the Supported Permanency Program~~ TANF SPP benefit.

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TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 25. CHILD SUPPORT SERVICES

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RULES:

Subchapter 1. Scope and Applicability

340:25-1-1.2 [AMENDED]

Subchapter 5. Operational Policies

Part 15. Case Initiation, Case Management, and Case Closure

340:25-5-110.1 [AMENDED]

340:25-5-117 [AMENDED]

340:25-5-134 [AMENDED]

Part 20. Medical Support

340:25-5-168 [AMENDED]

Part 21. Establishment

340:25-5-176 [AMENDED]

340:25-5-178 [AMENDED]

340:25-5-179.1 [AMENDED]

Part 33. Intergovernmental Cases

340:25-5-270 [AMENDED]

Part 39. Accounting and Distribution

340:25-5-351. [AMENDED]

(Reference WF 20-25)

AUTHORITY:

Director of Human Services; 56 O.S. § 162; 43 O.S. §§ 601-101 through 901; 56 O.S. § 237; 12 O.S. § 2004; 10 O.S. §§ 7700-508 & 509; 43 O.S. § 118G. 45 Code of Federal Regulations (C.F.R.) § 303.7; 45 C.F.R. § 302.38; 45 C.F.R. § 302.33; 45 C.F.R. § 302.51; 45 CFR § 302.56; 42, C.F.R. § 433.152. Section 1603(12) of Title 25 of the United States Code (25 U.S.C. § 1603(12)); 42 U.S.C. §§ 652, 654, 654a, & 655.

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n/a

GIST/ANALYSIS:

The proposed amendments to Subchapters 1 and 5 of Chapter 25 amend the rules to: (1) comply with 45 C.F.R. § 303.31(b)(2) that mandates Child Support Services (CSS) include government medical assistance, such as SoonerCare (Medicaid), as qualifying health care coverage; (2) update the calculation for family share of child care costs in the child support guidelines in response to federal policy revisions required by the reauthorization of the Child Care and Development Block Grant; (3) implement rule changes recommended during the annual CSS policy review process; (4) amend legal authority as necessary; and (5) make non-substantive cleanup to improve rule clarity.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-693-6542.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2020:

SUBCHAPTER 1. SCOPE AND APPLICABILITY

340:25-1-1.2. Structure and service

(a) Structure.

(1) Under Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code, every state must designate a single state agency to administer a statewide plan for child support services. The Oklahoma Department of Human Services is the designated agency in Oklahoma. Oklahoma Child Support Services (~~OCSS~~) (CSS) administers the plan.

(2) ~~OCSS~~ CSS provides services through a state office and other offices throughout the state that may be administered through service agreements or contracts with district attorneys and other entities, such as Community Action Program agencies to provide legal child support services.

(3) The primary function of ~~OCSS~~ CSS is to provide child support services in all Title IV-A Temporary Assistance for Needy Families (TANF), Title IV-E foster care, and non-TANF SoonerCare (Medicaid) cases where eligibility is due to the absence of one or both parents, and in other cases for persons who have applied for services. ~~OCSS~~ CSS also provides these services in cases forwarded by:

- (A) Title IV-D agencies of other states;
- (B) Native American tribes; and
- (C) foreign jurisdictions, as appropriate.

(4) ~~OCSS~~ CSS is committed to the right of all parties to have access to the justice system for the purpose of enhancing understanding and ownership of the case. In addition to the child support services provided by ~~OCSS~~ CSS as described in this Chapter, when parties want to be heard on child support issues, regardless of whether

the party's positions of the party are contrary to the state's position and may be subject to legal defenses, ~~OCS~~ CSS:

(A) provides available pro se self-help forms to request a hearing before either the Office of Administrative Hearings: Child Support (OAH) under Oklahoma Administrative Code (OAC) 340:2-28-17.2 or the district court. OAH or the district court determine whether a hearing is granted;

(B) assists pro se customers in completing available ~~OCS~~ CSS self-help forms upon request; and

(C) refers parties to community resources including, but not limited to:

- (i) lawyer referral services;
- (ii) community legal services;
- (iii) other available self-help legal forms; and
- (iv) other available informational materials and community resource materials.

(5) ~~OCS~~ CSS complies with the standards for an effective program and the organization and staffing requirements, ~~prescribed by~~ per Part 303 of Title 45 of the Code of Federal Regulations (45 C.F.R. Part 303).

(b) **Services.** ~~OCS~~ CSS services include, but are not limited to:

(1) establishment of paternity, child support obligations, ongoing medical support, and ongoing child care obligations through administrative and court actions;

(2) enforcement of:

- (A) child support;
- (B) health insurance;
- (C) fixed sums and judgments for medical support including birthing costs;
- (D) fixed ongoing child care costs and judgments for child care costs; and
- (E) certain spousal support obligations when due in conjunction with child support;

(3) location of noncustodial parents and their assets by establishing intrastate and interstate links with local, state, and federal agencies, private sources, and international central authorities;

(4) ~~review of cases~~ case reviews for modification of support orders as appropriate;

(5) collection and distribution of support payments in accordance with federal and state ~~and federal~~ law; and

(6) establishment and maintenance of accounting and other records in accordance with federal and state ~~and federal~~ law.

(c) **Excluded services.** ~~OCS~~ CSS services do not include:

(1) establishment or modification of spousal support, visitation, or custody;

(2) establishment of judgment for unreimbursed medical expenses or child care costs that are not included in the fixed monthly child support obligation; ~~and~~

(3) enforcement of alimony in lieu of property division; and

(4) enforcement or collection of private attorney fee judgments.

(d) **Limited Intergovernmental limited services.** ~~OCS~~ CSS provides limited services only at the request of

an initiating interstate Title IV-D agency or an international central authority, ~~under~~ per Sections 601-101 through 901 of Title 43 of the Oklahoma Statutes and ~~Section 303.7 of Title 45 of the Code of Federal Regulations~~ 45 C.F.R. § 303.7. ~~OCS~~ CSS provides limited services, when appropriate, even if ~~when no individual~~ the noncustodial parent or custodial person ~~resides~~ does not reside in Oklahoma. Requests for limited services not listed in 45 C.F.R. 303.7 must be approved by the CSS director or his or her appointed designee.

SUBCHAPTER 5. OPERATIONAL POLICIES

PART 15. CASE INITIATION, CASE MANAGEMENT, AND CASE CLOSURE

340:25-5-110.1. Applications

(a) The Oklahoma Department of Human Services (DHS) Child Support Services (CSS) initiates child support cases, per Title IV, Part D, of Subchapter IV of Chapter 7 of Title 42 of the United States Code, Sections 302.33 and 303.2 of Title 45 of the Code of Federal Regulations (45 C.F.R. §§ 302.33 and 303.2), and Section 237 of Title 56 of the Oklahoma Statutes (56 O.S. § 237).

(b) To apply for child support services, a person must submit a completed and signed application form to the address on the form. A one cent application fee is paid by CSS for each application received. An application for child support services is submitted in every circumstance, including applications ~~received by~~ from:

(1) former Temporary Assistance for Needy Families (TANF), Aid to Families with Dependent Children (AFDC), or non-TANF SoonerCare (Medicaid) DHS recipients ~~with DHS~~;

(2) former participants in Title IV-D cases;

(3) noncustodial parents (NCP) listed on ~~an~~ existing medical enforcement only ~~case~~ cases, when the NCP is requesting a review and adjustment, or to open a new case, per Oklahoma Administrative Code (OAC) 340:25-5-198.1; or

(4) persons receiving child support payments from the Centralized Support Registry, and who are not currently receiving CSS child support services ~~through CSS~~.

(c) Application forms are obtained at any child support or other DHS office or by writing or phoning CSS at the address and phone numbers provided in OAC 340:25-1-2.1. Printable application forms are available from the CSS website at <http://www.okdhs.org>.

(d) An applicant who is a custodial person (CP) must give DHS authority to endorse and negotiate payments related to child support and to spousal support on behalf of the CP and child(ren).

(e) CSS accepts an application from a CP, parent, or person alleging his or her parentage and opens a case when:

(1) the child is a minor or is still entitled to current support, per 43 O.S. § 112;

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- (2) the application is to enforce a child support order for an adult with disabilities, per 43 O.S. § 112.1A;
 - (3) parentage must be established for a minor child against a deceased NCP ~~consistent~~, per OAC 340:25-5-176; or
 - (4) the former CP's parental rights were terminated, then the child was adopted, and the application to collect past-due support owed to the former CP was received before the adoption.
- (f) CSS does not accept applications for collection of past-due support when:
- (1) all children on the application have reached the age of majority and none is an adult with disabilities, with an established child support order;
 - (2) the child is deceased; or
 - (3) the child is a minor, ~~but who~~ no longer resides with the CP.
- (g) CSS accepts applications for locate only services, per OAC 340:25-5-155.
- (h) CSS does not accept an application and does not open a case when the case was previously closed and the circumstances that led to the closure have not changed.

340:25-5-117. Initiation of Title IV-D cases

(a) Title IV-A, Title IV-E foster care, non-TANF SoonerCare (Medicaid), and child care subsidy referrals.

- (1) Oklahoma Department of Human Services Child Support Services (CSS) automatically initiates child support cases without additional application for certified Title IV-A, Title IV-E foster care, non-Temporary Assistance for Needy Families (TANF) SoonerCare (Medicaid), and child care subsidy referrals.
- (2) A referral from the assistance programs listed in (1) of this subsection, means receipt of data that includes verified information with no errors or duplications, sufficient and appropriate for CSS to initiate a child support case;
- (3) Custodial persons (CP)s who apply for non-TANF SoonerCare (Medicaid) for themselves and their child(ren) must assign medical support rights to the state, per Section 1396k of Title 42 of the United States Code (42 U.S.C. § 1396k).
 - (A) These CPs must cooperate in establishing paternity and obtaining medical support unless an exception exists, per 42 U.S.C. §§ 1396a(l)(1)(A), 1396k, or 1396r-6.
 - (B) CSS must open a Title IV-D medical enforcement only case, per Oklahoma Administrative Code (OAC) 340:25-5-169. CSS may open a full-service case to provide all appropriate Title IV-D services, per OAC 340:25-1-1.2 at the CP's request.
- (4) When CSS receives a referral from the Adult and Family Services worker, per OAC 340:40-7-9, CSS must open a full-service case when any of the applicant's children in the household are certified for a child care subsidy.
- (5) When CSS receives a non-TANF SoonerCare (Medicaid) referral from the Oklahoma Health Care Authority (OHCA) in which the CP has assigned court-ordered child support or cash medical support ~~child support~~

~~is owed~~, CSS ~~must~~ determines when it is appropriate to open a full-service case, per OAC 340:25-5-169.

- (6) CPs who apply for non-TANF SoonerCare (Medicaid) on behalf of their child(ren) only are not required to cooperate in establishing paternity and obtaining medical support. Therefore, except when (4) of this subsection applies, CSS does not provide child support services unless the CP made a request for a full-service case or the case is for medical enforcement only.
- (b) **Termination of Title IV-A, Title IV-E foster care, and non-TANF SoonerCare (Medicaid) benefits.** When a family is no longer eligible for assistance under Titles IV-A, Title IV-E foster care, or SoonerCare (Medicaid) programs, all appropriate Title IV-D services continue without application, per Section 302.33 of Title 45 of the Code of Federal Regulations. Non-TANF SoonerCare (Medicaid) cases previously limited to medical support continue as full-service cases. When a CP refuses continued Title IV-D services and subsequently requests services, the CP must submit a completed and signed Form 03EN001E, Application for Child Support Services, even when CSS has an active case because of unreimbursed assistance owed to the state.
- (c) **Referrals from other jurisdictions.** CSS accepts cases referred:
- (1) by any state or tribal Title IV-D agency and from other countries when the noncustodial parent (NCP) resides in Oklahoma. CSS does not require an application for cases referred from another Title IV-D agency;
 - (2) by interstate referrals for judgment only collections when the case was opened in the initiating state during the minority of any child on the case; or
 - (3) when Oklahoma is an appropriate jurisdiction to establish, enforce, modify, or determine the controlling order, per the Uniform Interstate Family Support Act in Sections 601-101 through 601-903 of Title 43 of the Oklahoma Statutes, whether or not the NCP resides in Oklahoma.
- (d) **Responses from NCPs who sign an acknowledgment of paternity form.** CSS opens full-service cases for NCPs who filed Form 03PA209E, Acknowledgment of Paternity, with the Oklahoma State Department of Health, Division of Vital Records and requested child support services by completing and signing Form 03EN001E, Application for Child Support Services.
- (e) **Other Title IV-D cases.** Except as provided in ~~subsections~~ (a), (c), and (d) of this Section, an applicant must submit a completed and signed Form 03EN001E to receive all appropriate child support services or locate only services.
- (f) **Building case balances.**
- (1) CSS builds case balances on new and reopened cases, per OAC 340:25-5-140.
 - (2) When CSS opens a case and has information the NCP made payments in excess of the court-ordered child support order, CSS only collects the excess payment when a court has determined the amount of the excess payment and ordered that it be satisfied by offset against the monthly current child support obligation.

(g) **Good cause.** When the NCP submits an application for child support services in a case previously closed for good cause for noncooperation, CSS:

- (1) reviews the case to determine if:
 - (A) good cause still exists for the CP not to cooperate with CSS; and
 - (B) CSS can proceed without the CP's cooperation or participation;
- (2) opens the case when good cause no longer exists;
- (3) opens the case when good cause exists, but CSS can proceed without the CP's cooperation or participation; or
- (4) closes the case when good cause still exists and CSS cannot proceed without the CP's cooperation or participation.

(h) CSS does not open a case when the case was previously closed and the circumstances that led to the closure have not changed.

340:25-5-134. Default orders

(a) **Legal basis.** The Oklahoma Department of Human Services, Child Support Services (CSS) requests default orders and processes requests for vacation or modification of default orders, per Sections 1031, 1031.1, 1038, and 2004 of Title 12 of the Oklahoma Statutes.

(b) **Service of process.** Before a default order is requested, CSS ensures all parties whose rights will be affected are served, in accordance with Section 2004 of Title 12 of the Oklahoma Statutes, unless there are statutorily recognized substitutes for service.

(bc) **Entry of default orders.** CSS reviews service of the pleadings and files a proper return of service prior to requesting entry of a default.

(ed) **Default order reviews.** When a default order is entered and either party contacts CSS in writing within 30-calendar days of entry of the default order, CSS treats the request as a motion to rehear, vacate, or modify. CSS takes necessary steps to bring the action before the court for resolution.

(de) **Default orders in parentage action.** CSS requests default orders in parentage actions, per Oklahoma Administrative Code 340:25-5-176. When any party whose rights will be affected has been served and is non-cooperative in establishing parentage, CSS may request a default order of parentage, unless the non-defaulting party objects. When the non-defaulting party objects, CSS determines whether to set the case for hearing or dismiss without prejudice.

PART 20. MEDICAL SUPPORT

340:25-5-168. Establishment of medical support

(a) **Scope and applicability.** Oklahoma Department of Human Services (DHS) Child Support Services (CSS) refers to federal and state law for establishment of a medical support order, per:

- (1) Section 666 of Title 42 of the United States Code (42 U.S.C. § 666) and 25 U.S.C. § 1603(12);
- (2) Sections 302.33, 302.56, 303.7, 303.30, and 303.31 of Title 45 of the Code of Federal Regulations (45 C.F.R.

§§ 302.33, 302.56, 303.7, 303.30 & 303.31); and 42 C.F.R. § 433.152;

(3) Section 6058A of Title 36 of the Oklahoma Statutes (36 O.S. § 6058A), and 43 O.S. §§ 112, 118-118I, 118.2 and 119, and 56 O.S. § 237.

(b) **Medical support provision of child support order.** A child support order established by CSS must contain a medical support provision.

(c) **Calculating the cost of medical support.** To calculate the actual premium cost of health insurance, CSS:

- (1) deducts from the total insurance premium, the cost of coverage for the parent;
- (2) deducts from the total insurance premium, the cost of coverage for any other adults in the household, when that cost information is available;
- (3) divides the remainder by the number of dependent children covered; and
- (4) multiplies the amount per child by the number of children in the child support case under consideration.

(d) **Standards for medical support provision.** When choosing a medical support provision, CSS requests the court to apply the standards in (1) through (3) of this subsection.

(1) Health insurance must be reasonable in cost, meaning that the pro rata share of the actual out-of-pocket premium cost paid for the child(ren) by the insured does not exceed five percent of the gross income of the parent ordered to provide health insurance.

(2) Health insurance must be accessible, meaning the health care providers must be available to meet the child(ren)'s individual health care needs, and must be located no more than 60 miles one-way from the primary residence of the child(ren).

(3) Health insurance must provide coverage for both routine and major medical expenses including, but not limited to: preventive care, office visits, hospitalization, and medication coverage in compliance with the Oklahoma Insurance Department, per Oklahoma Administrative Code (OAC) 365:10-5-3(14) and OAC 365:10-5-5(f). Limited Insurance Coverage, per OAC 365:10-5-5(k) does not satisfy this requirement. Annual deductibles must be reasonable and relate to the medical circumstances of the child(ren).

(e) **Exceptions to standards for medical support provision.** When the parents agree or it is otherwise appropriate, CSS requests the court make an exception to the standards for health coverage when the:

- (1) reasonable cost of health insurance exceeds five percent of the gross income of the parent ordered to provide health insurance; or
- (2) closest insurance provider exceeds 60 miles one-way from the primary residence of the child(ren).

(f) **Selection of health care coverage.** CSS requests the court consider the cost, quality, and accessibility of health care coverage available to the parties when entering a medical support order.

(g) **Health coverage preference.** When health coverage meeting standards in (d) of this Section is available to both

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parents, CSS requests the court give priority to the preference of the custodial person (CP).

(h) **Applicability of cash medical support.** CSS requests a cash medical order by the obligor, when:

- (1) the court determines an order for health insurance is inappropriate due to family violence concerns; or
- (2) the only health care plan available for the child is a governmental medical assistance program or health plan, such as SoonerCare (Medicaid); or
- (3) there is no health care plan available for the child(ren).

(i) **Cash medical support.**

(1) When cash medical support is applicable, CSS requests the court order cash medical support to be paid by the obligor, until the obligor enrolls the child(ren) in accessible insurance coverage and provides proof of enrollment to CSS and the CP.

(2) CSS refers to the Cash Medical Income Guidelines Table as found in the child support computation form prescribed by CSS and published by the Administrative Office of the Courts on the Oklahoma State Courts Network site, per 43 O.S. § 120 to determine the cash medical support amount.

(3) CSS computes a cash medical order by applying the Cash Medical Income Guidelines Table, using the gross income for the noncustodial (NCP) of the child in the case under consideration and the number of children in the instant case.

(A) When the NCP's gross income is at or below the income amount for the number of children in the case, CSS requests the court order a cash medical order at \$0 per month.

(B) When the NCP's gross income exceeds the income amount for the number of children in the case, CSS computes the requested cash medical order by:

- (i) multiplying the amount of \$115, representing the average monthly cost of health care for an uninsured child(ren), by the number of children in the case not covered by insurance; and
- (ii) prorating the result by the percentage of income for each parent.

(C) The NCP's share of the cash medical amount is added to the child support obligation.

(D) CSS does not request the court set cash medical support against a parent who has at least 182 overnights.

(4) Unless the parties agree or the court orders a greater amount, the prorated cash medical support amount must not exceed five percent of the gross income of the parent who is ordered to pay cash medical support.

(5) CSS seeks cash medical support only as part of a prospective order for child support. CSS does not include a cash medical support amount in a judgment for support for a prior period, per OAC 340:25-5-179.1.

(6) In a child support modification action, CSS requests a cash medical support order be effective the same date the

modified child support amount is effective, unless the parties agree to a different date or the change in health coverage cost or availability occurred on a later date.

(7) In a multiple case action, when the monthly child support amount in the combination child support computation form exceeds 20 percent of the NCP's gross income, CSS may request a deviation to set cash medical support at \$0 per month in the individual computation forms as applicable.

(j) **Medical support for DHS adopted children.** CSS does not request health insurance or cash medical support for children who are adopted through DHS Adoption Services. CSS requests a medical support order reflecting that the child(ren) receive SoonerCare (Medicaid) through the adoption plan. The parties may agree to cover the child(ren) on health insurance.

(k) **Termination of cash medical support.**

(1) When CSS receives notice the parent ordered to pay cash medical support enrolled the child(ren) in health insurance, CSS sends a Notice of Proposed Termination of Cash Medical Support to all parties in the case by regular mail. When a party believes the child(ren) is not covered by accessible health insurance, a party may request a review of the termination of cash medical support within 10-calendar days from the date of mailing of the notice.

(2) When a party requests a review to contest the Notice of Proposed Termination of Cash Medical Support, CSS reviews the case within 10-calendar days of receipt of the request and determines if termination of cash medical support is proper based on information provided by the contesting party. CSS notifies the parties of the review decision.

(3) When the parties disagree with the review decision, the parties have 15-calendar days from the date of mailing the review decision to request a hearing on the termination of cash medical support.

(4) CSS files a Notice of Termination of Cash Medical Support with the proper court when no party requests a:

- (A) review within the 10-day time period; or
- (B) hearing after CSS notifies them of the review decision.

(5) CSS does not proceed with a separate termination of cash medical support when the child support and medical support order is modified within 30-calendar days of notification that the child(ren) is enrolled in health insurance.

(6) When a cash medical support order is terminated within a modification action, CSS requests the termination become effective the date of filing of the Motion to Modify or the date, if later when the child was actually enrolled in the insurance.

(l) **Reinstatement of cash medical support.**

(1) CSS seeks reinstatement of the cash medical order when:

- (A) a child support court order previously ordered the NCP to pay cash medical support until insurance was available;
- (B) insurance became available;
- (C) the cash medical support was terminated; and

- (D) the insurance subsequently lapsed.
- (2) CSS uses one of the processes listed in (A) or (B) of this paragraph to seek reinstatement of the cash medical order:
- (A) **Modification.** CSS seeks modification of the child support order and reinstatement of cash medical support, per OAC 340:25-5-198.1 and OAC 340:25-5-198.2 when:
- the child support order that provided for cash medical support was modified to include credit for insurance premium costs; or
 - there is another material change of circumstance in addition to the lapse of health coverage.
- (B) **Expedited Process.** When (A) of this paragraph does not apply, CSS uses an expedited process to reinstate the cash medical support. CSS uses the expedited process when there is an address of record for the obligor.
- (3) CSS initiates a reinstatement of cash medical support when it receives notice the parent whose cash medical support was terminated due to the enrollment of the child(ren) in health insurance has allowed the coverage to lapse. CSS sends a Notice of Proposed Reinstatement of Cash Medical Support to all parties in the case by regular mail. When a party believes the child(ren) is covered by health insurance, a party may request a review of the reinstatement within 10-calendar days of the date the notice was mailed.
- (4) A party may file a written objection to the reinstatement of cash medical support and submit it to CSS with supporting health care coverage documentation. CSS reviews the case within 10-calendar days of receipt of the objection and determines if reinstatement of cash medical support is proper based on the information provided by the contesting party. CSS provides the CP and the NCP with written notice of the review decision.
- (5) When the parties disagree with the review decision, they have 15-calendar days from the date of the review decision to request a hearing.
- (6) CSS files a Notice of Reinstatement of Cash Medical Support with the proper court when no party requests a:
- review within the 10-calendar day time period; or
 - hearing after CSS notifies them of the review decision.
- (m) **Fixed medical costs.** When the parties agree or the court orders, CSS includes the total monthly fixed medical costs in the child support guidelines computation. When the obligor's share of fixed medical costs exceeds five percent of the obligor's gross income and the parties do not agree to exceed the five percent standard, CSS requests the court determine the monthly amount of fixed medical costs included in the current child support order.
- (n) **Indian Health Services (IHS).**
- ~~A~~When a child support order that provides for the enrollment of a child(ren) in IHS ~~may comply with~~does not meet the standards in (d) of this Section, CSS seeks an order for either or both parents to secure another type of

health ~~insurance~~care coverage besides IHS for the minor child(ren) ~~when:~~

- ~~IHS does not meet the standards in (d) of this Section; or~~
 - ~~health insurance is available through an employer or other group plan and the CP requests it.~~
- (2) CSS does not request cash medical support when a child(ren) is receiving IHS is the chosen provider.
- (o) **Notification requirements.** The NCP and the CP must notify CSS in writing within 30-calendar days after:
- health insurance becomes available;
 - the cost of existing health insurance changes; or
 - other provisions of existing health insurance change.
- (p) **Modification request.** When a child support order exists, CSS considers a request to establish a medical support order as a request for modification of the order, per 43 O.S. § 118.1. CSS seeks a medical support order in a tribunal that has jurisdiction to modify the child support order.

PART 21. ESTABLISHMENT

340:25-5-176. Establishment of parentage

- (a) **Legal authorities.** Oklahoma Department of Human Services Child Support Services (CSS) establishes parentage and provides genetic testing when appropriate based on the facts of the case, per:
- Sections 653, 654, and 666 of Title 42 of the United States Code (42 U.S.C. §§ 653, 654, & 666);
 - Parts 302 and 303 of Title 45 of the Code of Federal Regulations; and
 - Sections 83, 90.4, and 7700-101 ~~through~~ 7700-902 of Title 10 of the Oklahoma Statutes (10 O.S. §§ 83, 90.4, and 7700-101 - 7700-902), 43 O.S. §§ 601-201, 601-401, & 601-701, 56 O.S. §§ 230.60, 231 - 240.23, and 63 O.S. §§ 1-311 and 1-321.
- (b) **Legal parents.** CSS applies the presumptions in 10 O.S. § 7700-204(A)(1) through (4) to an individual when the individual and the woman who gave birth to the child are married. CSS applies the presumption in 10 O.S. § 7700-204(A)(5) to an individual regardless of gender. CSS requests the court confirm parentage in cases where the individual is a presumed parent.
- (c) **Acknowledgment of Paternity.** Form 03PA209E, Acknowledgment of Paternity, can only be completed by the biological mother and biological father of the child, per 10 O.S. § 7700-301. CSS provides Form 03PA209E, ~~Acknowledgment of Paternity~~, for voluntary acknowledgment of paternity, per 10 O.S. § 7700-312 and 63 O.S. §§ 1-311 ~~& and~~ 1-311.3. CSS also provides companion forms that include instructions for completion, described (1) through (4) of this subsection. Signed and witnessed forms must be filed with the Oklahoma State Department of Health (OSDH), Division of Vital Records.
- When parents of an adult child, 18 years of age ~~or and~~ older, complete Form 03PA209E, the adult child must give consent to add the natural father's name to the

birth certificate. The child indicates consent by signing Form 03PA212E, Adult Child's (18 Years or Older) Consent.

(2) Form 03PA210E, Denial of Parentage, must accompany Form 03PA209E ~~if when~~ the mother of a child is married to someone other than the natural father and the child is born within ~~300-calendar~~ 300-calendar days after the marriage is terminated, per 10 O.S. § 7700-204.

(3) ~~Per 10 O.S. §§ 7700-307 & 7700-312,~~ CSS provides Form 03PA211E, Rescission of Acknowledgment of Paternity, to rescind the legal finding of parentage created by having previously signed Form 03PA209E, per 10 O.S. §§ 7700-307 and 7700-312. This form must be completed, signed, and filed with the OSDH Division of Vital Records within ~~60-calendar~~ 60-calendar days after the date of the last signature on Form 03PA209E.

(A) When a person submits Form 03PA211E within ~~60-calendar~~ 60-calendar days after the date of the last signature on Form 03PA209E, CSS sends notice of the rescission to all other signatories on Forms 03PA209E and 03PA210E. Notice is given by mailing a copy of the rescission to the address of the signatories as shown on Forms 03PA209E and 03PA210E and to the last-known address of the signatories, if different.

(B) When rescissions are submitted to CSS past the ~~60-calendar~~ 60-calendar day time period, CSS sends a letter to the person who submitted Form 03PA211E informing ~~the person him or her that~~ the rescission is invalid because it was not timely submitted.

(4) ~~Per 10 O.S. §§ 7700-307 & 7700-312,~~ CSS provides Form 03PA213E, Rescission of Denial of Parentage, to rescind the legal finding of parentage created by having previously signed Form 03PA210E, per 10 O.S. §§ 7700-307 and 7700-312. Form 03PA213E must be completed, signed, and filed with the OSDH Division of Vital Records within ~~60-calendar~~ 60-calendar days after the date of the last signature on Forms 03PA209E and 03PA210E.

(A) When a person submits Form 03PA213E to CSS within ~~60-calendar~~ 60-calendar days after the date of the last signatures on Forms 03PA209E and 03PA210E, CSS sends notice to all other signatories of Forms 03PA209E and 03PA210E. Notice is given by mailing a copy of Form 03PA213E, to the address of the signatories as shown on Forms 03PA209E and 03PA210E and to the last known addresses of the signatories, if different.

(B) When Form 03PA213E is submitted to CSS past the ~~60-calendar~~ 60-calendar day time period, CSS sends a letter to the person who submitted Form 03PA213E informing ~~the person him or her that~~ the rescission of denial of parentage is invalid because it was not timely submitted.

(d) **Servicemembers.** When CSS establishes parentage and either parent is a servicemember, CSS applies the provisions of the Servicemembers Civil Relief Act, codified in 50 U.S.C. §§ 3901 through 4043.

(e) **Genetic testing of relatives.** When CSS has the cooperation of a deceased alleged biological father's relatives, CSS establishes parentage of the child(ren) through genetic testing of the relatives as necessary according to the standards and provisions of the Uniform Parentage Act, 10 O. S. §§ 7700-501-7700-511.

(f) **Supplemental Security Income (SSI).** CSS establishes parentage against a parent who is disabled and receiving monthly SSI before reviewing the case for possible closure, per Oklahoma Administrative Code (OAC) 340:25-5-123.

(g) **Defaults.**

(1) CSS pursues all alleged **biological** fathers before requesting the court enter a default parentage order.

(A) CSS requests a default order when genetic testing shows one alleged father is the biological father or all other alleged fathers ~~have been~~ are excluded by genetic testing. CSS uses other legal processes to compel genetic testing, such as license revocation or contempt of court proceedings.

(B) CSS requests the court determine parentage when unable to obtain genetic testing on two or more alleged biological fathers.

(2) CSS does not request a default parentage order when the alleged biological father is the case applicant and the CP objects to the alleged biological father being found the father without genetic testing. When a default parentage order is entered and either party contacts CSS in writing within 30-calendar days of entry of the default order, CSS treats the request as a motion to rehear, vacate, or modify, per 12 O.S. § 1031.1. CSS takes necessary steps to bring the action before the court for resolution.

(3) When requesting a default parentage order CSS follows OAC 340:25-5-134.

(h) **Genetic testing costs.** Costs incurred in parentage establishment cases are paid per (1) through (4) of this subsection.

(1) CSS advances the costs for genetic testing and recovers the genetic test costs from the noncustodial parent or as ordered by the court.

(2) When CSS genetic test results are contested, CSS requests payment in advance of a second genetic test by the requesting party.

(3) When a court orders CSS to provide genetic testing and CSS does not have a case open for services, CSS requires a party to complete an application for services.

(4) In interstate cases, CSS follows OAC 340:25-5-270.

(i) **Genetic testing services.**

(1) When parentage ~~has~~ is not ~~been~~ established, CSS performs genetic testing when appropriate before establishing parentage and child support orders. CSS only performs genetic testing in open, full-service cases.

(2) The case applicant may apply for case closure, per OAC 340:25-5-123 after parentage and child support are established.

(3) CSS does not provide genetic testing only services.

340:25-5-178. Calculation of new and modified child support obligations

(a) **Legal authority.** Oklahoma Department of Human Services (DHS) Child Support Services (CSS) establishes current child support, per:

- (1) Sections 654, 656, and 666 of Title 42 of the United States Code (42 U.S.C. §§ 654, 656, and 666);
- (2) Parts 302 and 303 of Title 45 of the Code of Federal Regulations; and
- (3) Section 83 of Title 10 of the Oklahoma Statutes (10 O.S. § 83); Title 43; and 56 O.S. §§ 231 through 240.23.

(b) **Child support guidelines.** CSS uses the child support guidelines in 43 O.S. §§ 118-118I and 119 to:

- (1) establish the amount of current support; and
- (2) prepare a child support computation form prescribed by CSS and published by the Administrative Office of the Courts on the Oklahoma State Courts Network website, per 43 O.S. § 120.

(c) **Child support computation.** ~~Per 43 O.S. §§ 118-118I,~~ CSS uses the best evidence available to determine a parent's monthly gross income for the child support computation form, including written earning records, past job history, and earning ability based on education and training, with a continued emphasis on setting fair and equitable child support orders, per 43 O.S. §§ 118-118I. When requesting the court enter or modify child support orders in a noncustodial parent's (NCP) multiple cases, CSS may request the court deviate from the child support guidelines amounts, per 43 O.S. § 118H.

(d) **Gross income.** When determining gross income for the child support computation, CSS uses (1) through (4) of this subsection, per 43 O.S. § 118B.

(1) **Written earning record.** For time periods when a parent has a written earning record, CSS uses the:

- (A) actual monthly gross income; or
- (B) average of the gross monthly income for the time actually employed during the previous three years.

(2) **Ability to work and no written earning record.** For time periods when a parent has an earning ability, but no written earning records, CSS imputes the most equitable of the:

- (A) minimum wage paid for a 40-hour work week; or
- (B) amount of gross income a person with comparable education, training, and experience could reasonably expect to earn.

(3) **Combination.** For time periods when a parent has a written earning record for some months, but no written earning record for other months, for the months worked CSS uses the actual income and for the months with no written earning record CSS uses the most equitable of either:

- (A) the actual gross income; or
- (B) an imputed amount of either:
 - (i) minimum wage paid for a 40-hour work week; or

(ii) the amount of gross income per person with comparable education, training, and experience could reasonably expect to earn.

(4) **Reduced earning ability.** CSS uses actual income when a parent has reduced earning ability due to the parent's limited education, physical or mental disability, incarceration, or other obstacle to employment, and there is evidence the parent has income of less than minimum wage for 40 hours per week.

(e) **Child care.** To establish the amount of current support, CSS considers "actual" child care expenses to be the amount paid to the child care provider by the parent(s) or custodial person (CP) except when (f) of this Section applies. CSS determines the amount of prospective annual child care costs and allocates this amount between the parents in the same proportion as their adjusted gross income. The amount allocated to the NCP becomes part of the fixed monthly child support obligation.

(f) **Child care subsidy.** When the parent(s) or CP is participating in the DHS Child Care Subsidy Program, per 56 O.S. § 230.50, CSS uses DHS Appendix C-4, Child Care Eligibility/Co-payment Chart, to determine the family share co-payment amount considered as actual child care costs on the child support computation form, per 43 O.S. § 118G.

(1) CSS considers a parent's share of the base monthly obligation for child support and the monthly income amount reflected in the records of the DHS Child Care Subsidy Program as the monthly income when applying Appendix C-4. ~~Upon selecting the applicable income level on Appendix C-4, CSS uses the corresponding family share co-payment amount based on the number of children in DHS subsidized child care.~~ CSS allocates the family share co-payment amount indicated on Appendix C-4, in the same proportion as base child support. CSS staff performs a separate child support guidelines calculation for each NCP.

(2) When a parent has a child(ren) in DHS subsidized child care other than a child(ren) included in the child support case being established, CSS uses the proportionate share of the family share co-payment for the child(ren) included in the case.

(g) **Juvenile Court cases.**

(1) **Deprived cases.** When a case is referred, CSS establishes child support orders in deprived court actions, per 10A O.S. § 1-4-702 and prepares the child support order on the standard child support order form prescribed by CSS and published by the Administrative Office of the Courts on the Oklahoma State Courts Network website.

(2) **Delinquent cases.** When a case is referred, CSS establishes a child support order against each parent of a child in the custody of the Oklahoma Office of Juvenile Affairs, per 43 O.S. §§ 118 through 118I.

(h) **Intergovernmental majority age.** CSS establishes child support orders for a child(ren) for whom child support is impossible under applicable law.

(i) **Minor parents.** When a parent is a minor, CSS establishes paternity, per Oklahoma Administrative Code

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340:25-5-176 when necessary and establishes a child support order.

- (1) When a minor NCP or a CP is ~~under~~younger than 16 years of age, CSS does not impute gross income for the minor parent in the child support computation and only uses actual income.
- (2) When a minor NCP or CP is between 16 and 18 years of age and regularly and continuously attending high school, unless otherwise inappropriate, CSS uses either the imputed gross income for the minor parent(s) based on minimum wage at 20 hours per week or actual income.
- (i) **Minor parents.** When the NCP is a minor, CSS establishes paternity, per Oklahoma Administrative Code 340:25-5-176 when necessary and establishes a child support order. When a minor NCP or a CP is ~~under~~younger than 16 years of age, CSS does not impute gross income for the minor parent in the child support computation and only uses actual income. When a minor NCP or CP is between 16 and 18 years of age and regularly and continuously attending high school, unless otherwise inappropriate, CSS uses either the imputed gross income for the minor parent(s) based on minimum wage at 20 hours per week or actual income.
- (j) **Adult disabled child.** CSS enforces child support orders for adults with disabilities, per 43 O.S. § 112.1A. CSS establishes or modifies child support orders to continue after the child reaches the age of majority, per 43 O.S. § 112.1A when the application or referral for Title IV-D services is received during the period when child support is due, per 43 O.S. § 112.
- (k) **Incarcerated NCP.** When an NCP is expected to be incarcerated for at least ~~six consecutive~~six consecutive months from the date the support amount is reviewed or established, CSS requests the court enter a temporary child support and medical support amount using actual income of \$0, unless there is evidence of income or assets outside of the correctional institution. At the time the order is entered, when there is:
 - (1) a pre-incarceration child support order, CSS requests the order state that upon release from incarceration, the monthly child support obligation reverts back to the pre-incarceration order amount beginning the first day of the month following a lapse of 90-calendar days upon release from incarceration. When the NCP within the lapse period, requests in writing a review of the pre-incarceration order, the post incarceration monthly child support obligation does not begin until the review or modification is complete. When a review is requested and the NCP fails to appear for hearing, the monthly child support obligation reverts back to the pre-incarceration amount to begin the first day of the month following a lapse of 90-calendar days upon release from incarceration; or
 - (2) no pre-incarceration child support order, CSS requests the court order state; upon release from incarceration, the monthly child support amount is set based on minimum wage for a 40-hour work week beginning the first day of the month following a lapse of 90-calendar days upon release from incarceration. When the NCP within the lapse period requests in writing a hearing, the post incarceration monthly child support amount does not

begin until the review or modification is complete. When a hearing is requested and the NCP fails to appear for the hearing, the monthly child support obligation reverts back to the support amount set based on minimum wage for a 40-hour work week, to begin 90-calendar days upon release from incarceration.

- (l) **Military.** When CSS establishes a child support order for a child of an NCP or a CP who is a servicemember, CSS applies the provisions of the Servicemembers Civil Relief Act, codified in 50 U.S.C. §§ 3901 through 4043.
- (m) **Disability benefits.** CSS does not impute gross income to a person determined disabled by the Social Security Administration.
- (n) **Default orders.** When a default order for child support is ordered and either party contacts CSS in writing within 30-calendar days of entry of the default order and provides information to calculate an accurate child support obligation, CSS treats the request as a motion to vacate or modify, and requests the court enter a new order consistent with the evidence presented.

340:25-5-179.1. Establishment of support for a prior period

- (a) Oklahoma Department of Human Services Child Support Services (CSS) establishes support for a prior period.
 - (1) In parentage and establishment cases, CSS establishes current support and support for a prior period at the same time, per Sections 83 and 7700-636 of Title 10 (10 O.S. §§ 83 and 7700-636), 43 O.S. §§ 118-118I and 119, and 56 O.S. ~~§ 238.1~~§ 238.6B.
 - (2) When a child(ren) is born during a marriage and no order addressing support for a prior period exists, CSS establishes support for a prior period per 43 O.S. §§ 118-118I and 119 and 56 O.S. § 238.1.
 - (A) CSS establishes support for a prior period under this subsection only when:
 - (i) current child support is sought; and
 - (ii) Temporary Assistance for Needy Families (TANF) or Title IV-E and non-Title IV-E eligible foster care has been expended in any month during the past two years.
 - (B) CSS limits this prior period to the number of months on TANF or Title IV-E and non-Title IV-E eligible foster care during the two years immediately before the date CSS files the court action.
- (b) When a child support order is entered against a minor noncustodial parent (NCP), CSS establishes support for a prior period under the criteria for establishing current child support, per Oklahoma Administrative Code (OAC) 340:25-5-178.
- (c) CSS does not establish an order for support for a prior period on an incarcerated NCP. ~~CSS requests the court:~~
 - (1) ~~reserve and~~ When establishing an order on an incarcerated NCP, CSS requests the court not ~~determine~~ address the amount of child support for any periods prior to the entry of the court order ~~during which the NCP was not incarcerated; and~~

- (2) ~~set the amount of support for a prior period at \$0 for any time periods during which the NCP was incarcerated. The issue of support for a prior period may be determined after release from incarceration by application of any party.~~
- (3) Upon release from incarceration, when the issue of support for a prior period is before the court, CSS requests the court set the amount based on actual income for any time periods during which the NCP was incarcerated.
- (d) When CSS establishes an order for support for a prior period for a child of an NCP or a custodial person who is a servicemember, CSS applies the provisions of the Servicemembers Civil Relief Act, codified in Sections 3901 through 4043 of Title ~~50A-50~~ of the United States Code.
- (e) When the NCP is a current TANF or Supplemental Security Income (SSI) recipient and CSS:
- (1) has information that the NCP had no obligation based on the child support guidelines for the prior period, CSS requests the court set the judgment at \$0; or
 - (2) determines a debt may be owed for a prior period, CSS requests the court reserve the issue of support for a prior period until the NCP is no longer receiving TANF or SSI.
- (f) CSS sets a monthly payment schedule per OAC 340:25-5-140.

PART 33. INTERGOVERNMENTAL CASES

340:25-5-270. Intergovernmental cases

- (a) **Legal basis.** When referring and processing intergovernmental Title IV-D cases, the Oklahoma Department of Human Services Child Support Services (CSS) is governed by:
- (1) Section 1738B of Title 28 of the United States Code (28 U.S.C. § 1738B) and 42 U.S.C. §§ 654, 659A, and 666;
 - (2) Sections 302.36 and 303.7 of Title 45 of the Code of Federal Regulations (45 C.F.R. §§ 302.36 and 303.7); and
 - (3) the Uniform Interstate Family Support Act, per Sections 601-100 through 601-903 of Title 43 of the Oklahoma Statutes (43 O.S. §§ 601-100 through 601-903) and 56 O.S. § 240.9.
- (b) **Definition.** For purposes of this Section, forum state means the state in which the hearing is held or the responding court proceeding is filed to establish or enforce a support order.
- (c) **Intergovernmental central registry.** CSS operates an intergovernmental central registry, per 45 C.F.R. §§ 302.36 and 303.7.
- (d) **Forms.** CSS uses forms issued by the Secretary of the United States Department of Health and Human Services, per 42 U.S.C. § 652 as applicable for processing intergovernmental cases.
- (e) **Communication.** When:
- (1) Oklahoma is the initiating state, CSS obtains information from the other Title IV-D agency and communicates with the custodial person in Oklahoma.
 - (2) Oklahoma is the responding state, CSS communicates to the initiating state with which CSS has established a case.

- (3) CSS receives written communication from a party or a party's attorney, CSS sends copies to the appropriate agency or person within two-business days of receipt, per 43 O.S. § 601-307.
- (f) **Family violence and nondisclosure.** When Oklahoma is the initiating state and a party claims family violence, CSS does not release the physical address of the party without a court order. CSS:
- (1) enters the address of record, when designated, or the district office's address instead of the physical address of the party requesting nondisclosure on the Child Support Enforcement Transmittal # 1, Initial Request, and on the General Testimony, when applicable;
 - (2) does not file the interstate transmittal forms with the tribunal;
 - (3) does not release a copy of the interstate transmittal form to the other party, per Oklahoma Administrative Code (OAC) 340:25-5-67; and
 - (4) seeks an order from the appropriate tribunal regarding release of the information when the initiating state, responding state, or a party requests release of specific identifying information, per 43 O.S. § 601-312.
- (g) **Services provided.** Except as provided in (1) through (4) of this subsection, CSS processes intergovernmental cases in the same manner as intrastate cases, per OAC 340:25-1-1.2.
- (1) **Evidence.** If one of the parties is a nonresident of the forum state, CSS arranges for telephonic testimony at the request of the nonresident party or a Title IV-D agency, and requests the court to admit evidence, per 43 O.S. § 601-316.
 - (2) **One-state processing.** In the absence of an order to establish paternity or support, CSS uses a one-state process to establish an order if personal and subject matter jurisdiction may be exercised over a nonresident party, per 45 C.F.R. § 303.7 and 43 O.S. § 601-201.
 - (3) **Determination of controlling order.** When there are multiple orders for current support for the same child, CSS seeks a determination of controlling order (DCO) or a new order from the appropriate tribunal, per 43 O.S. § 601-207 and 43 O.S. §§ 601-602 through 601-615.
 - (A) When making the arrears calculation for the DCO proceeding, CSS applies the law of the respective issuing states in determining the arrears under each order.
 - (B) Once the court issues a DCO, CSS applies the law of the controlling order state to the consolidated arrears, even when the support orders of other states contributed a portion to those arrears.
 - (4) **Redirection of payments.** Per 43 O.S. §§ 601-307 and 601-319:
 - (A) CSS issues a notice to redirect payments to the Title IV-D agency in the state in which the custodial person resides and issues an Order/Notice to Withhold Income for Child Support to implement the order when:
 - (i) Oklahoma is the state that issued the child support or income assignment order;

- (ii) neither the noncustodial parent, custodial person, or any child lives in Oklahoma; and
 - (iii) CSS or another Title IV-D agency makes the request.
- (B) CSS issues a notice to redirect payments to the Title IV-D agency in the state of residence of the custodial person when:
- (i) a child support or income assignment order was issued;
 - (ii) neither the noncustodial parent, custodial person, or any child lives in the issuing state; and
 - (iii) Oklahoma provides child support services.
- (C) CSS furnishes a certified record of payments to a requesting party or tribunal when CSS receives redirected payments, per 43 O.S. § 601-319.
- (5) **Limited services.** CSS provides limited services only at the request of an initiating interstate Title IV-D agency or an international central authority, per 43 O.S. §§ 601-101 through 901 and 45 C.F.R. § 303.7. CSS provides limited services, when appropriate, even when an individual noncustodial parent or custodial person does not reside in Oklahoma. Request for limited services not listed in 45 C.F.R. § 303.7 must be approved by the CSS director or appointed designee.
- (h) **Determination of arrears.** When Oklahoma has personal and subject matter jurisdiction and can obtain service of process on the noncustodial parent, CSS uses the annual notice, notice of support debt, contempt, or other appropriate proceedings to determine past support and interest before requesting a tribunal of another state to enforce.
- (i) **Choice of law.** The applicable law for determination of duration of support and other choice of law issues is controlled by subsection (h) of the Full Faith and Credit for Child Support Orders Act, per 28 U.S.C. § 1738B(h) and 43 O.S. §§ 601-604 through 601-611. The law of the initial controlling order state governs the duration of support even after the order is modified by another state.
- (j) **Genetic testing.** When genetic testing is required in intergovernmental cases, the responding state is responsible for paying the cost of testing, per 45 C.F.R. § 303.7 and OAC 340:25-5-176.

PART 39. ACCOUNTING AND DISTRIBUTION

340:25-5-351. Allocation and distribution of collections

- (a) **Authority.** Oklahoma Department of Human Services Child Support Services (CSS) allocates and distributes support collections, per Section 657 of Title 42 of the United States Code (42 U.S.C. § 657) and Sections 302.32, 302.51, and 302.52 of Title 45 of the Code of Federal Regulations (45 C.F.R. §§ 302.32, 302.51, and 302.52). CSS collects fees, per 42 U.S.C. § 654, 45 C.F.R. § 302.33, and Section 237 of Title 56 of the Oklahoma Statutes (56 O.S. § 237).
- (b) **Fees.** CSS collects fees, per 42 U.S.C. § 654, 45 C.F.R. § 302.33, and 56 O.S. § 237. A case is exempt from fees when the custodial person (CP) is currently receiving Temporary

Assistance for Needy Families (TANF). Fees are withheld prior to child support distribution to the CP. CSS collects:

- (1) an annual fee on eligible cases, per 45 C.F.R. § 302.33. When there is more than one Title IV-D child support program involved, CSS collects the annual fee on cases when Oklahoma is the initiating state; and
 - (2) a three percent service fee for each payment distributed to the CP, up to a \$10.00 per month maximum except when the CP is currently receiving SoonerCare (Medicaid).
- (c) **Allocation.**
- (1) **General allocation.** Allocation refers to how a payment is divided among eligible obligations. Some obligors have more than one child support case and the allocation rules determine which case receives all or a portion of the collection received. A collection is allocated based on the source of the collection and the type of legal action resulting in a collection.
- (2) **Allocation models.** CSS divides collections among the obligor's eligible obligations based on the following models.
- (A) **Standard.** All payments not made by income withholding order or federal income tax refund offset are allocated to eligible obligations in (i) through (iii):
- (i) prorated to the current child support, cash medical support, and spousal support;
 - (ii) prorated to the monthly payment plan on past support; and
 - (iii) amounts remaining from the initial collection or additional collections received during the same month will allocate based on a prorated share of total arrears owed on all eligible obligations. The allocated amounts cannot exceed the total arrears due on the cases.
- (B) **Income Withholding Order (IWO).** Periodic payments from an IWO are allocated to eligible obligations in (i) through (iii):
- (i) prorated to the current child support, cash medical support, and spousal support;
 - (ii) prorated to the monthly payment plan on past support and other judgment(s), such as judgments for ~~attorney fees or~~ genetic testing costs; and
 - (iii) the steps in (1) and (2) of this subsection are repeated for amounts remaining from the initial collection or additional collections received during the same month, until the entire collection is allocated.
- (C) **Internal Revenue Service (IRS).** Collections received from the offset of federal income tax refunds are allocated according to the existing federal hierarchy, per 42 U.S.C. § 657 and 45 C.F.R. ~~§ 302.32~~ 303.72. CSS allocates only to balances certified to the IRS. CSS applies these collections to each eligible obligation:
- (i) first to balances certified to the IRS as public assistance; and
 - (ii) then to any CP's certified balances.

(3) **Specific enforcement actions.** Collections received from case-specific enforcement actions are not allocated across all cases, but are allocated to the case(s) in which the action is taken.

(4) **Non-Title IV-D cases.** In non-Title IV-D cases, CSS allocates payments as follows:

(A) payments received from an IWO are allocated using the IWO model. Collections are allocated to non-Title IV-D cases based on the amounts listed in the non-Title IV-D IWO; and

(B) all other payments are allocated using the Standard model. When CSS receives information on processing a specific payment, CSS may allocate the payment based on that information.

(5) **Intergovernmental cases.**

(A) **Incoming.** In cases where CSS is collecting support for a CP who is receiving services from another jurisdiction's child support agency, past-due payments are allocated based on information provided by the initiating state.

(B) **Outgoing.** Collections received from other jurisdictions resulting from an outgoing referral are allocated to that case.

(d) **Distribution.**

(1) CSS distributes collections based on the federal distribution hierarchy, per 42 U.S.C. § 657 and 45 C.F.R. §§ 302.32 and 302.51.

(2) CSS initially distributes collections to current support and current cash medical support obligations due each month. When collections are less than the amount of all current support and current cash medical support due, CSS distributes collections between the current child support and the current cash medical support obligations in proportionate shares.

(3) After the current child support and current cash medical support obligations are met, CSS distributes collections to current spousal support due.

(4) After current child support, current cash medical support, and current spousal support obligations are satisfied, remaining collections for the month are distributed to past-due balances.

(5) CSS distributes payments to interest owed after current child support and principal arrears balances are paid in full to each obligation.

(6) When a payment collected represents current support for future months, the amount is applied to such. When past support balances exist on any of the noncustodial parent's cases, payments are not applied to the next month's current support, per 45 C.F.R. § 302.51.

[OAR Docket #20-542; filed 7-7-20]

TITLE 340. DEPARTMENT OF HUMAN SERVICES

CHAPTER 40. CHILD CARE SUBSIDY PROGRAM

[OAR Docket #20-543]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

340:40-1-6 [AMENDED]

Subchapter 3. Initial Application

340:40-3-1 [AMENDED]

Subchapter 5. Child Care Plan

340:40-5-1 [AMENDED]

Subchapter 7. Eligibility

340:40-7-1 [AMENDED]

340:40-7-2 [REVOKED]

340:40-7-6 [AMENDED]

340:40-7-7 [AMENDED]

340:40-7-9 [AMENDED]

340:40-7-10 [AMENDED]

340:40-7-11 [AMENDED]

340:40-7-12 and 340:40-7-13 [AMENDED]

Subchapter 9. Procedures Relating to Case Changes

340:40-9-1 [AMENDED]

340:40-9-2 [AMENDED]

Subchapter 10. Electronic Benefit Transfer (EBT) System for Child Care

340:40-10-1 through 340:40-10-4 [AMENDED]

Subchapter 13. Child Care Rates and Provider Issues

340:40-13-3 [AMENDED]

340:40-13-5 [AMENDED]

Subchapter 16. Improper Payments Error Rate Review Process

340:40-16-1 [AMENDED]

(Reference APA WF 18-17 and 20-40)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes; Section 658A of the Child Care Development Block Grant Act of 2014 [Public Law 113-186]; and Sections 98.11, 98.16, and 98.20 through 98.21 of Title 45 of the Code of Federal Regulations.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 18, 2019

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Superseded rules:

Subchapter 3. Initial Application

340:40-3-1 [AMENDED]

Subchapter 5. Child Care Plan

340:40-5-1 [AMENDED]

Subchapter 7. Eligibility

340:40-7-1 [AMENDED]

340:40-7-7 [AMENDED]

340:40-7-10 [AMENDED]

340:40-7-12 and Z340:40-7-13 [AMENDED]

Subchapter 9. Procedures Relating to Case Changes

340:40-9-1 [AMENDED]

340:40-9-2 [AMENDED]

Permanent Final Adoptions

(Reference APA WF 18-17)

Gubernatorial approval:

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19-187

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendment to remove the graduated phase out of care provision, reference to an entry and exit income threshold and the provision that when the number of children in care increases, the family share copayment increases are made as the income threshold on Appendix C-4, Child Care Eligibility/Copayment Chart is being updated to raise the income threshold for all families to the federal income threshold and to no longer increase the family share copayment when the number of children in child care increases. These changes will increase the number of families eligible for high quality, subsidized child care and is made possible because of the increased discretionary Child Care and Development Fund (CCDF) funding received as a result of passage of the Bipartisan Budget Act of 2018. The proposed revisions to approve children attending an OECP facility for a weekly unit type and exempting household income when a child attends an OECP facility are made to benefit low-income families by increasing access to child care and providing high-quality early learning opportunities for young children. Decades of research show that the experiences infants and toddlers have in their earliest years shape the architecture of the brain and have long-term impacts on human development such as success in school and the ability to earn higher wages as adults. At the same time, the proposed changes increase the employability and stability of parents and reduce the impact of poverty on children. Studies have shown that access to reliable child care contributes to increased employment and earnings for parents. The proposed amendment to exclude military combat pay from income consideration and update the legal citations for Title III and Title V funds excluded under the Older Americans Act and the organizations that receive the funds are made to align Child Care Subsidy rules with SNAP rules.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

340:40-1-6. Philosophy and goals of the child care program

(a) **Strengthen the family and promote early childhood development.** ~~Child~~Subsidized child care is a servicebenefit provided for children as a means to strengthen the family and promote early childhood development. Providing child care services which are safe and affordable child care benefits for low income families;

(1) enables a ~~parent(s) or caretaker(s)~~parents or caretakers to participate in employment, training, or education-related activities which help themto become more self-supporting-;

(2) promotes early childhood development and school readiness through rules that support continuity of care and stability of child care placement; and

(3) ~~Child care is also provided in certain critical situations to help~~helps prevent neglect, abuse, or exploitation of children in certain critical situations.

(b) **Promote choice.** ~~A parent(s) or caretaker(s)~~Parents or caretakers can choose between a licensed and contracted child care center or family child care home, or a contracted in-home child care provider when deciding on the type of child care whichthat best meets the family's needsof the family.

(c) **Provide consumer education.** ~~The child care subsidy program~~Child Care Subsidy Program encourages a ~~parent(s) or caretaker(s)~~parents and caretakers to become educated on choosing a provider that best suits the needs of a particular familytheir families through online resources at www.okdhs.org and through the local Child Care Resource and Referral agency.

(d) **Achieve independence from welfare.** Affordable, quality child care is a necessary work support to help move families receiving Temporary Assistance to Needy Families (TANF) families from welfare dependencycash assistance to self-support through employment or TANF Work activities.

(e) **Encourage collaboration.** ~~The child care subsidy program~~Child Care Subsidy Program encourages collaboration with all agencies and programs whichthat help to strengthen families and increase resources available to families~~them~~. Recommended partnerships include child care and:

- (1) ~~child support programs;~~
- (2) ~~the Medical Assistance Program;~~
- (3) ~~child protective services;~~
- (4) ~~cash assistance programs; and~~
- (5) ~~Head Start, Early Head Start, and First Start.~~

SUBCHAPTER 3. INITIAL APPLICATION

340:40-3-1. Application process

(a) **Application process.** The application process for subsidized child care benefits begins with a request for benefits and ends with an eligibility determination. Application approval is subject to available funding. Subsidized child care benefits must be synchronized with the client's food benefits or Sooner-Care (Medicaid) benefits per Oklahoma Administrative Code (OAC) 340:40-9-1~~(e)~~(f). Child Welfare Services or Adult and Family Services (AFS) staff ~~process~~processes the application.

(1) **When an application is required.** An application is required, when:

- (A) an applicant initially applies for subsidized child care benefits. Refer to (c)(2) of this Section when an application is denied;
- (B) the client's subsidized child care benefits are closed for more than 30-calendar days;
- (C) the payee for the subsidized child care benefits changes; or
- (D) the family income was not considered because OAC 340:40-7-12(6) policy applied and one or more of the affected adopted children turns 6 years of age unless there is already a separate open income eligible case and the child can be added to that case per OAC 340:40-9-2(d).

(2) **Who can apply.** An applicant or the applicant's authorized representative may apply for subsidized child care benefits. When an authorized representative applies on behalf of an applicant, he or she must bring a signed statement from the applicant giving the person permission to act on behalf of the applicant or the applicant must have designated the person as his or her authorized representative on the signed application.

(A) When the natural or adoptive parent or stepparent lives with the child, he or she is considered the applicant and eligibility is based on the parent's situation regardless of whether he or she has custody of the child.

(B) When both the natural and adoptive parent of the child live in the same household and the adoption is final, the adoptive parent is considered the applicant and eligibility is based on the adoptive parent's situation.

(C) When the natural or adoptive parent or stepparent is not in the home, the person acting in the role of the parent, referred to as the caretaker, is the applicant. The caretaker may or may not be related to the child.

(D) When the child's parent is a minor, either the minor parent or the responsible adult the minor lives with can be considered the applicant for the subsidized child care benefits. Eligibility is based on the minor parent's situation.

(E) When the natural or adoptive parent lives in the home but is too incapacitated to apply, another person living in the home may apply for the natural or adoptive parent. The other person must provide proof of the parent's inability to apply.

(3) **Application.** An applicant or the applicant's authorized representative completes and signs an application to apply for subsidized child care benefits. When the applicant requests child care for a child with disabilities, the worker gives Form 08AD006E, Certification for Special Needs Rate for Licensed Child Care Homes and Centers, to the applicant.

(4) **Request date.** The request date, known as the application date for other Adult and Family Services programs, is the date the applicant requests subsidized child care benefits verbally or in writing.

(5) **Certification date.** The certification date is the date the applicant or the applicant's authorized representative completes the child care interview and provides all necessary verification to the county office, including the name of the child care provider the client chooses to use.

(A) The provider must have a valid Oklahoma Department of Human Services (DHS) child care provider contract.

(B) Refer to OAC 340:40-5-1(7) for reasons an applicant cannot choose certain child care providers.

(C) For applicants choosing an in-home provider, refer to OAC 340:40-13-1 and 340:40-13-2.

(6) **Child care interview.** Child care interviews may be completed face-to-face or over the phone with the applicant or authorized representative.

(7) **Explanation of eligibility factors.** At the time of the initial interview, the worker informs the applicant or authorized representative of:

(A) his or her rights and responsibilities;

(B) all factors of eligibility including the requirement that the chosen child care provider be contracted with DHS;

(C) the child care plan and reason child care may be approved based on the applicant's statements at interview;

(D) the applicant's electronic benefit transfer (EBT) responsibilities including viewing the client training video;

(E) the earliest date child care can be approved;

(F) the requirement to cooperate with the DHS Office of Inspector General during any audit or investigation of the applicant or the provider the applicant uses for child care; and

(G) the requirement to report within 10-calendar days when household income exceeds the ~~federal exit~~ income eligibility threshold per DHS Appendix C-4, Child Care Eligibility/Copayment Chart, ~~Schedule II~~. At certification and renewal, a computer-generated notice issues to inform the client of the current, ~~federal~~ income eligibility threshold for his or her family size.

(8) **Timeliness.** To be considered timely, the worker must determine eligibility within two-business days of receiving all necessary verification to certify or deny the application.

(A) When the applicant does not provide requested verification, the worker denies the request within 30-calendar days of the request date.

(B) When eligibility is not determined within 30-calendar days, the worker sends Form 08MP038E, Client Notice of Action Taken, explaining the reason for delay.

(9) **Right to appeal.** The applicant has the right to appeal the untimely processing of a child care request or the decision of eligibility or ineligibility per OAC 340:2-5.

(b) **Presumptive eligibility processing.** The worker may presumptively approve a maximum of 30-calendar days of child care prior to making a complete eligibility determination when a reason described in (1) of this paragraph applies.

(1) Reasons include, when the applicant:

(A) is in danger of losing a job or cannot start a new job unless child care is immediately approved. In this circumstance it must be out of the applicant's control to provide required verification and the applicant does not have the money to pay toward the cost of child care;

(B) is employed but has not received pay from the job and is not guaranteed a wage because he or she is self-employed or works on a commission-only basis. Further care is not approved until the applicant provides proof he or she received earnings from the job;

(C) requests protective or preventive child care per OAC 340:40-7-8(f); or

(D) requests good cause for refusal to cooperate in pursuing child support with Child Support Services per OAC 340:40-7-9 and has not provided good cause proof yet. Further care is not approved until the applicant provides good cause proof that supports the good cause claim.

(2) The worker gives or sends the applicant Form 08AD092E, Client Contact and Information Request, to inform the applicant what he or she needs to provide before further care is approved.

(c) **Eligibility determination.** The worker determines the applicant's eligibility to receive child care subsidy benefits based on eligibility conditions per OAC 340:40-7. The applicant must meet a need factor within 30-calendar days of the request date. After calculating family income, the worker uses DHS Appendix C-4, Child Care Eligibility/Copayment Chart, ~~Schedule I-A or I-B~~ to determine if the household meets the income guidelines eligibility threshold. Refer to OAC 340:40-5-1(8) and 340:40-7-10 through 340:40-7-13 for information regarding income determination.

(1) **Applicant determined eligible.** The earliest date the worker approves subsidized child care benefits is the date the applicant completes the child care interview and provides all necessary verification to determine eligibility. The worker certifies the applicant for a 12-month eligibility period per Section 98.21 of Title 45 of the Code of Federal Regulations. The applicant is responsible for child care used before the certification date.

(A) The client swipes attendance with his or her EBT card through a point-of-service machine at the child care facility.

(B) DHS does not pay for care for any day the child attends child care when the client fails to swipe attendance, unless extenuating circumstances exist beyond the control of the client or provider.

(C) When the client fails to swipe attendance, he or she is responsible for any care provided that day and may be responsible for any absent day payment DHS pays, when all of the days the child attended were recorded.

(2) **Applicant determined ineligible.** The worker denies the child care request or application when the applicant completes the application process and is determined ineligible, does not provide needed verification, or fails to cooperate in determining eligibility.

(A) When the applicant is determined ineligible after completing the application process and providing necessary verification, a new application is required regardless of the original request date.

(B) When the worker denies the application because the applicant did not provide required verification, including choice of provider, a new application is not needed when the applicant completes the application process and provides necessary verification within 60-calendar days of the original request date.

(C) When the worker denies the application because the applicant fails to cooperate in determining eligibility, a new application is not required when the

applicant cooperates within 30-calendar days of the original request date.

SUBCHAPTER 5. CHILD CARE PLAN

340:40-5-1. Child care plan

Providing child care is part of an overall plan of service designed to help the parent or caretaker, with whom the child lives, achieve his or her maximum potential for self-support. Quality child care services ~~assure~~ensure the parent or caretaker each child has adequate care that affords developmental and learning experiences while the parent or caretaker is engaged in self-support activities. The child care plan consists of many components that link to form a goal-directed child care plan; ~~and includes components as described in (1) through (11) of this Section.~~

(1) **Child characteristics.** The worker gathers information about the child for whom child care is needed including his or her name, age, grade level, and ~~whether if~~ the child has a disability.

(2) **Need for child care.** The worker determines ~~whether if~~ the parent or caretaker meets a need factor per Oklahoma Administrative Code (OAC) 340:40-7-7 and 340:40-7-8.

(3) **Plan hours.** The worker gathers information about the days and hours, including travel time, from the parent or caretaker ~~meets to document the need factor, including travel time.~~

(A) When there are two parents or caretakers in the home, the worker only approves subsidized child care benefits when both parents or caretakers meet a need factor during the same hours, per OAC 340:40-7-7 and 340:40-7-8.

(B) Based on the days and hours the child requires care, the worker approves a full-time daily, part-time daily, a combination of full-time and part-time daily, weekly, or a blended unit type.

(C) Refer to OAC 340:40-7-7(e) for plan hours concerning a child attending an Early Head Start-Child Care Partnership (EHS-CCP) grant program or an Oklahoma Early Childhood Program (OECP).

(D) The worker does not decrease the child care plan hours because the client no longer meets a need factor or has a decreased need for child care between renewal periods, per Section 98.21(a) of Title 45 of the Code of Federal Regulations (45 C.F.R. § 98.21) and OAC 340:40-9-2(b).

(4) **Alternative to subsidized child care benefits.** The worker and client explore whether there is an appropriate, feasible alternative to Oklahoma Department of Human Services (DHS) subsidized child care benefits.

(A) When the alternative is a spouse or the natural or adoptive parent of the child who lives in the home, the client must use the alternative rather than subsidized child care benefits.

(B) When the alternative is someone other than a spouse or parent of the child, the client may choose whether to use the alternative.

(5) **Plan to increase income.** At each application or renewal, the client and worker explore ways the client ~~could~~may become more self-supporting by increasing household income. ~~Ways to increase~~Increasing household income may include pursuing a work promotion, searching for a higher paying job, or increasing job skills. The client must also pursue any identified potential income, per OAC 340:40-7-9.

(6) **Back up plan.** The worker and client discuss and develop a ~~back-up~~backup plan for child care when the child cannot go to the usual provider because of illness, school holidays, or other ~~unforeseen~~ emergencies. The ~~back-up~~backup plan includes the name and address of a person the client feels he or she can rely on when the normal plan of care cannot be used.

(7) **Choice of provider.** The worker documents the choice of provider on the application or renewal form.

(A) When the client does not choose a provider at the time of request, the worker provides the client with information to help in making the choice.

(B) The client may choose a family child care home regardless of star level.

(C) The client may not choose a child care:

- (i) facility that does not have a valid contract with DHS;
- (ii) facility in which the client or his or her spouse, including the child's parent or stepparent, has an ownership interest;
- (iii) home in which the child resides;
- (iv) home in which the client also works during the hours his or her child is in care;
- (v) provider who does not allow parental access during the hours the provider is caring for children;
- (vi) program receiving state or federal funds, such as Head Start, Early Head Start, or public schools, and not charging all parents for the hours subsidy payment is requested. EHS-CCP grant programs and OECPs are exempt from this rule; ~~and~~
- (vii) provider caring for a school age child during the regular school day when the student could be attending a public or private school during those hours;
- (viii) center, when it is a one star facility, unless there are no centers with a higher star status in the community or special exception criteria are met.

Special exception criteria are:

- (I) the child was approved for care prior to the provider's star status being reduced to one star. The child may remain at the facility unless the child stops attending there for more than 30-calendar days. The child may be approved at the same facility again when the only reason

the child did not attend for more than 30-calendar days was because of a school break or circumstances beyond the control of the family, such as the child's illness~~of the child~~;

(II) care is requested for a child living in the same home as a child already approved for care per (7)(C)(viii)(I) of this subsection for the same one star child care provider; or

(III) the parent or guardian demonstrates there is no other child care option that meets the family's needs; or

(ix) in-home provider who is not related to the child. Per OAC 340:40-13-2, related means an aunt, uncle, grandparent, great grandparent, or sibling not living in the home.

(8) **Income determination.** Per OAC 340:40-7, the worker determines who is considered part of the household for income determination and what income is countable or excluded.

~~(A)~~ The household's countable income must not exceed the ~~entry~~ income eligibility threshold, per DHS Appendix C-4, Child Care Eligibility/Copayment Chart, ~~Schedule I-A or Schedule I-B, state income guidelines for initial certification.~~

~~(B)~~ When the household reports increased income during the 12 month eligibility period that exceeds the entry income threshold but remains below the exit income threshold, per DHS Appendix C-4, Schedule H, federal income guidelines, the household remains eligible. The family share copayment does not increase until renewal per (9)(A) of this Section.

~~(C)~~ At renewal, the household's countable income must not exceed the exit income threshold to remain eligible for an additional 12 months.

(9) **Family share copayment.** The worker refers to DHS Appendix C-4 to determine the family share copayment for each family. The family share copayment is applied before DHS pays a child care subsidy. The family's copayment cost varies based on family size, and income, ~~and the number of children receiving subsidized child care benefits.~~

(A) The family share copayment is determined at approval and may not be increased until renewal, per 45 C.F.R. § 98.21(a)(3). When the worker anticipates changes in household income at approval, such as when the client started a new job and did not receive a full month's pay for the application month, the worker increases household income and the family share copayment for the next month in the certification action. All family share copayment changes made at certification are included in the approval notice(s).

(B) When household income decreases during the eligibility period, the worker decreases the family share copayment, when applicable, per OAC 340:40-9-2(c). Following a decrease, the copayment is not increased until renewal unless the household income is overexceeds the federal income guidelines

~~eligibility threshold, per DHS Appendix C-4, Schedule II.~~

(C) ~~At renewal, when the family's income exceeds the state income guidelines and remains below the federal income guidelines eligibility threshold, per OAC 340:40-9-1(f) the worker increases the family share copayment per DHS Appendix C-4, the worker closes the child care benefits.~~

(10) **Social services requests.** When a client requests help in meeting the social services needs listed on the application or renewal, the worker provides all available information to aid a client in meeting these needs.

(11) **Client rights and responsibilities.** The worker informs the client of his or her rights and responsibilities per (A) through (G) of this paragraph.

(A) A child care request is only approved back to the request date when the interview is conducted and verification is provided on the request date.

(B) The client has the right to ask for a fair hearing when the client disagrees with an action taken on his or her case, per OAC 340:2-5.

(C) The provider may charge the client for special fees, such as enrollment or transportation fees, provided these fees are posted and also charged to families attending the facility who do not receive subsidized child care.

(D) The provider may charge the client for care provided in excess of the DHS- approved child care plan when the client chooses to leave the child in care longer. When the provider requires all children in the facility to begin care by a certain time of day and the client's child care plan hours start later, the provider must not charge the client for the additional hours. The client swipes attendance based on the child care plan hours.

(E) The provider may charge the client for any days DHS refuses to pay for care because the:

- (i) client did not swipe attendance for the correct days and times his or her child attended child care;
- (ii) swipes were denied and the client did not get them corrected within 10- calendar days; or
- (iii) provider lost the absent-day payment for a child approved for a weekly unit type because the client did not swipe correct attendance for every day the child attended that month.

(F) The provider may not charge the client for days:

- (i) and hours covered in the child care plan when all attendance was correctly swiped, even when the hours are more than customary for a full-time day; and
- (ii) the child is not in attendance.

(G) The client is required to cooperate with the DHS Office of Inspector General in any audit or investigation of possible overpayments by the client or by the client's chosen provider.

SUBCHAPTER 7. ELIGIBILITY

340:40-7-1. Categories of eligibility

A person may be predetermined eligible for a child care benefit, determined income eligible based on the gross income of the household, or have dual eligibility with his or her tribe.

(1) **Predetermined eligible.** A person is predetermined eligible for a child care benefit with a zero copayment when he or she is a recipient of public assistance or Supplemental Security Income (SSI). Public assistance is defined as a State Supplemental Payment (SSP), Temporary Assistance for Needy Families (TANF) that includes Supported Permanency, or Refugee Resettlement Program (RRP) cash assistance.

(A) TANF recipients who work and are eligible for a child care benefit may choose to receive a child care benefit through the Oklahoma Department of Human Services (DHS) or pay for the child care themselves. When they choose to pay for the child care cost, it is considered as an earned income exemption for the TANF benefit per Oklahoma Administrative Code 340:10-3-33.

(B) A person receiving public assistance or SSI is not predetermined eligible for a zero copayment when:

- (i) the recipient is a child and the parent or guardian requesting the benefit for the child is not the payee on the public assistance or SSI payment; ~~or~~
- (ii) ~~it makes a difference whether other children in the household are income eligible for child care.~~

(2) **Income eligible.** Households not predetermined eligible for a child care benefit must meet the income eligibility guidelines threshold for their household/family size, per DHS Appendix C-4, Child Care Eligibility/Co-payment Chart, to receive assistance with child care costs.

(3) **Transitional child care.** Per Section 230.61 of Title 56 of the Oklahoma Statutes, a TANF recipient who becomes employed is eligible for transitional child care benefits for 24 months following the date of employment as long as he or she meets the income eligibility guidelines threshold, per DHS Appendix C-4, for his or her household/family size unless the:

- (A) employer provides child care benefits; or
- (B) recipient's gross monthly earned income exceeds the monthly allowance of assistance pursuant to the TANF program plus the cost of child care and medical insurance to which the recipient would be entitled.

(4) **Dual eligibility.** A person may have dual eligibility to receive child care assistance through the DHS Child Care Subsidy Program and his or her tribe. However, the child care provider may not receive payment for the same service from both programs simultaneously.

340:40-7-2. Conditions of eligibility [REVOKED]

In order for a child to be eligible for Department subsidized child care, the household must meet the conditions of eligibility found in this Subchapter. See OAC 340:40-3-1(b) for expedited eligibility processing.

340:40-7-6. Household composition and income consideration

(a) **Definition of household composition terms.** The worker ~~determines household composition for income considerations using~~ uses the definitions of household composition terms listed in (1) through (9)(8) of this subsection when determining who must be considered part of the household for income consideration.

(1) An adult is an emancipated minor or person 18 years of age ~~or~~ and older. A child who is a parent is considered an adult.

(2) A spouse is a person married by ceremony or common-law to another person. They may live together or separately. When they live separately, they are not considered part of the household unless the separation is temporary or involuntary.

(3) A stepparent is a person who is or was a spouse to the child's parent.

(4) A caretaker is an adult who lives with, and acts in the role of a parent to the child applying for or receiving subsidized child care benefits. The caretaker:

- (A) ~~The caretaker~~ may or may not be:
 - (i) related to the child by blood, adoption, or marriage; or
 - ii) legally and financially responsible for the child; and

(B) ~~The caretaker~~ must pursue child support from the natural or adoptive parent, per Oklahoma Administrative Code (OAC) 340:40-7-9.

(5) ~~An adult non relative is defined as any person over 18 years of age or an emancipated minor who is not related to the parent or caretaker by blood, adoption, or marriage.~~

(6) The term legally and financially responsible adult is defined as a parent or stepparent of the child who needs child care. The term also includes other caretaker adults who are court-ordered to be legally and financially responsible for the child.

(7) ~~A child is any unmarried, unemancipated non-emancipated, non-parental person under younger than 18 years of age.~~

(8) A child who ~~has married~~ marries or voluntarily ~~left~~ leaves the parental home for any reason other than to attend school or receive medical care, and established ~~establishes~~ independent living arrangements, other than being away from home for school or health reasons, is considered emancipated and treated as an adult. Once a child is emancipated, the emancipation is permanent.

(9) A sibling is a minor child who has at least one parent in common with another child in the same household. ~~The definition also includes~~ A sibling may also include a step-brother or step-sister.

(b) **Household composition and income consideration.** To establish a child's eligibility for subsidized child care benefits, it is necessary to define who must be considered part of household composition for income consideration. All persons whose income is counted in determining the income eligibility threshold and family share copayment amount are included ~~to determine~~ in family size on the Oklahoma Department of Human Services (DHS) Appendix C-4, Child Care Eligibility/Copayment Chart. Persons whose income must be considered in determining eligibility are:

- (1) the natural, adoptive, or stepparent ~~of living in the home with the child living in the home~~ who needs child care;
- (2) the caretaker(s) of the minor child needing child care when the caretaker is legally and financially responsible for the child; and
- (3) the child needing child care and his or her siblings ~~under younger than~~ 18 years of age living in the home;
- (4) ~~an adult non relative who lives in the home with the natural or adoptive parent and acts in the role of a spouse. An adult non relative is considered to be acting in the role of a spouse when the person lives with the parent or caretaker and they represent themselves as a couple and/or have a physical relationship with each other; and~~
- (5) ~~a child of an adult non relative acting in the role of a spouse when the child lives in the home.~~

(c) **Temporary absence of a household member.**

(1) When a household member is out of the home due to a temporary absence and intends to return to the home, he or she is considered a household member ~~as long as he or she plans to return to the home.~~ Any parent or ~~caretaker(s)~~ caretaker who remains in the home must meet a need factor, per OAC 340:40-7-8. ~~Examples of temporary absence~~ Temporary absences may include, but are not limited to:

- (A) hospitalization for physical or mental health reasons;
- (B) incarceration;
- (C) attending school;
- (D) military service;
- (E) working or training away from home
- (F) looking for a job away from home; and
- (G) vacation time for a child. When a child goes to stay with:

- (i) someone other than a natural or adoptive parent for a vacation, household composition, income, and need is based on the usual home situation. The person the child is staying with must also meet the need factor for child care; or
- (ii) a non-custodial natural or adoptive parent, ~~that the non-custodial parent must apply and qualify for subsidized child care benefits for that time frame based on his or her own household's eligibility for the visitation time frame.~~

(2) When a child lives with each parent for part of the month, refer to (d) of this Section.

(3) When a child lives with a parent for part of the month and a caretaker for the rest of the month, the child's

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eligibility is based on the parent meeting the eligibility factors, per OAC 340:40-7. The caretaker must also meet a need factor during the time he or she has physical custody of the child, per OAC 340:40-7-70 ~~during the time he or she has physical custody of the child~~.

(d) **Joint or shared custody.** When parents separate or divorce and have joint or shared custody of their child and one or both need child care, each parent applies separately for subsidized child care benefits.

- (1) Joint or shared custody may be voluntary or court-ordered.
- (2) The worker determines each parent's eligibility separately. This includes a separate income and need for child care determination.
- (3) When only one parent qualifies for subsidized child care benefits, the worker only approves child care for the days ~~that the~~ qualifying parent meets a need factor for child care and has physical custody of the child.
- (4) When both parents qualify for subsidized child care benefits, the worker approves each parent only for the days and hours ~~that parent~~ he or she meets a need factor for child care and has physical custody of the child.

340:40-7-7. Establishing the need factor for child care

(a) **Establishing the need factor.** In order for children to be cared for in a safe environment while the parent or caretaker participates in an approved activity or for protective or preventive reasons, the Oklahoma Department of Human Services (DHS) provides subsidized child care benefits.

- (1) The worker arranges to obtain documentation of the need factor from the client or collateral sources, ~~documentation of the need factor~~.
- (2) The worker and client negotiate the amount of travel time allowed for an activity based on what is a reasonable length of time.
- (3) The worker does not approve child care for the hours the child attends school or Head Start.

(b) **Need factor for single parent or caretaker families.** The need for subsidized child care is met when the:

- (1) parent or caretaker is employed, per Oklahoma Administrative Code (OAC) 340:40-7-8(a);
- (2) parent or caretaker needs sleep time during the day after working night hours when a feasible alternative is used at no cost to DHS during the night working hours, per OAC 340:40-7-8(a)(5);
- (3) parent or caretaker attends a training or formal education program designed to lead to employment, per OAC 340:40-7-8(b) and (c);
- (4) parent or caretaker attends high school, high school equivalency classes, literacy, adult basic education (ABE), or English as a Second Language (ESL) classes, per OAC 340:40-7-8(c);
- (5) parent or caretaker participates in Supplemental Nutrition Assistance Program (SNAP) Education and Training (E&T) activities, per OAC 340-7-8(d);
- (6) parent or caretaker participates in an approved Temporary Assistance for Needy Families (TANF) Work activity, per OAC 340:10-2-1;

(7) child needs care or supervision for part of the day as a protective or preventive service, per OAC 340:40-7-8(f); or

(8) child receives Supplemental Security Income (SSI) and needs care for enrichment purposes, per OAC 340:40-7-8(g).

(c) **Need factor for two-parent or two-caretaker families.** Two-parent or two-caretaker families include two natural or adoptive parents, the natural parent and a stepparent, two grandparents, other relative married couples, or other non-relative married couples. When an unmarried couple applies, only the natural or adoptive parent must meet a need factor. The need for subsidized child care is met when:

- (1) both parents or caretakers work during the same hours they request child care, per OAC 340:40-7-8(a);
- (2) one or both parents or caretakers need sleep time during the day after working night hours when a feasible alternative is used at no cost to DHS during the night working hours, per OAC 340:40-7-8(a)(5). When both parents do not work night hours, one parent must work during the other parent's sleep time hours;
- (3) one parent or caretaker attends a formal education or training program, per OAC 340:40-7-8(b) or (c) during the same hours the other parent or caretaker works per OAC 340:40-7-8(a) ~~through (e)~~;
- (4) both parents or caretakers attend high school, per OAC 340:40-7-8(c);
- (5) one parent or caretaker attends high school during the same hours the other parent or caretaker works or attends a formal education or post high school training program, per OAC 340:40-7-8(a) through (c);
- (6) one parent or caretaker attends high school equivalency classes, literacy, ABE, or ESL classes, per OAC 340:40-7-8(c)(2) or (3) during the same hours the other parent or caretaker works, per OAC 340:40-7-8(a) ~~through (e)~~;
- (7) one or both parents or caretakers participates in SNAP E&T activities per OAC 340-7-8(d). When one parent or caretaker is not participating in SNAP E&T activities, he or she must meet a need factor during the same hours, per OAC 340:40-7-8;
- (8) one or both parents or caretakers participate in approved TANF Work activities, per OAC 340:10-2-1. When one parent or caretaker is not participating in TANF Work activities, that parent must meet a need factor, per OAC 340:40-7-8 during the same hours;
- (9) the child needs care or supervision for part of the day as a protective or preventive service, per OAC 340:40-7-8(f);
- (10) the child receives SSI and needs care for enrichment purposes, per OAC 340:40-7-8(g); or
- (11) one parent or caretaker is incarcerated and the other parent remains in the home. In this instance, the parent remaining in the home is treated as a single parent.

(d) **Need factor in joint custody cases.** When parents are separated or divorced and share custody of their child, voluntarily or through a court order, each parent's income and need for child care is considered separately.

(e) **Need factor for a child attending an Early Head Start-Child Care (EHS-CC) Partnership (EHS-CCP) grant program or an Oklahoma Early Childhood Program (OECPP).** A child attending an EHS-CC Partnership grant program or an OECPP may be approved for a weekly unit type when the parent or caretaker qualifies for Child Care Subsidy and meets a need factor per (b) or (c) of this Section for some of the EHS-CC Partnership grant program or OECPP care hours.

(f) **Activities that do not meet the need factor for child care.** The need factor for child care is not met and child care must not be approved for:

- (1) job search for parents or caretakers not participating in TANF Work activities, per OAC 340:10-2-1;
- (2) online Internet based or televised education or training courses when an instructor is not conducting a live broadcast and attendance is not required while the program is being broadcast, per OAC 340:40-7-8(b) and (c);
- (3) undergraduate classes or other training not expected to lead to a degree or certificate of completion, per OAC 340:40-7-8(b) and (c);
- (4) post graduate education, such as master's and doctoral programs;
- (5) two-parent or two-caretaker families when both attend a formal education or training program during the same days and hours;
- (6) transportation only;
- (7) volunteer hours or jury duty;
- (8) hours a school age child could attend a public or private school, but the parent or caretaker chooses to home school the child at night; and
- (9) children in Child Welfare Services foster care, when one or both foster parents do not meet child care eligibility rules, per OAC 340:75-7-65.

340:40-7-9. Mandatory pursuit of child support and other potential income

(a) **Mandatory referral to Child Support Services (CSS).** When one or both of the child's parents are absent from the home, the client must agree to pursue child support through CSS for all children who must be included in the same household, per Oklahoma Administrative Code (OAC) 340:40-7-6 before subsidized child care benefits are approved.

- (1) **When a CSS referral is required.** The client is required to pursue child support for all children living in the home when one or both parents are absent, unless good cause exists per (2) or (6) of this subsection, including when:
- (A) the parent or caretaker is not requesting subsidized child care benefits for every child living in the home;
 - (B) the client receives court-ordered child support;
 - (C) there is a joint custody agreement and neither parent is ordered to pay support;
 - (D) parental rights are terminated, except in the case of adoption, per Section 1-4-906 of Title 10A of the Oklahoma Statutes;

- (E) an additional child, whose parent is absent, is added to the household after certification; or
- (F) one or both parents leave the home after certification.

(2) **When a CSS referral is not required.** The client is not required to complete child support forms when:

- (A) he or she is a foster parent to the child and the CSS referral was completed in the child's SoonerCare (Medicaid) case;
- (B) the client is an adoptive parent and provides proof of a single parent adoption;
- (C) a parent is temporarily out of the home, per OAC 340:40-7-6(c) and is considered part of the household;
- (D) ~~the child, whose parent is absent,~~ is not required to be considered part of the household, per OAC 340:40-7-6; or
- (E) the client is a minor parent; ~~or~~
- (F) ~~the child does not receive a subsidized child care benefit and is included in household composition because his or her parent is considered an adult non-relative acting in the role of a spouse per OAC 340:40-7-6(a) and (b).~~

(3) **Required forms.** The worker makes the referral to CSS by completing with the client Form 08TA001E, Absent Parent (AP) Information Sheet, for each absent parent. The client must sign Form 08TA012E, Cooperation Agreement and Request for Good Cause, per (6) of this subsection. The worker gives the Oklahoma Department of Human Services (DHS) Appendix C-16, Child Support Services and Responsibilities, to the client. The form explains CSS services and client expectations. The worker sends copies of legal documents concerning custody or child support to the appropriate CSS district office.

(4) **Oklahoma Centralized Support Registry (CSR).** After approval, the client must send all future child support payments to the CSR. DHS Appendix C-16 contains the CSR address ~~for the CSR.~~ CSR returns the child support payments to the client unless the client receives Temporary Assistance for Needy Families, per OAC 340:10-10-7.

(5) ~~Establishment of paternity~~ **Paternity establishment.** When the worker is able to contact the alleged father, the worker asks ~~whether him~~ if he is willing to acknowledge paternity. When the alleged father agrees to acknowledge paternity, the worker gives or sends him Form 03PA209E, Acknowledgment of Paternity, to review. The worker advises him to contact CSS at the phone number on the back of the form when, after review, he is willing to sign the form.

(6) **Good cause.** Good cause for refusal to cooperate in pursuing child support may be granted when cooperation is not in the child's or parent's best interest of the child or the parent. DHS may continue to pursue child support when CSS determines child support activities may be safely conducted without the client's cooperation.

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(A) The client must sign Form ~~03TA012E~~08TA012E, Cooperation Agreement and Request for Good Cause, and state if he or she wants to request good cause:

- (i) at the time of the initial application;
- (ii) at the time of an additional child request; or
- (iii) ~~when circumstances result in an applicant or recipient~~the recipient wants to request for good cause after certification.

(B) The worker does not deny, delay, or discontinue subsidized child care benefits pending a good cause determination ~~of good cause~~ when the applicant or recipient furnishes evidence or information supporting the good cause claim.

(C) DHS determines the client has good cause for refusing to cooperate only when:

- (i) there is possible physical or emotional harm to the child;
- (ii) there is possible physical or emotional harm to the parent or caretaker;
- (iii) the child was conceived as a result of incest or forcible rape;
- (iv) legal proceedings for adoption of the child are pending before a court; or
- (v) the client is currently being assisted by an attorney or a public or licensed private social agency ~~to resolve the issue of~~decide whether to keep the child or relinquish the child for adoption.

(D) The applicant or recipient claiming good cause is responsible for supplying documentary evidence to establish the claim or furnishing sufficient information to permit DHS to investigate the good cause claim. Uncorroborated statements of the applicant or recipient are not acceptable documentation. The evidence must be of probative value and supported by written statements to the extent possible. ~~Examples of acceptable written statements~~Acceptable documentation may include:

- (i) ~~a birth certificate, or a medical, or law enforcement records indicating report that indicates~~ the child was conceived as a result of incest or forcible rape;
- (ii) court documents or other records indicating legal adoption proceedings ~~for adoption~~ are pending before a court of competent jurisdiction;
- (iii) ~~criminal court~~, medical, child protective services, social services, psychological, or law enforcement records indicating the putative alleged father or absent non-custodial parent might inflict physical or emotional harm on the child or caretaker;
- (iv) medical records or a written statement from a licensed mental health professional as defined in Title 43A of the Oklahoma Statutes indicating that the parent or caretaker or the child suffered emotional health history and present emotional health status of the caretaker or child ~~or a written statement from a mental health~~

~~professional indicating a diagnosis or prognosis concerning the emotional health of the caretaker or child~~harm due to the non-custodial parent's actions;

(v) a written statement from an attorney or a public or licensed private social agency ~~working with that~~ states the applicant or recipient is being assisted to resolve the issue of~~decide~~ whether to keep the child or relinquish~~give~~ the child up for adoption; and

(vi) ~~sworn~~ statements from persons other than the client with knowledge of the circumstances that provide the basis for the good cause claim, except in the case of adoption.

(E) Upon request, the worker helps the client obtain applicable documentary evidence listed in (D)(i) through (vi) of this subsection. The client must specify the type of document or record needed and provide sufficient identifying information to make it possible for the worker to obtain the documents.

(b) **Failure to cooperate in the pursuit of child support.** Failure to cooperate in pursuit of child support without good cause may be indicated at the time of application or at any time further action by the client is necessary.

(1) Actions indicating failure to cooperate include refusals to:

- (A) identify and assist in locating a known parent;
- (B) establish paternity; or
- (C) establish, modify, or enforce a support order.

(2) When at application the client refuses to cooperate ~~at the time of application~~, the worker denies the child care subsidy application.

(3) When an applicant applies for subsidized child care and is in non-cooperation status with CSS, the applicant must verify cooperation with CSS before the worker approves subsidized child care benefits.

(4) When, after certification, CSS informs the worker the client is not cooperating, the subsidized child care benefits remain open until the child care renewal is due. At renewal, the worker reviews the client's cooperation with CSS. When the client is not cooperating, further care is not approved.

(c) **Cooperation with CSS following denial or closure of the subsidized child care benefits.** The client must verify that he or she is cooperating with CSS before the worker approves subsidized child care benefits following a denial or closure based on non-cooperation with CSS.

(1) When the client cooperates with CSS and notifies the worker of the cooperation within 30-calendar days of the:

- (A) denial of subsidized child care benefits, the client is not required to file a new application before benefits may be approved; or
- (B) closure of the subsidized child care benefits, the worker reopens the benefits back to the closure date.

(2) When the client does not cooperate with CSS or cooperates, but waits to inform the worker of the cooperation

for more than 30-calendar days from the denial or closure date, the client must complete a new application before care is approved. The earliest date subsidized child care benefits may be approved is the date the client completes a child care interview and provides all necessary verification, per OAC 340:40-3-1.

(d) **Exploration and development of potential income other than child support.** The worker explores potential sources of income, such as Social Security benefits, Supplemental Security Income (SSI), unemployment benefits, veteran's benefits, and increased wages with the client at the time of application and each renewal for all members of the household whose income must be considered, per OAC 340:40-7-6. The client must apply for, or continue to pursue, all potential sources of income for which it appears likely he or she may be eligible, except for SSI before the next child care renewal is due. The client is encouraged, but not required, to apply for SSI when the client indicates a household member has a disability.

(1) When the client refuses to pursue available income at the time of request, the worker denies the child care request.

(2) When the client agrees to pursue all potential income and fails to do so within the 12-month eligibility period, further care is not approved at renewal.

(3) When the client is approved for the potential income or offered a pay raise within the 12-month eligibility period and refuses to accept it, further care is not approved at renewal.

(4) When the client's ~~pay decreases in~~ rate of pay or number of hours worked ~~decreases~~, the worker explores why the decrease occurred. When the client requested the decrease to avoid a family share copayment increase or to maintain eligibility, the worker closes the subsidized child care benefits at renewal.

(5) At each renewal, the worker determines whether the client continues to pursue potential income.

(A) When the client begins receiving previously identified potential income, the worker ~~considers~~ adds the income for the next negative action deadline after it is reported to the case although the system does not ~~decrease the benefit until renewal~~.

(B) When the client was not approved for the income, the client must verify this. The worker records in the case record the verification provided and stops exploring this potential income with the client.

(C) When the client stops pursuing potential income and was not determined ineligible for the income, further care is not approved at renewal.

(6) When the client's subsidized child care benefits close at renewal because of failure to pursue potential income, the client must verify receipt or pursuit of such income or that such income is no longer potentially available before child care may be approved.

(A) When the client verifies cooperation within 30-calendar days of the closure of subsidized child care benefits, the worker may reopen the benefits

back to the date they were closed without imposing a penalty.

(B) When the client does not cooperate or waits to verify cooperation for more than 30-calendar days from the date the subsidized child care benefits close, the client must complete a new application before care is approved. The earliest date subsidized child care benefits may be approved is the date the client completes a child care interview and provides all necessary verification, per OAC 340:40-3-1.

340:40-7-10. General provisions regarding income

(a) **Income considered.** Available and anticipated income, except that required to be disregarded by law or Oklahoma Department of Human Services (DHS) policy, per Oklahoma Administrative Code (OAC) 340:40-7-12, is considered when determining a client's eligibility for child care subsidy benefits per this Section and OAC 340:40-7-11.

(b) **Reporting requirement.** The client must report all sources of income at application and as changes occur, per (e) of this Section and OAC 340:40-9-2.

(c) **Income from a new source.** Income from a new source is only considered for the approval month when a full check is received on or prior to the certification date. Income is anticipated and considered for the next month when a full check from the new source is expected to be received by the first of the month. When a full check is not received by the first of the next month, it is anticipated and considered for the third month before income is set for the remainder of the eligibility period.

(d) **Past income.** Past income is not used to anticipate future income for any month in which an income change occurred or employment ended.

(e) **Increased income between eligibility determinations.** Between eligibility determinations, per Section 98.21(e)(1) of Title 45 of the Code of Federal Regulations, the client is only required to report income changes within 10-calendar days of the date the change occurs, when the household's gross income exceeds the ~~federal exit~~ income eligibility threshold for the ~~household~~ family size, per DHS Appendix C-4, Child Care Eligibility/Copayment Chart, ~~Schedule H~~.

(1) A computer-generated notice issues at certification and renewal informing the client of the current ~~federal exit~~ income eligibility threshold for his or her family size and instructs the client to report when the household income exceeds this amount.

(2) When income exceeds the ~~federal exit~~ income eligibility threshold, the worker closes the child care benefit for the next advance-notice effective date per OAC 340:40-9-2(f).

(f) **Decreased income after approval.** When income decreases after approval, the worker makes the change for the current month, when appropriate, or by the next non-advance notice effective date per Oklahoma Department of Human Services (DHS) Appendix B-2, Deadlines for Case Actions. Once income decreases, it is not increased until the renewal month per ~~OAC 340:40-5-1(8)~~ and (e) of this Section.

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(g) **Garnished income.** When a person's income is reduced due to garnishment, the gross amount before the garnishment is counted as income.

(h) **Withheld or returned payments not considered as income.** Payments not considered as income are:

- (1) monies withheld from any income source to repay a prior overpayment received from that same source;
- (2) monies voluntarily or involuntarily returned to repay a prior overpayment received from that same income source; or
- (3) child support payments received by Temporary Assistance for Needy Families (TANF) recipients that must be sent to DHS Child Support Services to maintain TANF eligibility.

(i) **Withheld or returned payments considered as income.** Monies withheld or returned to repay overpayments in federal, state, or local means tested assistance programs are not excluded when they are withheld or returned to repay overpayments resulting from intentional program violation as established by the agency administering the program.

340:40-7-11. Sources of income considered

(a) **Sources of income considered.** Income may be received periodically or at irregular intervals. All income, unless specifically excluded, per Oklahoma Administrative Code (OAC) 340:40-7-12 is considered in determining monthly gross income. Income is classified as earned or unearned income.

(b) **Earned income.** Earned income means total money earned by a person through the receipt of wages, salary, commission, or profit from activities in which the person is engaged as self-employed or as an employee. Temporary disability insurance payment(s) and temporary workers' compensation payments are considered earned income when payments are employer-funded and the person remains employed.

(1) **Wages.** Wages include total money earned for work performed as an employee including armed forces pay, commissions, tips, piece-rate payments, longevity payments, and cash bonuses before deductions, such as taxes, bonds, pensions, union dues, credit union payments, or cafeteria plans are subtracted.

(A) Countable wages for military personnel include any allowance included on the earnings statement, such as the Basic Allowance for Housing (BAH) or Basic Allowance for Subsistence (BAS).

(B) Only the portion of the cafeteria plan the client controls, including any excess benefit allowance payments, is counted as income.

(C) Reimbursements for expenses, such as a uniform allowance or transportation costs, other than daily commuting, are subtracted from the gross income.

(D) Payments made for annual leave, sick leave, or severance pay are considered earned income during the month such income is received whether paid during employment or at termination of employment.

(E) Wages that are garnished or diverted and paid to a third party are also counted as income.

(2) **S corporations.** When a household member is a shareholder in an S corporation, he or she may receive profits from the business in two ways; as a salary and/or as a profit share of the business. Both types of income are reported on the household member's personal income tax return. Salary income is considered as earned income and profit share income is considered as unearned income, per (c)(11) of this Section.

(23) **Self-employment.** Self-employment income is calculated based on procedures listed in this subsection.

(A) **Persons considered self-employed.** A person is considered self-employed when:

- (i) he or she declares himself or herself to be self-employed;
- (ii) there is an employer/employee relationship and the employer does not withhold income taxes or Federal Insurance Contributions Act (FICA), even when required to do so by law; or
- (iii) the employer withholds taxes and the person provides proof he or she files taxes as self-employed.

(B) **Records used and income calculation.** The worker uses the records described in (i) through (iii) of this subparagraph to calculate income. When the person reports a loss instead of a profit on the business, the worker does not deduct the loss from other household income.

(i) When the person filed a federal income tax return for self-employment income for the most recent year, whether the person's income is derived from his or her own business or from working for an employer, the worker uses the gross self-employment income shown on the person's federal income tax return, subtracts 50 percent of the income for claimed business expenses, and divides the income by 12 or the number of months the business has existed or the person started working for the employer, when less than 12 months. The worker verifies the person's start date with the employer when the person states he or she has not worked for the employer for at least 12 months.

(ii) When the person did not file an income tax return for the most recent tax year for his or her own business, the worker calculates self-employment income using the person's business records for the last 12 months or the number of months the business has existed when less than 12 months. When the client declares business expenses, the worker subtracts 50 percent of the gross self-employment income to arrive at the net profit.

(iii) When the person works for an employer, did not file a federal tax return as self-employed, and receives earnings from an employer, the person must provide proof of the last 12 months of income from the employer. The worker divides the gross income by 12 or the number of months the person worked for the employer to determine

monthly income. When the person declares business expenses, the worker subtracts 50 percent of the gross self-employment income before dividing the income by the applicable number of months to determine monthly income.

(C) **Profit sharing.** Households who operate S corporations, general or limited partnerships, or limited liability companies (LLC) may receive profit sharing that is reported on the household's personal income tax return. ~~When a household member:~~

(i) ~~actively participates in the operations, the income from profit sharing is considered part of the household's self-employed earned income; or~~ S corporation profit sharing is considered unearned profit sharing income. Refer to Oklahoma Administrative Code (OAC) 340:40-7-11(b)(2) and (c)(11) for information regarding S corporations.

(ii) ~~does not actively participate in the operations, the income from profit sharing is considered part of the household's unearned income.~~ Partnerships are unincorporated businesses with two or more partners. When a household member is a partner in a business, he or she is considered self-employed and not an employee of the business. Each partner receives a profit share from the business. When a business is considered a:

(I) general partnership or LLC with a member-manager, each partner's share of the business income is shown as self-employment income on his or her federal income tax form; or

(II) limited partnership or other LLC member, each partner's share of the business income is shown as self-employment income or unearned profit sharing income on his or her federal income tax form.

(D) **Monthly self-employment income.** Self-employment income received on a monthly basis is normally averaged over a 12-month period. When the averaged amount does not accurately reflect the household's actual monthly circumstances because the household experienced a substantial increase or decrease in income, the worker calculates the self-employment income based on anticipated earnings.

(E) **Seasonal self-employment.** Self-employment income intended to meet the household's needs for only part of the year is averaged over the period of time it is intended to cover.

(F) **Annualized self-employment income.** Self-employment income that represents a household's annual support is averaged and annualized over a 12-month period, even when the income is received in a short time period.

(i) When the average annualized amount does not accurately reflect the person's actual monthly circumstances because the person experienced a substantial increase or decrease in income, the

worker calculates the self-employment income on anticipated earnings.

(ii) The worker does not calculate self-employment income on the basis of prior earnings, such as income tax returns, when an increase or decrease of business has occurred.

(iii) When the person received the self-employment income for less than 12 months, the worker averages the income over the applicable number of months and projects the monthly amount for the coming year.

(G) ~~Income from rental~~ **Rental property income.** ~~Income from rental~~ Rental property income is considered self-employment income.

(H) ~~Income from room~~ **Room and board income.** Payments from roomers or boarders are considered self-employment when the roomer or boarder pays a reasonable amount. ~~When the roomer or boarder is acting in the role of a spouse, OAC 340:40-7-6(b)(4) applies.~~

(34) **On-the-job (OJT) training.** Earned income from regular employment for ~~on the job training (OJT)~~ is considered earned income. This includes OJT provided, per Section 3(44) of the Workforce Innovation and Opportunity Act (WIOA), for persons 19 years of age and older. This does not include classroom or institutional training or WIOA-sponsored intern assignments sponsored by WIOA, even when an hourly amount is paid for such training, per OAC 340:40-7-12(25)(G).

(45) **Title I payments of Domestic Volunteer Services Act.** Payments under Title I of the Domestic Volunteer Services Act of 1973 as amended per Public Law 93-113 are considered income unless excluded, per OAC 340:40-7-12.

(56) ~~Earnings of children~~ **Children's earnings.** ~~Earned income of a~~ minor parent's earned income is treated as adult earned income. Earnings of other children 17 years of age and younger who are under the parental control of an adult household member are excluded, per OAC 340:40-7-12.

(c) **Unearned income.** Unearned income is income a person receives for which the person does not put forth any daily, physical labor. Types of income listed in paragraphs (1) through (10) of this subsection are considered unearned income.

(1) **Assistance payments.** Assistance payments include state means-tested programs, such as Temporary Assistance for Needy Families (TANF), including Supported Permanency benefits, State Supplemental Payment (SSP) to the aged, blind, or disabled, and Refugee Resettlement Program (RRP) cash assistance.

(2) **Pensions, disability, and Social Security benefits.** Annuities, pensions, retirement benefits, disability benefits from either government or private sources, or Social Security survivor benefits are considered unearned income.

(A) When a minor child receiving Social Security benefits no longer lives with the payee receiving the

Social Security benefits, only the portion of the child's Social Security benefit used to meet the minor child's needs is considered income. This may include cash given directly to the minor child or money paid to a third party for room and board for the minor child.

(B) The parent or caretaker or, when appropriate, the minor child must take action to become the payee within the 12 month eligibility period, per OAC 340:40-7-9(d). When the parent, caretaker, or minor child does not take action by renewal, the worker counts the total Social Security benefit as income.

(3) **Supplemental Security Income (SSI).** SSI is considered unearned income.

(4) **Unemployment and workers' compensation.** Income from unemployment insurance benefits or workers' compensation is counted as unearned income.

(5) **Child support, court-ordered or third party paid child care, and alimony.** Child support, child care payments, and alimony payments, whether court-ordered or voluntary, made directly to the household from non-household members are counted as unearned income.

(A) When a child care payment is paid directly to the child care provider, it is not considered income for the client.

(B) When the absent parent reports he or she is paying a portion of the client's family share copayment to the child care provider, the only action taken by the worker is to record this in the case record.

(C) When the absent parent or another third party, such as an employer, is making a payment to the provider in addition to the client's copayment, it is considered an additional copayment that must be met before the Oklahoma Department of Human Services (DHS) makes a subsidy payment to the provider.

(D) Any other payment made to a third party for a household expense must be considered as income when a court order directs the payment be made to the household. Payments for medical support are excluded.

(6) **Veterans' compensation, pensions, or military allotments.** Disability compensation, military allotments, servicemen dependent allowances, and similar payments are considered unearned income.

(7) **Contributions.** Appreciable contributions recurrently received in cash are considered unearned income except when the contribution is not made directly to the client. To be appreciable, a contribution must exceed \$30 per calendar quarter per person.

(8) **Dividends, interest, minerals, and royalties.** Dividends, interest income, income from minerals, royalties, and similar sources are considered unearned income. When income from these sources is received irregularly or in varied amounts, it is averaged over 12 months. Income from royalties is treated as unearned, self-employment income, subject to (b)(2)(3) of this Section.

(9) **Lump sum payments.** Recurring lump sum payments, including income from earnings, are averaged over the period they are intended to cover.

(10) **Irregular income.** Income received irregularly but in excess of \$30 per quarter is considered income unless it is from an excluded income source specifically mentioned at OAC 340:40-7-12. Countable irregular income is averaged over 12 months.

(11) **Profit sharing.** When a household member is a shareholder in an S corporation or a partner in a limited partnership or an LLC, he or she may receive a distribution or profit share of the business. This is considered as unearned income.

340:40-7-12. Sources of excluded income

Only the income listed in this Section is excluded in determining a household's eligibility for a child care benefit. No other income is excluded.

(1) **Lump sum payments.** One-time lump sum payments are excluded as income. Recurring lump sum payments are excluded as a countable income source unless specifically mentioned per Oklahoma Administrative Code (OAC) 340:40-7-11.

(2) **In-kind income.** In-kind income is excluded as income. In-kind income is defined as any gain or benefit that is not in the form of money paid directly to the household. This includes non-monetary or in-kind benefits, such as meals, clothing, public housing, or produce from a garden.

(3) **Money received from the sale of property.** Money received from the sale of property, such as stocks, bonds, or a house or car is excluded. This exclusion does not apply when the person is engaged in the business of selling such property.

(4) **Bank or trust account withdrawals.** Money withdrawn from a bank or trust account is excluded as income even when used to meet current living expenses.

(5) **Capital gains.** The proceeds from the sale of capital goods or equipment are excluded.

(6) **Household income for certain children adopted through Oklahoma Department of Human Services (DHS).** The income of all household members is exempt for a child only when conditions in (A) through (E) are met. The:

(A) child was adopted through DHS or a federally-recognized Indian tribe, as defined by the Federal and Oklahoma Indian Child Welfare Acts, by the parent applying for benefits;

(B) adoptive parent applying for benefits must provide:

(i) a fully executed Form 04AN002E, Adoption Assistance Agreement, listing child care as an adoption assistance benefit for the child;

(ii) Form 04AN033E, Post Adoption Child Care Referral;

(iii) the Final Decree of Adoption; and

(iv) a form of identity;

(C) adoptive parent and child are Oklahoma residents;

(D) child is 5 years of age or younger. When a child turns 6 years of age during the 12-month eligibility

period, household income remains exempt until the next renewal; and

(E) adoptive parent meets an allowable need factor and provides proof, per OAC 340:40-7-7 and OAC 340:40-7-8 ~~and provides proof~~. In a two-parent family, both parents must meet an allowable need factor.

(7) **Household income when at least one child attends an Early Head Start-Child Care (EHS-CC) Partnership (EHS-CCP) grant program or an Oklahoma Early Childhood Program (OECF).** The household income is exempt for all children in care when at least one child attends an ~~EHS-CC Partnership~~ OECF grant program or an OECF and the household meets the income guidelines threshold, per DHS Appendix C-4, Child Care Eligibility/Copayment Chart.

(8) **Earnings of children.** ~~Exclude the~~ The earnings of a person 17 years of age and younger who is considered a child in the case are excluded as long as the child ~~is attending~~ attends school regularly. The exclusion continues to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment resumes following the break. When the child is a minor parent and the payee, the minor parent's earnings are treated as adult income.

(9) **Irregular income.** Any income received too infrequently or irregularly to be reasonably anticipated is not counted unless it is in excess of \$30 per calendar quarter.

(10) **Reimbursements.** Reimbursements for past or future expenses not exceeding actual expenses are excluded.

(11) **Tax refunds.** Exclude federal or state income tax refunds including Earned Income Tax Credit (EITC) payments.

(12) **Money received for third parties.** Money received and used for the care and maintenance of a third party who is not a household member is excluded.

(13) **Loans.** All loans, including loans from private as well as commercial institutions, are excluded as income. When the household states someone is loaning the household money to meet expenses, a statement signed by both parties is required indicating the payment is a loan and must be repaid. When the household states it receives loans on a recurrent or regular basis from the same source, the lender must sign an affidavit stating the payments are loans that must be repaid or that payments will be made in accordance with an established repayment schedule.

(14) **Grants.** Grants obtained and used under conditions that preclude their use for current living costs are excluded.

(15) **Educational assistance.** Educational assistance is excluded as income and includes, but is not limited to:

- (A) work study;
- (B) scholarships;
- (C) fellowships;
- (D) educational loans when payment is deferred; and
- (E) veterans' education benefits.

(16) **Stipends.** Stipends paid to students participating in the Indian Vocational Education Program through the Carl

D. Perkins Vocational and Applied Technology Education Act are excluded as income.

(17) **Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE).** Payment for supportive services or reimbursement of out-of-pocket expenses made to volunteers serving as foster grandparents, senior health aides, senior companions, and to persons serving in SCORE and ACE is excluded as income.

(18) **Government rent or housing subsidies.** Government rent or housing subsidies by government agencies received in-kind or in cash for rent, mortgage payments, or utilities are excluded as income.

(19) **Foster care payments.** Foster care payments received for a foster child in state or tribal custody are excluded as income.

(20) **Title IV E of the Social Security Act or State Adoption Subsidy.** Federal or state funded adoption subsidy payments made to adoptive parents are excluded as income.

(21) **Victims of Crime Act of 1984.** Payments made from the crime victims' compensation program as amended in Section 1402 of the Victims of Crime Act of 1984 and ~~per~~ Section 10602 of Title 42 of the United States Code (42 U.S.C § 10602) are excluded as income.

(22) **Family Support Assistance Payment Program.** Family Support Assistance Payment Program payments paid to persons by ~~the~~ DHS Developmental Disabilities Services are excluded as income.

(23) **Vendor payments.** Vendor payments made directly to the household's creditors, a person, or an organization providing a service to the household, are excluded as income unless a court order or other legally binding agreement specifies the money is to be paid directly to the client.

(24) **Money received by another household for a household member.**

(A) When a child spends part of the month in two separate households and receives countable income, the worker considers the portion of the income received by the household applying for or receiving a child care benefit as income and excludes the remainder.

(B) When a minor parent is the payee and lives with a parent or caretaker, child support received for the minor parent is considered income for the parent or caretaker and not considered for the minor parent's child care benefit.

(25) **Money deposited into or withdrawn from a qualified Oklahoma Achieving a Better Life Experience (ABLE) Program account.** Money deposited into or withdrawn from a qualified ABLE Program account, per Sections 4001.1 through 4001.5 of Title 56 of the Oklahoma Statutes, or a qualified ABLE Program account set up in any other state, per the ABLE Act of 2014 (26 U.S.C. § 529A), is excluded as income when the client:

(A) provides documents to verify the account meets exemption criteria;

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- (B) verifies money deposited in the account does not exceed the annual federal gift tax exclusion amount, per 26 U.S.C. § 2503(b). Any money deposited in the account in the calendar year that is in excess of the annual federal gift tax exclusion amount is considered as countable income in the amount deposited; and
- (C) verifies withdrawals from the account were used to pay qualified disability expenses. Money withdrawn for reasons other than to pay qualified disability expenses is considered as income for the month of withdrawal.
- (26) **Income excluded by federal law.** Income excluded by federal law is defined as:
- (A) payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (B) payments received:
- (i) under the Alaska Native Claims Settlement Act, Public Law (P. L.) 92-203, § 21(a);
 - (ii) under the Sac and Fox Indian Claims Agreement, P.L. 94-189;
 - (iii) from the disposition of funds to the Grand River Band of Ottawa Indians, per P.L. 94-540;
 - (iv) by members of the Confederated Tribes of the Mescalero Reservation, per P.L. 95-433;
 - (v) under the Maine Indian Claims Settlement Act of 1980 to members of the Passamaquoddy and the Penobscot Nation, P.L. 96-420; or
 - (vi) by an individual as a lump sum or a periodic payment via the Cobell Settlement, per the Claims Resolution Act of 2010, P.L. 111-291;
- (C) any payment to volunteers under Title II, Retired and Senior Volunteer Program, Foster Grandparents and others, of the Domestic Volunteer Services Act of 1973, P.L. 93-113 as amended. Payments under Title I of that Act, Volunteers in Service To America, University Year for Action, and Urban Crime Prevention Program, to volunteers are excluded only when the monthly amount, converted to an hourly rate, is less than the Oklahoma minimum wage;
- (D) income derived from submarginal land of the United States held in trust for certain Indian tribes, per P.L. 94-114, Section 6;
- (E) Indian per capita payments distributed from judgment awards and trust funds, made per P.L. 98-64. ~~Also excluded is any interest~~ Interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest, or investment income accrued on such funds is excluded. Any per capita payments, headrights of the Osage tribe, income from mineral leases or other tribal business ventures are excluded as long as the payments are paid per capita. Any interest or income derived from the funds after distribution is considered as any other income. The per capita exclusion applies per person rather than per family;
- (F) income up to \$2,000 per year received by individual Indians derived from leases or other uses of individually-owned trust or restricted lands, is not counted as income. The income exclusion applies to calendar years beginning January 1, 1994. Any remaining disbursements from the trust or restricted lands are considered income;
- (G) allowances, stipends, earnings, compensation in lieu of wages, grants, and other payments made for participation in the Workforce Innovation and Opportunity Act (WIOA) or other federally-funded workforce training program to persons of all ages and student status with the exception of income paid to persons 19 years of age and older for on-the-job training. This income is treated as any other earned income, per OAC 340:40-7-11(b)(4);
- (H) payments, allowances, or earnings to persons participating in programs under Title I of the National and Community Service Trust Act of 1993. Title I includes three Acts: Serve-America, The Community Service, Schools and Service-Learning Act of 1990; the American Conservation and Youth Service Corps Act of 1990; and the National and Community Service Act. Most of the payments are made as a weekly stipend or for educational assistance. The Higher Education Service-Learning Program and the AmeriCorps Umbrella Program come under this Title. This includes AmeriCorps income;
- (I) payments or allowances made under any federal law for the purpose of energy assistance, Low Income Home Energy Assistance Program (LIHEAP), and utility payments and reimbursements made by the Department of Housing and Urban Development (HUD) and the Farmers Home Administration (FmHA);
- (J) the amount of the mandatory salary reduction of military service personnel used to fund the G.I. Bill;
- (K) ~~all funds paid to persons under the Community Service Employment Program under benefits from State and Community Programs on Aging, per Title III and Title V, P.L. 100-175 of the Older Americans Act of 1965 as amended by P.L. 114-144, Older Americans Act Reauthorization Act of 2016. This program is authorized by the Older Americans Act.~~ Each state and various organizations receive ~~some~~ Title V funds. These organizations include:
- (i) Experience Works, ~~formerly Green Thumb~~;
 - (ii) National Council on Aging;
 - (iii) National Council of Senior Citizens;
 - (iv) American Association of Retired Persons Foundation;
 - (v) United States (U.S.) Forest Service;
 - (vi) National Association for Spanish Speaking Elderly;
 - (vii) National Urban League;
 - (viii) National Council on Black Aging; and

- (ix) National Council on Indian Aging;
- (x) Asociación Nacional Pro Personas Mayores;
- (xi) Associates for Training and Development, Inc.;
- (xii) American Samoa;
- (xiii) Easter Seals, Inc.;
- (xiv) Goodwill Industries International, Inc.;
- (xv) Institute for Indian Development;
- (xvi) National Able Network;
- (xvii) National Asian Pacific Center on Aging;
- (xviii) National Caucus and Center on Black Aged, Inc.;
- (xix) National Older Worker Career Center;
- (xx) Operation A.B.L.E. of Greater Boston, Inc.;
- (xxi) Senior Service America, Inc.;
- (xxii) SER-Jobs for Progress National, Inc.;
- (xxiii) Workplace, Inc.; and
- (xxiv) VANTAGE Aging;
- (L) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement In Re Agent Orange Product Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);
- (M) payments received under the Civil Liberties Act of 1988. These payments are made to persons of Japanese ancestry who were detained in internment camps during World War II;
- (N) payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from exposure to radiation from nuclear testing and uranium mining;
- (O) payments for the fulfillment of a Plan for Achieving Self-Support under Title XVI of the Social Security Act;
- (P) payments made to persons because of their status as victims of Nazi persecution;
- (Q) payments made for the Experimental Housing Allowance Program under Annual Contributions Contracts entered into prior to January 1, 1975, per Section 23 of the U.S. Housing Act of 1937 as amended;
- (R) monetary allowances provided to certain children of Vietnam War veterans, per Chapter 18 of Title 38 of the United States Code;
- (S) federal funds distributed by Federal Emergency Management Assistance (FEMA) due to a disaster or emergency to persons directly affected by the event. This exclusion also applies to comparable disaster assistance provided by states, local governments, and disaster assistance organizations. For payments to be excluded, the disaster or emergency must be declared by the President of the United States;
- (T) the value of the food benefit allotment under the Food and Nutrition Act of 2008; ~~and~~
- (U) the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special

food services program for children under the National School Lunch Act of 1970, both as amended, per Omnibus Budget Reconciliation Act of 1981; and (V) income received by a member of the United States Armed Forces, per 37 U.S.C. Chapter 5 and per 273.9(c)(20) of Title 7 of the Code of Federal Regulations that is:

- (i) received in addition to the service member's basic pay during combat deployment;
- (ii) received as a result of the service member's deployment or service in an area designated as a combat zone as determined per Executive Order or P.L.; and
- (iii) not received by the service member prior to the service member's deployment to or service in a federally designated combat zone.

340:40-7-13. Computation of income

(a) **Ongoing income.** Income from an ongoing source received regularly but in amounts that vary, or income received irregularly, is averaged over a minimum of 30-calendar days unless the client has not received at least 30-calendar days of representative income. This includes overtime pay, irregular child support, and other occasional increases or decreases in monthly gross income. When income is received more often than once per month, the income is converted to a monthly amount.

(b) **Income verification.** The worker verifies the household's income using the best available information.

(1) When at application or renewal the person received at least 30-calendar days of income, the best available information is normally the person's pay stubs or an employer statement. When neither source is available, the worker uses whatever records are available that best establish the income already received and expected for future months.

(2) When the client's ongoing employment income changed and the last 30-calendar days of income is not indicative of future earnings, the best available information may be an employer statement. When work hours remain the same but the client received a pay raise, the worker averages the person's work hours over the last 30-calendar days and multiplies the averaged hours by the new pay rate.

(3) For earned income, pay stubs are used for verification only when the client's name or Social Security number, date(s) of the pay period, and amount of income before deductions are shown on the pay stub. When this information is not shown on the pay stub, or pay stubs are not available, phone contact with the employer or an employer statement is required.

(4) When a household member starts a new job, the worker verifies the person's start date, date the first full paycheck is expected to be received, hourly rate, and anticipated number of hours per week.

(c) **Income calculations at initial certification.** For an initial certification, the worker calculates income using procedures in (1) through (4).

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(1) When household income is ongoing, the worker uses actual income received for the approval month, except when:

(A) all income for the month has not been received and verified. When this occurs, the worker uses any full representative paychecks to anticipate income not yet received for the approval month and future months; or

(B) the person received an additional check in the approval month due to a third or fifth week. When this occurs, the worker averages the last 30-calendar days of income for the approval month and future months.

(2) When income is ongoing and actual income is used for the approval month, the worker averages the last 30-calendar days of representative income and converts it to a monthly amount for the following month.

(3) When income is from a new source and the person did not receive any income as of the approval date, the worker does not consider income for the approval month per Oklahoma Administrative Code (OAC) 340:40-7-10.

(A) Income expected to be received in the month following the approval month is anticipated and considered when a full check is expected to be received on or before the first of the month following the approval month.

(B) When only partial earnings are expected to be received in the month following the approval month, earnings are not considered until the next month.

(4) The worker adds together all countable earned and unearned income to arrive at the household's gross income.

(d) **Income calculation at renewal.** To calculate income at renewal, the worker determines eligibility based on circumstances anticipated for future months using the best information available.

(1) The worker adds together all countable earned and unearned income to arrive at the household's gross income.

(2) When the household reports earned income from a new source at renewal, the worker considers the earned income effective the first month a full check is expected to be received by the first of that month.

(e) **Income deduction.** After computing gross income, the worker subtracts any verified, legally-binding child support payments paid by a household member to or for a non-household member, including child support and child care support payments made to a third party on behalf of the non-household member.

(f) **Income eligibility guidelines threshold.** The worker uses Oklahoma Department of Human Services Appendix C-4, Child Care Eligibility/Copayment Chart, ~~Schedule I-A or I-B,~~ to determine if the household meets the income guidelines threshold for initial certifications and Schedule II to determine ongoing eligibility per Section 98.21(b)98.20(a)(2) of Title 45 of the Code of Federal Regulations ~~and OAC 340:40-5-1(8).~~

340:40-9-1. Renewal of child care eligibility

(a) **Child care renewal.** The client must complete the child care renewal at the end of the 12-month eligibility period in order to continue receiving benefits per Section 98.21(a) of Title 45 of the Code of Federal Regulations (45 C.F.R. § 98.21(a)). Refer to Oklahoma Administrative Code 340:40-9-2(f) for reasons child care is closed prior to the renewal. At renewal, the client is sent a computer-generated notice informing the client:

- (1) the renewal is due;
- (2) the methods the client may use to complete the renewal;
- (3) types of verification that may be required; and
- (4) when benefits close if the renewal is not completed.

(b) **Renewal time frame.** A child care renewal is due no earlier than 12 months from the approval date or the last renewal unless the client receives Supplemental Nutrition Assistance Program food benefits and benefits must be synchronized per (g) of this Section.

(c) **Signature requirement.** The client or the client's authorized representative must sign the renewal.

(d) **Interview requirement.** An interview is not required at renewal for the Child Care Subsidy Program.

(e) **Eligibility determination.** An eligibility determination is made once the renewal is signed and all required verification is provided and evaluated.

(1) The eligibility determination results in:

- (A) completing the renewal without changes;
- (B) completing the renewal with changes; or
- (C) closing the child care benefits.

(2) Benefits, when closed, may be reopened when the client provides required information within 30-calendar days of closure.

~~(f) **Graduated phase-out of subsidized care.** When the household's income at renewal exceeds state income guidelines but remains below federal income guidelines, the household is eligible to receive 12 more months of subsidized care. The family share copayment is increased per Oklahoma Department of Human Services Appendix C-4, Child Care Eligibility/Copayment Chart.~~

~~(g) **Synchronization of benefits.** When the client receives other Adult and Family Services benefits in addition to the subsidized child care benefits, certification and renewal dates must be coordinated with the other programs.~~

340:40-9-2. Case changes

(a) **Change reporting.** Between eligibility determinations, per Section 98.21(e)(1) of Title 45 of the Code of Federal Regulations (45 C.F.R. § 98.21(e)(1)), the household must report within 10-calendar days of the change occurring, when the household's gross income exceeds ~~federal~~ the income eligibility threshold for the household family size, per Oklahoma Department of Human Services (DHS) Appendix C-4, Child Care Eligibility/Copayment Chart, ~~Schedule II.~~

- (1) A computer-generated notice issues at certification and renewal informing the client of the current ~~federal~~ income eligibility threshold for his or her family size and

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instructs the client to report when the household income exceeds this amount.

(2) When the client fails to report an income increase timely that, if reported, would have resulted in benefit closure, the worker makes an overpayment referral to Adult and Family Services Benefit Integrity and Recovery per Oklahoma Administrative Code (OAC) 340:40-15-1.

(b) **Action taken on reported changes.** The worker must act on all changes reported by the household between renewal periods. Benefits do not decrease unless the client requests a decrease to avoid or reduce an overpayment or the reported change results in closure of the child care benefit per (f) of this Section.

(c) **Changes that increase subsidized child care benefits.** When the client reports a change within 10-calendar days of the change that increases the amount of child care approved or decreases the family share copayment, the client and the worker jointly plan the effective date of the change. When the client does not report the change within 10-calendar days of the change, the earliest date the worker increases the subsidized child care benefits is the first day of the month in which the client reports the change.

(d) **Additional child request.** When an additional child requires subsidized child care benefits, the worker completes the request within two-business days of the client providing all necessary verification to determine eligibility. When eligible, the child may be approved for subsidized child care benefits beginning with the date of request.

(e) **Change in provider.** When a client reports a change in provider, the change is effective the date the change in provider occurs, regardless of whether the client reports the change timely. The worker completes provider changes within two-business days of the date the client reports the change.

(f) **Closure of subsidized child care benefits.** When the client is no longer eligible for subsidized child care benefits, the closure date varies depending on circumstances. Refer to DHS Appendix B-2, Deadlines for Case Actions, for advance-notice deadline dates.

(1) The worker closes the subsidized child care benefits effective 10-calendar days from the date action is taken, when the:

- (A) payee for the child care benefit changes. When this occurs, a new application is needed per OAC 340:40-3-1(a)(1)(C);
- (B) only child(ren) approved for subsidized child care leaves the home;
- (C) client already received income in excess of the federal ~~exit~~ income threshold per DHS Appendix C-4, ~~Schedule H~~;
- (D) client moves out of state; or
- (E) client was approved for child care in error.

(2) The worker closes the child care benefit effective the last day of the current calendar month when the client's anticipated income for the next month is expected to exceed the ~~federal~~ income ~~guidelines~~ eligibility threshold, per 45 C.F.R. § 98.21(e)(1) and DHS Appendix C-4, ~~Schedule H~~.

(3) The worker closes the child care benefit effective the last calendar day of the renewal month when:

- (A) the client does not meet a need factor;
- (B) the client is not pursuing child support or other potential income per OAC 340:40-7-9;
- (C) the child reached the maximum age limit per OAC 340:40-7-3; or
- (D) an adopted child turned 6 years of age and the family income must now be considered per OAC 340:40-7-12. In this circumstance, a new application is required per OAC 340:40-3-1(a)(1)(D).

(4) When the client receives Temporary Assistance for Needy Families (TANF) related subsidized child care per OAC 340:40-7-8(e) and stops meeting a need factor, the worker closes the child care benefit effective 90-calendar days from the date the client stops participating.

(5) When a client stops participating in Supplemental Nutrition Assistance Program Employment and Training activities per OAC 340:40-7-8(d) and does not meet another need factor, the worker closes the child care benefit effective 90-calendar days from the date the client stops participating.

(6) When the client requests closure of the child care benefit, the earliest date the worker closes the child care is the date action is taken.

(7) When the client does not complete the benefit renewal timely, the system closes the child care benefit effective the last day of the renewal month.

(g) **Reopen action.** When a client's subsidized child care benefits close, benefits may be reopened within 30-calendar days of the closure effective date using current eligibility information unless the client must complete a new application per OAC 340:40-3-1(a)(1). Child care benefits are not decreased unless the renewal is due per 45 C.F.R. § 98.21(a).

SUBCHAPTER 10. ELECTRONIC BENEFIT TRANSFER (EBT) SYSTEM FOR CHILD CARE

340:40-10-1. Electronic benefit transfer (EBT) system for child care

(a) The EBT system used for child care ~~is used to track~~ tracks time and attendance for a child ~~using~~ receiving subsidized child care and ~~to process~~ processes provider child care payments ~~sent to child care providers~~. This system involves use of an EBT card by a client or authorized representative to document attendance by swiping the card through a point-of-service (POS) machine at the child care facility. The client ~~is able to~~ swipes real-time attendance or ~~can enter~~ enters previous in and out times for up to ~~ten~~ 10-calendar days, the current day and nine previous days. The system works best if when all or most of the client's swipes are completed real time.

(b) The county EBT specialist issues an EBT card to a child care applicant ~~is issued an EBT card~~ at the time ~~a request is made~~ or she applies for a child care benefit and views an EBT training video.

(c) Only two EBT cards ~~can be~~ issued per Adult and Family Support Services Division (FSSD) child care case;

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one card for the parent or caretaker and one for an authorized representative. The authorized representative can be the other parent or someone else who helps the client take the child to ~~and~~ pick the child up ~~the child~~ from the child care facility. The client is responsible for all swipes made by the authorized representative. The authorized representative ~~cannot~~ must never be the child care provider or anyone who is employed by the child care provider.

(d) Two EBT cards can be issued per child in a Child Welfare case ~~if when~~ each child in the case is residing with different foster parents.

340:40-10-2. Client, worker, and provider electronic benefit transfer (EBT) responsibilities

(a) **Client EBT responsibilities.** Client EBT responsibilities include:

- (1) ~~watching~~ viewing the client training video;
- (2) swiping correct attendance days and times with his or her EBT card through the provider's point-of-service (POS) machine within ~~ten~~ 10-calendar days, current day and previous nine days;
- (3) checking the message on the POS machine after each swipe to see if it is approved, denied, ~~or~~ pending, or pending different provider. ~~If When~~ the message shows denied or pending different provider, the client is responsible to report the problem to the worker right away;
- (4) not swiping attendance for any day the child does not attend child care;
- (5) not giving the EBT card or personal identification number (PIN) to anyone else, including the child care provider; and
- (6) paying for care the Oklahoma Department of Human Services (~~OKDHS~~) (DHS) does not pay because:
 - (A) the client did not swipe attendance timely for days and times his or her child attended child care;
 - (B) swipes were denied and the client did not get them corrected within ~~ten~~ 10-calendar days; or
 - (C) the provider loses the absent day payment for a weekly authorization because the client did not swipe correct attendance for every day that the child attended care for a given month.

(b) **Worker EBT responsibilities.** Worker EBT responsibilities include:

- (1) ensuring that ~~the client reads and states he or she understands~~ clients read and state they understand the EBT responsibilities shown on the application;
- (2) arranging for ~~the client~~ clients to receive ~~his or her~~ their EBT ~~card~~ cards and ~~watch~~ view the training video as soon as possible after the child care request is submitted;
- (3) ~~if the client chooses an authorized representative,~~ arranging for ~~that person~~ authorized representatives to receive ~~his or her~~ their EBT ~~card~~ cards and ~~watch~~ view the training video as ~~quickly~~ soon as possible;
- (4) acting on swipe errors reported by ~~the client~~ clients as soon as they are reported;

(5) acting on reports of misuse of the EBT card as soon as they are reported, per ~~policy at OAC~~ Oklahoma Administrative Code 340:40-10-3 ~~as soon as they are reported~~.

(c) **Provider EBT responsibilities.** Provider responsibilities include:

- (1) never ~~being in possession of~~ possessing or swiping a client's EBT card through the POS machine;
- (2) never moving the POS machine to another location without receiving prior written approval from ~~OKDHS~~ DHS Adult and Family Support Services Division Child Care Section Subsidy;
- (3) requiring clients to swipe attendance as child care is used;
- (4) never asking or requiring a client to swipe attendance for a day the child does not attend; and
- (5) ensuring ~~that~~ claimed attendance submitted via the EBT system is correct and voiding any incorrect transactions within the ~~ten~~ 10-calendar day swipe limit, current day and previous nine days.

340:40-10-3. Misuse of the electronic benefit transfer (EBT) card

- (a) When the worker becomes aware that the client or the authorized representative of the client is misusing his or her EBT card, the worker cancels that EBT card.
- (b) Misuse can occur when the client or authorized representative gives his or her EBT card to another person, such as the child care provider, to swipe attendance or when the client knowingly swipes incorrect attendance dates and times.
- (c) Before the EBT specialist issues a new EBT card, the client or authorized representative must view the EBT training video regarding proper use of the EBT card again ~~and sign Form 08EB005E, Access Oklahoma Card Violation~~.

340:40-10-4. Child care electronic benefit transfer (EBT) payment process

- (a) **Child care payments.** The Oklahoma Department of Human Services (~~OKDHS~~) (DHS) makes payments for child care services to providers electronically using the electronic benefit transfer (EBT) system unless the provider is an in-home provider. ~~These~~ In-home providers are paid manually via the EBT system after submitting Form 10AD121E, Child Care Claim.
- (b) **Point-of-service (POS) machines.** Contracted child care providers are issued a POS machine within ~~ten~~ 10-calendar days of the date the worker authorizes care for a child and the provider notifies the ~~OKDHS~~ DHS contractor that he or she ~~is beginning to care~~ started caring for a child eligible for ~~an~~ OKDHS subsidy DHS subsidized child care and submits all necessary forms to the contractor.
- (c) **Attendance swiping.** Clients record actual times their child attends child care by swiping an EBT card through the POS machine. Providers ~~can~~ may charge clients for care provided on days they fail to bring their EBT card or when the machine message shows care is denied. ~~If When~~ the client pays for care that is later approved for that date(s), the provider must

reimburse the client for any care paid for by the client above the family share ~~co-payment~~ copayment amount.

(1) Providers must monitor the POS machine to ensure correct attendance times are recorded. ~~If~~ When incorrect times are recorded, the provider can void the incorrect transaction and ask the client to start over.

(2) When clients forget to swipe their EBT card for a day their child attends care, record incorrect times that are voided by the provider, or receive a denied error message, the system allows the client to swipe previous in and out times for the current day and the previous nine days.

(3) Based on attendance recorded and the level of care authorized, electronic settlements to providers are made weekly.

(d) **EBT payment week.** The EBT payment week begins every Sunday at 12:01 a.m. and ends every Saturday at midnight. Electronic settlements are made each week in the provider's designated financial institution account on Tuesday morning for services provided two weeks prior to the current week. ~~If~~ When the financial institution is closed on Monday or Tuesday or Monday is a holiday, the electronic settlement is deposited on Wednesday morning.

(e) **Manual claims process.** When the provider reports he or she was not paid correctly, the provider may submit Form 10AD121E ~~or ask the client's worker to submit Form 10EB004E, Report of EBT Child Care Payment Adjustments,~~ to the DHS Financial Services Electronic Payment Services (EPS) Unit of the Finance Division for a manual adjustment. Manual claims must be submitted within 90-calendar days of the error. EPS staff ~~evaluate~~ evaluates whether to adjust the payment to the provider based on the reason care was not paid electronically.

(1) ~~If~~ When the client did not attempt to record attendance electronically, ~~no payment is made to~~ DHS does not pay the provider for those days ~~swipes are not recorded~~ unless extenuating circumstances beyond the client's or provider's control exist. These extenuating circumstances must be documented on Form 10AD121E.

(2) ~~If the client swiped correct attendance times but swipes were denied in error,~~ EPS staff makes manual adjustments when the:

(A) client swiped correct attendance times, but swipes were denied in error;

~~(3B) If the family share co-payment~~ copayment applied by the EBT system was incorrect, ~~EPS staff makes manual adjustments;~~ or

~~(4C) If the provider was paid the wrong rate because;~~

(i) of incorrect coding of the child care plan was incorrectly coded;

(ii) an incorrect birth date ~~shown~~ was entered for a child; or

(iii) an incorrect star status was paid, ~~EPS staff makes manual adjustments.~~

(f) **Absent-day payments.** Providers can be paid an absent-day payment for a child who misses some days of scheduled attendance and is authorized for a weekly unit type. An absent-day payment is electronically deposited in the

provider's account in their weekly settlement received after the ~~tenth~~ 10th day of the month following the month care was given. To be eligible to receive this additional payment, the child must be approved for a weekly unit type and attend the minimum number of full-time days shown on ~~OKDHS~~ DHS Appendix C-4-B, Child Care Provider Rate Schedule, for that month. The provider is not eligible for an absent-day payment ~~if~~ when the child did not attend the minimum number of full-time days for that calendar month or attended the maximum days paid ~~also~~ as shown on ~~OKDHS~~ DHS Appendix C-4-B.

SUBCHAPTER 13. CHILD CARE RATES AND PROVIDER ISSUES

340:40-13-3. Child care payments and rates

(a) The Oklahoma Department of Human Services (DHS) contracts to purchase out-of-home child care services for children only with licensed providers who:

- (1) post rates and fees;
- (2) sign and comply with all the terms of Form 08CC001E, Child Care Provider Contract;
- (3) ~~have~~ participated in mandatory contract training; and
- (4) have access to an account at a financial institution for electronic benefit transfer (EBT) purposes.

(b) Per Section 85.44B of Title 74 of the Oklahoma Statutes, DHS cannot make advance payments to child care providers.

(c) The rates paid by DHS are described on DHS Appendix C-4-B, Child Care Provider Rate Schedule, and determined by:

- (1) the child's age;
- (2) the settings in which the care is provided that in- clude:
 - (A) the child's own home;
 - (B) a child care center; or
 - (C) a child care home;

(3) whether the child has disabilities and the provider is approved for the special needs rate unit type. The special needs rate is added to the applicable rate a child care provider receives for a typical child of the same age after the Form 08AD006E, Certification for Special Needs Child Care Rate, Certification for Special Needs Child Care Rate for Licensed Child Care Homes and Centers, approval process is followed;

(4) whether the care is provided full-time, over four hours per day, or part-time, four hours or fewer per day;

(5) whether the worker approves a full-time daily, part-time daily, a combination of full-time and part-time daily, blended, or a weekly unit; and

(6) ~~the county in which the provider is located;~~ and

(7) whether the facility qualifies for a differential quality rate.

(d) The in-home child care rate is paid for children cared for in their own homes. The in-home rate is shown on DHS Appendix C-4-B for the child's age. ~~If~~ When a child is eligible for the severe or moderate special needs rate, this additional amount is added to the applicable in-home rate for that child.

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(e) When the child is cared for in an out-of-home child care center or home, the allowable rate is the amount as shown on DHS Appendix C-4-B.

(f) Care may only be authorized at one facility per day per child. ~~If~~When the client uses care at two different providers for the same day for the same child, DHS staff approves care at only one of the facilities. The parent or caretaker may use care at two different providers for the same child when care is needed on different days of the week.

(g) Charges are authorized and payment is made only when the care provided is in accordance with the jointly developed child care plan between the client and DHS.

(h) Age-driven rate changes are effective the first of the month following the child's birth date.

(i) A change to add the higher special needs rate to the applicable daily rate is effective the first of the month following the month eligibility for this rate is determined.

(j) A child care provider may be approved for a differential quality rate ~~if~~when he or she meets the criteria for this rate. This rate is approved effective the first of the month following the month Oklahoma Child Care Services licensing staff approves the provider for the rate. The rate is designated on DHS Appendix C-4-B by its star status.

340:40-13-5. Child care provider contracts

(a) **Criteria.** A child care facility owner and the Oklahoma Department of Human Services (DHS) director or his or her designee must sign Form 08CC001E, Child Care Provider Contract, before DHS pays for out-of-home child care services. By signing the contract, the provider agrees to not take into account a person's race, color, religion, sex, national origin, or disability in deciding which children to accept in the child care program or in how services are provided to them. Age may be a factor only to the extent that certain services are designed for a particular age group.

(1) Written complaints of noncompliance with the assurance in (a) of this Section may be made to the DHS Director or to the Secretary of Health and Human Services, Washington, D.C., 20201.

(2) Local Child Care Services (CCS) licensing staff provides initial contract information for child care facilities. The provider contacts Adult and Family Services (AFS), Child Care Subsidy staff to request a contract.

(3) Child care contracts are valid for a maximum of one year. Contracts may be renewed at the sole option of DHS for successive one year terms per (g) of this Section.

(b) **License and star status for child care centers and homes.** DHS does not contract with child care providers located out-of-state. Child care providers may only obtain a DHS contract after they are licensed or permitted.

(1) A child care center provider requesting a contract must have a license or permit and a one plus or higher star status.

(2) A child care home provider requesting a contract must have a license or a permit.

(A) When licensed, the child care home provider must have a star status of one star or higher.

(B) When on permit, the child care home provider must have a star status of one star plus or higher.

(c) **Procedure for obtaining child care contracts.** The procedures in (1) through (5) of this subsection are used to obtain child care contracts.

(1) CSS licensing staff gives the child care provider DHS Publication 07-12, "Obtaining a Contract with OKDHS for Child Care Subsidy Payments" and instructs the provider to contact AFS Child Care Subsidy to obtain a DHS child care contract.

(2) When contacted by the owner of a child care facility, AFS Child Care Subsidy staff explains to the owner or responsible person authorized to sign the contract that he or she must provide documents listed in (A) through ~~(C)~~(D) of this paragraph before signing a contract. Documents include a copy of:

(A) the owner's Social Security card;

(B) a document from the Internal Revenue Service verifying the employer identification number for a child care center provider and a home provider who is not a sole proprietor; ~~and~~

(C) the certificate of completion of the required online "Orientation to Child Care Subsidy Contracts" training; and

(D) ownership verification.

(3) Once the owner provides the required documents, AFS Child Care Subsidy staff sends Form 08CC001E to the provider and explains that the earliest date a contract is valid is the date of approval by the DHS Director or designee.

(4) The owner or person authorized to sign the contract signs and returns the contract to AFS Child Care Subsidy.

(5) AFS Child Care Subsidy staff processes the contract request for approval or denial.

(A) When approved, AFS Child Care Subsidy staff assigns a contract number and sends a copy of the signed contract to the provider.

(B) When denied, AFS Child Care Subsidy staff sends a letter to the provider.

(d) **Changes the provider must report.** Form 08CC001E informs child care providers of changes they must report to AFS Child Care Subsidy no less than 30-calendar days prior to the effective date of any changes. When the provider fails to report the anticipated change timely and a new contract is needed, a gap may occur in the child care subsidy payment to the provider. Changes that must be reported include:

(1) collaborations or agreements;

(2) change of ownership;

(3) change of legal business entity;

(4) change in facility status;

(5) legal name change of the business;

(6) plan to stop caring for children; ~~and~~

(7) reduction of star status;

(8) changes in the responsible person authorized to sign the contract or a legal name change of that person;

(9) disqualification, suspension, or debarment from the Child and Adult Food Care Program or any other federal program;

(10) when a person who has ownership or an employment relationship with the provider is convicted of a criminal offense; and

(11) provider change of address.

(e) **Changes that require a new contract.** A new contract is required when changes listed in (1) through (3) of this subsection occur.

(1) **Change in ownership.** A change in ownership occurs when the owner of a child care center or child care home changes.

(2) **Change of legal business entity.** A change of legal business entity is a change from one legal business entity type to another. Refer to Appendix L-7, Ownership Proof Chart, for a list of legal business entity types.

(3) **Change in facility status.** A change in facility status occurs when a child care home changes to a child care center or a child care center changes to a child care home.

(f) **Providing care at a different site than is authorized.** When the child care provider signs the child care contract, he or she agrees to provide care only at the physical address designated in the contract.

(1) After obtaining prior written approval from AFS Child Care Subsidy staff, a child care center provider owning more than one child care center may be authorized to move children receiving subsidized child care benefits and the point-of-service (POS) machine to an alternate center for a designated period of time.

(2) AFS Child Care Subsidy staff may provide written approval when (A) through ~~(D)~~(E) of this paragraph are met.

(A) The same owner or legal business entity operates the alternate site.

(B) The alternate site is licensed and contracted at the same star level and the provider has adequate licensed capacity at the alternate site.

(C) There is a legitimate business reason for providing care in another location.

(D) The provider advises AFS Child Care Subsidy staff how he or she is ensuring parents are aware their children are being cared for at a different location.

(E) The provider advises AFS Child Care Subsidy staff of the date of expected return to the contracted site.

(g) **Child care contract renewal.** Child care contracts may be renewed at the sole option of DHS for successive one-year terms, under the same terms and conditions, unless DHS makes changes to Form 08CC001E. The child care contract is not renewed when:

(1) the provider or DHS gives written notice of its intent not to renew to the other party at least 30-calendar days prior to the expiration of the previous contract term; or

(2) during the contract renewal period, the provider fails to:

(A) complete all required contract training; or

(B) provide any other information or documents requested.

(h) **Contract violations.** By signing the child care provider contract, Form 08CC001E, the child care provider agrees to abide by the terms of the contract. When local county staff becomes aware a provider is violating the terms of the contract, he or she emails the circumstances to AFS Child Care Subsidy staff. Local county staff may also complete Form 19MP001E, Referral Form, to report the violation to the Office of Inspector General. Examples of contract violations include, but are not limited to:

(1) discriminating against persons seeking services by charging a discriminatory rate or violating a person's rights as listed in the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973 as amended, or the Americans with Disabilities Act of 1990, as amended;

(2) failing to maintain a drug-free workplace;

(3) operating over licensed capacity;

(4) possessing or swiping a client's electronic benefit transfer (EBT) card;

(5) knowing a client's EBT personal identification number (PIN);

(6) refusing unlimited access by a parent or caretaker to the areas of the facility used for child care during the hours of operation;

(7) failing to ensure the parent or caretaker records accurate time and attendance information on the POS machine. During the school year when a child is approved for a blended unit type or any time part-time care is approved, the parent or caretaker is only required to enter one swipe per day to record attendance because the number or hours the child attends does not affect provider payment;

(8) charging a client receiving subsidized child care more than the DHS rate for days and hours ~~within the client's child care plan~~ authorized by DHS;

(9) charging a client receiving subsidized child care an allowable fee when not charged to non-DHS participants;

(10) failing to post all of the facility's rates and fees;

(11) charging or requiring a client to swipe attendance for days and hours outside of client's child care plan when those days and hours are a requirement of the provider, not a choice of the client;

(12) failing to advise and provide DHS a completed copy of any collaboration or agreement the provider enters into within 30-calendar days of signing the collaboration or agreement. This includes agreements with Head Start, Early Head Start, public schools, or other programs receiving federal or state funding;

(13) claiming or receiving payment from DHS for any hours of care the provider is not charging all parents for care because provider receives federal or state funds for those hours. Refer to Oklahoma Administrative Code (OAC) 340:40-5-1(7) regarding collaborations;

(14) claiming payment for care given for any hours in an unlicensed collaborative classroom;

(15) moving the children from the agreed upon location shown in the contract and claiming for services at the other location without prior, written approval from AFS Child Care Subsidy staff;

(16) moving the POS machine without receiving prior, written approval from AFS Child Care Subsidy staff per subsection (f) of this Section;

(17) failing to inform DHS of a change in facility status, legal business entity, or ownership of the business, or the responsible person at least 30-calendar days in advance of the change;

(18) failing to inform DHS in writing within 10-calendar days of any person who has an ownership or controlling interest in, or is an agent or managing employee of the child care business, who was convicted of a criminal offense related to such person's involvement under Titles XVIII, XIX, or XX of the Social Security Act;

(19) failing to allow full access to the facility's premises and personnel to investigate a complaint;

(20) failing to report the income from the child care business within 10-calendar days to his or her AFS worker when receiving benefits;

(21) claiming payment for care given by a home provider for an employee's child. Refer to OAC 340:40-5-1(7);

(22) subcontracting services to another provider; or

(23) breaching the contract signed by the provider with the DHS EBT contractor.

(i) **Cancellation of child care provider contracts.** AFS Child Care Subsidy staff initiates the cancellation by issuing a notice to the provider. When AFS cancels a contract, all open child care authorizations for the provider close automatically. Contracts may be cancelled:

(1) with cause. The effective date of cancellation is 13-calendar days after AFS Child Care Subsidy staff mails the notice. This allows three-calendar days for mailing time. The notice must contain a reference to the grounds for cancellation including the specific contract provision(s) violated; or

(2) without cause. The effective date of cancellation is 33-calendar days after AFS Child Care Subsidy staff mails the notice. This allows three-calendar days for mailing time.

SUBCHAPTER 16. IMPROPER PAYMENTS ERROR RATE REVIEW PROCESS

340:40-16-1. Improper payments error rate review process

~~There is a federally mandated review of a scientific sample of case actions relating to the Child Care Subsidy Program by the Office of Inspector General (OIG) Administrative Review Unit (ARU) in the same manner as for food benefits, public assistance, and medical benefit actions. The sample is selected by the Office of Planning, Research, and Statistics. The records for all cases in the sample are requested by ARU when the cases are scheduled and verification of conditions of eligibility is reviewed. The improper payments error rate review process is a federally mandated review of randomly selected child care subsidy cases to determine if an error existed on the case during the sample month. The review occurs every three years. The Office of Inspector General Administrative Review~~

Unit conducts the reviews and maintains the files as required by federal law.

[OAR Docket #20-543; filed 7-7-20]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 50. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

[OAR Docket #20-544]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Non-Financial Eligibility Criteria

Part 3. Special Households

340:50-5-29 [AMENDED]

Part 5. Students, Strikers, Resident Farm Laborers, Migrant Households, Sponsored Aliens, and School Employees

340:50-5-45 [AMENDED]

Part 10. Able-Bodied Adults without Dependents

340:50-5-101 [AMENDED]

Subchapter 7. Financial Eligibility Criteria

Part 1. Resources

340:50-7-1 [AMENDED]

Part 3. Income

340:50-7-29 [AMENDED]

340:50-7-31 [AMENDED]

Subchapter 9. Eligibility and Benefit Determination Procedures

340:50-9-5 [AMENDED]

(Reference WF 19-03)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes; Sections 272.17, 273.5, 273.9, 273.11 and 273.12 of Title 7 of the Code of Federal Regulations (C.F.R.); 7 U.S.C. § 2014, Informational Memos Regarding Section 4009 of the Agricultural Act of 2014 and Sections 4004 and 4005 of the Agriculture Improvement Act of 2018.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 18, 2019

COMMENT PERIOD:

January 15, 2020 through February 14, 2020

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March 2, 2020

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March 3, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 15, 2020

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 5. Non-Financial Eligibility Criteria

Part 3. Special Households

340:50-5-29 [AMENDED]

Part 5. Students, Strikers, Resident Farm Laborers, Migrant Households, Sponsored Aliens, and School Employees

340:50-5-45 [AMENDED]

Part 10. Able-Bodied Adults without Dependents

340:50-5-101 [AMENDED]

Subchapter 7. Financial Eligibility Criteria

Part 1. Resources

340:50-7-1 [AMENDED]

Part 3. Income

340:50-7-29 [AMENDED]
340:50-7-31 [AMENDED]
Subchapter 9. Eligibility and Benefit Determination Procedures
340:50-9-5 [AMENDED]
(Reference WF 19-03)

Gubernatorial approval:

October 2, 2019

Register publication:

37 OK Reg 122

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19-793

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendment to update shelter deduction information to allow for a new standard homeless shelter deduction or an excess shelter deduction for homeless households with shelter expenses is submitted as emergency rules to comply with a United States Department of Agriculture (USDA) informational memo issued in February, 2019, regarding changes to Section 4004 of the Agriculture Improvement Act of 2018, Section 2014 of Title 7 of the United States Code (7 U.S.C. § 2014), to make the current option to provide a shelter deduction to homeless households that are not receiving free shelter throughout the month and do not opt to claim an excess shelter deduction mandatory for all states.

The following proposed amendments are submitted as emergency rules to comply with implementation of federal regulations issued in April, 2019, and a USDA Informational Memo Regarding Implementation of Section 4009 of the Agricultural Act of 2014 issued in June, 2019 to: (1) update employment and training programs in which students are exempt from student eligibility restrictions; and (2) define and count substantial lottery or gambling winnings as countable resources and explain how a household may regain resource eligibility following benefit closure and add a household requirement to report substantial lottery or gambling winnings within 10-calendar days of receipt and that such a verified change may close food benefits between renewal periods. The proposed amendment to reduce the percentage of able-bodied adults without dependents that may be exempted from work requirements is submitted as an emergency rule to comply with a USDA informational memo regarding Section 4005 of the Agriculture Improvement Act of 2018, issued in March, 2019.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-693-6542.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2020:

SUBCHAPTER 5. NON-FINANCIAL ELIGIBILITY CRITERIA

PART 3. SPECIAL HOUSEHOLDS

340:50-5-29. Homeless households

(a) A household is not required to have a fixed residence in order to receive food benefits. A homeless household may include one or more homeless persons.

(b) Per 271.2 of Title 7 of the Code of Federal Regulations (7 C.F.R. § 271.2), homeless person means a person who lacks a fixed and regular nighttime residence or a person whose primary nighttime residence is a:

(1) supervised shelter designed to provide temporary accommodations;

(2) half-way house or similar institution providing temporary residence for persons intended to be institutionalized;

(3) temporary accommodation in the residence of another person of not more than 90-calendar days from the application date. The worker applies the 90-calendar day time frame to each subsequent temporary accommodation in a different household and location; or

(4) place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings, such as a hallway, bus station, lobby, car, or similar places.

(c) Per 7 C.F.R. § 273.2(f)(4)(v) and Oklahoma Administrative Code 340:50-7-31, when a homeless household incurs or expects to incur a shelter cost during the month, the household is eligible for the standard homeless shelter deduction, per Oklahoma Department of Human Services Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions, or the excess shelter deduction, whichever results in the most food benefits for the household. When a homeless household lives in a vehicle and makes ~~Homeless shelter costs may include a monthly payments on the vehicle, the monthly payment is an allowable shelter cost payment when the household lives in the vehicle, payments to friends or neighbors for sleeping accommodations, camping fees, or hotel or motel charges.~~

PART 5. STUDENTS, STRIKERS, RESIDENT FARM LABORERS, MIGRANT HOUSEHOLDS, SPONSORED ALIENS, AND SCHOOL EMPLOYEES

340:50-5-45. Students

(a) **Supplemental Nutrition Assistance Program (SNAP) eligibility.** Persons classified as students per (b) of this Section are not eligible to participate in the Supplemental Nutrition Assistance Program (SNAP) unless they qualify for an exemption per (c) of this Section. Students that do not meet the criteria per (b) of this Section may participate in SNAP when all other eligibility criteria are met.

(a**b**) **Student classification.** ~~Persons~~ Per Section 273.5 of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.5), persons are classified as students when they are enrolled at least half-time in an institution of higher education.

(1) An institution of higher education includes a:

(A) business, technical, trade, or ~~voca-~~ tion/vocational school that normally requires a high school diploma or equivalency certificate to enroll in the curriculum. Schools or courses that do not require a high school diploma or equivalency certificate are not considered an institution of higher education; or

(B) a college or university that offers degree programs even when a high school diploma or equivalency certificate is not required to enroll. A college includes a junior, community, two-year, or four-year college, or university.

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- (i) Students enrolled at least half time in the **regular curriculum** are considered enrolled in higher education.
- (ii) Persons enrolled in a special program at a college or university, ~~in special programs are not considered enrolled in higher education. Special programs include:~~
 - (I) ~~courses for such as~~ English as a second language;
 - (II) ~~course or other courses that are not part of the regular degree programs; or~~
 - (III) ~~Temporary Assistance for Needy Families (TANF) Special Projects Expansion Project~~ program are not considered to be enrolled in higher education.
- (2) Student status begins on the first day of the school term for students who have:
 - (A) not attended an institution of higher education previously; or
 - (B) had a break of more than a semester since they last attended.
- (3) Persons are classified as students during normal periods of class attendance, ~~and through vacations~~ vacation, and other breaks unless the student:
- (4) ~~Persons who graduate, are~~
 - (i) graduates;
 - (ii) is expelled or suspended;
 - (iii) dropout, drops out; or
 - (iv) have completed school and does not intend to register for the next normal school term, excluding summer school, are no longer considered students.
- (~~b~~c) **Students not subject to eligibility restrictions** ~~Student exemptions.~~ The students described in this subsection may participate in the Supplemental Nutrition Assistance Program (SNAP) ~~if when~~ all other eligibility criteria are met. ~~Eligibility restrictions discussed in subsection (e) of this Section do not apply if the students are~~ The student is:
 - (1) ~~under age~~ younger than 18 years of age or age 50 or years of age and older;
 - (2) physically or mentally unfit.
 - (A) ~~If When the student claims~~ mental or physical unfitness ~~is claimed~~ and the unfitness is not evident to the worker, verification may be required.
 - (B) Appropriate verification may consist of:
 - (i) receipt of temporary or permanent disability benefits issued by governmental or private sources;
 - (ii) participation in a state vocational rehabilitation (VR) program; or
 - (iii) a statement from a physician or licensed or certified psychologist;
 - (3) ~~attending high school;~~
 - (4) participating in an on-the-job training (OJT) program. Students are considered participating in OJT programs only during the period of time the students are being trained by the employer;
 - (5) ~~attending an institution of higher education less than half time; or~~
 - (6) ~~enrolled half time or more in schools and training programs which are not institutions of higher education.~~
- (~~e~~) **Eligibility restrictions for students.** Persons between the ages of 18 and 50 who are physically and mentally fit and are enrolled at least half time in an institution of higher education may participate in the SNAP only if:
 - (14) employed for an average of 20 hours per week or 80 hours per month and paid for that employment. Earning wages equal to the federal minimum wage times 20 ~~is does not a substitute~~ qualify the person for this restriction exemption;
 - (25) self-employed for an average of 20 hours per week or 80 hours per month and receives weekly earnings at least equal to the federal minimum wage times 20;
 - (36) participating in a state or federally financed work study program during the regular school year.
 - (A) To qualify under this provision, the ~~student~~ student must be approved for work study at the time of application for food benefits.
 - (i) The work study must be approved for the school term and the ~~students~~ student must anticipate actually working during the school term.
 - (ii) The exemption begins with the month the school term begins or the month work study is approved, whichever is later.
 - (iii) Once begun, the exemption continues until the end of the month the school term ends, or it becomes known the ~~students have~~ student refused an assignment.
 - (B) The exemption does not continue between terms when there is a break of a full month or longer unless the student is ~~participating~~ participates in a work study program during the break;
- (47) responsible for the care of a dependent household member under ~~the age of~~ six years of age. Only one person may be considered as responsible for a dependent child. The caretaker need not be the person providing for the child's support;
- (58) responsible for the care of a dependent ~~household member~~ child, six through 11 years of age, when the worker determines that adequate child care is not available to enable the student to attend class and work an average of 20 hours per week or participate in a state or federally financed work study program.
 - (A) The reasons for lack of adequate child care include, but are not limited to, ~~location of the nearest~~ lack of an available licensed and contracted child care facility within a reasonable distance from the student's home or school or the availability of funds to pay child care expenses. Determination of availability of adequate child care is made on a case-by-case basis.
 - (B) Only one person may be considered ~~as~~ responsible for the care of a dependent child. The caretaker need not be the person providing for the child's support;

(69) a single ~~parent~~parent enrolled in an institution of higher education on a full-time basis, as determined by the institution, and responsible for the care of a dependent child ~~under age~~younger than 12 years of age, regardless of the availability of child care.

(A) This provision applies in those situations where only one natural, adoptive, or stepparent, regardless of marital status, is in the same food benefit household as the child.

(B) ~~If~~When no natural, adoptive, or stepparent is in the same food benefit household as the child, another full-time student in the same food benefit household as the child may qualify for eligible student status under this provision if exemption when he or she has parental control over the child and ~~is not living~~does not live with his or her spouse;

(710) A Temporary Assistance for Needy Families (TANF) ~~recipients~~recipient; or

(811) assigned to or placed in an institution of higher education through or in compliance with the requirements of one of the employment and training programs identified in (A) through ~~(E)~~(D) of this paragraph. "In compliance with" means the person self-enrolled in the school during the period of time he or she was enrolled in an employment and training program and the program has a component for enrollment in an institution of higher education and accepts the placement. Employment and training programs include:

(A) the Workforce ~~Investment~~Innovation and Opportunity Act (~~WIA~~) Program;

(B) a food benefit employment and training program, per 7 C.F.R. § 273.7, subject to the condition that the course or program of study, as determined by Adult and Family Services (AFS) SNAP staff, is:

(i) part of a career and technical education program, per Section 3 of the Carl D. Perkins Career and Technical Education Act of 2006; and Section 2302 of Title 20 of the United States Code (20 U.S.C. § 2302), designed to be completed in not more than four years at an institution of higher education, per Section 102 of the 1998 Amendments to the Higher Education Act of 1965, 20 U.S.C. § 1002; or

(ii) limited to remedial courses, basic adult education, literacy, or English as a second language;

(C) ~~the Job Opportunities and Basic Skills (JOBS) program under Title IV of the Social Security Act;~~

~~(D)~~ a program under Section 236 of the Trade Act of 1974 currently known as The Trade Adjustment Assistance Program and administered by the Oklahoma Employment Security Commission; or

~~(E)~~ a state or local government-operated employment or training program, ~~as determined appropriate by the United States Department of Agriculture, Food and Nutrition Service (FNS) for low-income households where one or more components of the~~

program is at least equivalent to an acceptable SNAP employment and training program as specified, per 7 C.F.R. § 273.7(e)(1) and as determined by AFS SNAP staff; or

(12) enrolled as a result of participation in the Job Opportunities and Basic Skills program under Title IV of the Social Security Act or its successor program.

(d) **Income and deductible expenses of an ineligible student.** When the student is not eligible to receive food benefits, he or she is considered a non-household member per Oklahoma Administrative Code (OAC) 340:50-5-5. His or her income is not considered and household expenses may be prorated, per OAC 340:50-5-6.

PART 10. ABLE-BODIED ADULTS WITHOUT DEPENDENTS

340:50-5-101. Exemption to Able-Bodied Adult Without Dependents (ABAWD) Work Requirements

Per Section 273.24(g) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.24(g)), the Oklahoma Department of Human Services (DHS) may provide an exemption from the three-countable months during any 36-month period rule for ABAWDs, per Oklahoma Administrative Code (OAC) 340:50-5-100(b), for up to ~~45~~12 percent of eligible ABAWDs per federal fiscal year.

(1) **Eligible ABAWD.** An eligible ABAWD is a food benefit recipient or applicant denied eligibility solely because he or she received three-countable months during the current 36-month period. This includes an ABAWD, who is not:

(A) exempt from ABAWD work requirements, per OAC 340:50-5-100(d);

(B) fulfilling work requirements, per OAC 340:50-5-100(a); or

(C) receiving Supplemental Nutrition Assistance Program food benefits because he or she regained eligibility for three-consecutive months, per OAC 340:50-5-100(e)(2).

(2) **Tracking.** DHS tracks the number of exemptions used each month and reports the information to the United States Department of Agriculture Food and Nutrition Services regional office on a quarterly basis.

(3) **~~15~~12 percent exemption.** DHS uses the allowable ~~15~~12 percent exemptions to extend food benefit eligibility for one additional month to ABAWDs whose eligibility was extended more than three-countable months in error.

SUBCHAPTER 7. FINANCIAL ELIGIBILITY CRITERIA

PART 1. RESOURCES

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340:50-7-1. Resources considered

(a) Resources are excluded in determining eligibility for the Supplemental Nutrition Assistance Program (SNAP) unless the household:

- (1) applies for expedited service. The worker must include the household's liquid resources as defined at (b) of this Section to determine eligibility for expedited service, per Oklahoma Administrative Code (OAC) 340:50-11-1; or
- (2) contains one or more sponsored aliens whose sponsor's resources must be considered, per OAC 340:50-5-49; or
- (3) has substantial lottery or gambling winnings. Per Section 273.11(r) of Title 7 of the Code of Federal Regulations (7 § C.F.R. 273.11(r)), substantial lottery or gambling winnings are defined as a cash prize won in a single game, before taxes or other amounts are withheld equal to, or greater than, the SNAP resource standard for households containing an elderly or disabled household member. Refer to Oklahoma Department of Human Services (DHS) Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions, for the current resource standard.

(A) The client must provide verification of the winnings from the appropriate lottery commission or gaming facility.

(B) When the household's winnings exceed the SNAP resource standard for the elderly or disabled, the worker closes the SNAP food benefit for the next advance notice effective date, per Appendix B-2, Deadlines for Case Actions.

(C) The household may regain resource eligibility once the client verifies the winnings are spent down below the resource standard.

(b) The worker accepts the household's statement regarding the value of liquid resources to determine expedited eligibility. Liquid resources include:

- (1) cash on hand;
- (2) checking or savings account balances;
- (3) the cash value of savings certificates; and
- (4) the cash value of stocks or bonds.

(c) The household must verify the value of liquid and non-liquid resources, per OAC 340:50-5-49, when the sponsor's resources must be considered. After subtracting \$1,500 from countable resources, resources cannot exceed \$3,000the resource standard for households that contain a member who is disabled or 60 years of age or older or \$2,000the resource standard for all other households, per DHS Appendix C-3.

PART 3. INCOME

340:50-7-29. Income inclusions

(a) **Sources of income considered.** The worker considers all household income, unless specifically excluded, per Section 273.9(c) of Title 7 of the Code of Federal Regulations (7 § C.F.R. 273.9(c)) and Oklahoma Administrative Code (OAC)

340:50-7-22, in determining monthly gross income. Income is classified as earned or unearned.

(1) When one or more household members are absent from the home, before deciding whether to consider the absent household member's income, the worker must determine if the person returns to the home for part of the month.

(A) Per OAC 340:50-5-2, the worker does not include the absent member in the benefit amount and only counts the portion of his or her income that he or she makes available to the rest of the household when the household member does not return for part of the month.

(B) When the household member returns for part of each month, the worker includes him or her in the benefit amount and counts all of his or her income unless excluded, per OAC 340:50-7-22.

(2) Per OAC 340:50-5-5, the household has the option of including a child receiving a foster payment that includes a payment for kinship care, or a Developmental Disability Services (DDS) room and board payment in the food benefit. When the household chooses not to include the child in the food benefit, the worker does not count the child's income, including the foster or DDS room and board payment.

(3) When the household adopts a child previously in the custody of the Oklahoma Department of Human Services (DHS) and receives an adoption subsidy payment for the child, the worker includes the child in the food benefit and counts the child's income, including the adoption subsidy payment.

(4) When a member of the household becomes the guardian of a child and receives a guardianship payment from DHS, the payment is considered as income. The child for whom the payment is received must be included in the food benefit.

(b) **Earned income.** Per 7 C.F.R. § 273.9(b)(1), earned income is income a household receives in the form of wages, commission, self-employment, or training allowances, and for which a person puts forth physical labor. Temporary disability insurance payments and temporary workers' compensation payments are considered earned income when payments are employer-funded and the person remains employed. The types of earnings listed in (1) through (4) of this subsection, including money from the sale of whole blood or blood plasma or a DDS payment to an extended family care provider for services rendered in addition to the child's room and board payment, are considered earned income.

(1) **Wages.** Wages and salaries include sick pay paid by the employer to an employee who plans to return to work when recovered, excess benefit allowance payments, and wages garnished or diverted to pay a third party for a household's expenses. Countable wages for military personnel include any allowance included on the earnings statement, such as the Basic Allowance for Housing (BAH) and the Basic Allowance for Subsistence (BAS).

(2) **S corporations.** When a household member is a shareholder in an S corporation, he or she may receive

profits from the business in two ways; as a salary and/or as a profit share of the business. Both types of income are reported on the household member's personal income tax return. Salary income is considered as earned income and profit share income is considered as unearned income per (c)(7) of this Section.

(3) **Self-employment.** Refer to OAC 340:50-7-30 for self-employment income procedures.

(4) **Title I payments of the Domestic Volunteer Services Act.** Countable earned income includes payments paid to a household member under Title I of the Domestic Volunteer Services Act of 1973 as amended per Public Law (P.L.) 93-113, unless excluded, per OAC 340:50-7-22.

(5) **On-the-job training (OJT).** The worker counts income earned in OJT positions as earned income. This includes OJT provided per Section 3(44) of the Workforce Innovation and Opportunity Act of 2014, P.L. 113-128 for persons 19 years of age or older.

(c) **Unearned income.** In general, unearned income is income a household receives and is not in the form of wages, self-employment, or training allowances, and for which a person does not put forth physical labor. The income listed in (1) through (6) of this subsection, while not all inclusive, are considered unearned, per 7 C.F.R. § 273.9(b)(2).

(1) **Assistance payments.** The worker counts payments from a federally-aided public assistance program, such as Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), or assistance programs based on need, such as State Supplemental Payments, as unearned income. When such payments are received by a third party, they are counted as income for the person to whom it is legally owed.

(A) A household's food benefit amount does not increase when the public assistance benefit the household receives under a federal, state, or local means-tested public assistance program is reduced, suspended, or closed because the public assistance program imposed a penalty due to an intentional program violation determined as fraud or a household member's failure to comply with a requirement of that program.

(i) To impose a food benefit sanction, the person must be certified for Supplemental Nutrition Assistance Program (SNAP) benefits at the time of the failure to comply and receiving regular benefits from the other program at the time fraud occurred or the household failed to comply with a substantive program requirement.

(ii) Examples of means-tested public assistance programs include SSI and TANF.

(iii) Substantive requirements are behavioral requirements of that program designed to improve the well-being of the household. For TANF, this includes:

(I) complying with TANF Work requirements, per OAC 340:10-2. OAC 340:10-2-2 explains the TANF penalty considered for

SNAP when the household fails to comply with TANF Work activities;

(II) cooperating to obtain child support, per OAC 340:10-10-5;

(III) providing a Social Security number, per OAC 340:10-12-1;

(IV) ensuring school-age children regularly attend school, per OAC 340:10-13-1;

(V) verifying children meet immunization requirements, per OAC 340:10-14-1; and

(VI) not using the TANF benefit in a prohibited business, per OAC 340:10-1-3.

(iv) Procedural requirements that do not trigger a penalty include failing to:

(I) provide verification;

(II) complete an interview; or

(III) complete a benefit renewal.

(v) When a worker is not able to obtain the necessary information and cooperation from another federal, state, or local means-tested welfare, or public assistance program to comply with the provision in (A) of this paragraph, DHS is not held responsible. The worker must make a good faith effort to get the needed information and record the details and results of this effort in the case file.

(vi) The worker does not reduce, suspend, or close the household's current food benefit amount when the benefits under another assistance program are decreased.

(vii) When the worker adds eligible members to the food benefit, the benefit must be adjusted regardless of whether the household is prohibited from receiving benefits for the additional member under another federal, state, local welfare, or public assistance means-tested program.

(viii) Changes in household circumstances not related to the penalty imposed by another federal, state, local welfare, or public means-tested assistance program are not affected by the provision in (A) of this paragraph.

(ix) The application of the provision in (A) of this paragraph applies for the duration of the imposed penalty or until DHS cannot determine the amount of the penalty.

(x) SNAP sanctions extending beyond one year must be reviewed at least annually to determine if the sanction continues to apply.

(B) The provision in (A) of this paragraph does not apply to persons or households subject to disqualification from SNAP for noncompliance with a comparable work requirement per Title IV of the Social Security Act or an unemployment compensation work requirement.

(2) **Pension and Social Security.** Annuities, pensions, retirement, veterans' or disability benefits, workers' or unemployment compensation, survivors' or Social Security benefits, and strike benefits are unearned income. When a third party receives Social Security benefits it is counted

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as income for the person to whom it is legally owed. The worker considers disability payments as:

- (A) unearned income when the person is no longer considered an employee of the company and an agency outside of the company pays the disability benefits; and
 - (B) earned income when the person is still considered an employee of the company and the company pays the disability benefits.
- (3) **Support and alimony.** The worker counts support and alimony payments paid directly to the household from non-household members as unearned income. The worker also counts money deducted or diverted to a third party to pay a household expense as unearned income when the court order directs the payment be made to the household. The worker does not count money the court order states must be paid to a third party as income.
- (4) **Grants, dividends, royalty, and interest payments.** Payments from government sponsored programs, such as Agricultural Stabilization and Conservation Service Programs, grants, dividends, royalties, interest, and all other direct money payments from any source construed to be a gain or profit are considered income. The worker treats income from these sources as unearned income. The household must provide proof of income from these sources so income can be averaged to determine monthly countable income.
- (5) **Monies withdrawn or dividends that are or could be received by a household from trust funds.** Dividends the household has the option of either receiving as income or reinvesting in the trust are considered income in the month they become available to the household.
- (6) **Department of Veteran's Affairs (VA) Aid and Attendance.** When a person receives VA Aid and Attendance income and does not pay someone outside of the food benefit household to care for him or her, this is considered as countable income. Any portion of the VA Aid and Attendance paid to someone outside of the food benefit household for care is excluded.
- (7) **Profit sharing.** When a household member is a shareholder in an S corporation or a partner in a limited partnership or limited liability company, he or she may receive a distribution or profit share of the business. This is considered as unearned income.
- (d) **Income of excluded household members.** Per OAC 340:50-5-10.1, excluded household members are termed as disqualified or ineligible. The worker does not consider the needs of a disqualified or ineligible household member when determining the household's size for purposes of assigning a benefit level to the household or comparing the household's monthly income with the income eligibility standard, per 7 C.F.R. § 273.11(c)(2)(iv).
- (1) **Disqualified household members.** The worker counts the disqualified household member's income in its entirety as available to the remaining household members, per 7 C.F.R. § 273.11(c)(1)(i). The worker does not prorate utility, medical, dependent care, child support expenses, or excess shelter deductions. Per OAC

340:50-5-10.1, disqualified household members are those excluded for:

- (A) committing an intentional program violation;
 - (B) failing to meet work registration requirements;
 - (C) meeting fleeing felon criteria; or
 - (D) being a probation or parole violator.
- (2) **Ineligible household members.** The worker prorates the income of ineligible household members among all household members, per 7 C.F.R. § 273.11(c)(2)(ii).
- (A) Per OAC 340:50-5-10.1, ineligible household members are those excluded because they do not meet a program requirement, such as:
- (i) failure to obtain or refusal to provide a Social Security number;
 - (ii) not being a citizen or qualified alien; or
 - (iii) being an able-bodied adult without dependents and not meeting work requirements; or
 - (iv) failure to cooperate with providing requested verification regarding unclear information.
- (B) The worker counts a pro rata share of the ineligible household member's income as income available to the remaining members by first subtracting the allowable income exclusions, per OAC 340:50-7-22, from the ineligible member's income and dividing the income evenly among the eligible household members and the ineligible member.
- (C) The worker counts all but the ineligible member's share as income available to the remaining household members. The earned income deduction, per OAC 340:50-7-31, and DHS Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions, applies to the prorated income attributed to the household when it was earned by the ineligible member.
- (D) The portion of the household's allowable shelter, child support, and dependent care expenses paid by or billed to the ineligible member is divided evenly among the household members, including the ineligible member. All but the ineligible member's share is considered a deductible shelter expense for the remaining household members, with the exception of utility expenses, per 7 § C.F.R. § 273.9(d)(6)(iii)(F), or the standard homeless shelter deduction, per 7 C.F.R. § 273.9(d)(6)(i). When the:
- (i) household is responsible for utility expenses, the household is allowed the full utility standard for which it qualifies, per OAC 340:50-7-31; or
 - (ii) homeless household is responsible for shelter costs, the household is allowed the full standard homeless shelter deduction, per Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions, or the prorated excess shelter deduction incurred by the household, whichever results in the most benefits for the household, per OAC 340:50-7-31(a)(6)(A)(v).

340:50-7-31. Deductions

(a) **Deductible expenses.** Households are allowed certain deductible expenses from income as described in (1) through (6) of this subsection and per Section 273.9(d) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.9(d)). The household reports current medical, dependent care, legally-binding child support, and shelter expenses at certification, mid-certification renewal, and certification renewal. The household must also report current shelter costs when the household moves.

(1) **Standard deduction.** All households are allowed a standard deduction, per Oklahoma Department of Human Services (DHS) Appendix C-3, Maximum Food Benefits Allotments and Standards for Income and Deductions.

(2) **Earned income deduction.** Households with earned income are allowed an earned income deduction, per DHS Appendix C-3, to cover the cost of state and local income taxes, pensions, union dues, and work related expenses. Refer to Oklahoma Administrative Code (OAC) 340:50-7-30 for information regarding business expenses for self-employed persons.

(3) **Medical expense deduction.** A medical expense deduction is only allowed for household members meeting the definition of elderly or disabled, per OAC 340:50-5-4. For these household members, medical expenses exceeding \$35 per month are deductible when verified. The \$35 is subtracted from medical expenses once per household, not per person, when the household has more than one elderly or disabled member.

(A) **Allowable medical expenses.** Allowable medical expenses must be prescribed or approved by a state licensed or qualified practitioner and include:

- (i) medical and dental care, including psychotherapy and rehabilitation services provided by a licensed practitioner or other qualified health professional authorized by state law;
- (ii) hospitalization or outpatient treatment, nursing care, and nursing home care, including payments by the household for a person who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the state;
- (iii) prescription drugs and other over-the-counter medication including insulin, when approved by a licensed practitioner or other qualified health professional authorized by state law. This does not include the cost of a Schedule I controlled substance under the Controlled Substances Act, Section 801 et. seq. of Title 21 of the United States Code, or any expenses associated with its use;

~~(iv) Costs~~ (iv) costs of medical supplies, sick-room equipment including rentals, or other prescribed equipment ~~are also included;~~

~~(v)~~ (v) health, dental, and hospitalization policy premiums;

~~(vi)~~ (vi) Medicare premiums and any cost-sharing or spend-down expenses incurred by Medicare or SoonerCare (Medicaid) recipients;

~~(vii)~~ (vii) dentures, hearing aids, and prosthetics;

~~(viii)~~ (viii) eye glasses prescribed by a licensed practitioner;

~~(ix)~~ (ix) reasonable cost of lodging and transportation to obtain medical treatment or services. Lodging costs are allowed when the elderly or disabled member is required to spend the night away from home to receive medical services. Reasonable transportation costs are based on the type of transportation used. When the elderly or disabled member:

(I) uses his or her vehicle, the state's current mileage reimbursement is allowed;

(II) uses public transportation, the actual cost of the transportation is allowed; or

(III) pays a non-household member for transportation, the amount charged by the person is allowed;

~~(x)~~ (x) maintaining an attendant, homemaker, home-health aide, child care services, or housekeeper due to age, infirmity, or illness. When this expense also qualifies as a dependent care expense per (4) of this subsection, it is considered a medical expense rather than a dependent care expense. Additionally, when the household furnishes a majority of the caretaker's meals, an amount equal to one allotment is added to the medical expense for meals provided. The allotment used is the amount in effect at certification; and

~~(xi)~~ (xi) costs associated with all service animals specially trained to serve the needs of elderly or disabled program participants. This includes maintenance costs, such as veterinary bills, food, and other expenses for these service animals.

(B) **Medical expenses not allowed.** Expenses not allowed include:

(i) costs associated with special diets;

(ii) premiums for health and accident insurance policies, such as those payable in lump sum settlements for death or dismemberment;

(iii) premiums for income maintenance policies, such as those that continue mortgage or loan payments while the beneficiary is disabled;

(iv) items that can be purchased with food benefits, such as dietary supplements; ~~and~~

(v) the cost of meals or other incidentals when the person spends the night away from home to receive medical services; ~~and~~

(vi) medical marijuana or any expenses associated with its use.

(C) **Medical expense verification requirements.** Households are required to report and verify medical expenses at certification and certification renewal. Households are not required to report changes in medical expenses during the certification period.

(i) When a household voluntarily reports a reduction in medical expenses that will decrease the food benefit allotment, no verification is needed.

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However, the change requires notice of adverse action, per OAC 340:50-9-5.

(ii) When a household voluntarily reports additional medical expenses that will increase the food benefit allotment, the household must verify the additional expenses before the worker changes the medical expense deduction.

(iii) When the additional medical expenses are one-time expenses, such as hospital costs, dental expenses, or the purchase of prescription eyeglasses, the expense is only allowed when the person reports and verifies the expense before it becomes past due. When a portion of the expense will be paid by a vendor or insurance payment, the worker does not allow the expense until the amount owed by the person is verified. Once verified, the household may choose to:

- (I) deduct the entire expense in the month incurred or when it becomes due;
- (II) average the expense over the remaining months of the certification period; or
- (III) average the expense over the scheduled length of a payment plan.

(iv) When the worker finds out about a change from a source other than the household, the change is acted on when verified upon receipt, such as when the worker is notified via data exchange of a Medicare premium change. The worker does not contact the household for additional information. When the change requires household contact for additional information or verification, the worker does not make the change.

(v) When a household reports but does not verify an anticipated medical expense, the worker informs the household the expense will be allowed when the household provides verification.

(4) **Dependent care.** Dependent care is payment for the actual cost for the care of a child under 18 years of age or other dependent of any age with disabilities when necessary for a household member to seek, accept, or continue employment or to attend training or education preparatory to employment. Dependent care costs may include activity fees and the cost of transportation to and from the dependent care facility.

(A) The deduction applies regardless of whether the household member is subject to the Supplemental Nutrition Assistance Program Employment and Training requirements.

(B) When the expense also qualifies as a medical expense per (a)(3) of this Section, it is considered a medical expense rather than a dependent care expense.

(C) There is no maximum dependent care deduction. The total reported by the client is an allowable expense as long as it meets the criteria in this Section.

(D) Dependent care is only verified when the expenses claimed actually result in a deduction and

other information available to the worker is inconsistent with the household's claim that it incurs a dependent care expense.

(5) **Legally-binding child support.** A deduction is allowed for verified legally-binding child support payments paid by a household member to or for a non-household member, including payments made to a third party on behalf of the non-household member.

(6) **Shelter costs.** A household is allowed a shelter deduction when the monthly shelter cost exceeds 50 percent of the household's income after all other deductions are allowed, per 7 C.F.R. § 273.9(d)(6)(ii). The shelter deduction cannot exceed the maximum amount allowed per DHS Appendix C-3, unless the household includes an elderly or disabled member. Households with an elderly or disabled member receive an excess shelter deduction for the monthly cost exceeding 50 percent of the household's income after the deductions listed in (1) through (6) of this subsection are allowed. When the household includes a non-household member or disqualified member, refer to (b)(4)(5) and ~~(5)(6)~~ of this Section to determine whether to prorate shelter costs.

(A) **Allowable rent or mortgage costs.** Allowable rent or mortgage costs for the

(i) monthly rent or mortgage payment, or other continuing charges leading to the ownership of the shelter, such as loan repayments for the purchase of a mobile home, including interest on such payments;

(ii) charge for renting or buying the land on which a mobile home is located;

(iii) property taxes, state and local assessments, and insurance on the structure. A mobile home is taxed as part of the property tax when the land is owned or being purchased;

(iv) personal property tax for unregistered mobile homes on rented land; or

(v) ~~monthly vehicle payment~~ standard homeless shelter deduction, per DHS Appendix C-3, or the excess shelter deduction described, per (a)(6) of this Section, whichever results in the most food benefits for the household, when a homeless household lives in the vehicle incurs or expects to incur a shelter cost.

(B) **Expenses not considered as shelter costs.** The worker does not consider as shelter costs, the cost for:

(i) insuring furniture or personal belongings when paid separately from the insurance on the home;

(ii) vehicle registration or a tag for a mobile or motor home; or

(iii) personal property tax except as allowed, per (6)(A)(iv) of this subsection.

(C) **Allowable utility costs.** When the household incurs utility expenses, it is eligible for one of three standard utility allowances based on criteria in (i) through (iii) of this subparagraph. The applicable

utility standard amount is specified, per DHS Appendix C-3.

(i) The standard utility allowance (SUA) is based on annual averages that include costs for heating or cooling; and cooking fuel, electricity, basic phone service, water, sewage, and garbage. This includes households that receive Low Income Heat Energy Assistance Payments (LIHEAP).

(I) The household is eligible for the SUA when the household is billed for heating or cooling during the year. Households billed less often than monthly for heating costs, such as butane or propane may continue to use the utility standard between billing months.

(II) When a household reports they no longer incur a heating or cooling expense, but still have a utility expense, the standard must be changed to the basic utility allowance (BUA) or telephone standard.

(III) When a household's heating or cooling expenses are partially reimbursed or paid by an excluded payment, such as a vendor payment, Housing and Urban Development (HUD), or Farmers Home Administration (FmHA) payment, the household remains eligible for the SUA.

(ii) The BUA includes utility charges the household incurs other than for heating and/or cooling, such as cooking fuel, water, sewage, garbage collection, and basic phone service.

(iii) The telephone standard is used when the household is not entitled to use the SUA or BUA, but has a phone cost.

(D) **When shelter costs for an unoccupied home are allowed.** Shelter costs for an unoccupied home may be allowable when the household is temporarily away from home because of illness, a disaster or casualty loss to the home, or to attend an employment or training opportunity.

(i) For the cost of a vacated home to be included in shelter costs the:

(I) household must intend to return to the home;

(II) current occupants of the home, if any, must not claim the shelter costs during the household's absence; and

(III) home must not be rented or leased during the household's absence.

(ii) A household that has an occupied home and an unoccupied home is only allowed one standard utility deduction.

(b) **Expense calculation.** The worker calculates a household's expenses based on the expenses the household expects to be billed for during the certification period. The worker anticipates expenses based on the most recent month's bills unless the household is reasonably certain a change will occur.

(1) **Billing fluctuations.** The household may elect to average expenses when the billed amount fluctuates

monthly, is billed less often than monthly, or as in the case of some medical expenses, the expense changes throughout the certification period.

(2) **When expenses are owed but not paid.** The household is allowed a deduction in the month the expense is billed or otherwise becomes due, regardless of when the household intends to pay the expense. A particular expense may be deducted only once.

(3) **Reimbursed expenses.** The portion of an expense paid by an excluded reimbursement or vendor payment is not deductible. The amount left after deducting the excluded payment is deductible and includes HUD and Farmers Home Administration (FmHA) rent and utility payments. Expenses are only deductible when the service is provided by someone outside of the household and the household makes a monetary payment for the service.

(4) **One-time expenses.** The household may choose to average one-time expenses over the entire certification period in which they are billed, per 7 C.F.R. § 273.10(d)(3). When the household reports a one-time expense during the certification period, the household may choose to:

(A) deduct the entire expense for the next effective month; or

(B) average the expense over the remaining months in the certification period beginning with the next effective month. When the household is certified for 24 months and the one-time expense was incurred in the:

(i) first 12 months of the certification period, the household may elect to deduct the expense in one month, average the expense over the remaining months in the first 12 months of the certification period or average the expense over the remaining months in the certification period; or

(ii) the second 12 months of the certification period, the household may elect to have the expense deducted in one month or averaged over the remaining months in the certification period.

(5) **When the household includes a disqualified household member.** When the household includes a disqualified household member, per OAC 340:50-5-10.1, the worker does not prorate allowable deductions because the disqualified member's income is counted in its entirety, per OAC 340:50-7-29(d).

(6) **When the household includes an ineligible household member.** When the household includes an ineligible household member, per OAC 340:50-5-10.1, the worker prorates the allowable deductions evenly between the household members, including the ineligible member except for utility expenses, with the exception of (A) and (B) of this subparagraph, because the ineligible member's income is also prorated, per OAC 340:50-7-29(d). When the household is:

(A) ~~When the household is~~ responsible for utility expenses, the household is allowed the full utility standard deduction for which it qualifies per (a)(6)(C) of this Section; or

(B) homeless and incurs shelter costs, the household is eligible for the full standard homeless shelter deduction or for a prorated share of excess shelter deduction, whichever results in more food benefits for the household.

- (7) **When the household includes a non-household member.** When the household shares deductible expenses with a non-household member, the worker only deducts the amount the household actually pays or contributes toward household expenses with the exception of the utility expenses. When the household pays part of the utility expenses, the household is allowed the full utility standard deduction for which it qualifies, per (a)(6)(C) of this Section. When the payments or contributions cannot be differentiated, the worker prorates the expenses evenly among persons actually paying or contributing to the expense and deducts only the household's pro rata share with the exception of the utility expenses.

SUBCHAPTER 9. ELIGIBILITY AND BENEFIT DETERMINATION PROCEDURES

340:50-9-5. Changes after application and during the certification period

(a) **Change reporting requirements.** Section 273.12 of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.12) contains change reporting requirements after application and during the certification period described in (a) through (i) of this Section.

(b) **Applicant households.** Applicant households must report all changes related to their food benefit eligibility and benefit amount. Households must report changes that occur after the interview but before the date of the notice of eligibility, within 10-calendar days of the date of the notice.

(c) **Annual reporting households.** Annual reporting households are households in which all adult members are elderly or disabled with no earned income.

(1) **Certification period.** A 24-month certification period is automatically assigned to annual reporting households. Annual reporting households must complete a mid-certification renewal between certification periods to report current household circumstances.

(2) **Change reporting between renewal periods.** Between the mid-certification renewal and certification renewal reporting months, the household must report gross income changes when the household's income exceeds the maximum gross income scale for household size shown on Form 08MP006E, Information for Benefit Renewal, and when the household wins substantial lottery or gambling winnings as defined, per 7 C.F.R. § 273.11(r) and Oklahoma Administrative Code (OAC) 340:50-7-1, within 10-calendar days of receipt of the first payment attributable to the change. The maximum gross income scale is based on 130 percent of the monthly poverty income guidelines.

(3) **Action taken on reported changes.** The worker must act on all changes reported by households.

(A) The computer system determines if the change results in an increase, decrease, or no change in benefits.

(B) Between the mid-certification renewal and certification renewal months, the changes the worker makes do not decrease or close benefits until the mid-certification renewal is due unless the:

(i) household's income increase exceeds the maximum gross income scale for household size shown on Form 08MP006E;

(ii) household requested benefit closure;

(iii) worker has information about the household's circumstances considered verified upon receipt, per (g) of this Section; ~~or~~

(iv) a household member is identified as a disqualified or ineligible person, per 7 C.F.R. § 273.12(a)(5)(vi) and ~~Oklahoma Administrative Code (OAC) 340:50-5-10.1; or~~

(v) the worker verifies the household won substantial lottery or gambling winnings as defined, per 7 C.F.R. § 273.11(r) and OAC 340:50-7-1.

(C) The computer system applies all changes that increase benefits. Before entering a change that increases benefits, verification supporting the change must be provided, when required.

(d) **Mid-certification renewal for annual reporting households.** Annual reporting households are sent notification in the 11th month of certification that the mid-certification renewal is due. The notice explains methods the household may choose to complete the renewal and required verification needed. An interview is not required.

(1) **When the mid-certification renewal is due.** The household must complete the benefit renewal and provide required verification by the last day of the 12th month of certification.

(2) **Completion of mid-certification renewal.** The worker reviews benefit renewal information and verification provided to determine completeness and continued eligibility.

(A) When the renewal is complete and the household remains eligible, the worker acts on all reported changes and the computer system applies any increase or decrease in benefits.

(i) When the household fails to provide sufficient information regarding a deductible expense requiring verification, the worker processes the mid-certification renewal without regard to the deduction.

(ii) When benefits are decreased, an advance notice is sent, per the Oklahoma Department of Human Services (DHS) Appendix B-2, Deadlines for Case Actions.

(B) When the household is no longer eligible, the worker closes food benefits effective the next advance-notice deadline date, per DHS Appendix B-2.

(C) When the renewal is incomplete, the computer system closes food benefits effective the next advance-notice deadline date, per DHS Appendix B-2.

- (3) **When benefits may be reopened.** Food benefits may be reopened following closure when criteria is met per (j) of this Section.
- (e) **Semi-annual reporting households.** Food benefit households are considered semi-annual reporting households unless they meet criteria per (b) or (g) of this Section.
- (1) **Certification period.** A 12-month certification period is automatically assigned to semi-annual reporting households.
- (2) **Change reporting between renewal periods.** Between the mid-certification renewal and certification renewal reporting months, the household must report when:
- (A) the household's gross income exceeds the maximum gross income scale for household size shown on Form 08MP006E and when the household wins substantial lottery or gambling winnings as defined per 7 C.F.R. § 273.11(r) and OAC 340:50-7-1 within 10-calendar days of receiving the first payment attributable to the change. The maximum gross income scale is based on 130 percent of the monthly poverty income guidelines; and
- (B) a decrease in work hours below an average of 20 hours per week or 80 hours per month occurs for any household member meeting the able-bodied adults without dependents (ABAWD) work rules, per OAC 340:50-5-100 by the 10th of the following month.
- (3) **Action taken on reported changes.** The worker must act on all changes reported by households.
- (A) The computer system determines if the change results in an increase, decrease, or in no change in benefits.
- (B) Between mid-certification renewal and certification renewal months, the changes the worker makes do not decrease or close food benefits until the mid-certification renewal is due unless:
- (i) the household's income increase exceeds the maximum gross income scale for household size shown on Form 08MP006E;
- (ii) the household requested benefit closure;
- (iii) the worker has information about the household's circumstances considered verified upon receipt, per (h) of this Section;
- (iv) an ABAWD must be removed from the food benefit household because he or she does not meet the ABAWD work rule, per OAC 340:50-5-100;
- (v) a household member is identified as a disqualified or ineligible person, per 7 C.F.R. § .27312(a)(5)(vi) and OAC 340:50-5-10.1; ~~or~~
- (vi) a household member is identified as failing to meet work registration requirements, per OAC 340:50-5-85 through OAC 340:50-5-87; or
- (vii) the worker verifies the household won substantial lottery or gambling winnings as defined per 7 C.F.R. § 273.11(r) and OAC 340:50-7-1.
- (C) The computer system applies all changes that increase benefits. Before entering a change that increases benefits, verification supporting the change must be provided, when required.
- (f) **Mid-certification renewal for semi-annual reporting households.** Semi-annual reporting households are sent notification in the fifth month of certification that the mid-certification renewal is due. An interview is not required.
- (1) **When the mid-certification renewal is due.** The household must complete the benefit renewal and provide required verification by the last day of the sixth month of certification.
- (2) **Completion of mid-certification renewal.** The worker reviews benefit renewal information and verification provided to determine completeness and continued eligibility.
- (A) When the renewal is complete and the household remains eligible, the worker acts on all reported changes and the computer system applies any increase or decrease in benefits.
- (i) When the household fails to provide sufficient information regarding a deductible expense requiring verification, the worker processes the mid-certification renewal without regard to the deduction.
- (ii) When benefits are decreased, the worker sends an advance notice, per DHS Appendix B-2, Deadlines for Case Actions, deadline dates.
- (B) When the household is no longer eligible, the worker closes food benefits effective the next advance-notice deadline date, per DHS Appendix B-2.
- (C) When the renewal is incomplete, the computer system closes food benefits effective the next advance-notice deadline date, per DHS Appendix B-2.
- (3) **When benefits may be reopened.** Food benefits may be reopened following closure when criteria is met per (i) of this Section.
- (g) **Change reporting households.** Change reporting households are assigned a certification period other than 12 or 24 months. These households are required to report changes within 10-calendar days of when the change occurred.
- (1) **Household characteristics.** Households not approved for a 12- or 24-month certification period include households approved for:
- (A) expedited services for one or two months because the interview and/or verification were postponed, per OAC 340:50-3-2; and
- (B) a three- or four-month certification period because the household includes one or more ABAWDs that do not meet the work rule, per OAC 340:50-5-100.
- (2) **Required change reporting.** These households must report changes in:
- (A) sources of income;
- (B) unearned income of \$100 per month or more;
- (C) earned income of more than \$100 per month;
- (D) household composition, such as an addition or loss of a household member;

- (E) residence and shelter costs;
 - (F) the legal obligation to pay child support; ~~and~~
 - (G) the work hours of an ABAWD subject to benefit time limits, per OAC 340:50-5-100 when they fall below 20 hours per week; ~~and~~
 - (H) resources when the household wins substantial lottery or gambling winnings as defined, per 7 C.F.R. § 273.11(r) and OAC 340:50-7-1.
- (3) **Action taken on case changes.** The worker must act on changes reported by the household within 10-calendar days of the date the household reported the change and provided necessary verification.
- (A) When the household fails to report a change within the 10-calendar day period and, as a result, receives benefits to which it is not entitled, an overpayment claim is referred to Adult and Family Services (AFS) Benefit Integrity and Recovery, per OAC 340:50-15.
 - (B) When the worker fails to take timely action on a reported change and benefits are lost, the worker supplements the household's food benefits.
- (4) **Changes that increase benefits.** When the household reports a change that increases benefits the household must verify the information before the worker makes the change. The worker gives the household 10-calendar days to verify the information.
- (5) **Changes that decrease or close benefits.** When the household reports a change in household circumstances that decreases or closes food benefits, the worker gives or sends the household Form 08AD092E, Client Contact and Information Request, giving the household 10-calendar days to provide verification of the change. When the household provides required verification, the worker reduces or closes food benefits based on the verification provided. When the household does not provide required verification, the worker closes the food benefits based on the household's failure or refusal to provide verification.
- (A) When a household's benefit decreases or closes, an advance notice of adverse action is required unless exempt from such notice for a reason listed in (i) or (ii) of this subparagraph. Per 7 C.F.R. § 273.13, advance notice of adverse action is considered timely when the notice is mailed at least 10-calendar days before the action becomes effective. The household retains its right to a fair hearing and continuation of benefits when a fair hearing is requested within 10-calendar days of the change notice. An adverse action notice may be mailed just prior to the date the household receives or would have received benefits when the:
 - (i) DHS receives a clear written statement signed by a responsible household member:
 - (I) stating the household no longer wishes to receive food benefits; or
 - (II) giving information that requires closure or reduction of food benefits and stating

- that the household understands the food benefit will be reduced or closed; or
 - (ii) worker closes or reduces food benefits per notice requirements at (k)(3)(A) of this Section.
- (B) When an advance notice is required, the benefit decrease or closure is effective the next advance notice deadline date, per DHS Appendix B-2. When the household reports a change:
- (i) 10-calendar days or more before the advance-notice deadline, per DHS Appendix B-2, the worker decreases or closes the food benefit effective the first of the following month; or
 - (ii) less than 10-calendar days before the advance-notice deadline, per DHS Appendix B-2, the worker must take action before the advance-notice deadline the following month.
- (C) When a reported change increases food benefits, the worker makes the change by the non-advance-notice deadline date, per DHS Appendix B-2.

(h) **Changes considered verified upon receipt.** Verified upon receipt means the information is not questionable and the provider is the primary source of the information. For example, when DHS receives Social Security and Supplemental Security Income verification through data exchange with the Social Security Administration (SSA), it is considered verified upon receipt because SSA is the primary source. When the worker receives information considered verified upon receipt, he or she makes the change within 10-calendar days of notification using DHS Appendix B-2 deadline dates.

(i) **Required action on unclear information.** During the certification period, the worker may obtain unclear information about a household's circumstances that may affect the household's continued eligibility or benefit amounts. The worker may receive the unclear information from a third party, such as a data exchange discrepancy, an employer, or a person claiming knowledge of the household's circumstances. Unclear information is information that is not verified or is verified but the worker needs additional information before acting on the change.

(1) Per 7 C.F.R. § 273.12(c)(3)(i), when the worker receives unclear information in a non-report month for semi-annual or annual reporting households or any month for change reporters, he or she sends Form 08AD092E to the household; ~~to inform it of required verification or actions. The household must clarify~~ verify its circumstances within 10-calendar days only when the unclear information:

- (A) significantly conflicts with the information used at the time of the certification, indicating the household may have failed to report eligibility information at application; or
 - (B) is fewer than 60-calendar days old, relative to the current participation month and when true, must be reported under the household's reporting responsibilities.
- (2) When the household provides the requested verification in a non-report month, the worker determines

whether to take action, per requirements at (c)(3) and (e)(3) of this Section.

(3) When the worker sends Form 08AD092E, per (i)(1)(A) or (B) of this Section, and the household does not respond or responds but refuses to provide sufficient information to clarify its circumstances, the worker closes the household's food benefits effective the next advance-notice deadline date, per DHS Appendix B-2;

(4) Per 7 C.F.R. § 273.12(c)(3)(iii), when the worker receives a data match that indicates a household member may have died or may be incarcerated for more than 30-calendar days, the worker sends Form 08AD092E to the household notifying it of the discrepancy and requesting information regarding the household member.

(A) When the household is a change reporting household and:

- (i) fails to respond to Form 08AD092E or responds but refuses to provide sufficient information to clarify the person's household status, the worker closes the household's food benefits;
- (ii) responds and verifies the person is not dead or incarcerated, no action is taken; or
- (iii) responds and confirms the accuracy of the data exchange information, the worker removes the person from the food benefit and determines if an overpayment referral is needed, per OAC 340:50-15.

(B) When the household is an annual or semi-annual reporting household and:

- (i) fails to respond to Form 08AD092E or responds but refuses to provide sufficient information to clarify the person's household status, the worker removes the person and his or her income from the household and adjusts the food benefits;
- (ii) responds and verifies that the person did not die or is not incarcerated, no action is taken; or
- (iii) responds and confirms the accuracy of the data exchange information, the worker removes the person and his or her income from the household, adjusts the food benefits, and determines if an overpayment referral is needed, per OAC 340:50-15.

(j) **When benefits may be reopened following closure.** The food benefit may be reopened following closure using current eligibility information, when:

- (1) DHS did not administer policy and procedures correctly. The food benefit is reopened effective the first day of the month of closure;
- (2) the household fails to complete the mid-certification renewal timely, but provides all required verification by the first day of the month of closure. The food benefit is reopened effective the first day of the month of closure; or
- (3) the household fails to complete the mid-certification renewal timely, but provides all required verification by the last day of the month of closure. The food benefit is reopened and prorated from the date the household completes the mid-certification renewal and provides all required verification.

(k) **Notice requirements.** DHS is required to send a notice to the household when food benefits increase, reduce, or close.

(1) **Advance notice of adverse action required.** Prior to reducing or closing food benefits during the certification period, per 7 C.F.R. § 273.13, the worker must provide timely advance notice unless circumstances described in (k)(2) or (3) of this Section occur.

(A) Advance notice of adverse action is considered timely when the notice is mailed at least 10-calendar days before the action becomes effective. Refer to DHS Appendix B-2 for advance notice processing deadlines.

(B) When the household reports a change:

- (i) 10-calendar days or more before the advance notice of adverse action deadline, the worker decreases or closes the food benefit effective the first of the following month. For example, when the household reports a change on May 18th, the effective date of the change is June 1st; or
- (ii) less than 10-calendar days before the advance notice of adverse action deadline, per DHS Appendix B-2, the worker decreases or closes the food benefit effective the first of the month after the following month. For example, when the household reports a change on May 25th, the effective date of the change action is July 1st.

(2) **Notice requirement when benefits increase.** When a reported change increases food benefits, the worker makes the change by the non-advance notice deadline date, per DHS Appendix B-2. When the change is reported after the non-advance notice deadline, the worker supplements food benefits.

(3) **Advance notice of adverse action not required.** Advance notice of adverse action is not required for actions (A) through (H) of this paragraph, per 7 C.F.R. § 273.12(e) and 7 C.F.R. § 273.13(b).

(A) **Mass changes.** When DHS initiates mass changes because of changes or requirements in federal or state law, the computer system closes benefits by the non-advance-notice deadline, per DHS Appendix B-2. In these situations, the individual notification requirement is waived and AFS mails generic notices to the affected households informing them of the changes that are about to be made.

(B) **Deceased household members.** When the worker determines, based on reliable information, that all members of the household are deceased, the worker closes benefits by the non-advance-notice deadline, per DHS Appendix B-2.

(C) **Moved out of state.** When the worker determines, based on reliable information, the household moved out of state, the worker closes benefits by the non-advance-notice deadline, per DHS Appendix B-2.

(D) **Unfinished issuance certification.** When the unfinished issuance process is used at certification, the worker adjusts the benefit to take into account changes anticipated at the time of certification. The

certification notice informs the household of all benefit changes included in this process.

(E) **Disqualified household member.** When the only household member is disqualified for an intentional program violation or fraud, per OAC 340:50-15-25, food benefits are closed by the non-advance-notice deadline, per DHS Appendix B-2. When there is more than one person in the household, the remaining household members' benefits are reduced or closed because of that household member's disqualification by the non-advance-notice deadline, per DHS Appendix B-2.

(F) **Facility loses approval.** When a household's food benefit closes because the drug or alcohol treatment center or group home facility where the household resides is no longer approved, the worker closes benefits by the non-advance-notice deadline, per DHS Appendix B-2.

(G) **Household provides written statement.** The worker closes or reduces benefits by the non-advance-notice deadline, per DHS Appendix B-2, when the household provides a written statement:

- (i) stating the household no longer wants to receive food benefits; or
- (ii) requesting closure or reduction in food benefits to avoid or repay an overpayment.

(H) **Case transfer.** When the worker closes food benefits in one case in order to transfer the food benefits to another case without a decrease or disruption in benefits, the worker closes benefits by the non-advance-notice deadline, per DHS Appendix B-2.

(I) **Action on changes when fair hearings are requested.** When a household requests a fair hearing within 10-calendar days of the date shown on an adverse action notice, the worker must reopen or restore food benefits to the previous level pending the outcome of the hearing unless the household specifically waives continuation of benefits, per 7 § C.F.R. 273.15(k). Refer to OAC 340:2-5 for fair hearing procedures.

[OAR Docket #20-544; filed 7-7-20]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 75. CHILD WELFARE SERVICES

[OAR Docket #20-545]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions of Child Welfare Services

Part 1. Scope and Applicability

340:75-1-9 [AMENDED]

Subchapter 3. Child Protective Services

Part 1. Purpose, Definitions, and Child Abuse and Neglect Hotline Protocol

340:75-3-120 [AMENDED]

340:75-3-140 [AMENDED]

Part 3. Child Safety Evaluation Criteria and Procedure

340:75-3-300 [AMENDED]

Part 4. Specialized Investigative Protocols, Child Death or Near-Death Reporting Protocols

340:75-3-400 [AMENDED]

340:75-3-450 [AMENDED]

Part 5. Investigative Findings and Appeals

340:75-3-530 [AMENDED]

Subchapter 4. Family-Centered and Community Services

Part 1. Family-Centered Services

340:75-4-12.1 [AMENDED]

Subchapter 6. Permanency Planning

Part 1. General Provisions

340:75-6-4 [AMENDED]

Part 5. Permanency Planning Services

340:75-6-31.1 [AMENDED]

340:75-6-31.4 [AMENDED]

Part 7. Family and Child Individualized Service Planning Components

340:75-6-40.1 [AMENDED]

340:75-6-40.3 [AMENDED]

340:75-6-40.9 [AMENDED]

Part 11. Permanency Planning and Placement Services

340:75-6-85.2 [AMENDED]

Part 13. Successful Adulthood

340:75-6-110 [AMENDED]

Subchapter 7. Foster Home Care

Part 1. General Provisions

340:75-7-2 [AMENDED]

Part 2. Development of Resource Families

340:75-7-14 through 340:75-7-15 [AMENDED]

340:75-7-19 [AMENDED]

340:75-7-24 [AMENDED]

Part 5. Eligibility and Payments

340:75-7-52.1 [AMENDED]

Part 6. Resource Home Support Services

340:75-7-65 [AMENDED]

Subchapter 8. Therapeutic Foster Care and Developmental Disabilities Services

Part 1. Therapeutic Foster Care

340:75-8-6 [AMENDED]

340:75-8-8 [AMENDED]

340:75-8-11 through 340:75-8-11.1 [AMENDED]

Subchapter 11. Child Welfare Community-Based Residential Care

Part 17. Contracted Community-Based Residential Care Providers

340:75-11-230 [AMENDED]

Part 25. Non-funded and Funded Contracted Level B Placements

340:75-11-300 [AMENDED]

340:75-11-301 [AMENDED]

Subchapter 13. Other Child Welfare Services and Medical Services for Children in Out-Of-Home Care

Part 1. Eligibility for Substitute Care Services and Claims for Payment

340:75-13-7 through 340:75-13-8 [AMENDED]

Part 2. Title IV-E Eligibility and Reimbursability

340:75-13-13 [AMENDED]

Part 3. Income and Resources of the Child

340:75-13-28 through 340:75-13-30 [AMENDED]

Part 7. Medical Services

340:75-13-61 through 340:75-13-64 [AMENDED]

340:75-13-80 [AMENDED]

340:75-13-82 [AMENDED]

Subchapter 14. Well-Being

340:75-14-1 [AMENDED]

340:75-14-2 [NEW]

340:75-14-3 [AMENDED]

340:75-14-4 [NEW]

Subchapter 15. Adoptions

Part 2. Adoption Services Program Legal Authority and Scope

340:75-15-7 [AMENDED]

Part 10. Family Assessment and Preparation Process

340:75-15-84.1 [AMENDED]

Part 14. Post-Adoption Services

340:75-15-128.2 [AMENDED]

(Reference WFs 19-01 and 20-75)

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Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162).

Chapter 75 Subchapter 1: 10A O.S. §§ 1-1-105 et seq.; Titles IV-B, IV-E, V, VI, XIX, and XX of the Social Security Act, as amended by the Multiethnic Placement Act of 1994, Interethnic Provisions of 1996, Adoption and Safe Families Act of 1997, Fostering Connections to Success and Increasing Adoptions Act of 2008, and Family First Prevention Services Act, P.L. 115-123.

Chapter 75 Subchapter 3: 10 O.S. §§ 175.20 and 402; 10A O.S. §§ 1-1-102, 1-1-105, 1-2-101, 1-2-102, 1-2-105, 1-2-108, 1-2-109, 1-3-102, 1-4-102, 1-4-201, 1-4-203, 1-4-204, 1-4-205, 1-4-806, 1-6-105, and 1-8-102; 21 O.S. §§ 748, 748.2, and 1040.13a; 22 §§ 20 and 60.14; 30 O.S. § 2-101; 70 O.S. § 10-106; and 42 United States Code (U.S.C.) § 671; Child Abuse Prevention and Treatment Act (CAPTA), Section 5101 et seq. of Title 42 U.S.C.

Chapter 75 Subchapter 4: 10A O.S. § 1-7-112.

Chapter 75 Subchapter 6: 10 O.S. §§ 40.6, 7700-102 and 7700-204; 10A O.S. §§ 1-1-102, 1-1-105, 1-4-101, 1-4-105, 1-4-203, 1-4-204, 1-4-704, 1-4-705; 1-4-709 through 1-4-711, 10A O.S. §§ 1-4-810; 1-4-811, 1-4-901, 1-4-902, 1-4-904, 1-4-906 through 1-4-908, and 1-7-106, 1-9-107; 43 O.S. §§ 118 and 119; 70 O.S. §§ 2601 et seq. and § 3230; The Foster Care Independence Act of 1999 enacted as part of P.L. 106-169; Section 475 of the Social Security Act as amended by P.L. 110-351, Fostering Connections to Success and Increasing Adoption Act of 2008; and by the Preventing Sex Trafficking and Strengthening Families Act, P.L. 113-183; Section 471(a)(29) of Title IV-E of the Social Security Act 42 U.S.C. § 671(a)(29), and 42 U.S.C. 673(d)(3).

Chapter 75 Subchapter 7: 10A O.S. §§ 1-1-102, 1-1-105, 1-4-204, 1-4-705; 1-7-109, 1-7-111, 1-7-115, 1-9-106, and 1-9-119; 18 O.S. § 16; 21 O.S. § 692; 57 O.S. § 582; 68 O.S. § 2358.5-1; Section 901 et seq. of Title 28 of the Code of Federal Regulations (C.F.R.), Multiethnic Placement Act of 1994, Interethnic Provisions of 1996, Adoption and Safe Families Act of 1997, Fostering Connections to Success and Increasing Adoptions Act of 2008, and Family First Prevention Services Act, Public Law 115-123. Chapter 75 Subchapter 8: 10A O.S. §§ 1-1-105, 1-2-101, 1-3-102, 1-6-102, 1-7-105, 1-9-119, and 1-9-119.1; Multiethnic Placement Act of 1994, and the Interethnic Provisions of 1996.

Chapter 75 Subchapter 11: 10A O.S. §§ 1-1-105, 1-7-103, and 1-9-110.

Chapter 75 Subchapter 13: 10A O.S. § 1-7-103; Title IV-E §§ 472 and 1615 of the Social Security Act; Omnibus Reconciliation Act of 1981, P.L. 97-35.

Chapter 75 Subchapter 14: 10A §§ 1-1-105, 1-7-105 1-9-107, and 1-9-119.1; and 42 U.S.C. §§ 672 and 675.

Chapter 75 Subchapter 15: 10 O.S. §§ 7501-1.1 et seq.; 10A O.S. § 1-4-705; 1-7-111; 21 O.S. § 692; 57 O.S. § 582; 18 U.S.C. 16; and 42 § U.S.C. 673; and 45 C.F.R. § 1356.30.

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Subchapter 3. Child Protective Services

Part 1. Purpose, Definitions, and Child Abuse and Neglect Hotline Protocol

340:75-3-120 [AMENDED]

Part 3. Child Safety Evaluation Criteria and Procedure

340:75-3-300 [AMENDED]

Part 4. Specialized Investigative Protocols, Child Death or Near-Death Reporting Protocols

340:75-3-400 [AMENDED]

340:75-3-450 [AMENDED]

Subchapter 6. Permanency Planning

Part 1. General Provisions

340:75-6-4 [AMENDED]

Part 5. Permanency Planning Services

340:75-6-31.4 [AMENDED]

Part 13. Successful Adulthood

340:75-6-110 [AMENDED]

Subchapter 14. Well-Being

340:75-14-2 [NEW]

340:75-14-4 [NEW]

Subchapter 15. Adoptions

Part 14. Post-Adoption Services

340:75-15-128.2 [AMENDED]

(Reference WF 19-01)

Gubernatorial approval:

April 9, 2019

Register publication:

36 OK Reg 443

Docket number:

19-398

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendment to Chapter 75 Subchapter 1 amends the rule to include updated authorizations granted under Family First Prevention Services Act and achieves the Oklahoma Department of Human Services (DHS) goals by updating federal authorizations, which benefit children, parents, and staff.

The proposed amendments to Chapter 75 Subchapter 3: (1) clarifies examples presented in the eligibility criteria are not an exhaustive list and achieves DHS goals by providing clarity on appeals of substantiated findings of child abuse and neglect to benefit children, parents, and staff; (2) address changes to federal policy on fetal alcohol syndrome and development of plans of safe care for drug-endangered infants, per House Bill (HB) 3104 (2018); and (3) update guidance on human trafficking and victims, per Senate Bill (SB) 1005 (2018); and (4) require child abuse and neglect history searches for court-appointed special advocates (CASA), per Senate Bill (SB) 722 (2019).

The proposed amendment to Chapter 75 Subchapter 4 amends meeting process to align with permanency planning revisions and achieves DHS goals by updating family meetings (previously family team meetings) to align with permanency planning rules, which benefits children, parents, service providers, and staff.

The proposed amendments to Chapter 75 Subchapter 6: (1) clarify the purpose and process for family meetings (FMs) and assessment of child safety (AOCS) and achieve DHS goals by ensuring consistency in conducting FMs and assessing child safety, which benefits children, parents, placement providers, and staff; (2) update "sibling" definition to comply with federal regulations, per HB 3104 (2018); (3) implement Pinnacle Plan strategy to move more children to permanency; (4) comply with deadlines and requirements of Public Law (P.L.) 115-123, the Family First Prevention Services Act, regarding essential documents for foster youth aging out of care; (5) guardianship prohibition in HB 1036 (2019); (6) time frames for due diligence search for kin and any tribal connection per HB 1074 (2019); and (7) least restrictive placement in SB 1993 (2019).

The proposed amendments to Chapter 75 Subchapter 7: (1) clarify optional foster care training; (2) add intensive treatment foster care (ITFC); (3) remove military history background check requirement; (4) clarify timeframe for optional foster care maintenance and benefit payments and achieve DHS goals by simplifying resource parent requirements and guidance in applying foster care rules, which benefit children, parents, placement providers, and staff; and (5) make therapeutic foster care (TFC) homes eligible for child care subsidy to improve TFC new home recruitment and meet Pinnacle Plan Metric 2.B target.

The proposed amendments to Chapter 75 Subchapter 8: (1) update therapeutic foster care (TFC) rules to include references to the statement of a child's rights, TFC home recruitment, and respite care and achieve DHS goals by updating rules to comply with other program rules and state statutes which benefit children, placement providers, and staff; and (2) make therapeutic foster care (TFC) homes eligible for child care subsidy to improve TFC new home recruitment and meet Pinnacle Plan Metric 2.B target.

The proposed amendments to Chapter 75 Subchapter 11 update the rule to include definitions for "family-style living program," per HB 1993 (2019) and "qualified residential treatment program," per SB318.

The proposed amendments to Chapter 75 Subchapter 13 amend rules to reflect administrative re-organization, business processes, and Social Security changes and achieve DHS goals by recognizing CWS organizational

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and business process changes, which benefits children, parents, placement providers, and staff.

The proposed creation of Chapter 75 Subchapter 14 policy is to: (1) memorialize the statement of foster child rights, per HB 2552 (2018); and (2) comply with deadlines and requirements of P.L. 115-123, the Family First Prevention Services Act, regarding maintaining a child's placement with a parent receiving substance abuse services at a family-based residential facility; (3) update screenings and functional assessment requirements for children in DHS custody.

The proposed amendments to Chapter 75 Subchapter 15 amend: (1) adoption rules to remove military service personnel background information search requirement and include ITFC in definitions and achieve DHS goals by ensuring consistency when assessing background information to benefit children, placement providers, and staff; and (2) eligibility for adoption assistance, per P.L. 115-123, the Family First Prevention Services Act.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-693-6542.

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT OKLAHOMA HUMAN SERVICES, SEQUOYAH BUILDING, OKLAHOMA CITY AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):

Subchapter 1. General Provisions of Child Welfare Services

Part 1. Scope and Applicability

Oklahoma Administrative Code (OAC) 340:75-1-9 is amended to update citations for federal authority to administer a child welfare program.

Subchapter 3. Child Protective Services

Part 1. Purpose, Definitions, and Child Abuse and Neglect Hotline Protocol

OAC 340:75-3-120 is amended to update the definition for "sibling" and adds a definition for "plan of safe care," per HB 3104 (2018).

Part 3. Child Safety Evaluation Criteria and Procedure

OAC 340:75-3-300 is amended to reflect protocol changes regarding child victims of human trafficking, per SB 1005 (2018).

Part 4. Specialized Investigative Protocols, Child Death or Near-Death Reporting Protocols

OAC 340:75-3-400 is amended to reflect protocol changes regarding child victims of human trafficking, per SB 1005 (2018).

OAC 340:75-3-450 is amended to reflect changes in terminology regarding fetal alcohol spectrum disorder, per HB 3104 (2018).

Part 5. Investigative Findings and Appeals

OAC 340:75-3-530 is amended to clarify eligibility criteria for requesting an appeal of a substantiated finding of child abuse and neglect.

Subchapter 4. Family-Centered and Community Services

Part 1. Family-Centered Services

OAC 340:75-4-12.1 is amended to correctly name the family meeting process.

Subchapter 6. Permanency Planning Services

Part 1. General Provisions

OAC 340:75-6-4 is amended to include updated definition for "sibling," per HB 3104 (2018).

Part 5. Permanency Planning Services

OAC 340:75-6-31.1 is amended to clarify the FMs purpose.

OAC 340:75-6-31.4 is amended to move more children to permanency per Pinnacle Plan strategy.

Part 7. Family and Child Individualized Service Planning Components

OAC 340:75-6-40.3 is amended to streamline permanency assessment by deleting family functional assessment and focusing on AOCS.

Part 13. Successful Adulthood

OAC 340:75-6-110 is amended to reflect new interpretation of federal policy regarding eligibility for youth development funds for children 16 and older aging out of the foster care without finding permanency and additions to the list of essential documents for children aging out of foster care.

Subchapter 7. Foster Home Care

Part 1. General Provisions

OAC 340:75-7-2 is amended to include references to the Family First Prevention Services Act and ITFC definition.

Part 2. Development of Resource Families

OAC 340:75-7-14 is amended to remove the Resource Unit's authority to approve individual training curriculum for resource parents with scheduling conflicts or disability.

OAC 340:75-7-15 is amended to: (1) remove the requirement to obtain military criminal history on active service members when conducting a background information search on resource parent applicants; and (2) update notification requirements when a new household member moves into a resource home.

OAC 340:75-7-19 is amended to remove joint use of a CWS adoptive home as a traditional resource home.

OAC 340:75-7-24 is amended to clarify that a kinship applicant is only eligible for a money payment instead of a maintenance payment when the child has lived with the applicant continuously for at least nine months.

Part 5. Eligibility and Payments

OAC 340:75-7-52 regarding case responsibility for children attending the Schools for the Deaf and Blind.

OAC 340:75-7-52.1 is amended to clarify the requirements for a resource parent to become the payee for a child's Social Security benefit payment.

Subchapter 8. Therapeutic Foster Care and Developmental Disabilities Services

Part 1. Therapeutic Foster Care

OAC 340:75-8-6 is amended to insert the policy cite for the rights of a child in DHS custody.

OAC 340:75-8-11 is amended to simplify respite care requirements.

OAC 340:75-8-11.1 is amended to place time limits on a child's placement in coordinated foster care in a TFC home.

Subchapter 13. Other Child Welfare Services and Medical Services for Children in Out-Of-Home Care

Part 1. Eligibility for Substitute Care Services and Claims for Payment

OAC 340:75-13-7 is amended to update form numbers.

OAC 340:75-13-8 is amended so the language corresponds with requirements in

Part 2. Title IV-E Eligibility and Reimbursability

OAC 340:75-13-13 is amended to correct a rule citation.

Part 3. Income and Resources of the Child

OAC 340:75-13-28 is amended to update process for submitting an application for and transfer of Social Security and Veterans Affairs benefits.

OAC 340:75-13-29 is amended to update the process for submitting an application for a child eligible to receive Supplemental Security Income.

OAC 340:75-13-30 is amended to update the process for establishing a special needs trust.

Part 7. Medical Services

OAC 340:75-13-61 is amended to clarify when a child in DHS custody and out-of-home placement is referred to Medicaid (SoonerCare) and for a Title IV-E eligibility determination.

OAC 340:75-13-62 is amended to clarify how to apply for medical services for a child living in his or her own home.

OAC 340:75-13-63 and 340:75-13-64 are amended to reflect name changes to CWS financial and administrative unit.

OAC 340:75-13-80 is amended to extend the age from 21 to 26 years of age that a former foster child is eligible to receive SoonerCare when still in DHS custody at 18 years of age

OAC 340:75-13-82 is amended to extend limited reimbursement for funeral and burial expenses to a child who has a terminal medical diagnosis at the time of adoption finalization.

Subchapter 14. Well-Being
OAC 340:75-14-2 is created to acknowledge the statement of foster child rights and dissemination of information of those rights to foster children and resource parents, per HB 2552 (2018).

OAC 340:75-14-4 is created to establish a foster care maintenance payment structure for placement of a foster child with a parent receiving substance abuse services in a residential family-based facility, per P.L. 115-123, the Family First Prevention Services Act.

Subchapter 15. Adoptions

Part 2. Adoption Services Program Legal Authority and Scope

OAC 340:75-15-7 is amended to update citations in adoption definitions.

Part 10. Family Assessment and Preparation Process

OAC 340:75-15-84.1 is amended to remove the requirement to obtain military criminal history on active service members when conducting background information searches on adoptive applicants.

340:75-15-128.2 is amended to reflect changes to eligibility for federal adoption assistance, per Public Law 115-123, the Family First Prevention Services Act.

[OAR Docket #20-545; filed 7-7-20]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 100. DEVELOPMENTAL DISABILITIES SERVICES**

[OAR Docket #20-546]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Client Services

Part 3. Service Provisions

340:100-5-34 [AMENDED]

Subchapter 18. Licensing

340:100-18-1 [AMENDED]

(Reference WFs 19-02 and 20-100)

AUTHORITY:

Director of Human Services; Section 162 and Section 1020 of Title 56 of the Oklahoma Statutes.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 18, 2019

COMMENT PERIOD:

January 15, 2020 through February 14, 2020

PUBLIC HEARING:

February 24, 2020

ADOPTION:

March 2, 2020

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 3, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 15, 2020

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 18. Licensing

340:100-18-1 [AMENDED]

(Reference WF 19-02)

Gubernatorial approval:

September 13, 2019

Register publication:

37 OK Reg79

Docket number:

19-764

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendments to Chapter 100, Subchapter 5 amend the rule to implement changes recommended during the annual Developmental Disabilities Services (DDS) rule review process. The proposed amendments add eligibility criteria for Prader-Willi Syndrome (PWS) when an applicant provides documentation that he or she has a condition closely related to PWS, except mental illness; clarify when an applicant may be removed from the PWS waiting list; and clarify that an applicant may remain on the waiting list when he or she declines or is not 18 years of age.

The proposed amendment to Oklahoma Administrative Code (OAC) 340:100-18-1 adds registered behavior technician (RBT) service provisions to the rules. The amendment protects public health, safety, and welfare by ensuring individuals have adequate access to medically necessary applied behavior analysis (ABA) therapy.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-693-6542.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2020:

SUBCHAPTER 5. CLIENT SERVICES

PART 3. SERVICE PROVISIONS

340:100-5-34. Services for persons with Prader-Willi Syndrome (PWS)

(a) **Legal Basis.** Section 1020 of Title 56 of the Oklahoma Statutes authorizes the Oklahoma Department of Human Services (~~OKDHS~~) (DHS) to provide community services for persons with ~~Prader-Willi Syndrome~~ PWS.

(b) **Applicability.** The rules in this ~~section~~ Section apply to services provided through ~~(OKDHS)(DHS) and Developmental Disabilities Services Division (DDSD)(DDS)~~ to persons with ~~Prader-Willi Syndrome~~ PWS through funds appropriated by the Oklahoma Legislature.

(c) **General information.** Services for ~~people~~ persons with ~~Prader-Willi Syndrome~~ PWS are intended to meet the service recipients' specialized needs of ~~persons with Prader-Willi Syndrome~~. ~~OKDHS~~ DHS provides a monthly payment to the contracted residential provider to:

- (1) ensure each service recipient participates in regular recreation, leisure, and exercise activities at home and in the community;
- (2) provide program coordination staff who serve no more than ~~eight~~ 12 service recipients ~~in~~ within a 40-mile radius. The program coordinator must visit each home at least four times per month when the service recipient is present, and one of the visits must occur during night-time hours;
- (3) assess the service recipient's progress and challenges related to activities of daily living and safety and provide a written summary to the case manager ~~30~~ 30-calendar days prior to the annual Individual Plan (Plan) meeting;
- (4) ensure program coordination staff attend a ~~Prader-Willi Syndrome~~ annual PWS conference ~~annually~~ and provide the direct service staff at least one hour per month of ~~Prader-Willi Syndrome~~ PWS-related training;
- (5) ensure service recipients are provided with specialized diets, ~~as specified in their Plan~~ per his or her Plan;
- (6) ensure ~~the~~ service recipient's exercise program is implemented and ~~provide~~ he or she is provided access to exercise equipment and classes, ~~as identified in their Plan~~ per his or her Plan;
- (7) work with the service recipient and ~~their~~ his or her team to develop a plan for ~~the replacement of~~ replace property damaged by a service recipient at no cost to ~~OKDHS~~ DHS;
- (8) assist service recipients ~~in conducting~~ to conduct safety and evacuation drills, per Oklahoma Administrative Code (OAC) 340:100-5-22.1; and

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- (9) ensure ~~that the~~ service recipient's home is safe and secured, ~~as defined in their Plan~~ per his or her plans.
- (d) **Eligibility.** To be eligible for ~~Prader Willi Syndrome~~ PWS services, each person must:
- (1) provide documentation from a licensed physician that confirms the diagnosis of ~~Prader Willi Syndrome~~ PWS as evidenced by the deoxyribonucleic acid (DNA) Methylation Analysis of the PWS region of chromosome 15; or
 - (2) be receiving Home and Community Based Waiver Services (HCBS) or be on the Request for Waiver Services List per OAC 317:40-1-1 and determined eligible for HCBS unless admitted to the program prior to July 1, 1997; and provide documentation that he or she has a condition closely related to PWS, except for mental illness. The DDS director or his or her designee may grant an exception to the confirmed PWS DNA Methylation analysis when the service recipient provides documentation containing objective evidence that he or she has a condition closely related to PWS. The condition:
 - (A) results in challenging behaviors that create serious risk of physical injury or harm to the service recipient;
 - (B) results in substantial impairments;
 - (C) is likely to continue indefinitely;
 - (D) requires treatment or services similar to those required for persons with PWS;
 - (E) requires strict control of access to food and limitation of daily caloric intake required for the individual's normal growth; and
 - (F) requires services and supports that are not available from another source;
 - (3) be 18 years of age receiving Home and Community Based Waiver Services (HCBS) or be on the Request for Waiver Services List, per OAC 317:40-1-1 and determined eligible for HCBS unless admitted to the program prior to July 1, 1997; and
 - (4) be 18 years of age.
- (e) **Waiting list.** When resources are unavailable to offer services through the ~~Prader Willi Syndrome~~ PWS program, applicant names are maintained on a statewide waiting list.
- (1) The statewide waiting list is maintained by the DDS residential programs supervisor for DDS, manager or his or her designee.
 - (2) The statewide waiting list is maintained in chronological order based on the date of receipt of a written request for ~~Prader Willi Syndrome~~ PWS services.
 - (3) The statewide waiting list is administered by ~~DDS~~ DDS uniformly throughout the state.
 - (4) An applicant is removed from the statewide waiting list, when he or she:
 - (A) is determined ineligible for services; or
 - (B) the applicant cannot be located by OKDHS DDS;
 - (C) does not provide DHS-requested information or fails to respond;
 - (D) is not an Oklahoma resident at the requested Waiver approval date; or

- (E) declines an offer of PWS services and indicates he or she does not want to remain on the statewide waiting list.
- (5) When an applicant is offered ~~Prader Willi Syndrome~~ PWS services but declines ~~or is not eligible due to age~~ because he or she is not at least 18 years of age, the applicant maintains ~~their~~ his or her position on the statewide waiting list.
- (f) **Scope. Reimbursement** ~~for Prader Willi Syndrome~~ PWS services reimbursement is provided at a ~~rate~~ DHS-approved by the ~~Oklahoma Commission for Human Services~~ rate within the program capacity determined by legislative appropriation.
- (g) **Service expectations.** The contracted-residential provider agency ensures that:
- (1) all applicable ~~rules of OKDHS~~ DHS and the Oklahoma Health Care Authority (~~OHCA~~) rules are met, including OAC:
 - (A) ~~OAC 340:100-3-24, Quality assurance~~ 340:100-3-27;
 - (B) ~~OAC 340:100-3-38, Staff training~~ 340:100-3-34;
 - (C) ~~OAC 340:100-3-40, Community records system~~ 340:100-3-38;
 - (D) ~~OAC 340:100-5-22.1, Community residential supports~~ 340:100-3-40;
 - (E) ~~OAC 340:100-5-26, Health services~~ 340:100-5-22.1;
 - (F) ~~OAC 340:100-5-32, Medication administration~~ 340:100-5-26;
 - (G) ~~OAC 340:100-5-34, Incident reporting~~ 340:100-5-32; and
 - (H) ~~OAC 340:100-5-50 through 100-5-58, Individual planning~~ OAC 340:100-5-58;
 - (2) each service recipient is weighed at least weekly;
 - (3) all food and money are safeguarded to ensure a proper diet and health maintenance of health;
 - (4) transportation to and from vocational activities, community outings, and medical appointments is provided, in accordance with ~~per~~ the service recipient's Plan and Plan of Care;
 - (5) staff ~~implement~~ implements periodic room, clothing, and baggage searches as necessary to ensure that food and money are not present, ~~as outlined in their~~ per the service recipient's Plan; and
 - (6) the staffing ratio is appropriate to ensure the service recipient's safety, ~~as defined in the~~ per his or her Plan. Staff ~~are~~ is trained and competent to meet the PWS service recipient's needs of service recipients with Prader Willi Syndrome.
- (h) **Room and board.** Each service recipient is responsible for room and board, per OAC 340:100-3-4.
- (1) When the home is owned or leased by the service recipient or ~~their~~ his or her family or guardian, the agency contracted-residential provider develops a financial agreement for payment of household expenses by the service recipient, per OAC 340:100-5-22.1.

(2) When the home is owned or leased by the contracted-residential provider agency, the agency contracted-residential provider may charge a room and board payment of all but \$100 per month of the service recipient's income, up to a maximum of ~~90%~~ 90 percent of the current Social Security Supplemental income rate. In these circumstances the agency contracted-residential provider must comply with OAC 340:100-6.

SUBCHAPTER 18. LICENSING

340:100-18-1. Board Certified Behavior Analyst (BCBA) license and Board Certified Assistant Behavior Analyst (BCaBA) certification

(a) **Authority.** Section 1928 of Title 59 of the Oklahoma Statutes (59 O.S. § 1928) directs the Oklahoma Department of Human Services (DHS) Developmental Disabilities Services (DDS) to provide for licensing of (BCBAs) and certification of BCaBAs.

(b) **Definitions.** The following words and terms, when used in this Subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) **"Applied behavior analysis"** means the process of systematically applying interventions based upon the principles of learning theory to improve socially significant behaviors to a meaningful degree, and to demonstrate that the interventions employed are responsible for the improvement in behavior.

(2) **"Behavior Analyst Certification Board (national Board)"** means the ~~nationally accredited~~ nationally-accrediting Behavior Analyst Certification Board.

(3) **"Board Certified Assistant Behavior Analyst (BCBA)(BCaBA)"** means an individual who is certified by the ~~nationally accredited~~ national Board, practices under the close, ongoing supervision of a BCBA and is ~~licensed~~ certified by DHS DDS to provide applied behavior analysis services in Oklahoma.

(4) **"Board Certified Assistant Behavior Analyst (BCaBA)(BCBA)"** means an individual who is certified by the ~~nationally accredited~~ national Board and is ~~certified~~ licensed by DHS DDS to provide applied behavior analysis services in Oklahoma.

(5) **"Co-employed relationship"** means the BCBA and BCaBA are employed by the same employer.

(6) **"Employee-employer relationship"** means the BCBA is the employer of employs the BCaBA or the registered behavior technician (RBT).

(7) **"Human services professional"** means an individual licensed or certified in Oklahoma as a licensed:

- (A) physical therapist or physical therapist assistant;
- (B) occupational therapist or occupational therapist assistant;
- (C) clinical social worker;
- (D) masters social worker;
- (E) social work associate;

- (F) psychologist or health service psychologist;
- (G) speech pathologist;
- (H) audiologist;
- (I) professional counselor or professional counselor candidate;
- (J) marital and family therapist or marital and family therapist candidate; or
- (K) behavioral practitioner or behavioral practitioner candidate.

(8) **"Licensed behavior analyst"** means an individual who is certified by the ~~nationally accredited~~ nationally-accrediting Board as a BCBA and is licensed by DHS DDS to provide applied behavior analysis services in Oklahoma.

(9) **"Oklahoma Licensed Behavior Analyst Board (OLBAB)"** or **"State Board"** means the state board responsible for licensing behavior analysts and regulating the practice of applied behavior analysis professionals.

(10) **"Real-time supervision"** means the observation of the provision of service with all parties participating in or monitoring live interactions.

(11) **"Supervisee"** means ~~a person who acts under the extended authority of a licensed behavior analyst to provide applied behavior analysis services or a person who is training to provide such services~~ **"Registered behavior technician (RBT)"** means a paraprofessional who is certified by the national Board and practices under the close, ongoing supervision of a BCBA. The RBT works under the license number of a BCBA and is primarily responsible for the direct implementation of BCBA designed and prescribed behavior-analytic services.

(12) **"Supervision"** means the direct observation and professional guidance during the provision of service by a BCBA or a BCaBA. **"Supervisee"** means a BCaBA or RBT who acts under the authority and supervision of a BCBA to provide applied behavior analysis services or a BCaBA or RBT candidate in training to provide such services as defined by the national board.

(A) The supervisee does not design intervention or assessment plans. It is the supervising BCBA's responsibility to determine which other tasks the supervisee may perform as a function of his or her training, experience, and competence.

(B) The BCBA is responsible for the supervisee's work on the cases he or she is overseeing.

(C) A BCBA, BCaBA, or RBT as a guardian or parent, may not provide services to his or her own child or ward.

(13) **"Two-way interactions"** means the observation of the provision of service using real time visual and auditory contact through the use of technological devices. **"Supervision"** means the direct observation and professional guidance during the provision of service by a BCBA, BCaBA, or RBT.

(14) **"Two-way interactions"** means the observation of the provision of service using real-time visual and auditory contact through the use of technological devices.

(c) **Qualifications.**

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- (1) Each person wishing to practice as a BCBA or as a BCaBA in Oklahoma applies to DDS using Form 06LC001E, Application for BCBA License and BCaBA Certification, and furnishes evidence that he or she:
- (A) is at least 21 years old;
 - (B) passed the Board examination and is certified by the national Board as a BCBA or as a BCaBA, as applicable; and
 - (C) has not had a professional license or state certification refused, revoked, suspended, or restricted and does not have a complaint, allegation, or investigation pending in any regulatory jurisdiction in the United States or in another country for reasons that relate to unprofessional conduct unless DDS finds that the conduct was corrected or that mitigating circumstances exist that prevent resolution.
- (2) No person can claim the title of or hold himself or herself out as being a BCBA or BCaBA unless he or she meets the applicable requirements and obtains a license or certification, per this Section.
- (A) Supervisees provide applied behavior analysis under the supervision of a BCBA.
 - (B) This Section does not restrict the practice of applied behavior analysis by human services professionals, provided such individuals are working within the scope of their professions and the practice of applied behavior analysis is commensurate with their level of training and experience.
 - (C) This Section does not prohibit the practice of applied behavior analysis by a technician or family member implementing a plan within the home, acting under the extended authority and direction of a Licensed BCBA or BCaBA.
 - (D) A violation of this subsection is punishable by a fine of not more than \$500, the suspension or revocation of a license or certification issued per this Section, or both fine, and loss of licensure or certification.
 - (E) DHS Legal Services may file and seek injunctive relief against any person who wrongfully holds himself or herself out as a BCBA or BCaBA, and does not in fact meet the applicable requirements set forth above, or who is not licensed or certified as a BCBA or BCaBA. The injunctive relief set forth in this Section is filed in the district court for any county wherein which the person holding himself or herself out as a BCBA or BCaBA.
 - (F) The RBT is certified by the national board and renews certification annually as required and defined by the national board.
- (d) **Application.** Oklahoma licenses and certificates are issued for two-year terms following the initial State Board certification period.
- (1) **Licensure.** A person requesting licensure provides for:
 - (A) an initial request, ~~requires~~:
 - (i) a current copy of national Board certification;
 - (ii) a copy of a valid photo identification;
 - (iii) Form 06LC001E;
 - (iv) Form 06LC002E, Professional Reference for BCBA License and BCaBA Certification; and
 - (v) Form 06LC004E, Statement of Professional Disclosure for BCBA License and BCaBA Certification; and
 - (B) a renewal, ~~requires~~:
 - (i) a current copy of ~~National~~national Board certification;
 - (ii) ~~a copy of a valid photo identification~~;
 - (iii) Form 06LC001E; and
 - (iv) Form 06LC004E.
- (2) **Certification.** A person requesting certification ~~must provide~~provides for:
- (A) an initial request:
 - (i) a current copy of ~~National~~national Board certification;
 - (ii) a copy of a valid photo identification;
 - (iii) Form 06LC001E;
 - (iv) Form 06LC002E;
 - (v) Form 06LC004E; and
 - (vi) Form 06LC005E, BCaBA Professional Supervision; and
 - (B) re-certification:
 - (i) a current copy of ~~National~~national Board certification;
 - (ii) a copy of a valid photo identification;
 - (iii) Form 06LC001E;
 - (iv) Form 06LC004E; and
 - (v) Form 06LC005E.
- (3) **Post-military personnel.** Pursuant to the Post-Military Service Occupation, Education and Credentialing Act, 59 O.S. § 4100.1, issuance of an Oklahoma license or certificate to post-military service members and spouses ~~are~~is expedited upon receipt of required application materials and verification of national Board certification.
- (e) **Licensure and certification.** A person licensed or certified by DDS:
- (1) maintains active status and fulfills all requirements of ~~national~~ certification or recertification with the national Board;
 - (2) conducts professional activities in accordance with the ethical and professional standards found in the Guidelines for Responsible Conduct and Professional Disciplinary Standards established by the of the national Board and available on ~~their~~its website at www.bacb.com; and
 - (3) applies for license or certification renewal on or before April 30 of each odd- numbered year to continue practicing in Oklahoma.
- (f) **Fees.**
- (1) BCBA licensure fees:
 - (A) for initial licensing are pro-rated on a rounded average of \$50 for each full- calendar year remaining on the national Board certification; and
 - (B) \$100 for each two-year license thereafter.

- (2) BCaBA certification fees:
 - (A) for initial certification are pro-rated on a rounded average of \$25 for each full-calendar year remaining on the national Board certification; and
 - (B) \$50 for each two-year certification thereafter.
- (g) **Requirements of supervision.** A certified BCaBA or RBT works under the supervision of a licensed BCBA. ~~A BCBA may provide supervision to a maximum of six BCaBAs at any time. Supervision by the BCBA occurs for a minimum of two hours for each 40 hours of services provided by a BCaBA. The BCBA follows the supervision guidelines of the national Board.~~
 - (1) ~~Supervision requirements include, for:~~
 - (A) ~~real time supervision:~~
 - (i) ~~a minimum of one of two supervision sessions are conducted using real time supervision; and~~
 - (ii) ~~not more than half of the supervisory requirements are satisfied in a group setting; and~~
 - (B) ~~qualifying supervision beyond the requirements of real time supervision includes:~~
 - (i) ~~the use of two way interactions;~~
 - (ii) ~~review of materials submitted by the BCaBA; and~~
 - (iii) ~~observation of the BCaBA demonstrating professional skills.~~
 - (2) ~~A formal professional relationship must exist between a supervising BCBA and BCaBA and may include:~~
 - (A) ~~a co-employed relationship; or~~
 - (B) ~~an employee-employer relationship.~~
 - (3) ~~BCaBAs submit Form 06LC005E to OLBAB within 10 business days of any change in supervision status.~~
- (h) **OLBAB.**
 - (1) OLBAB has five members consisting of:
 - (A) three licensed BCBAs who may be employed by DHS appointed to the OLBAB by the DHS Director;
 - (B) one BCaBA who may be employed by DHS appointed to the OLBAB by the DHS Director; and
 - (C) one member employed by OHCA, designated by the Oklahoma Health Care Authority (OHCA) who is a person with behavioral health expertise.
 - (2) The chair of OLBAB is appointed by the DHS Director.
 - (3) Administrative support of the OLBAB is provided by DDS staff as designated by the DDS director.
 - (4) OLBAB meets a minimum of four times per calendar year. All meetings are subject to the Open Meetings Act, per 25 O.S. § 301-314.
 - (5) Travel expenses for members of OLBAB are reimbursed, per 74 O.S. § 500.4.
 - (6) OLBAB maintains a list of all persons licensed or certified to provide behavior analytic services in Oklahoma and provides copies to interested persons upon written request.
- (i) **Ethics.**

- (1) Any person licensed or certified by DDS as either a BCBA or a BCaBA reports to the state Board within five-business days any sanction, denial of initial or renewal certification, revocation, suspension, or any other limitation of license or certification or combination of national Board sanctions. When a person loses national Board licensure or certification for any reason, he or she immediately forfeits the Oklahoma license or certification and must notify OLBAB within five-business days of such national Board action and must immediately stop providing BCBA or BCaBA services in Oklahoma.
- (2) Grounds for forfeiture or non-renewal of a license or certification for practice in Oklahoma include:
 - (A) obtaining or attempting to obtain a license or certification by making a false or misleading statement, failure to make a required statement, or fraud or deceit in any communication to OLBAB;
 - (B) gross or repeated negligence, incompetence, misconduct, or malpractice in professional work including, but not limited to:
 - (i) any physical or mental condition that currently impairs competent professional performance or poses a substantial risk to the recipient of behavior analysis services;
 - (ii) professional conduct that constitutes an extreme and unjustified deviation from the customary standard of practice accepted in the applied behavior analytic community and creates a serious risk of harm to or deception of service recipients;
 - (iii) abandonment of a service recipient resulting in the termination of imminently needed care without adequate notice or provision for transition;
 - (iv) professional record keeping or data collection that constitutes an extreme and unjustified deviation from the customary standard of practice for the field, or deceptively altering service recipient's records or data;
 - (v) engaging in blatant fraud, deception, misrepresentation, false promise or pretense, intimidation in the practice of applied behavior analysis, or in solicitation of service recipients; or
 - (vi) the unauthorized material disclosure of confidential service recipient information;
 - (C) limitation, sanction, revocation, or suspension by a health care organization, professional organization, or other private or governmental body, relating to behavior analysis practice, public health or safety, or behavior analysis certification;
 - (D) any conviction of a felony or misdemeanor directly relating to behavior analysis practice or public health or safety; or
 - (E) failure to adequately supervise or be supervised in accordance with the BACB Standards for Supervision.
- (3) Applicants and persons holding a current license or certificate reports to the OLBAB within 30-calendar days of occurrence:

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- (A) a change in name, address, or other vital information;
- (B) the filing of any criminal or civil charges;
- (C) the initiation of any disciplinary charges, investigations, or findings and/or sanctions by a health care organization, federal or state agency, or other professional association; and
- (D) any other change in information provided by the applicant or person holding a current license or certificate to the OLBAB.

(4) The RBT must abide by the national Board's RBT Ethics Code. When OLBAB becomes aware of a potential code violation, a referral is made to the national Board that has the responsibility for investigating and initiating disciplinary action, when determined necessary.

(j) **Complaint investigation.** All complaints regarding unprofessional conduct of a BCBA or BCaBA are submitted to OLBAB in writing. The DDS Quality Assurance programs administrator assists with investigations upon request and reports any findings to the state Board for action.

(k) **Sanctions.** Sanctions are determined by the State Board.

[OAR Docket #20-546; filed 7-7-20]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 110. LICENSING SERVICES

[OAR Docket #20-547]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
- Part 1. Licensing Services - Child Care
- 340:110-1-8.4 [AMENDED]
- 340:110-1-8.6 [AMENDED]
- 340:110-1-8.8 through 340:110-1-8.10 [AMENDED]
- 340:110-1-9.2 [AMENDED]
- 340:110-1-10.1 [AMENDED]
- 340:110-1-15 [AMENDED]
- Part 3. Licensing Services - Residential Care and Agencies
- 340:110-1-47 through 340:110-1-47.1 [AMENDED]
- 340:110-1-54 [AMENDED]
- Subchapter 3. Licensing Standards for Child Care Facilities
- Part 5. Requirements for Family Child Care Homes and Large Family Child Care Homes
- 340:110-3-84 through 340:110-3-85 [AMENDED]
- 340:110-3-91 through 340:110-3-91.1 [AMENDED]
- 340:110-3-97.1 [AMENDED]
- Part 9. Requirements for Residential Child Care Facilities
- 340:110-3-147 [AMENDED]
- 340:110-3-153 through 340:110-3-153.1 [AMENDED]
- 340:110-3-154.2 [AMENDED]
- 340:110-3-154.4 [AMENDED]
- 340:110-3-168 [AMENDED]
- Subchapter 5. Requirements for Child-Placing Agencies
- Part 1. Requirements for Child-Placing Agencies
- 340:110-5-4 [AMENDED]
- 340:110-5-6 through 340:110-5-7 [AMENDED]

- 340:110-5-9 through 340:110-5-11 [AMENDED]
- 340:110-5-12 [AMENDED]
- Part 3. Requirements for Adoption Agencies
- 340:110-5-32 [AMENDED]
- Part 5. Requirements for Foster Homes Agencies
- 340:110-5-63 [AMENDED]
- Part 9. Requirements for Independent Living Programs
- 340:110-5-117 [AMENDED]
- (Reference WF 20-110)

AUTHORITY:

Director of Human Services; 56 O.S. § 162; 10 O.S. §§ 404, 405.3, and 406 of the Oklahoma Child Care Facilities Licensing Act.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 18, 2019

COMMENT PERIOD:

January 15, 2020 through February 14, 2020

PUBLIC HEARING:

February 24, 2020

ADOPTION:

March 2, 2020

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 3, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

November 1, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendments to Chapter 110, Subchapter 1, Part 1 and Part 3 amend Child Care Services (CCS) procedures for quality rating and improvement system (QRIS), complaint investigations, Restricted Registry, grievance policy, and case management. Subchapter 3, Part 5 and Part 9, amend licensing requirements for family child care homes, large child care homes, and residential facilities. Subchapter 5, Part 1, Part 3, Part 5, and Part 9 amend licensing requirements for child-placing agencies. Licensed child care programs impacted by the proposed amendments include: (1) family child care homes; (2) child care centers; (3) day-camps; (4) drop-in programs; (5) out-of-school time programs; (6) part-day programs; (7) programs for sick children; (8) residential child care facilities; and (9) child-placing agencies. Proposed amendments align residential and child-placing agency licensing requirements with federal statutes regarding mechanical restraints and adoption record retention. Proposed amendments to licensing requirements were reviewed and approved by Child Care Advisory Committee's standing subcommittees representing family child care homes, residential facilities, and child-placing agencies.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-693-6542.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. LICENSING SERVICES - CHILD CARE

340:110-1-8.4. Licensing status and compliance for differential quality rating and improvement certification criteria

(a) **Licensing status criteria for one star plus, two star, and three star levels.** For star certification, programs ~~must~~ have a license or permit.

(b) **Compliance criteria for one star plus, two star, and three star levels.** The monitoring visits and substantiated complaints for the last 24 months of operation are reviewed. The ~~licensing record~~ Licensing file from the applicant's previous licenses is considered. Numerous, repeated, and serious non-compliance, per Oklahoma Administrative Code (OAC) 340:110-1-9.3 are considered when approving or denying star certification. The request for star certification may be denied or the level reduced, when:

- (1) there are numerous, repeated, or serious non-compliance with applicable ~~licensing~~ Licensing requirements;
- (2) a serious incident occurs resulting in injury or imminent risk of harm to a child; ~~or~~
- (3) ~~the program fails to employ a qualified director for six months or more~~ an Emergency Order or notice of proposed request for license denial or license revocation is issued;
- (4) a serious substantiated complaint occurs;
- (5) the program fails to employ a qualified director for six months or more; or
- (6) star certification level criteria are not met.

340:110-1-8.6. Director, personnel, and primary caregiver qualifications for differential quality rating and improvement certification criteria

(a) **Master teacher and primary caregiver qualifications for two and three star levels.** Required criteria ~~listed in (1) - (3) of this subsection~~ include:

- (1) a current Oklahoma Professional Development Ladder (OPDL) certificate of Level 3, specifically met by an Oklahoma Competency Certificate with a Master Teacher emphasis, or Level 4 or higher;
- (2) completed training in Oklahoma's Early Learning Guidelines (ELG); however, new master teachers, ~~and probationary master teachers~~, or primary caregivers hired or assuming the responsibilities after certification are trained within 90-calendar days; and
- (3) employment on-site, full-time; however, out-of-school time master teachers are on-site at least 50 percent of weekly-operating hours.

(b) **Master teachers required for two and three star centers.** There is a full-time master teacher for every 30 children of the licensed capacity.

- (1) Out-of-school time programs ~~must~~ and programs licensed as day camps have a master teacher for every 40 children of the licensed capacity.
- (2) An individual is not counted as a master teacher, probationary master teacher, or primary caregiver in more than one program, unless the scheduled hours of employment in each program do not overlap at any given time.

(3) When an individual replaces a master teacher and does not meet educational qualifications, refer to Oklahoma Administrative Code (OAC) 340:110-1-8.3(f)(3).

(4) When approved, a probationary master teacher must also complete training in ELG in (a)(2) of this Section.

(c) **Director as master teacher.** The director may be counted as a master teacher when meeting master teacher qualifications in (a) of this Section, regardless of the program's licensed capacity.

(d) **Master teacher responsibilities.** Master teachers work directly with children and support other teaching personnel with responsibilities, such as program development, weekly lesson plans, use of space and equipment, interactions with parents, and program evaluation.

(e) **Director responsibilities.** An individual is not counted as director in more than one program.

340:110-1-8.8. Learning environment differential quality rating and improvement certification criteria

(a) **Criteria for one star plus centers.** Learning environment criteria ~~listed in (1) - (2)(3)~~ of this subsection are required.

(1) Space is arranged in ~~well-defined~~ clearly-defined and ~~equipped~~ well-equipped interest areas in each classroom facilitating a variety of activities including music and movement for children 2 years of age and older.

(2) Television or other screen time is not used for children 1 year of age and younger.

(3) Out-of-school time programs and programs licensed as day camps may have required interest areas set up throughout the program as long as children are supervised and have accessible free choice to all required areas.

(b) **Criteria for two and three star centers.** Learning environment criteria ~~listed in (a) of this Section and (1) - (3)(4)~~ of this subsection are required.

(1) Space is arranged in ~~well-defined~~ clearly-defined and ~~equipped~~ well-equipped interest areas in each classroom facilitating a variety of activities also including math and science or nature for children 2 years of age and older.

(2) ~~At least two learning centers are available outdoors for children's use~~ Out-of-school time programs and programs licensed as day camps may have required interest areas set up throughout the program as long as children are supervised and have accessible free choice to all required areas.

(3) ~~The program utilizes developmentally appropriate Oklahoma Early Learning Guidelines as a resource for lesson and curriculum planning.~~ At least two learning centers are available outdoors for children's use.

(4) The program utilizes developmentally appropriate Oklahoma Early Learning Guidelines as a resource for lesson and curriculum planning.

(c) **Criteria for one star plus homes.** Learning environment criteria ~~listed in (1) - (4)~~ of this subsection are required.

(1) A written daily schedule reflecting a balanced program of opportunities for learning, physical activity,

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indoor and outdoor play, rest periods, and meals is followed.

(2) The daily schedule is posted.

(3) Children are read to a minimum of 15 minutes each day.

(4) Television or other screen time is not used for children 1 year of age and younger.

(d) **Criteria for two and three star homes.** Learning environment criteria ~~listed~~ in (c) of this Section and in (1) - (2) of this subsection are required.

(1) Children have opportunities during the day to access art, block building, book reading, dramatic play, manipulative play, and music and movement.

(2) The program has a plan for transition times.

340:110-1-8.9. Family engagement differential quality rating and improvement certification criteria

(a) **Criteria one star plus centers.** Family engagement criteria ~~listed~~ in (1) - (7) of this subsection are required.

(1) A system is established and maintained for sharing with, and communicating to families the happenings, activities, and related issues about a child's physical and emotional state.

(2) Families are welcomed in the center at all times, ~~for examples such as, to eat lunch~~ heating with a child, ~~observe~~ observing, or ~~volunteer~~ volunteering in the classroom.

(3) Individual parent conferences are arranged and documented to discuss and set goals regarding the child's ~~progress~~, accomplishments, and challenges, at least annually and as needed. Documentation is maintained with the child's records.

(4) The program provides a family resource area with books, pamphlets, or articles on parenting and community resources accessible to families. When provided electronically, resources are easily accessible and printable.

(5) At least two family meetings with guest speakers or special events are held annually, such as open houses, brown bag lunches, family pot-luck dinners, and children's programs.

(6) The program informs families using, at a minimum, two of these methods:

(A) bulletin board;

(B) newsletter;

(C) parent handbook;

(D) website, specific to each center location; or

(E) email, social media, or other electronic communication.

(7) Families participate in program and policy development through board involvement and planning meetings or are given an opportunity to complete annual questionnaires.

(b) **Criteria two and three star centers.** Family engagement criteria ~~listed~~ in (a) of this Section are required. In addition, individual parent conferences are held at least twice annually. Programs operating only part-year, conduct one

individual parent conference, per calendar year. A written report about the child is provided to parents.

(c) **Criteria one star plus homes.** Family engagement criteria ~~listed~~ in (1) - (6) of this subsection are required. The primary caregiver:

(1) maintains a signed contract on file for each family including, but not limited to, policy concerning hours, fees, payment schedules, vacations, and terminations;

(2) encourages families to visit when ~~the~~ his or her children are present and provides access to all parts of the home used for child care;

(3) arranges for, and documents individual parent conferences, to discuss and set goals regarding ~~the~~ his or her child's progress, accomplishments, and challenges, at least annually and as needed. Documentation is maintained with the child's records;

(4) provides opportunities for family involvement in the program's activities;

(5) has information available about common childhood issues and resources including health care, education, nutrition, and counseling services for families and children, and makes referrals as needed; and

(6) ensures applicable ~~licensing~~ Licensing requirements are available to families.

(d) **Criteria two and three star homes.** Family engagement criteria ~~listed~~ in (c) of this Section and in (1) - (2) of this subsection are required. The primary caregiver:

(1) provides parents a minimum of two non-relative references, including contact information; and

(2) has and uses a system to communicate with families the happenings, activities, and related issues regarding ~~the~~ his or her child's physical and emotional state.

340:110-1-8.10. Program evaluation differential quality rating and improvement certification criteria

(a) **Criteria one star plus centers and homes.** Program evaluation criteria in (1) through (2) of this subsection are required for family child care homes. Program evaluation criteria in (2) of this subsection are required for all child care programs. In addition, program evaluation criteria in (3) of this subsection are required for part-day programs.

(1) Health and safety checklists for both indoor and outdoor spaces are completed annually and maintained on file at the facility.

(2) Personnel and parents are surveyed annually identifying program strengths and weaknesses and evaluating effectiveness in meeting children's, parents', and personnel's needs.

(3) An equipment inventory is conducted annually using the appropriate Oklahoma Department of Human Services (DHS) form and kept on file at the center.

(b) **Criteria two and three star centers and homes.** Program evaluation criteria in (a) of this Section are required. In addition, program evaluation methods described in (1) through (4) of this subsection ~~must be~~ are completed within one year of receiving two star level and repeated as required.

(1) The program is assessed annually using an assessment tool approved by Child Care Services (CCS). This assessment is not required for:

(A) programs accredited by a CCS-approved, national accrediting ~~body organization~~; or

(B) Head Start grantees compliant with Head Start Program Performance Standards.

(2) Program goals are established and updated annually considering information gathered from completed health and safety checklists, parent and personnel surveys, and a CCS-approved assessment tool.

(3) The program has a written plan and program policy and procedures for meeting established goals, including professional development and educational needs ~~offor~~ personnel or the provider and assistant.

(4) Personnel participate in program evaluation and the established goals are shared with personnel.

340:110-1-9.2. Complaint investigations

(a) **Legal basis.** The Oklahoma Child Care Facilities Licensing Act (Act), ~~10 O.S. § 406~~ Section 406 of Title 10 of the Oklahoma Statutes (10 O.S. § 406), mandates that the Oklahoma Department of Human Services (OKDHS)(DHS) conduct a full complaint investigation of a complaint alleging a violation against the Act or any licensing requirement Licensing requirements.

(b) ~~Receipt of the complaint~~ Complaint receipt. Complaints may be made to licensing Licensing in writing, in person, by ~~telephone~~ phone, or electronically.

(c) **Complaint information.** Licensing staff obtains as much relevant information as possible from the complainant.

(d) **Screening complaints.** Licensing staff accepts a complaint for investigation when ~~it alleges~~ alleging:

(1) non-compliance with licensing Licensing requirements;

(2) violation of the Act;

(23) unlicensed facility operation of an unlicensed facility in violation of the Act; or

(34) abuse or neglect of a child in care.

(e) **Complaint risk levels.** ~~Risk levels are determined by licensing~~ Licensing staff determine risk levels based upon the degree of harm or danger to children in care. Risk levels are used to ensure ~~that~~ investigations occur in a timely manner ~~and to track types of complaints.~~

(1) **Risk level I complaints.** Risk level I complaints indicate a child is in imminent risk of serious physical harm. The risk level ~~of risk~~ is not influenced by the removal of a child from the facility ~~if when~~ other children remain in care. Investigations are initiated immediately or no later than 24 hours after receipt ~~of the complaint~~ by licensing staff Licensing unless awaiting investigation by a Child Welfare Services (CWS) or local law enforcement. ~~This does not include investigation; excluding weekends and holidays when the facility is closed. Examples of risk level I complaints~~ Non-compliances with licensing requirements include, but are not limited to:

(A) alleged physical or sexual abuse;

(B) the presence or use of illegal drugs while children are in care;

(C) drug distribution of drugs;

(D) children left alone in the facility or in a vehicle without anyone present;

(E) extreme facility temperatures;

(F) an infant placed on the stomach for sleep ingsleep environments and safe-sleep training;

(G) caregiver's threatening or impaired behavior ~~of a caregiver;~~

(H) severe understaffing or severe over licensed capacity;

(I) unlicensed facility child passenger restraints;

(J) violating an Emergency Order violation;

(K) required staff without current cardio-pulmonary resuscitation and first aid training;

(L) failure to obtain background investigations; or

(M) knowingly permitting access to children by persons individuals identified as restricted or Re- stricted Registry registrants.

(2) **Risk level II complaints.** Risk level II complaints do not indicate there is imminent risk of harm, but without intervention, a child may not be safe. Investigations are initiated within ~~45~~ 10-calendar days of receipt ~~of the complaint~~ by licensing staff, or sooner depending on the degree of risk Licensing, unless advised to delay the investigation by CWS or local law enforcement ~~to delay the investigation. Examples~~ Non-compliances with licensing requirements include, but are not limited to:

(A) leaving children with an underage staff ~~per-~~ son personnel;

(B) alleged physical abuse from a ~~staff~~ per- son personnel no longer working in the facility;

(C) inappropriate discipline, where when no injury is reported;

(D) broken playground equipment diapering or toilet- ing;

(E) injury caused by lack of supervision hazardous equipment; or

(F) minor understaffing transporting without a valid driver license, liability insurance, or parent permissions;

(G) lack of supervision; or

(H) minor understaffing or minor over licensed ca- pacity.

(3) **Risk level III complaints.** Risk level III complaints do not indicate imminent risk of harm and there are no injuries alleged. Serious non-compliances, per Oklahoma Administrative Code (OAC) 340:110-1-9.3 are not considered risk level III complaints. Investigations are initiated within ~~30~~ 15-calendar days of the ~~date of receipt of the complaint~~ by licensing staff or immediately ~~if~~ Licensing; including when a telephone phone investigation is appropriate, per (g) of this Section. ~~Examples~~ Non-compliances with licensing requirements include, but are not limited to:

(A) inadequate meal service;

(B) lack of play equipment;

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- (C) ~~inappropriate use of television or videos~~quarterly vehicle maintenance; or
- (D) ~~inadequate cleanliness of the facility~~program records and documentation;
- (E) ~~inappropriate television or media use~~; or
- (F) ~~facility cleanliness~~.

(f) **The investigation.** Licensing staff conducts a full investigation, obtaining sufficient information to ~~make~~determine a finding.

(g) **Telephone investigation.** With supervisory approval, ~~licensing~~Licensing staff may investigate a complaint by ~~telephone~~phone. The investigation discussion ~~and if necessary, an agreed-upon plan of correction~~, is documented on Form 07LC080E, Licensing Services Supplemental Information, including an agreed-upon plan of correction, when necessary. A copy is ~~sent~~provided to the operator. A complaint ~~may be~~is investigated by ~~telephone~~phone only when:

- (1) the alleged non-compliance does not place children at risk of harm, ~~for example such as~~, the facility did not serve milk one day or children have head lice;
- (2) the facility has not had numerous, repeated, or serious non-compliance within the previous 12 months from complaint receipt; and
- (3) a monitoring visit ~~has been made~~was conducted in the last three months ~~during which~~with substantial compliance was documented.

(h) **Procedure for investigating an allegation of operating an unlicensed facility investigations.** When a complaint alleging ~~operation~~ of an unlicensed facility is received, the procedure, per OAC 340:110-1-13 is also followed.

(i) **Child abuse and neglect complaints.** ~~Upon~~On receipt of a complaint alleging abuse or neglect allegations of a child in care, ~~licensing~~Licensing staff immediately notifies the ~~licensing~~Licensing supervisor and ~~makes~~submits a CWS referral to CWS. ~~If~~When the allegation involves child abuse or neglect or a report indicating ~~that~~ a child is in imminent risk of serious physical harm, the ~~licensing~~Licensing regional programs manager (RPM) is also notified.

(j) **Findings.** After the investigation is ~~completed~~completion, the ~~licensing~~Licensing staff, in consultation with the ~~licensing~~Licensing supervisor, as appropriate, ~~makes~~ a finding as to whether ~~determines~~ the complaint is ~~finding~~ as substantiated, ~~or unsubstantiated, or ruled out~~.

(1) **Substantiated.** A substantiated finding of ~~substantiated~~ is ~~made when a weighing of the information obtained during the investigation clearly indicates~~determined when some credible evidence indicates the facility violated any licensing requirementLicensing requirements or the Act.

(2) **Unsubstantiated.** ~~A~~An unsubstantiated finding of ~~unsubstantiated~~ is ~~made when the information does not lead to a definite conclusion, for example~~determined when:

- (A) ~~there is insufficient or conflicting information on which to conclude that~~insufficient evidence exists to fully determine whether a violation occurred; or
- (B) ~~information needed to make a finding is unavailable~~.

(3) **Ruled out.** A finding of ruled out is made when a weighing of the information clearly indicates that there was not a

(B) ~~no violation of any licensing requirement~~Licensing requirements or the Act occurred.

(k) **Documentation of findings.** Upon investigation completion, ~~of the investigation, licensing~~Licensing staff:

- (1) documents the findings;
- (2) notifies the provider of the complaint allegations and findings by ~~sending~~providing:

(A) a complaint findings cover letter;;

(B) Form 07LC081E, Licensing Complaint Report Summary;; and if

(C) applicable, Form 04CP004E, Child Welfare Investigative Summary Notification to Child Care Licensing Services, when applicable; and

(3) ~~enters the complaint information on the licensing database using complaint key words~~; and

(4) updates the Licensing database and closes the complaint ~~tracking screen~~. Licensing staff and a supervisor complete the complaint review checklist.

(l) **Use of Notice to Comply.** When a complaint allegation ~~has been~~is substantiated, ~~licensing~~Licensing staff advises the facility to correct the violations immediately and requests the facility complete Form 07LC037E, Notice to Comply, ~~following the procedure in~~per OAC 340:110-1-9.3(d)(7). Licensing staff update the Licensing database with plan of correction information.

(m) **Summary of facts.** Facility owners, directors, or primary caregivers may submit a written request for a summary of the facts used to evaluate and determine the ~~licensing~~Licensing complaint findings.

(n) **Complaint overview.** Licensing staff ~~complete~~completes an overview of completed complaint investigations on Form 07LC080E, Licensing Services Supplemental Information. This overview provides ~~an investigation~~ summary of ~~the investigation~~, how the complaint findings were determined, and is filed in the case file's confidential section.

340:110-1-10.1. Restricted Registry

(a) **Legal basis.** The Oklahoma Child Care Facilities Licensing Act, Section 405.3 of Title 10 of the Oklahoma Statutes (10 O.S. § 405.3) requires the Oklahoma Department of Human Services (DHS) to establish and maintain a Restricted Registry, also named Joshua's List. Individuals recorded on the Restricted Registry are identified as registrants and are prohibited from licensure, ownership, employment, unsupervised access to children, and/or residence in a facility or program licensed, certified, operated or contracted by, or with, DHS or the Office of Juvenile Affairs (OJA). The Restricted Registry search is required, per 10 O.S. § 404.1 and Oklahoma Administrative Code (OAC) ~~340:110-1-8.1~~340:2-46-5.

(b) **Registrants.** Registration may result after review by the Restricted Registry Review Committee and after all appeals are exhausted, when:

- (1) a substantiated finding of abuse or neglect, per 10A O.S. § 1-1-105 by an individual, when the abuse or neglect

occurred to a child while in the care of a facility licensed, certified, operated or contracted by, or with, DHS or OJA;
(2) a denial or revocation of a child care program license;

(3) a specified criminal history for individuals who have entered a plea of guilty, nolo contendere (no contest), or a conviction for felony offenses in (A) through (C) of this paragraph of:

- (A) child abuse or neglect;
- (B) a crime against a child; or
- (C) a crime involving violence including, but not limited to: rape, sexual assault, or homicide;

(4) a specified criminal history for individuals who have entered a plea of guilty, nolo contendere (no contest), or a conviction ~~within the five year period preceding prior to, and after the request for license date and ownership, prior to employment, unsupervised access to children, and/or residence, for the felony offenses in (A) and (B) of this paragraph of:~~

- (A) domestic abuse; or
- (B) a drug or alcohol-related offense; or

(5) an individual required to register, pursuant to per the Sex Offender Registration Act or the Mary Rippe Violent Crime Offenders Act.

(c) **Restricted Registry search for program owners.** When the owner is a:

(1) registrant, ~~Licensing documents owner contact~~ contacts the owner and documents discussion regarding his or her registration on Form 07LC080E, Licensing Services Supplemental Information, regarding the owner's registration; or

(2) non-registrant, procedures for processing a request for license are followed, per OAC 340:110-1-6 or 340:110-1-45.

(d) **Restricted Registry online search for child care program owners, personnel, individuals with unsupervised access, and residents.** The DHS Office of Background Investigation (OBI) verifies programs conduct ~~and a Restricted Registry online search of the Restricted Registry~~ within 30-calendar days of submission, per OAC ~~340:2-46-4~~ 340:2-46-5.

(e) **Registration as a result of findings of abuse or neglect investigations by Child Welfare Services (CWS).** DHS staff notifies Restricted Registry staff of receipt of substantiated or confirmed findings when the abuse or neglect occurred to a child while in the care of a facility licensed, certified, operated or contracted by, or with, DHS or OJA. Restricted Registry staff verifies CWS appeal status before requesting additional information on potential registrants. Investigation information is forwarded to the Restricted Registry Review Committee for consideration, per (j) of this Section.

(f) **Registration as a result of findings of abuse or neglect investigations by Office of Client Advocacy (OCA).** OCA submits abuse or neglect investigations to the residential licensing programs manager who reviews the information. Information meeting Restricted Registry registration criteria ~~identified in, per (b)(1) of this Section~~ are forwarded to Restricted Registry staff. Investigation information is forwarded

to the Restricted Registry Review Committee for consideration, per (j) of this Section. Restricted Registry staff verifies OCA appeal status before requesting further review.

(g) **Registration as a result of findings of OJA abuse or neglect investigations.** OJA Office of Public Integrity personnel submits abuse or neglect investigations to Restricted Registry staff. Information meeting Restricted Registry registration criteria ~~identified in, per (b)(1) of this Section~~ are forwarded to Restricted Registry staff. Investigation information is forwarded to the Restricted Registry Review Committee for consideration, per (j) of this Section. Restricted Registry staff verifies OJA appeal status before requesting further review.

(h) **Registration as a result of a denial or revocation.** Procedures regarding the request for license denial or revocation of a license are followed, per OAC 340:110-1-10 or 340:110-1-52. A copy of the cease and desist letter and ~~revocation or denial or revocation~~ letter is forwarded to Restricted Registry staff by the statewide licensing coordinator or designee. Documentation relating to the denial and revocation is forwarded to the Restricted Registry Review Committee for consideration, per (j) of this Section.

(i) **Registration as a result of a specified criminal history.** When a criminal history review conducted by OBI, including Record of Arrest and Prosecution (RAP) Back, reveals an individual is a potential registrant ~~as indicated in, per (b)(3) - (5) of this Section~~, and a criminal history restriction waiver was rescinded or not granted, all criminal background information is forwarded to the Restricted Registry Review Committee for consideration, per (j) of this Section.

(j) **Restricted Registry Review Committee.** The Restricted Registry Review Committee consists of six DHS staff and one OJA staff, who make a registration determination of registration within 30-calendar days of receipt of necessary information from Restricted Registry staff.

(1) Criteria considered for Restricted Registry registration include, the:

- (A) individual's age at the time of the offense(s);
- (B) length of time since the offense(s) occurred;
- (C) number and types of offenses the individual was convicted for, or for findings made;
- (D) circumstances surrounding commission of the offense(s), demonstrating willful intent;
- (E) likelihood the individual will re-offend; and
- (F) other documentation submitted indicating children's health, safety, and well-being are, or are not endangered.

(2) The Restricted Registry Review Committee ~~standard to determine~~ determines Restricted Registry registration by clear and convincing evidence ~~includes; including~~ consideration of:

- (A) the individual's history of behavior likely to create a reasonable risk of harm to children; and
- (B) ~~if the individual is~~ children are unsafe with ~~child~~ the individual; either alone or in a group.

(3) The Restricted Registry Review Committee's determination requires a majority decision and is based on a ~~majority decision of the Restricted Registry Review~~

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~~Committee members~~ the members' review, discussion of documentation, and consideration of registration criteria as listed.

(4) When the Restricted Registry Review Committee recommends registration, information is forwarded to Restricted Registry staff.

(k) **Restricted Registry legal review.** Restricted Registry staff submits registration information to DHS Legal Services (LS) ~~requesting legal review~~ for registration review.

(l) **Restricted Registry notification.** Within five DHS-business days of receipt of DHS LS review, Restricted Registry staff notifies the potential registrant on Form 07LC115E, Restricted Registry Notification. The notification:

(1) is mailed to the most recent address of record as provided by the potential registrant through request for license, personnel documents, criminal background requests, or interviews. Notification is provided by regular and certified mail, return receipt requested; and

(2) advises the potential registrant of the:

(A) right to appeal within 30-calendar days of receipt of notice;

(B) failure to request a hearing, within the time frame specified, may result in Restricted Registry registration, per (n) of this Section; and

(C) responsibility for notifying restricted registry staff of changes in mailing address.

(m) **Restricted Registry appeal process.** A request for an appeal is forwarded to Restricted Registry staff. Appeal requests are forwarded to DHS LS.

(n) **Registration.** When an appeal is not requested within the specified timeframe or when an administrative decision becomes final, Restricted Registry staff:

(1) mails Form 07LC114E, Restricted Registry Final Notification, to the registrant's last known address of record on file;

(2) mails Form 07LC113E, Restricted Registry Program Notification, to the program where registrant is associated;

(3) notifies the appropriate CWS Resource Unit, OJA, or Licensing staff regarding Restricted Registry registration; and

(4) enters registrant information on the Restricted Registry database.

(o) **District Court appeal process.** Registrants aggrieved by the decision may appeal to the District Court of the county where the program is maintained and operated by filing a verified petition with the court clerk within 10-calendar days after the decision. Within 20-calendar days of the filing of the appeal in District Court, the registrant must also file with the court clerk the administrative hearings transcript.

(p) **Request for registration removal.** A registrant may request removal after 60 months from the date of Restricted Registry registration. A request for removal from the Restricted Registry is forwarded to the Restricted Registry staff for submission to the Restricted Registry Review Committee. The Restricted Registry Review Committee makes a determination within 30-calendar days of receipt of notice from the Restricted Registry staff.

(1) Criteria considered for removal includes, but ~~are~~is not limited to, ~~criteria in~~ (j)(1)(A) through (F) of this Section, and:

(A) a current criminal background review, conducted within 30-calendar days;

(B) ~~work and training histories~~, since registration, consideration of;

(i) work and training histories; and

(ii) character behavioral references;

(C) a personal statement of rehabilitative efforts; and

(D) reason for original placement and the length of time on the Restricted Registry.

(2) A decision to remove a registrant from the Restricted Registry is based on a Restricted Registry Review Committee majority decision.

(3) A request for appeal of continued placement on the Restricted Registry is forwarded to Restricted Registry staff. Appeal requests are forwarded to DHS Legal Services. ~~(3)(4)~~ Restricted Registry staff notifies the registrant of the Restricted Registry Review Committee decision.

340:110-1-15. Grievance policy and procedure

(a) **Grievance policy.** The program owner or director may ~~file~~submit a grievance regarding the application of any written or unwritten policy, rule, or regulation of Child Care Services (CCS) or a CCS employee decision affecting the program. Grievances must be ~~requested~~received within 30-calendar days of the documented non-compliance, star criteria violation, or substantiated complaint allegation. A grievance is not accepted concerning an Emergency Order, request for license denial, ~~or license revocation, or Restricted Registry registration.~~ The procedure for appealing this action is provided in the Oklahoma Child Care Facilities Licensing Act, Section 407 of Title 10 of the Oklahoma Statutes (10 O.S. § 407).

(b) **Grievance procedure.** Individuals wanting to ~~file~~submit a grievance are encouraged to seek informal resolution of his or her concerns by contacting the appropriate Licensing supervisor, who attempts to resolve the matter.

(1) When a resolution cannot be reached at the local level or through verbal conversation with CCS State Office staff, the grievant is ~~requested~~instructed to ~~file~~submit one written grievance request with the Licensing supervisor. Grievances must be received within 15-calendar days of this communication. Written grievances are forwarded when additional reviews are requested.

(2) The Licensing supervisor notifies the regional programs manager (RPM) and statewide licensing coordinator that a formal grievance was filed~~received~~ and efforts ~~were~~ made to resolve the issue. The Licensing supervisor responds to written grievances within 10-Oklahoma Department of Human Services (DHS) business days of receipt. The grievant is informed additional review requests must be ~~submitted~~received within 15-calendar days of the correspondence date.

(3) When the grievant is not satisfied with the proposed resolution, he or she may request RPM review. The RPM

responds to written grievances within 10-DHS business days of receipt. The grievant is informed additional review requests must be ~~submitted~~received within 15-calendar days of the correspondence date.

(4) When the grievant is not satisfied with the proposed resolution, he or she may request statewide licensing coordinator review. The grievant is informed he or she may request Child Care Advisory Committee (CCAC) Peer Review Board review, prior to statewide licensing coordinator review. The statewide licensing coordinator forwards information to the Peer Review Board, when applicable or proceeds with the review.

(5) When applicable, the Peer Review Board responds to the statewide licensing coordinator with resolution advisement within 10-DHS business days of receipt.

(6) The statewide licensing coordinator notifies the grievant of the CCS decision within 10-DHS business days or when applicable 10-DHS business days of Peer Review Board advisement receipt. The grievant is informed additional review requests must be ~~submitted~~received within 15-calendar days of the correspondence date.

(7) When the grievant is not satisfied with the proposed resolution, he or she may request review by the CCS director, ~~Adult and Family Service (AFS)~~Children's Services director, and DHS Director (Director), respectively. The CCS director, AFS director, and Director each respond within 10-DHS business days of receipt. The grievant is informed additional review requests must be ~~submitted~~received within 15-calendar days of the correspondence date. The Director's decision is final.

(c) **Grievance procedures against a CCS employee.** A child care program may ~~file~~submit a grievance about a CCS employee who retaliated against a program or program employee. Grievances must be received within 30-calendar days of the alleged incident. Reports are investigated regardless of the grievant's decision to remain anonymous.

(1) The grievant is referred to the appropriate supervisor, who attempts to resolve the matter.

(2) When the grievant is not satisfied with the proposed resolution at the supervisory level, the grievant is referred to the assistant licensing coordinator not within the line of supervision of the involved Licensing staff. The assistant licensing coordinator:

- (A) requests the allegations be submitted in writing; however, written submission is not required;
- (B) investigates the allegations; and
- (C) provides written investigation results to the grievant, when contact information is available.

(3) The assistant licensing coordinator's decision is final; however, the grievant may request the CCS director review the finding.

PART 3. LICENSING SERVICES - RESIDENTIAL CARE AND AGENCIES

340:110-1-47. Case management

(a) Periodic visits.

(1) Licensing staff conducts monitoring visits documenting compliance with requirements. Required monitoring visits annually include two:

(A) unannounced and one announced, to residential programs; and

(B) announced, to child-placing agencies

(2) When caseloads prevent Licensing staff from conducting ~~all the required~~ monitoring visits, the programs manager consults with Licensing staff on case management, and the required monitoring visits may be reduced. This adjustment is approved and documented in the case file by the programs manager.

(3) During each monitoring visit, Licensing staff:

(A) observes the entire facility, including outdoor play space and transportation, when available; and

(B) verifies:

- (i) compliance with ~~licensing~~Licensing requirements;
- (ii) resident files, when applicable;
- (iii) new personnel records including personnel sheets and compliance with background investigations, per Oklahoma Administrative Code (OAC) 340:110-1-8.1;
- (iv) the Oklahoma Department of Human Services (DHS) database on applicable individuals, per OAC 340:110-1-8.1;
- (v) Form 07LC092E, Insurance Verification, within the ~~last~~previous 12 months;
- (vi) fire and health inspections within the ~~last~~previous 12 months, when applicable; and
- (vii) other documentation requiring renewal.

(b) **Consultation and technical assistance.** Licensing staff provides technical assistance to operators to meet and maintain minimum requirements. Consultation is provided to parties interested in licensure and to licensed programs, and includes suggestions for improving the quality of care and for exceeding minimum requirements.

(c) **Address change.** When a program moves to a new address, Licensing staff follows procedures in this subsection to document the change.

(1) **Child-placing agency.** When a child-placing agency moves its office, Licensing staff:

- (A) obtains an updated Form 07LC040E, Request for License Child-Placing Agency and Residential Child Care; and
- (B) requests a permit or license be issued reflecting the address change.

(2) **Residential program.** When a residential program moves, Licensing staff:

- (A) obtains an updated request for license;
- (B) conducts a monitoring visit verifying the new location meets ~~licensing~~Licensing requirements;
- (C) obtains new fire and health inspection approvals, when applicable;
- (D) obtains Oklahoma Department of Environmental Quality approval, when applicable;
- (E) completes an updated physical plant drawing with required calculations; and

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- (F) requests a permit or license be issued reflecting the address change.
- (d) **Satellite office.** When a child-placing agency adds a satellite office, Licensing staff:
- (1) documents each office location; and
 - (2) requests needed files from satellite locations.
- (e) **Program or agency name change.** When Licensing staff verifies there is a name change but no ownership change, the name change is documented in the case file and the database is updated. A new Form 07LC040E, Request for License Child-Placing Agency and Residential Child Care, reflecting the name change is completed. Licensing staff requests permit or license issuance reflecting the new program or agency name.
- (f) **Executive or program director change.** When there is a director change, Licensing staff:
- (1) verifies the new director meets qualifications;
 - (2) obtains the applicable page of Form 07LC040E, Request for License Child-Placing Agency and Residential Child Care, completed by the new director;
 - (3) obtains an appropriate, Form 07LC056E, Compliance Review-Residential Child Care Facility; or Form 07LC043E, Child Placing Agency Compliance Review, completed by the executive or program director;
 - (34) notifies the new director of current personnel granted a waiver; and
 - (45) documents the information on Form 07LC080E, Licensing Services Supplemental Information.
- (g) **Capacity increase or decrease.** When a program requests a capacity increase or decrease, it is documented on Form 07LC080E, Licensing Services Supplemental Information, and must be approved by the programs manager. When the increase involves new construction, architectural plans approved by the State Fire Marshal are submitted to Licensing for approval prior to construction. When the request to increase capacity is due to additional physical space, the required documentation includes:
- (1) the reason for the increase;
 - (2) fire department approval;
 - (3) health department approval of additional food preparation space not previously inspected;
 - (4) a physical plant drawing indicating required calculations; and
 - (5) the request for additional personnel, when applicable.
- (h) **Inactive programs.** A program is inactive when care or child-placing agency activity was not provided for more than 90-calendar days.
- (1) A program remaining open after 90-calendar days submits a request in writing including a statement the owner will notify Licensing prior to resuming care or child-placing agency activity. Licensing staff verifies compliance with requirements prior to resuming care.
 - (2) The program is contacted by Licensing staff, a minimum of every four months for residential programs; and a minimum of every six months for child-placing agencies by phone, letter, or email to update the program status including changes in personnel, household members, or other program changes.

- (3) ~~The Voluntary~~ closure is discussed with the owner and an agreement to close is reached, when possible.
 - (4) Licensing staff ~~visits~~ monitors the inactive program, at least once during the 12-month timeframe verifying compliance with ~~licensing~~ Licensing requirements until closure is final or the program resumes care.
 - (5) When an address change occurs during the time a program is in inactive status, a monitoring visit is required and address change is followed per (c) of this Section.
- (i) **Inactive program closure.** Procedures in (1) ~~through~~ (4) of this subsection are followed when closing an inactive residential program or child-placing agency.
- (1) To verify program status, Licensing staff contacts the program or agency owner during the 12th month of inactive status.
 - (2) Licensing ~~staff~~ documents program status on Form 07LC080E, Licensing Services Supplemental Information, and notifies the owner ~~that if the case will be closed when care or child-placing activity does not resume prior to the end of the 12th month, the case will be closed.~~
 - (3) When care was not provided for 12-consecutive months or longer, Licensing staff provides a letter notifying the owner of case closure within 10-calendar days of letter receipt, unless Licensing is notified care or child-placing activity resumed.
 - (4) The case is closed and the owner must reapply and be approved for a new license prior to resuming care, per OAC 340:11-1-45.
- (j) **Change in ownership.** When there is a change in ownership or a change in the business organization of a residential program or child-placing agency assumes new ownership, the case ~~file~~ is closed, and the program must apply for a new license ~~under the new owner~~. Prior to permit or license issuance, the program must comply with background investigations, per OAC 340:110-1-8.1. A permit may be issued when a monitoring visit without numerous, repeated, or serious non-compliances was conducted ~~at the program~~ within the past 60-calendar days. A full-monitoring visit is conducted within 14-calendar days of ownership change, verifying the new owner is able to meet minimum ~~licensing~~ Licensing requirements.
- (k) **Transitional change of ownership.** When a residential program or child-placing agency requests a transitional change of ownership (1) through (5) of this subsection are followed.
- (1) Licensing staff conducts a monitoring visit within five DHS-business days, verifying compliance with ~~licensing~~ Licensing requirements and, obtains:
 - (A) Form 07LC015E, Transitional Change of Ownership, completed by the current and prospective owners;
 - (B) Form ~~07LC004E~~ 07LC040E, Request for License Child-Placing Agency and Residential Child Care, completed by the prospective owner; and
 - (C) a ~~list of all~~ current personnel list, verifying ~~that~~ the prospective owner employs the same personnel as the current owner, at the time of transitional change of ownership.

- (2) Periodic and ongoing monitoring is maintained, per (a) of this Section.
- (3) All ~~licensing~~Licensing monitoring and correspondence are provided to both the current and prospective owners.
- (4) Change of ownership procedures are followed, by the end of 90-calendar days, when applicable, per (j) of this Section.
- (5) When programs notify Licensing ~~that~~the transitional change of ownership is no longer proceeding, Licensing staff verifies program operation or child-placing activity status and consults with the programs manager for appropriate action.
- (l) **Response to a child death.** When notified of a child death while in care, Licensing staff:
 - (1) completes Form 07LC079E, Child Death Report, and forwards it to the statewide licensing coordinator or designee; and
 - (2) visits the residential program as soon as possible, and contacts the child-placing agency unless advised otherwise by local law enforcement officials.
- (m) **Serious incident reports.** Licensing staff submits a serious incident report to the programs manager. Serious incidents include at least, incidents:
 - (1) resulting in the serious injury or child death, such as a:
 - (A) shaken baby;
 - (B) drowning or near drowning; or
 - (C) traffic accident resulting in serious injury;
 - (2) placing a child at a high risk for death or injury, such as when a child is left:
 - (A) at a location away from the facility;
 - (B) unattended in a vehicle; or
 - (C) alone in a facility; or
 - (3) resulting in significant facility damage, such as:
 - (A) fire;
 - (B) flood; or
 - (C) tornado.
- (n) **Coordination with state agencies.** Licensing staff works cooperatively with the DHS Office of Client Advocacy and Child Welfare Services, the Oklahoma Commission on Children and Youth, the Oklahoma Health Care Authority, and local law enforcement.

340:110-1-47.1. Complaint investigations

- (a) **Legal basis.** The Oklahoma Child Care Facilities Licensing Act (Act), Section 406 of Title 10 of the Oklahoma Statutes (10 O.S. § 406), mandates that the Oklahoma Department of Human Services (DHS) conduct a full ~~investigation of a complaint~~ investigation alleging a violation against the Act or ~~any licensing requirement~~ Licensing requirements.
- (b) **Receipt of the complaint** ~~Complaint receipt~~. Complaints may be made to Licensing ~~Services~~, in writing, in person, by phone, or electronically.
- (c) **Complaint information.** Licensing staff obtains as much relevant information as possible from the complainant.
- (d) **Screening complaints.** Licensing staff accepts a complaint for investigation when ~~it alleges~~ alleging:

- (1) non-compliance with ~~licensing~~Licensing requirements;
- (2) violation of the Act;
- (3) unlicensed program operation ~~of an unlicensed program in violation of the Act~~; or
- (34) abuse or neglect of a child in care.
- (e) **Disposition of complaints.** ~~Upon~~On receipt of a complaint, ~~licensing~~Licensing staff determines a disposition, as described in this subsection.
 - (1) A complaint not meeting the criteria in (d) of this Section is discussed with the complainant and, when appropriate, a referral is ~~made~~submitted to another entity, such as local law enforcement, the Office of Juvenile Affairs (OJA), the Office of Client Advocacy (OCA), Child Welfare Services (CWS), or the Office for Civil Rights.
 - (2) A complaint alleging ~~violation of licens~~ing non-compliance with Licensing requirements or unlicensed program operation ~~of an unlicensed program~~ is investigated by Licensing Services.
 - (3) A complaint alleging child abuse or neglect is immediately referred to the Child Abuse and Neglect Hotline with a copy of Form 07LC012E, Licensing Complaint. The referral is documented on the form. When an immediate response ~~to the referral~~ is not received, ~~licensing~~Licensing staff follows up the next DHS-business day to obtain a response.
 - (4) When a complaint alleges illegal activity by program personnel, including illegal drug activity in the child care facility, ~~all referral information, including the complainant's name,~~ is immediately referred to the DHS Office of Inspector General (OIG) and local law enforcement where the program is located.
 - (A) Referral follow ups are documented in writing, a copy is filed in the program record case file, and the programs manager is notified.
 - (B) ~~It is the responsibility of licensing~~Licensing staff ~~to follow up~~follows up with local law enforcement officials to determine and document the investigation's outcome of the investigation.
 - (C) ~~A~~The referral ~~to~~ OIG is documented on Form 19MP001E, Office of Inspector General (OIG) Referral Form.
 - (5) ~~A~~Information in a complaint received from another ~~program division~~ within DHS or an agency responsible for monitoring residential child care programs or child-placing agencies, such as the Oklahoma Commission on Children and Youth (OCCY), OCA, the local health, or fire department, ~~is may be~~ may be deemed valid when documented in writing by the agency representative. Licensing staff determines ~~whether when~~ the observation is a non-compliance. The program is advised of the report, requested to complete Form 07LC037E, Notice to Comply, when applicable, per Oklahoma Administrative Code (OAC) 340:110-1-47.2, and given an opportunity to respond.
 - (6) The programs manager is notified of ~~any~~ a complaint when:
 - (A) the alleged non-compliance caused or could cause imminent risk of harm to a child in care;

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(B) the program has numerous, repeated, or serious non-compliance with requirements;

(C) the alleged non-compliance was addressed in a previous Form 07LC037E, Notice to Comply;

(D) referred to the Child Abuse and Neglect Hotline or local law enforcement; or

(E) receiving special attention, such as from the media or a legislator.

(f) **Complaint risk levels.** ~~Risk levels are determined by licensing~~ Licensing staff determine risk levels based upon the degree of harm or danger to children in care. Risk levels are used to ensure investigations occur in a timely manner ~~and to track types of complaints.~~

(1) **Risk level I complaints.** Risk level I complaints indicate a child is in imminent ~~danger~~ risk of serious physical injury. The ~~risk level of risk~~ is not influenced by the removal of a child from the program ~~if when~~ other children remain in care. Investigations are initiated immediately or no later than 24-hours after receipt of the complaint by ~~licensing staff~~ Licensing unless awaiting investigation by OCA or local law enforcement investigation; excluding weekends and holidays when the program or agency is closed. Examples of risk level I complaints ~~non-compliances with licensing requirements~~ include:

- (A) alleged physical or sexual abuse;
- (B) presence or use of illegal drugs while children are in care;
- (C) ~~drug distribution of drugs;~~
- (D) children ~~left~~ alone in the facility or in a vehicle without anyone present;
- (E) ~~extreme~~ facility temperatures;
- (F) ~~an infant placed on the stomach for sleep~~ sleep environments;
- (G) caregiver's threatening or impaired behavior ~~of a caregiver;~~
- (H) severe understaffing or severe over licensed capacity;
- (I) ~~unlicensed program~~ child passenger restraints;
- (J) ~~violating an~~ Emergency Order violation;
- (K) required personnel without current cardio-pulmonary resuscitation and first aid training;
- (L) failure to obtain background investigations; or
- (M) knowingly permitting access to children by individuals identified as restricted or Restricted Registry registrants.

(2) **Risk level II complaints.** Risk level II complaints do not indicate there is imminent danger of injury, but without intervention a child may not be safe. Investigations are initiated within ~~45~~ 10-calendar days of receipt of the complaint by ~~licensing staff or sooner, depending on the degree of risk~~ Licensing, unless advised by OCA or local law enforcement to delay the investigation. Examples of risk level II complaints ~~non-compliances with requirements~~ include:

- (A) leaving children with underage personnel;
- (B) alleged physical abuse from personnel no longer working in the program;

- (C) inappropriate discipline where no injury is reported;
- (D) ~~broken playground equipment~~ diapering or toileting;
- (E) ~~injury caused by lack of supervision~~ hazardous equipment; or
- (F) ~~minor understaffing~~ transporting without a valid driver license or liability insurance;
- (G) lack of supervision; or
- (H) minor understaffing or minor over licensed capacity.

(3) **Risk level III complaints.** Risk level III complaints do not indicate imminent danger and there are no injuries alleged. Serious non-compliances, per OAC 340:110-1-47.2 are not considered risk level III complaints. Investigations are initiated within ~~30~~ 15-calendar days of the date of receipt of the complaint by ~~licensing staff or immediately~~ Licensing including when a phone investigation is appropriate, per (h) of this Section. Examples of risk level III complaints ~~non-compliances with requirements~~ include:

- (A) inadequate meal service;
- (B) ~~inappropriate use of television or videos~~ quarterly vehicle maintenance; or
- (C) ~~inadequate cleanliness of the facility~~ program or agency records and documentation;
- (D) inappropriate use of television or videos; or
- (E) inadequate facility cleanliness.

(g) **The investigation.** Licensing staff conducts a full investigation, obtaining sufficient information to ~~make~~ determine a finding.

(h) **Phone investigation.** With supervisory approval, ~~licensing~~ Licensing staff may investigate a complaint by phone. The investigation discussion and, when necessary, an agreed upon plan of correction ~~are~~ is documented on Form 07LC080E, Licensing Services Supplemental Information, including an agreed-on plan of correction, when necessary. A copy is ~~sent~~ provided to the operator. A complaint ~~may be~~ is investigated by phone only when:

- (1) the alleged non-compliance does not place children at risk of harm, ~~for example~~ such as, the program did not serve milk one day or children have head lice;
- (2) the program has not had numerous, repeated, or serious non-compliance within the previous 12 months from complaint receipt; and
- (3) a monitoring visit ~~has been made~~ was conducted in the ~~last~~ previous three months ~~where~~ with substantial compliance ~~was~~ documented.

(i) **Procedure for investigating allegations of operating an unlicensed** Unlicensed program investigations. When ~~allegations of operating~~ a complaint alleging an unlicensed program ~~are investigated~~ is received; procedures, per Oklahoma Administrative Code (OAC) 340:110-1-54.1 are also followed.

(j) **Child abuse and neglect complaints.** ~~Upon~~ On receipt of a complaint ~~alleging~~ allegations of a child in care, ~~licensing~~ Licensing staff immediately notifies the programs manager and ~~makes~~ submits a referral to the Child Abuse and Neglect Hotline.

(k) **Findings.** After ~~the~~ investigation is ~~completed~~completion, ~~licensing~~Licensing staff, in consultation with the programs manager, as appropriate, ~~makes a finding as to whether~~determines the complaint ~~is finding as~~ substantiated, or unsubstantiated, or ruled out.

(1) **Substantiated.** A ~~finding of~~ substantiated ~~finding~~ is ~~made when a weighing of the information obtained during the investigation clearly indicates~~determined when some credible evidence indicates the program violated a ~~licensing~~Licensing requirement or the Act.

(2) **Unsubstantiated.** ~~AAn unsubstantiated finding of unsubstantiated is made when the information does not lead to a definite conclusion, for example~~determined when:

(A) ~~there is insufficient or conflicting information to conclude~~insufficient evidence exists to fully determine whether a violation occurred; or

(B) ~~information required to make a finding is un-~~available.

(3) **Ruled out.** A ~~finding of ruled out is made when a weighing of the information clearly indicates there was not a~~

(B) no violation of a ~~licensing~~Licensing requirement or the Act occurred.

(l) **Documentation of findings.** Upon investigation completion of ~~the investigation~~, ~~licensing~~Licensing staff:

(1) documents the ~~complaint allegations~~, findings;:

(2) notifies the provider in writing, ~~and enters the complaint information on the licensing database using complaint key words; and~~

(3) updates the Licensing database and closes the complaint. Licensing staff and the programs manager complete the complaint review checklist.

(m) **Notice to Comply.** When a complaint allegation is substantiated, ~~licensing~~Licensing staff advises the program to correct the violations immediately, using Form 07LC037E, Notice to Comply, following procedure, per OAC 340:110-1-47.2(c)(7). ~~The program must complete a plan of correction.~~Licensing staff update the Licensing database with plan of correction information.

(n) **Summary of facts.** Program or agency owners or program directors may submit a written request for a summary of the facts used to evaluate and determine the ~~licensing~~ complaint findings.

(o) **Complaint overview.** Licensing staff ~~complete~~completes an overview of completed complaint investigations on Form 07LC080E, Licensing Services Supplemental Information. This overview provides ~~an~~ an investigation summary of ~~the investigation~~, how the complaint findings were determined, and is filed in the case file's confidential section.

340:110-1-54. Grievance policy and procedure

(a) **Grievance policy.** The residential program or child-placing agency owner, director, or administrator may ~~file~~submit a grievance regarding the enforcement of any written or unwritten policy, rule, or regulation of ~~the~~ Child Care Services (CCS) or a CCS employee decision affecting

the program. Grievances must be ~~requested~~received within 30-calendar days of the documented non-compliance or substantiated complaint allegation. A grievance is not accepted concerning an Emergency Order, request for license denial, ~~or~~ license revocation, or Restricted Registry registration. The procedure for appealing this action is provided in the Oklahoma Child Care Facilities Licensing Act, Section 407 of Title 10 of the Oklahoma Statutes (10 O.S. § 407).

(b) **Grievance procedure.** Individuals wanting to ~~file~~submit a grievance are encouraged to seek informal resolution of his or her concerns by contacting the programs manager, who attempts to resolve the matter.

(1) When a resolution cannot be reached at the local level or through verbal conversation with CCS State Office staff, the grievant is ~~requested~~instructed to ~~file~~submit one written grievance request with the programs manager. Grievances must be received within 15-calendar days of this communication. Written grievances are forwarded when additional reviews are requested.

(2) The programs manager notifies the statewide licensing coordinator a formal grievance was ~~filed~~received and efforts were made to resolve the issue. The programs manager responds to written grievances within 10-Department of Human Services (DHS) business days of receipt. The grievant is informed additional review requests must be ~~submitted~~received within 15-calendar days of the correspondence date.

(3) When the grievant is not satisfied with the proposed resolution, he or she may request statewide licensing coordinator review. The grievant is informed he or she may request Child Care Advisory Committee (CCAC) Peer Review Board review, prior to statewide licensing coordinator review. The statewide licensing coordinator forwards information to the Peer Review Board, when applicable or proceeds with the review.

(4) When applicable, the Peer Review Board responds to the statewide licensing coordinator with resolution advisement within 10-DHS business days of receipt.

(5) The statewide licensing coordinator notifies the grievant of the CCS decision within 10-DHS business days or when applicable 10-DHS business days of Peer Review Board advisement receipt. The grievant is informed additional review requests must be ~~submitted~~received within 15-calendar days of the correspondence date.

(6) When the grievant is not satisfied with the proposed resolution, he or she may request review by the CCS director, ~~Adult and Family Service (AFS)~~Children's Service director and Director of Human Services (Director), respectively. The CCS director, AFS director and Director each respond within 10-DHS business days of receipt. The grievant is informed additional review requests must be ~~submitted~~received within 15-calendar days of the correspondence date. The Director's decision is final.

(c) **Grievance procedures against a CCS employee.** A residential program or child-placing agency may ~~file~~submit a grievance about a CCS employee who retaliated against a program or program employee. Grievances must be received within 30-calendar days of the alleged incident. Reports are

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investigated regardless of the grievant's decision to remain anonymous.

- (1) The grievant is referred to the programs manager, who attempts to resolve the matter.
- (2) When the grievant is not satisfied with the proposed resolution at the programs manager level, the grievant is referred to an assistant licensing coordinator. The assistant licensing coordinator:
 - (A) requests the allegations be submitted in writing; however, written submission is not required;
 - (B) investigates the allegations; and
 - (C) provides written investigation results to the grievant, when contact information is available.
- (3) The assistant licensing coordinator's decision is final; however, the grievant may request the CCS director review the finding.

SUBCHAPTER 3. LICENSING STANDARDS FOR CHILD CARE FACILITIES

PART 5. REQUIREMENTS FOR FAMILY CHILD CARE HOMES AND LARGE FAMILY CHILD CARE HOMES

340:110-3-84. Ages and number of children

(a) **Total number of children.** The maximum number of children in care at one time, ~~whether on or off of the premises,~~ does not exceed the number of children specified on the license.

(1) The total number of children in ~~a family child care home~~ care is limited to:

- (A) ~~seven children, that includes for a family child care home;~~
- (B) ~~twelve children, for a large family child care home; and~~
- (C) ~~includes children in (2) and (3) of this subsection.~~

(2) The total number of children in care includes:

- (1A) ~~children younger than five years of age who are living in the home and are present in the home while children are in care;~~
- (2B) ~~foster children 12 years of age and younger who are living in the home and are present in the home while children are in care; and~~
- (3C) ~~the substitute's or assistant caregiver's children of any substitute or assistant caregiver present while children are in care.~~

(3) When the primary caregiver is licensed in an alternative residence other than his or her primary residence, the total number of children in care includes children 12 years of age and younger not residing in the alternative residence.

(b) **One caregiver.**

- (1) When only one caregiver is present, the total number and ages of children ~~that may be~~ in care at any one time are:

- (A) seven children, with no more than two children younger than ~~two~~ 2 years of age;
- (B) six children, with no more than three children younger than ~~two~~ 2 years of age; or
- (C) five children of any age.

(2) Examples of number and ages of children are ~~presented~~ described in this paragraph.

Total Number of Children in Care	Under 2 Years	2 Years and Older
7	0	7
7	1	6
7	2	5
6	3	3
5	4	1
5	5	0

(A) When one caregiver has seven children in care, the program may care for:

- (i) seven children two years of age and older, and no children younger than two years of age;
- (ii) one child younger than two years of age, and six children two years of age and older; or
- (iii) two children younger than two years of age, and five children two years of age and older.

(B) When one caregiver has six children in care, the program may care for three children younger than two years of age, and three children two years of age and older.

(C) When one caregiver has five children in care, the program may care for:

- (i) four children under two years of age and one child two years of age and older; or
- (ii) five children all younger than two years of age, and no children two years of age and older.

(c) **Two caregivers.** Two caregivers ~~must be present and providing~~ are required to provide care when:

- (1) seven children are in care and more than two children are younger than ~~two~~ 2 years of age; or
- (2) six children are in care and more than three children are younger than ~~two~~ 2 years of age.

(d) Additional staff provisions are made for enrollment of children with disabilities ~~who require~~ requiring individual attention.

340:110-3-85. Caregiver requirements

(a) **Caregiver responsibilities.** Caregiver responsibilities ~~are listed in (1) through (15) of this subsection~~ are met.

- (1) **Primary caregiver.** The primary caregiver is present in the home at least 80 percent of weekly-operating hours and is responsible for the day-to-day program operation. The sole proprietor ~~must be~~ is the primary caregiver.

(2) **Care and supervision.** The caregiver provides children's care and supervision at all times, both indoors and outdoors.

(A) Caregivers prevent and respond to allergies and life-threatening conditions by:

- (i) being aware of children's known food and life-threatening allergies;
- (ii) knowing the location of life-threatening condition medications; and
- (iii) ensuring life-threatening condition medications, such as epinephrine pens and rescue inhalers, are in close proximity to the child for immediate administration when needed, including outdoors when the child is outside, during transportation, or on field trips. However, medications are inaccessible to children.

(B) Supervision of children means observing, overseeing, and guiding a child or group of children, including:

- (i) awareness of, and responsibility for, ~~the each child's~~ ongoing activity of ~~each child~~ and, being near enough to intervene when needed;
- (ii) observation of infants at least every 15 minutes while awake or sleeping; and
- (iii) observation of children 1 year of age and older at least every 15 minutes while in cribs and playpens.

(3) **Outdoor play supervision.** In addition to the requirements in (2) of this subsection, the caregiver remains outdoors with children at all times when:

- (A) there is a potentially hazardous situation, such as a pool on the premises or a trampoline in the outdoor play area;
- (B) there is access to a dog(s) outdoors;
- (C) there are children 3 years of age and younger present; or
- (D) the outdoor area is not completely fenced.

(4) **Overnight care supervision.** When children are in care overnight and more than one caregiver is required due to the children's ages and number ~~present~~, at least one caregiver ~~must be~~ awake at all times.

(5) **Assistant and substitute caregivers.** When the primary caregiver employs an individual to assist with or ~~to~~ provide children's care and supervision in the primary caregiver's absence, the primary caregiver ensures the assistant or substitute caregiver is qualified, understands and complies with requirements, and has current cardio-pulmonary resuscitation (CPR) and first aid certification documentation, per Oklahoma Administrative Code (OAC) 340:110-3-85(h).

(A) **Required records.** Prior to employment, a personnel information form provided by Oklahoma Department of Human Services (DHS) is completed. Relative references are not accepted. Assistant and substitute personnel records are maintained at the home and available to Licensing on request.

(B) **Assistant caregiver.** When an assistant caregiver is employed to meet the required staff to child

ratio, the assistant caregiver ~~must be~~ is a responsible, mature, and healthy individual at least 16 years of age. The caregiver is prohibited from leaving children alone in the care of individuals younger than 18 years of age.

(C) **Substitute caregiver.** A substitute caregiver, at least 18 years of age, is available to provide care for short periods of time in the caregiver's absence.

(i) The substitute caregiver may be used in emergency situations and occasionally in non-emergency situations. In non-emergency situations, the caregiver ~~must notify~~ notifies parents in advance when the substitute will be providing care.

(ii) The substitute's name, address, and phone number are provided to Licensing and ~~are~~ posted with the other required emergency numbers.

(6) **Criminal history investigation verification.** The family child care owner or primary caregiver is responsible for submitting to the DHS Office of Background Investigations (OBI), criminal history investigations and obtaining dispositions on any charges shown on the report lacking dispositions.

(7) **Realistic expectations.** The caregiver demonstrates a capacity for setting realistic behavior and performance expectations based on the children's ages, abilities, and special needs.

(8) **Constructive influence.** The caregiver's family members and others living in the home accept the children in care and provide constructive influence. There ~~must be~~ is an indication of a stable and harmonious home life.

(9) **Hazards.** The caregiver recognizes and acts to correct hazards to children's safety, both indoors and outdoors.

(10) **Child abuse and human trafficking reporting.** Reporting requirements in (A) and (B) of this paragraph are met.

(A) Any person who has reason to believe a child was abused or neglected, per Section 1-1-105 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-1-105) is required to report the matter promptly to the DHS Child Abuse and Neglect Hotline at 1-800-522-3511, per 10A O.S. § 1-2-101. Failure to report is a misdemeanor offense and upon conviction is punishable by law. Failure to report with prolonged knowledge, six months or more, of ongoing abuse or neglect is a felony offense.

(B) Per 21 O.S. § 870, every person having reason to believe that a person or child-placing agency is engaging in the crime of human trafficking in children, per 21 O.S. § 866, reports the matter promptly to the Oklahoma Bureau of Narcotics and Dangerous Drugs Control.

(11) ~~Notification of Licensing notification.~~ The primary caregiver notifies Licensing within:

(A) 24-hours of a child death while in care;

- (B) 24-hours of accidents involving transportation unless there were no injuries and only minor vehicle damage;
 - (C) 24-hours of changes in liability insurance coverage;
 - (D) 24-hours of a child's injury requiring emergency medical attention;
 - (E) 24-hours of remodeling, changes, or physical facility damage affecting compliance with licensing requirements;
 - (F) 24-hours of known arrests, criminal investigations, criminal charges, or child abuse investigations involving ~~persons~~individuals living in the home, providing care, or assisting with children's care;
 - (G) 24-hours of any legal action against a caregiver involving or affecting a child in care or program operation;
 - (H) 24-hours when an animal bites a child and the skin is broken;
 - (I) five-calendar days of an individual moving into the home; and
 - (J) 30-calendar days in advance of moving from one residence to another, unless an emergency exists. The new home ~~must comply~~complies with licensing requirements.
- (12) **License posting.** The permit or license is displayed in the home, including the denial or revocation notice, when applicable.
- (13) **Other employment.** The caregiver is prohibited from conducting business in the home during the hours children are in care. The primary caregiver is not employed outside the home during ~~the hours of~~ child care hours.
- (14) **Foster care.** The caregiver may not provide therapeutic foster care. The caregiver may provide foster care only with prior written approval from Licensing for each child placement.
- (A) The written approval includes the number and ages of foster children.
 - (B) Foster children 12 years of age and younger are counted in the license capacity.
- (15) **Inactive care.** A primary caregiver is in inactive status when care was not provided for more than 90-consecutive calendar days.
- (A) Prior to resuming care, the caregiver ~~must~~ notify Licensing to verify compliance with licensing requirements.
 - (B) When care was not provided for more than 12-consecutive months, the family child care home is closed ~~and~~. Prior to resuming care, the caregiver must reapply and be approved for a license prior to resuming care.
- (b) **Caregiver qualifications.** Caregiver qualifications are described in this subsection.
- (1) **General.** The caregiver is a responsible, mature, healthy adult capable of understanding and complying with licensing requirements, and meeting ~~the children's~~ need of children in care. The caregiver demonstrates

good judgment, as evidenced by prudent and responsible behavior reasonably ensuring children's health, safety, and well-being. Caregivers interact with children without physical, psychological, or emotional punishment, mistreatment, neglect, or abuse.

- (A) Primary caregivers applying for a license after October 1, 2007, are at least 21 years of age.

- (B) Primary caregivers applying for a license after October 1, 2007, have obtained a high school diploma or General Educational Development credential (GED).

- (C) Caregivers left alone with children have the ability to read and write for keeping required records, reading the licensing requirements, and administering medication.

- (D) Caregivers cooperate with Licensing during monitoring visits and DHS investigations.

(2) **Health.** The requirements relating to the caregiver's, assistant caregiver's, and household members' health ~~are specified in (A) - (C) of this paragraph~~ are met.

- (A) **General health.** Caregivers and household members where licensed care is provided ~~must be~~ are in good physical, mental, and emotional health. When it is reported or observed that a caregiver or household member has a physical, mental, or emotional condition that could negatively impact children's care, a licensed physician's statement is requested.

- (B) **Tuberculosis testing.** The need for personnel tuberculin skin testing is based upon a local identified tuberculosis exposure, the degree of transmission risk of latent tuberculosis infection, the impact to public health and safety, and Oklahoma State Department of Health specific recommendations.

- (C) **Immunizations.** There is documentation verifying children living in the home have or are in the process of obtaining the required immunizations at the medically appropriate time. The schedule for required immunizations is found in Supplement ~~IX~~III of DHS Publication No. 86-104, Licensing Requirements for Family Child Care Homes and Large Child Care Homes.

(3) **References.** The primary caregiver submits to Licensing the names of three non-relative references that may include a licensed personal or family physician.

(c) **Background investigations - general.**

- (1) **Required individuals.** Background investigations are required, per the Oklahoma Child Care Facilities Licensing Act (Licensing Act), 10 O.S. §§ 401 et seq., Oklahoma Child Care Facilities Licensing Act (Licensing Act) 404.1, unless an exception, per (3) of this subsection applies for:

- (A) owners, prior to authorization to operate;

- (B) responsible entities, prior to authorization to operate and, when there is a change in a responsible entity;

- (C) personnel applicants, prior to hire; however, the program may hire individuals, when:

- (i) the program has submitted a criminal history review request to OBI;
- (ii) only awaiting the national criminal history records search, based on fingerprint submission;
- (iii) criminal history review results from OBI are received by the program. However, until complete results are received, the individual does not have unsupervised access to children; and
- (iv) coming from another licensed program owned by the same business entity. Individuals are not required to repeat the background investigation process, unless required, per (2) of this subsection, with the exception of criminal history restriction waivers, provided there is no break in employment from the business entity;
- (D) individuals with unsupervised access to children, prior to having access to children, unless an exception, per (3) of this subsection applies;
- (E) adults living in the facility, prior to authorization to operate or moving into the facility of an existing program. This includes children, who become 18 years of age while living in the facility; and
- (F) individuals having access to, or review of, fingerprint results, prior to access to or review of results.
- (2) **Resubmission of criminal history reviews as of November 2, 2017.** Effective November 2, 2017, programs request a criminal history review process, excluding fingerprinting, for required individuals every five years. However criminal history reviews requested prior to November 2, 2017, are resubmitted by November 1, 2022.
- (3) **Non-required individuals.** Background investigations are not required for:
 - (A) specialized service professionals who are not program personnel, provided parent releases are obtained, per OAC 340:110-3-88(c);
 - (B) volunteer drivers transporting children on an irregular basis and not filling another position, provided parent releases are obtained, per OAC 340:110-3-88(c);
 - (C) contracted drivers not filling another position or having unsupervised access to children; and
 - (D) contracted non-personnel not having unsupervised access to children, such as when the program contracts for special activities or facility repair.
- (d) **Background investigations - Restricted Registry.** The program conducts an online search of the Restricted Registry, also named Joshua's List, when required, per (c) of this Section.
 - (1) **Non-registrants.** Non-registrants are individuals not recorded on the Restricted Registry.
 - (2) **Registrants.** Registrants are individuals recorded on the Restricted Registry, who are prohibited from licensure, ownership, employment, unsupervised access to children, or facility residence, and prohibited individuals, per (e) of this Section.
- (e) **Background investigations - criminal history.** The program and required individuals complete the criminal history review process. The program receives the completed criminal

history review results from OBI, when required, per (c) of this Section.

- (1) **Criminal history prohibitions.** Individuals with criminal history prohibitions are prohibited, per (f) of this Section. Criminal history prohibitions include:
 - (A) required registration under the:
 - (i) Sex Offenders Registration Act, including state and national repositories; or
 - (ii) Mary Rippy Violent Crime Offenders Registration Act; or
 - (B) pleas of guilty or nolo contendere (no contest), or convictions of felonies involving:
 - (i) murder, as defined in Section 1111 of Title 18 of United States Code;
 - (ii) child abuse or neglect;
 - (iii) crimes against children, including child pornography;
 - (iv) spousal abuse;
 - (v) crimes involving rape or sexual assault;
 - (vi) kidnapping;
 - (vii) arson;
 - (viii) physical assault or battery; or
 - (ix) a drug-related offense committed during the preceding five years, unless a criminal history restriction waiver, per (2) of this subsection is granted; or
 - (C) pleas of guilty or nolo contendere (no contest), or convictions of violent misdemeanors committed as adults against a child involving:
 - (i) child abuse or child endangerment; or
 - (ii) sexual assault; or
 - (D) pleas of guilty or nolo contendere (no contest), or convictions of misdemeanors involving child pornography.
- (2) **Criminal history restrictions.** Individuals with criminal history restrictions are prohibited, per (f) of this Section, unless a criminal history restriction waiver is granted. Criminal history restrictions include pending charges, pleas of guilty or nolo contendere (no contest), or convictions of criminal activity involving:
 - (A) gross irresponsibility or disregard for the safety of others;
 - (B) violence against an individual;
 - (C) sexual misconduct;
 - (D) child abuse or neglect;
 - (E) animal cruelty;
 - (F) illegal drug possession, sale, or distribution; or
 - (G) a pattern of criminal activity.
- (3) **Criminal history restriction waivers.** Restriction waivers are described in (A) through (C) of this paragraph.
 - (A) Restriction waivers may be requested for individuals having criminal history restrictions. The owner, responsible entity, or primary caregiver completes requests on a DHS form.
 - (B) Restriction waivers are not requested or granted for:
 - (i) Restricted Registry registrants;

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- (ii) individuals with criminal history prohibitions; or
 - (iii) individuals whose sentence has not expired for criminal history restrictions, per (2) of this subsection.
- (C) Individuals identified in pending or denied restriction waiver requests are prohibited, per (f) of this Section.
- (f) **Prohibited individuals.**
 - (1) **Background investigation of required individuals.** The program does not allow a required individual to be the owner or responsible entity, to be employed, to live in the facility, or have:
 - (A) access to children, such as being present at the facility during the hours of operation or present with the children in care while off-site, when the individual has criminal history:
 - (i) prohibitions; or
 - (ii) restrictions, unless a criminal history restriction waiver is granted. Individuals identified in a pending or denied restriction waiver request are prohibited; or
 - (B) unsupervised access to children, when the individual is a Restricted Registry registrant.
 - (2) **Background investigation statements and consents.** Individuals are prohibited to be the owner or responsible entity, to be employed, or to live in the facility, when:
 - (A) the individual refuses to consent to background investigations, per (c) of this Section; or
 - (B) knowingly makes a materially-false statement in connection with criminal background investigations.
 - (3) **Child endangerment.** An individual whose health or behavior would endanger children's health, safety, or well-being is not permitted to live in the home or be on the premises when children are in care.
 - (4) **Alcohol, drugs, and medication.** When children are in care, no caregiver is under the influence of:
 - (A) alcohol or illegal drugs; or
 - (B) medication ~~that impairs~~ impairing his or her functioning.
- (g) **Child abuse and neglect-DHS database.** A DHS database search is conducted on individuals signing the request for license. A confirmed or substantiated allegation of child abuse or neglect is considered when evaluating the applicant's qualifications and children's safety and well-being.
- (h) **Professional development requirements.** Caregiver professional development requirements in (1) - (4) of this subsection are met.
 - (1) **General.** The primary caregiver is required to complete 12 clock-hours of professional development annually through workshops, ~~formal~~ training, videos, or individual position-related readings. ~~Annually, no more than~~ Only six clock-hours of videos or individual position-related readings are counted annually toward the required 12 clock-hours.
 - (2) **CPR and first aid certification.** CPR and first aid requirements in (A) through (B) of this subsection are met.
 - (A) Current CPR and first aid certification is required for:
 - (i) the primary caregiver, prior to permission to operate or initial permit issuance;
 - (ii) individuals caring for children alone, on or off of the premises, including during transportation; and
 - (iii) other caregivers, included in the ~~caregiver to adult-child ratio. Caregivers employed:~~
 - ~~(I) prior to November 1, 2016, obtain CPR and first aid certification by November 1, 2017; or~~
 - ~~(II) on or after November 1, 2016, obtain~~ CPR and first aid certification is obtained within three months of ~~caring for children~~ beginning child care.
 - (B) CPR and first aid certification is kept current, approved by Licensing, and maintained at the facility.
 - (3) **Health and safety training.** Prior to caring for children, caregivers obtain ~~training~~ professional development in:
 - (A) the prevention and control of infectious disease and injury prevention measures;
 - (B) fire extinguisher use;
 - (C) the prevention of shaken baby syndrome and abusive head trauma;
 - (D) the prevention of sudden infant death syndrome (SIDS);
 - (E) infant safe sleep practices;
 - (F) car seat and transportation safety;
 - (G) physical premise safety including identification of and, protection from hazards that can cause bodily injury, such as electrical hazards, bodies of water, or vehicular traffic;
 - (H) the handling and storage of hazardous materials and appropriate bio-contaminant disposal ~~of bio-contaminants~~;
 - (I) emergency preparedness and response planning for emergencies resulting from a natural disaster or human-caused event;
 - (J) immunizations;
 - (K) medication administration;
 - (L) the prevention of and, response to emergencies due to food and allergic reactions;
 - (M) the definition, identification, and mandatory reporting of child abuse and neglect; ~~and~~
 - (N) behavior and guidance methods; and
 - (O) child development.
 - (4) **Safe-sleep training.** Prior to caring for infants, the primary caregiver and individuals caring for infants alone, obtain two or more clock-hours of ~~training~~ professional development in safe-sleep practices from an Oklahoma Professional Development Registry (OPDR)-approved training organization.

340:110-3-91. Daily routine and equipment

(a) **Program.** The caregiver provides a balanced program ~~of~~with opportunities for learning, indoor and outdoor play, rest ~~periods~~time, and meals.

(b) **Media use.** ~~Television~~When used, television, videos, computers, and video electronic games, if used, cell phones, social media, and other types of media are age appropriate and used ~~chosen~~with discretion, and selectivity, and are:

- (1) non-violent;
- (2) non-vulgar;
- (3) non-sexually explicit;
- (4) culturally sensitive; and
- (5) age-appropriate, according to accepted rating systems.

(c) **Play equipment.** A variety of indoor and outdoor play equipment ~~that meets the~~meeting children's varied developmental needs and interests ~~of children in care~~ is readily accessible.

(1) Equipment ~~must be~~is available from ~~the~~ categories of~~including:~~

- (A) art supplies;
- (B) books;
- (C) large muscle equipment;
- (D) musical equipment;
- (E) blocks and accessories;
- (F) dramatic play materials;
- (G) manipulative toys; and
- (H) science materials.

(2) Equipment is maintained in good working condition, and is clean, safe, and free from rough edges, sharp corners, pinch and crush points, splinters, and exposed nails or bolts.

(3) Outdoor equipment, such as swings, slides, and climbing apparatus is not located on a hard surface.

(4) Equipment not designed to be portable is anchored firmly to the ground.

(5) All equipment is placed in a safe location.

(d) **Tables and chairs.** Tables and chairs that ensure children's safety and comfort are provided for meals and snacks.

(e) **Prohibited equipment.** Children in care are prohibited from use of:

- (1) infant walkers;
- (2) heavy metal or molded plastic swings, such as animal figures; and
- (3) swinging gates used as play equipment.

340:110-3-91.1. Rest time

(a) **Place to rest.**

(1) Each child has an appropriately sized, individual place to rest, such as a crib, playpen, bed, cot, or mat, with clean, individual bedding. The place to rest is maintained in a clean, ~~and~~ sanitary condition, and in good repair.

(2) Waterbeds, sofas, soft mattresses, inflatable mats, bassinets, stacked cribs, pillows, beanbag chairs, and other soft surfaces are prohibited as infant sleeping surfaces.

(b) **Mats.** Mats are not used for overnight care. When used for ~~napping~~rest time, each mat is:

(4) at least two inches thick and covered with a fitted, durable, washable, waterproof material; ~~and~~

(2) ~~only used on clean carpeted surfaces.~~

(c) **Cribs and playpens.** A crib, port-a-crib, or playpen with a properly-fitted firm waterproof mattress or pad and a tight-fitting sheet is used for each child younger than ~~one~~1 year of age.

(d) **Crib, port-a-crib, and playpen safety features and sleep environments.** Infants sleep in appropriate rest equipment and environments ~~listed~~described in (1) through ~~(6)~~(9) of this subsection.

(1) Cribs, including portable cribs that can be folded or collapsed without being disassembled, meet the current Consumer Product Safety Commission (CPSC) full-size and non-full size crib standards, per Sections 1219 and 1220 of Title 16 of the Code of Federal Regulations.

(2) Verification of compliance with CPSC standards is maintained for duration of crib use.

(3) Mattresses are ~~tight-fitting~~tight-fitting with no more than one inch between the mattress and crib.

(4) Pillows, covers, blankets, quilts, comforters, sheepskins, bumper pads, and other soft products or bedding, are not permitted ~~inside and on the side of~~ infant cribs, playpens, or port-a-cribs.

(5) While in rest equipment:

(A) pacifiers are not attached to the infant or his or her clothing; and

(B) bibs are not placed around the infant's neck.

(6) Sleep positioners and elevated mattresses are prohibited, unless a medical reason documented by a licensed physician is provided. Documentation is maintained at the child care home.

(57) Play equipment, and other items, except for pacifiers, are not placed inside, above, or attached to the sides of ~~the~~ infant rest equipment, unless there is a medical reason documented by a licensed physician for a monitor or other device. Documentation is maintained at the facility. Mobiles may be securely attached or hung above the crib provided no part of the mobile is within the child's reach ~~of the child~~.

(68) When an infant arrives asleep or falls asleep in inappropriate rest equipment, the infant is immediately moved to appropriate rest equipment.

(9) Infants are protected from overheating by adjusting room temperature and clothing.

(e) **Sleep positioning.**

(1) To reduce the risk of Sudden Infant Death Syndrome (SIDS), infants younger than 12 months of age are placed on their back for sleeping unless a medical reason is documented by a licensed physician ~~that~~requesting the infant ~~should~~ not sleep in this position. Documentation is maintained at the facility.

(2) Infants ~~who are~~ able to turn themselves over are placed initially on their back for sleeping but allowed to sleep in a position they prefer.

(3) Children's heads and faces are not covered.

(f) **Swaddling.** Infants, birth through three months of age may be swaddled with an infant-sized, thin fabric, such as a receiving blanket, only when:

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- (1) the infant is not mobile enough to move the fabric over his or her face; and
- (2) requested in writing by the parents. Requests are maintained by the caregiver.

340:110-3-97.1. Requirements for large family child care homes

- (a) **Large family child care home.** A large family child care home is a residential family home ~~that provides~~ providing care and supervision for eight to 12 children for part of the 24 hour day.
- (b) **Requirements.** Large family child care homes ~~are required to meet the required rules,~~ per Oklahoma Administrative Code (OAC) 340:110-3-81 through 340:110-3-97, except as otherwise provided in this Section.
- (c) **Mobile homes.** ~~Large Prior to caring for children, large family child care homes operated in a mobile home are required to obtain an approved state or local fire inspection by the state or local fire official prior to caring for children.~~
- (d) **Capacity.** Large family child care homes are required to meet the rules found in OAC 340:110-3-84(a), ~~except and~~ the total number of children in care in a large family child care home is limited to 12.
- (e) **Supervision of outdoor play.** Large family child care homes ~~are required to meet the rules specified in OAC 340:110-3-85(a)(3) pertaining to supervision of outdoor play; supervision,~~ except when two or more ~~staff personnel~~ are needed to meet the required adult-child to staff ratio, ~~at~~ At least one ~~staff personnel~~ is present with children outdoors at all times.
- (f) **Required number of caregivers.** Large family child care homes are exempt from the requirements regarding the number of caregivers, per OAC 340:110-3-84(b) and (c). The number of caregivers required in a large family child care home is described in this subsection.
 - (1) **One caregiver.** One caregiver may care for up to:
 - (A) ~~up to~~ five children of any age;
 - (B) ~~up to~~ six children, with no more than three children younger than 2 years of age;
 - (C) ~~up to~~ seven children, with no more than two children younger than 2 years of age;
 - (D) ~~up to~~ seven children, when the children are 2 years of age and older;
 - (E) ~~up to~~ eight children, when the children are 3 years of age and older;
 - (F) ~~up to~~ 10 children, when the children are 4 years of age and older; or
 - (G) ~~up to~~ 12 children, when the children are 5 years of age and older.
 - (2) **Two caregivers.** Two caregivers may care for up to:
 - (A) eight children younger than 2 years of age; or
 - (B) 12 children, with no more than six children younger than 2 years of age.
 - (3) **Three caregivers.** Three caregivers may care for up to 12 children, with no more than eight children younger than 2 years of age.

- (g) ~~Qualifications of caregivers~~ **Caregiver qualifications.** Primary, assistant, and substitute caregivers at large family child care homes are required to meet qualifications, per OAC 340:110-3-85(a) and (b), except as otherwise described in this subsection.

- (1) **Primary caregiver.** The primary caregiver or ~~any person~~ individuals substituting for the primary caregiver ~~must be~~ are at least 21 years of age. For ~~any person~~ individuals applying after October 1, 2007, the primary caregiver ~~must~~:
 - (A) ~~have~~ has six months of satisfactory experience as the primary caregiver in a licensed family child care home in Oklahoma; and
 - (B) ~~meet~~ meets one of the requirements ~~specified in~~ (i) through ~~(iv)~~ (v):
 - (i) a high school diploma or General Educational Development (GED) credential and 12 college credit hours in child development or early childhood education;
 - (ii) ~~a vo-tech occupational child care program diploma~~ an Oklahoma Competency Certificate;
 - (iii) a current Child Development Associate (CDA) credential; ~~or~~
 - (iv) a current Certified Childcare Professional (CCP) credential; or
 - (v) ~~an associate~~ associate's or bachelor's degree in child development or early childhood education.
- (2) **Assistant caregiver.** The assistant caregiver or ~~any person~~ individuals substituting for the assistant caregiver ~~must be~~ are at least 16 years of age and have current ~~documentation of~~ cardio-pulmonary resuscitation (CPR) and first aid certification documentation, per OAC 340:110-3-85(h). Children are not left alone in the care of any ~~person~~ individual younger than 21 years of age.
- (3) **Substitute caregiver.** ~~Any person~~ Individuals substituting for the primary caregiver ~~is required to be~~ are at least 21 years of age and have current ~~documentation of~~ CPR and first aid certification documentation, per OAC 340:110-3-85(h).
- (h) **Professional development requirements.** The primary caregiver and assistant caregiver at large family child care homes are required to meet the professional development requirements, ~~specified in~~ per OAC 340:110-3-85(h), except as otherwise described in this subsection.
 - (1) The primary caregiver is required to complete 15 clock-hours of professional development annually.
 - (2) The assistant caregiver is required to complete 12 clock-hours of professional development annually.
 - (3) ~~No more than~~ Only six hours of videos or individual position-related readings is counted toward the annual required professional development hours for the primary caregiver ~~or~~ and assistant caregiver.
 - (4) Within two years prior to request for license ~~application~~, the primary caregiver ~~must have~~ has completed and documented all health and safety training specified in OAC 340:110-3-85(h)(3).
- (i) **Outdoor play space.** The requirements regarding outdoor play space, per OAC 340:110-3-86(a)(12) ~~must be~~ are

met. The outdoor play space ~~must be~~ enclosed by a building or a fence ~~that is in good repair, begins beginning at ground level, and is at least four feet high, and in good repair.~~ The Oklahoma Department of Human Services does not grant Fencing exceptions are not granted by Licensing.

PART 9. REQUIREMENTS FOR RESIDENTIAL CHILD CARE FACILITIES

340:110-3-147. License

~~An application Request~~ for a license is ~~made submitted~~ on Oklahoma Department of Human Services (DHS) provided forms ~~and in the manner prescribed.~~ A license to operate a residential child care ~~facility program~~ is granted ~~on the basis that when~~ the program meets minimum requirements. Children are not accepted into care until DHS authorization is obtained. The license is not transferable and is posted prominently in the facility including the denial or revocation notice, when applicable. ~~If When~~ the program changes ownership or location, a new license is obtained. Per the Oklahoma Child Care Facilities Licensing Act, Section 401 et seq. 405.3 of Title 10 of the Oklahoma Statutes (10 O.S. §§ 401 et seq.), Oklahoma Child Care Facilities Licensing Act (Licensing Act), persons identified as registrants on the Restricted Registry are prohibited from:

- (1) licensure as a child care program;
- (2) ownership of a child care program;
- (3) employment in a child care program;
- (4) having unsupervised access to children; and/or
- (5) residing in a child care facility.

340:110-3-153. Finances

(a) **Evidence of sufficient funds.** The facility program demonstrates evidence of sufficient funds.

- (1) A new facility program submits a letter to ~~the Oklahoma Department of Human Services (OKDHS)~~ Licensing from a certified public accountant ~~that documents~~ documenting the procedures in place for operating the fiscal management system so ~~that the facility's program's~~ financial statements can be audited at the ~~end of the first fiscal year of operation~~ operational year end.
- (2) A new facility program submits a budget for the first ~~year~~ 12 months of operation ~~to OKDHS.~~ The facility has including predictable funds ~~for the first year of operation, as well as reserve funds or documentation of reserve funds.~~
- (3) The facility program maintains a written ~~plan of~~ financing ~~that projects~~ plan projecting sufficient funds to carry out ~~their the program's~~ defined purposes and provide proper care for children.

(b) **Fiscal responsibility.** The facility program demonstrates fiscal responsibility.

- (1) The executive director maintains complete financial records of all income and disbursements.
- (2) ~~If When~~ cash funds are received, the executive director requires ~~all persons responsible for handling~~

individuals with cash funds to handling responsibilities be bonded.

(c) **Accountability.** The facility program demonstrates financial accountability.

(1) ~~All Program~~ financial records ~~pertaining to the facility~~ are audited ~~annually~~ by a certified public accountant, who is not a ~~staff program personnel~~ or a board member ~~of the facility, or audited in accordance with,~~ per the governmental funding source.

(2) When completed, a copy of the auditor's letter, including a statement verifying ~~that the facility's program's~~ financial records accurately reflect its financial operations ~~according to,~~ per generally accepted accounting principles, is submitted to Licensing.

(d) **Insurance.** The facility program maintains insurance. Insurance policies are available for ~~licensing staff to~~ Licensing review.

(1) The facility program is covered by property casualty insurance, unless operated by a government entity that is self-insured, ~~in accordance with~~ per state law.

(2) The facility program is covered by general liability insurance, unless ~~the facility is~~ exempt by state law. Coverage is at least \$200,000 for each occurrence of negligence. Form 07LC092E, Insurance Verification, that includes a certificate of insurance obtained from the insurance agent is completed annually, maintained at the facility, and made available to Licensing.

(3) ~~Any vehicle~~ Vehicles used to transport children ~~is are~~ covered by liability and medical insurance.

340:110-3-153.1. Personnel

(a) **Personnel policy.** Personnel policy includes defining staff, essential position functions, qualifications, and authority lines.

(b) **Personnel and responsibilities.** The program recruits personnel with specialized skills, knowledge, and the cultural understanding and competencies necessary for quality residential care services.

(1) **Executive director.** The program employs an executive director, superintendent, or administrator; and in his or her absence, an individual is designated in charge.

(A) The executive director, superintendent, or administrator is responsible for employing individuals possessing adequate education, training professional development, and experience to perform assigned positions' essential functions.

(B) The executive director is responsible for implementing the policies adopted by the governing board and ongoing program operation.

(2) **Program director.** The program director is responsible for implementing and supervising programs and services. The executive director may also serve as the program director, when meeting the qualifications ~~specified~~ in (d)(2) of this Section.

(3) **Social services personnel.** Social services personnel are responsible for admission assessments, placement services, counseling, residents' and ~~their~~ his or her families'

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casework services, service plans, service plan reviews, and discharge plans.

- (4) **Child care personnel.** Child care personnel are responsible for meeting residents' needs, taking in account the residents' ages, physical and mental conditions, and other factors affecting the amount of attention indicated.
- (5) **Support personnel.** Support personnel are responsible for providing support duties.
- (6) **On-call and part-time personnel.** On-call and part-time personnel are responsible for the position duties they are assigned.
- (7) **On-site official.** There ~~must be~~ is an on-site official authorized to apply the reasonable and prudent parent standard.
- (c) **Volunteers.** When a program uses volunteers, the program maintains current, written volunteer policy. Volunteers:
- (1) counted in ratios meet all child care personnel requirements;
 - (2) receive orientation prior to resident contact; and
 - (3) work under the executive director's or designated personnel's direct supervision.
- (d) **Executive director and program director qualifications.** The executive director, superintendent, or administrator, and program director possess adequate education, ~~training~~ professional development, and experience to perform the positions' essential functions.
- (1) In a program where the executive director operates primarily as an administrator and employs a program director, an executive director hired after June 15, 1990, has a minimum of a bachelor's degree from an accredited college or university.
 - (2) Individuals ~~hired after June 15, 1990~~, solely responsible for direct program supervision, when filling executive director or program director positions, meet at a minimum, one of the qualifications in (A) ~~through~~ (D) of this subsection ~~paragraph~~:
 - (A) a bachelor's degree ~~in a behavioral science or other related area of study~~ from an accredited college or university with at least nine-college credit hours in family focus, individual function and interaction, child development, sociology, social work, and/or a closely related subject, and 36 months ~~of~~ children's services experience;
 - (B) a master's degree in social work, psychology, guidance and counseling, sociology, child development, human relations, behavioral science or other closely related area of study ~~subject~~ from an accredited college or university and 24 months ~~of~~ children's services experience;
 - (C) a doctorate in medicine, social work, psychology, guidance and counseling, sociology, child development, human relations, or ~~other~~ closely related area of study ~~subject~~ from an accredited college or university and 12 months ~~of~~ children's services experience; or
 - (D) for programs specializing in substance abuse treatment, certification as a Qualified Substance Abuse Professional (QSAP).

(e) **Child care and supervisory personnel qualifications.** Child care and supervisory personnel possess adequate education, ~~training~~ professional development, and experience to perform the position's essential functions.

- (1) Child care personnel are at least 21 years of age ~~and older~~.
 - (2) Personnel hired after June 15, 1990, have a high school diploma or equivalent within 12 months of employment.
- (f) **Social services personnel qualifications.** Social services personnel, whether employees or contractors, possess adequate education, ~~training~~ professional development, and experience to perform the position's essential functions.
- (1) Social services supervisory personnel, ~~hired after June 15, 1990~~, responsible for developing and implementing the social services program, meet at a minimum, one of the qualifications in (A) ~~through~~ (C) ~~(D)~~ of this subsection ~~paragraph~~, including a bachelor's degree:
 - (A) ~~a bachelor's degree~~ in social work from an accredited college or university;
 - (B) ~~a bachelor's degree~~ in behavioral science, social science, or other related area of study ~~subject~~ from an accredited college or university and 12 months ~~of~~ children's services experience; ~~or~~
 - (C) ~~for programs specializing in substance abuse treatment, social services supervisory personnel are supervised by a QSAP with at least nine-college credit hours in family focus, individual function and interactions, child development, sociology, social work, and/or a closely related subject, and 48 months children's services experience; or~~
 - (D) for programs specializing in substance abuse treatment, when social services personnel are supervised by a QSAP. - (2) Social services personnel hired after June 15, 1990, providing only casework services have a bachelor's degree in a related area of study ~~subject~~ from an accredited college or university.
- (g) **Employment requirements.** Personnel meet requirements in (1) through (3) of this subsection.
- (1) **References.** The program obtains three references for personnel prior to employment.
 - (A) ~~References~~ Verified references include the date, interview questions, responses, and interviewer's signature.
 - (B) Copies are maintained in the employee's personnel record. - (2) **Tuberculin test.** ~~Testing for tuberculosis~~ Tuberculosis testing is not required on a routine basis. Programs comply with the Oklahoma State Department of Health recommendation regarding tuberculin skin testing, when there is a local identified tuberculin exposure.
 - (3) **Performance evaluation.** A written performance evaluation is updated at least annually and maintained in the employee's personnel record.
- (h) **Background investigations - general.**
- (1) **Required individuals.** Background investigations are required, per the Oklahoma Child Care Facilities

~~Licensing Act, Section 401 et seq. 404.1 of Title 10 of the Oklahoma Statutes (10 O.S. §§ 401 et seq.), Oklahoma Child Care Facilities Licensing Act (Licensing Act), unless an exception, per (3) of this subsection applies for:~~

- (A) owners, prior to authorization to operate;
- (B) responsible entities, prior to authorization to operate and, when there is a change in a responsible entity;
- (C) personnel applicants, prior to hire; however, the program may hire individuals, when:

- (i) the program has submitted a criminal history review request to the Office of Background Investigations (OBI);
- (ii) only awaiting the national criminal history records search, based on fingerprint submission;
- (iii) criminal history review results from the OBI are received by the program. However, until complete results are received, the individual does not have unsupervised access to residents; and
- (iv) coming from another licensed program owned by the same business entity. Individuals are not required to repeat the background investigation process, unless required, per (2) of this subsection, with the exception of criminal history restriction waivers, provided there is no break in employment from the business entity;

(D) individuals with unsupervised resident access, prior to having resident access, unless an exception, per (3) of this subsection applies;

(E) adults living in the facility prior to authorization to operate or moving into the facility of an existing program. This includes residents, who become 18 years of age while living in the facility, unless exempt as a resident receiving services from the program; and

(F) individuals having access to, or review of, fingerprint results, prior to access to or review of results.

(2) **Resubmission of criminal history reviews as of November 2, 2017.** Effective November 2, 2017, programs request a criminal history review process, excluding fingerprinting, for required individuals every five years. However, criminal history reviews requested prior to November 2, 2017, are resubmitted by November 1, 2022.

(3) **Non-required individuals.** Background investigations are not required for:

- (A) specialized service professionals who are not program personnel, provided parent releases are obtained, per Oklahoma Administrative Code (OAC) 340:110-3-154(a)(4)(E);
- (B) volunteer drivers transporting residents on an irregular basis and not filling another position, provided parent releases are obtained, per OAC 340:110-3-154(a)(4)(E);
- (C) contracted drivers not filling another position or having unsupervised resident access;
- (D) contracted non-personnel not having unsupervised resident access, such as when the program contracts for special activities or facility repair;

(E) individuals who are not program personnel and have contact with residents as part of family, community, and social activities, education, or employment, provided administrative and program policies are met including policy regarding trips away from the facility; and

(F) residents who become 18 years of age while living in the facility and continue to receive program services.

(i) **Background investigations - Restricted Registry.** The program conducts an online search of the Restricted Registry, also named Joshua's List, when required, per (h) of this Section.

(1) **Non-registrants.** Non-registrants are individuals not recorded on the Restricted Registry.

(2) **Registrants.** Registrants are individuals recorded on the Restricted Registry, who are prohibited from licensure, ownership, employment, unsupervised-resident access, facility residence, and prohibited individuals, per (j) of this Section.

(j) **Background investigations - criminal history.** The program and required individuals complete the criminal history review process. The program receives the completed criminal history review results from OBI, when required, per (h) of this Section.

(1) **Criminal history prohibitions.** Individuals with criminal history prohibitions are prohibited, per (k) of this Section. Criminal history prohibitions include:

(A) required registration under the:

- (i) Sex Offenders Registration Act, including state and national repositories; or
- (ii) Mary Rippey Violent Crime Offenders Registration Act; or

(B) pleas of guilty or nolo contendere (no contest), or convictions of felonies involving:

- (i) murder, as defined in Section 1111 of Title 18 of United States Code;
- (ii) child abuse or neglect;
- (iii) crimes against children, including child pornography;
- (iv) spousal abuse;
- (v) crimes involving rape or sexual assault;
- (vi) kidnapping;
- (vii) arson;
- (viii) physical assault or battery; or
- (ix) a drug-related offense committed during the preceding five years, unless a criminal history restriction waiver, per (2) of this ~~paragraph~~ subsection is granted; or

(C) pleas of guilty or nolo contendere (no contest), or convictions of violent misdemeanors committed as adults against a child involving:

- (i) child abuse or child endangerment; or
- (ii) sexual assault; or

(D) pleas of guilty or nolo contendere (no contest), or convictions of misdemeanors involving child pornography.

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- (2) **Criminal history restrictions.** Individuals with criminal history restrictions are prohibited, per (k) of this Section, unless a criminal history restriction waiver is granted. Criminal history restrictions include pending charges, pleas of guilty or nolo contendere (no contest), or conviction of criminal activity involving:
- (A) gross irresponsibility or disregard for the safety of others;
 - (B) violence against an individual;
 - (C) sexual misconduct;
 - (D) child abuse or neglect;
 - (E) animal cruelty;
 - (F) illegal drug possession, sale, or distribution; or
 - (G) a pattern of criminal activity.
- (3) **Criminal history restriction waivers.** Restriction waivers are described in (A) through (C) of this paragraph.
- (A) Restriction waivers may be requested for individuals having criminal history restrictions. The owner, responsible entity, or director completes requests on an Oklahoma Department of Human Services (DHS) form.
 - (B) Restriction waivers are not requested or granted for:
 - (i) Restricted Registry registrants;
 - (ii) individuals with criminal history prohibitions; or
 - (iii) individuals whose sentence has not expired for criminal history restrictions.
 - (C) Individuals identified in pending or denied restriction waiver requests are prohibited, per (k) of this Section.
- (k) **Prohibited individuals.**
- (1) **Background investigation of required individuals.** The program does not allow a required individual to be the owner or responsible entity, to be employed, live in the facility, or have:
 - (A) resident access, such as being present at the facility during the hours of operation or present with the residents in care while off-site, when the individual has criminal history:
 - (i) prohibitions; or
 - (ii) restrictions, unless a criminal history restriction waiver is granted. Individuals identified in a pending or denied restriction waiver request are prohibited; or
 - (B) unsupervised resident access, when the individual is a Restricted Registry registrant.
 - (2) **Background investigation statements and consents.** Individuals are prohibited to be the owner or responsible entity, to be employed, or to live in the facility, when:
 - (A) the individual refuses to consent to background investigations, per (h) of this Section; or
 - (B) knowingly makes a materially-false statement in connection with criminal background investigations.
- (3) **Alcohol, drugs, and medication.** When residents are in care, no individual employed by the program or providing program services may use or be under the influence of:
- (A) alcohol or illegal drugs; or
 - (B) medication that impairs his or her functioning.
- (4) **Child endangerment.** An individual whose health or behavior would endanger residents' health, safety, or well-being is not permitted to live in or be on the premises when residents are in care.
- (5) **Criminal allegations.** When personnel is alleged to have committed an act, per (j) of this Section, the program's executive director determines and documents when the personnel is removed from resident contact until the allegation is resolved. However, when criminal charges are filed, the accused is removed from resident contact until the charges are resolved.
- (6) **Deferred sentences.** Individuals having a deferred sentence for ~~charge's~~ charges in (j)(2) of this Section are removed from resident contact for the deferment duration.
- (l) **Orientation.** Personnel receive orientation within 30-calendar days of employment.
- (1) Personnel receive orientation prior to assignment as the primary personnel responsible for residents.
 - (2) Orientation includes, at least:
 - (A) confidentiality;
 - (B) resident grievance process;
 - (C) fire and disaster plans;
 - (D) suicide awareness and protocol;
 - (E) emergency medical procedures;
 - (F) organizational structure;
 - (G) program philosophy;
 - (H) personnel policy and procedures;
 - (I) mandatory child abuse reporting; and
 - (J) administrative policy and procedure regarding behavior management.
 - (3) DHS Publication No. 86-78, Licensing Requirements for Residential Child Care Facilities, is part of the orientation process and available to personnel at all times.
 - (4) Orientation ~~may count~~ counts toward total professional development hours for the first 12 months.
- (m) **Personnel professional development.** Personnel meet ~~the requirements for~~ professional development requirements in (1)-(7) of this subsection.
- (1) **Professional development for the administrator and program director.** The administrator and program director obtain at least 12-clock hours of ~~continuing education~~ professional development annually. Hours are prorated at one hour per month for personnel not employed for a full-calendar year. The content pertains to ~~the~~ position roles and position responsibilities.
 - (2) **Professional development for social services personnel.** Social services personnel, including licensed mental health professionals and those providing casework services, obtain at least 12-clock hours of ~~continuing education~~ professional development annually. Hours

are prorated at one hour per month for personnel not employed for a full-calendar year. The content pertains to the position roles and position responsibilities.

(3) **Professional development for child care personnel.** Child care personnel receive professional development.

(A) Full-time child care personnel obtain at least 24-clock hours of professional development courses annually. Hours are prorated at two hours per month for personnel not employed for a full-calendar year.

(B) Part-time child care personnel obtain at least 12-clock hours of professional development courses annually.

(C) On-call or substitute child care personnel obtain at least six-clock hours of professional development courses annually.

(D) ~~The content for professional development courses for child care personnel~~ professional development is relative to the assigned positions, roles, and responsibilities.

(E) When residents are in care on the facility premises or on a program-sponsored field trip, at least one personnel is present with current age-appropriate first aid and cardio-pulmonary resuscitation (CPR) documentation. All other child care personnel obtain and maintain age-appropriate first aid and CPR within 90-calendar days of employment.

(i) CPR training is conducted by an individual certified as an instructor through the:

- (I) American Red Cross;
- (II) Emergency Medical Services (EMS) Safety Services;
- (III) Emergency Care and Safety Institute;
- (IV) American Heart Association or American Heart-sponsored CPR for Family and Friends; or
- (V) American Safety and Health Institute.

(ii) First aid training is conducted by an individual certified as a first aid instructor, or a health care professional using a curriculum from a DHS-approved source through the:

- (I) Emergency Medical Services for Children (EMSC) First Care;
- (II) American Red Cross;
- (III) EMS Safety Services;
- (IV) Emergency Care and Safety Institute;
- (V) American Heart Association;
- (VI) American Safety and Health Institute;
- (VII) American Academy of Pediatrics First Aid for Caregivers and Teachers (PedFACTs); or
- (VIII) other DHS-approved source.

(4) **Professional development for support personnel.** Support personnel providing occasional instruction or ~~training~~ professional development to residents obtain at least six-clock hours of professional development courses annually. The content is relative to the position, role, and

responsibility or ~~to interacting with residents~~ resident interactions.

(5) **Behavioral intervention techniques.** Within 30-calendar days of employment, and prior to being solely responsible for residents, child care personnel and support personnel providing occasional instruction or ~~training~~ to residents, complete professional development or provide ~~proof of~~ current certification in behavioral intervention techniques, to include at least the demonstration of:

- (A) rules and appropriate consequences of various interventions;
- (B) techniques for early de-escalation and preventive intervention;
- (C) team approaches to behavior management;
- (D) verbal crisis intervention; and
- (E) safe and appropriate physical restraint, when applicable, per program policy.

(6) **Reasonable and prudent parent standard ~~training~~ professional development.** ~~Designated~~ A designated, on-site official authorized to apply the reasonable and prudent parent standard receives ~~training~~ professional development on ~~use and application of the use of~~ reasonable and prudent parent standards.

(7) **Contracted personnel professional development.** Contracted personnel not providing direct care or counted in the supervision ratio are exempt from meeting the personnel professional development requirements ~~specified in (m)(1)–(5) through (6) of this Section~~.

(n) **Documentation.** Orientation and professional development hours are documented and available for Licensing ~~staff~~ review. Documentation includes personnel names attending, course titles and descriptions, dates, hours attended, and trainer or facilitator names.

(o) **Personnel records.** Programs maintain personnel records for each employee.

(1) The program submits to ~~DHS~~ Licensing at the time of request for license a:

- (A) current employee list; and
- (B) DHS-provided personnel information sheet, for each employee.

(2) The program maintains ~~on file a~~ written personnel ~~record information~~ for each employee ~~working at the program for at least 12 months following an employee's separation from employment~~. The personnel ~~record file~~ includes:

- (A) ~~an application, resume, or personnel information sheet documenting position qualifications~~ a DHS-provided personnel information sheet, completed for each personnel and submitted to Licensing within two weeks of his or her employment;
- (B) ~~program required health records~~ an application, resume, or personnel information sheet documenting position specific qualifications;
- (C) ~~documentation of~~ criminal history review requests and results documentation;
- (D) other applicable criminal history records;
- (E) three references;

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- (F) annual performance evaluation reports and notes relating to the individual's program employment;
- (G) the employment date; ~~and~~
- (H) the date and reason for leaving employment; ~~and~~
- (I) program required health records.
- (4) Personnel records are maintained for at least 12 months following the last employment date, unless the requirements specifically state otherwise.
- (5) Licensing has access to personnel records and other confidential documents relevant to agency employees.

340:110-3-154.2. Behavior management

(a) **Behavior management policy.** Behavior management policy includes:

- (1) ~~goals and purposes of the program's~~ behavior management ~~program~~ goals and purposes;
- (2) ~~methods of~~ behavior management methods;
- (3) ~~a list of staff~~ personnel authorized to administer the behavior management policy; and
- (4) ~~methods of monitoring and documenting the use of the~~ behavior management monitoring and documentation methods policy.

(b) **Prohibitions.** Except as otherwise authorized in Oklahoma Administrative Code (OAC) 340:110-3-168 and 340:110-3-169, ~~facility program~~ policy prohibits:

- (1) shaking, striking, spanking, or other cruel treatment;
- (2) threatening, harsh, humiliating, cruel, abusive, or degrading language;
- (3) ~~denial of~~ food or sleep denial;
- (4) ~~work tasks that are~~ degrading or unnecessary work tasks and inappropriate to the resident's age and ability;
- (5) denial of private familial and significant other contact, including visits, phone calls, and mail, as a means of punishment;
- (6) ~~use of chemical agents~~ agent use, including tear gas, mace, or similar agents;
- (7) seclusion;
- (8) extreme physical exercise;
- (9) ~~one resident punishing another resident~~ residents disciplining other residents;
- (10) chemical restraint;
- (11) mechanical restraint;
- (12) group punishment; ~~and~~
- (13) violating a resident's rights; ~~and~~
- (14) enticing residents to engage in verbal or physical altercation.

(c) **Separation.** A resident ~~may~~ can be removed from the group or group activity as ~~a method of~~ behavior management. The resident remains alone, but within ~~hearing of an adult~~ hearing, in an unlocked, safe, clean, well-lighted, and well-ventilated area. The separation does not exceed one hour ~~in duration.~~

(d) **Physical restraint.** Restraint ~~may only be~~ is used only when less restrictive interventions, ~~according to facility per~~

program policy, ~~have been~~ were attempted or when an immediate intervention is required to protect the resident, a ~~staff~~ personnel member, or others. The restraint technique used must be the least restrictive intervention that ~~will be~~ is effective to protect the resident or others from harm. Restraint ~~must be~~ is discontinued at the earliest possible time. A written incident report is completed within 24-hours following each ~~use of~~ physical restraint use.

340:110-3-154.4. Food and nutrition

(a) **Menu planning.** Menus are planned at least one week in advance. Menus are dated, posted, and kept on file for one year. ~~Any substitutions~~ Substitutions are noted on the menu. ~~When food services are not directed by a nutritionist or licensed dietitian, facilities consult annually with a qualified nutritionist or licensed dietitian.~~

(b) **Frequency and quality of meals.** ~~All meals~~ Meals meet the ~~nutritional needs of the residents~~ residents' nutritional needs.

(1) The ~~facility~~ program provides or arranges for ~~the~~ provision of breakfast, lunch, and dinner, and one or more snacks from food that is selected, stored, prepared, and served in a sanitary and palatable manner. Brunch and dinner may only be provided on weekends and holidays ~~only.~~

(2) Each meal contains a sufficient amount of food for every resident and additional servings are available and permitted.

(3) Cool, potable, drinking water is available ~~for residents~~ at all times.

(c) **Special diets.** Facilities recognize ~~the residents'~~ religious, cultural, and health needs ~~of the residents~~ when planning, preparing, and serving food.

(1) The ~~facility~~ program makes available, as necessary, an alternate ~~choice of~~ food choice for each meal served for residents on special diets or ~~residents who, because of due~~ to religious beliefs, cannot eat particular foods.

(2) The ~~facility~~ program follows individualized diets and feeding schedules ~~that are~~ prescribed by the resident's licensed physician.

(d) **Meals.** Facilities recognize ~~the social and emotional needs of residents~~ residents' social and emotional needs during mealtime.

(1) Residents and the ~~staff who eat~~ personnel eating with them are served the same food, ~~except for~~ with the exception of tea and coffee, unless differences in age or special dietary needs are factors.

(2) Residents who have not had opportunities to learn how to handle food ~~with the usual table service are managed in such a way that they and utensils are not embarrassed or subject to the ridicule of other residents.~~

340:110-3-168. Requirements for residential treatment facilities

(a) **Residential treatment facilities.** A residential treatment ~~facility~~ program cares for children under 24-hour medical care ~~who have~~ with emotional, psychological, or mental disorders.

(b) **Requirements.** The program complies with the rules ~~specified in~~ Oklahoma Administrative Code (OAC) 340:110-3-145 through 340:110-3-165.1, except as otherwise provided in this Section.

(c) **Personnel.** The program:

- (1) complies with the rules regarding personnel, ~~specified in~~ OAC 340:110-3-153.1; and
- (2) employs a psychiatrist and adequate medical ~~staff personnel~~ to meet the medical needs of the residents' medical needs.

(d) **Supervision of residents.** The program is exempt from the rules, ~~specified in~~ OAC 340:110-3-153.2 regarding residents' supervision.

- (1) The program employs a sufficient number of ~~staff personnel~~ as child care workers to adequately supervise and meet the needs of residents' needs. Staff members are awake and accessible at all times.
- (2) The program maintains a ratio of one ~~staff per person~~ personnel for:
 - (A) six residents (1:6) during awake hours; and
 - (B) eight residents (1:8) during sleeping hours.
- (3) When ~~the admission to a~~ admission is ordered by a medical doctor, the doors may be locked.

(e) **Admission.** ~~A~~ Within 24-hours of admission, a health care professional reviews and approves the admission assessment within 24 hours of admission.

(f) **Service planning.** The program is exempt from the rules, ~~specified in~~ OAC 340:110-3-154(b)(1) and (2) regarding service plans.

- (1) The program meets the requirements ~~specified in~~:
 - (A) (1) and (2) of this subsection; and
 - (B) OAC 340:110-3-154(b)(1)(A) and (B) and (b)(2)(B) and (C).
- (2) A written service plan for each resident is:
 - (A) developed and documented within ~~four~~ seven program business days after admission; and
 - (B) reviewed at least every ~~five to nine~~ 30-calendar days thereafter unless ~~approved by the Oklahoma Health Care Authority~~ required by other licensing or contracted entities.

(g) **Portable pools.** The program is exempt from the rules, ~~specified in~~ OAC 340:110-3-163(14)(B). Therapeutic water activities are permitted when prescribed by ~~an~~ attending physician licensed physician, included in a treatment plan, and provisions are made to ensure hygienic practices. When portable pools are used as ~~part of~~ a therapeutic activity children are directly supervised at all times. Portable pools are:

- (1) no larger than six feet in diameter; and
- (2) contain ~~water~~ no more than six inches in water depth.

(h) **Discharge procedures.** The program meets the rules, ~~specified in~~ OAC 340:110-3-154(d) regarding discharge procedures. The program:

- (1) supplies the resident with ~~a prescription for~~ two weeks' worth of prescribed medication, when appropriate, upon discharge; and

(2) documents in the resident's ~~record file~~ at least one scheduled outpatient follow-up contact within two weeks of discharge.

(i) **Visitation.** The program is exempt from the rules, ~~specified in~~ OAC 340:110-3-154.1(b)(2) regarding visitation restriction reviews. ~~Reasons for visitation restrictions~~ Visitation restrictions are:

- (1) explained to the resident and parents;
- (2) documented in the resident's records; and
- (3) reviewed every seven-calendar days.

(j) **Behavior management.** The program is exempt from the rules, ~~specified in~~ OAC 340:110-3-154.2(b)(7); and (10), and (11) regarding seclusion and restraint. If the program uses seclusion and chemical restraint, it must meet the requirements ~~specified in~~ (1) through (5) of this subsection.

(1) **Seclusion.** Seclusion ~~may~~ is only be used when less-restrictive interventions, ~~according to~~ per program policy, ~~have been~~ were attempted or when an immediate intervention is required to protect the resident, staff member, or others. The resident is released from seclusion when he or she is no longer deemed a risk to self or others. A written incident report is completed within 24-hours following each use of seclusion.

(A) Seclusion is used only with specific verbal authorization of a health care professional. The authorization ~~must be~~ is written and signed by a health care professional within 24 hours.

(B) While in seclusion, a staff member continuously monitors the resident, either ~~in person by~~ direct contact or with audiovisual equipment, and ~~personally~~ directly checks the resident's well-being at least every 15 minutes. The resident receives appropriate medical and psychological services.

(C) The resident has reasonable access to toilet facilities and ~~to~~ all scheduled meals while in seclusion.

(D) As soon as the resident sufficiently gains control and is no longer a serious and immediate danger, the resident is released from seclusion.

(i) Residents 10 years of age and older do not remain in seclusion longer than two hours or a total of six non-consecutive hours within ~~any~~ a 24-hour period.

(ii) Residents 9 years of age and younger do not remain in seclusion longer than one hour within ~~any~~ a 24-hour period.

(2) **Seclusion room.** A room used for seclusion includes:

(A) at least 60 square feet and a ~~ceiling height of seven feet~~ foot, six inches in ceiling height;

(B) a safety glass window, mirror, or camera ~~that allows~~ allowing for full observation of the seclusion room full-observation;

(C) no hardware or furnishings ~~that obstruct~~ observing the obstructing child observation at all times;

(D) no hardware, equipment, or furnishings ~~that present~~ presenting a physical hazard or suicide risk;

(E) ~~means for~~ means for natural or mechanical ventilation;

- (F) ~~means for maintaining~~ a temperature between 65 and 85 degrees Fahrenheit;
 - (G) lighting for all ~~areas of the room~~ areas; and
 - (H) an automatic fire suppression system.
- (3) **Mechanical restraint.** Mechanical restraint ~~may only be used when less restrictive interventions, according to program policy, have been attempted or when an immediate intervention is required to protect the resident, staff members, or others. The resident is released from mechanical restraint when no longer deemed a risk to self or others. A written incident report is completed within 24 hours following each use of mechanical restraint.~~
- (A) Mechanical restraint is used only with specific verbal authorization of a health professional. The authorization must be written and signed by the health professional within 24 hours.
 - (B) ~~As soon as the resident sufficiently gains control and is no longer a serious and immediate danger, the resident is released from mechanical restraint.~~
 - (i) ~~Residents 10 years of age and older do not remain in mechanical restraint longer than two hours.~~
 - (ii) ~~Residents 9 years of age and younger do not remain in mechanical restraint longer than one hour.~~
 - (C) Mechanical restraint is used on the resident in ~~a comfortable and humane manner.~~
 - (i) ~~Resident's hands are not restrained to his or her feet.~~
 - (ii) ~~Mechanical restraints are padded or cushioned.~~
 - (D) ~~A staff member continuously monitors the resident, either in person or with audiovisual equipment, and personally checks the resident's well-being every 15 minutes.~~
 - (E) ~~The resident receives appropriate medical and psychological services is not used on children 18 years of age and younger, per OAC 317:30-5-95.39.~~
- (4) **Chemical restraint.** Chemical restraint ~~may~~ is only ~~be~~ used when less restrictive interventions, ~~according to~~ per program policy, ~~have been~~ were attempted or when an immediate intervention is required to protect the resident, ~~staff members~~ personnel, or others. A written incident report is completed within 24 ~~hours~~ following each ~~use of~~ chemical restraint use.
- (A) Chemical restraint is used only with specific verbal authorization of a health professionalcare professional's verbal authorization prior to administration. The verbal authorization must be written and signed by the health care professional within 24 hours.
 - (B) Chemical restraint is administered ~~to the resident~~ in a humane manner.
 - (C) A staff member continuously monitors the resident, ~~either in person~~ by direct contact or with audiovisual equipment, and personally checks the resident's well-being every 15 minutes.

- (D) The resident receives appropriate medical and psychological services.
- (5) **Seclusion and restraint log.** A seclusion and restraint log is ~~kept~~ maintained, and a report containing all ~~information in the log~~ information is part of the resident's record. The log includes ~~the~~ the:
 - (A) date and time of placement in seclusion or in restraint;
 - (B) ~~name of the health professionalcare professional's name, who is~~ authorizing the use of restraint or seclusion;
 - (C) reason for ~~the use of~~ restraint or seclusion and other behavior management techniques attempted;
 - (D) observation times, including a description of the resident's activity at each observation, and the signature of the person observing the resident; and
 - (E) time the resident is released from seclusion or restraint.

SUBCHAPTER 5. REQUIREMENTS FOR CHILD-PLACING AGENCIES

PART 1. REQUIREMENTS FOR CHILD-PLACING AGENCIES

340:110-5-4. License

~~Application~~ Request for a license is ~~made~~ submitted on Oklahoma Department of Human Services (DHS) provided forms ~~and in the manner prescribed.~~ A license to operate a child-placing agency is granted ~~on the basis that when~~ the agency meets minimum requirements for child-placing agencies. The license is not transferable ~~and is posted prominently in the facility including the denial or revocation notice, when applicable.~~ The agency ~~may~~ does not operate until DHS permission is obtained. Per the Oklahoma Child Care Facilities Licensing Act, Section 401 et seq. 405.3 of Title 10 of the Oklahoma Statutes (10 O.S. §401 et seq. 405.3), Oklahoma Child Care Facilities Licensing Act (Licensing Act), persons identified as registrants on the Restricted Registry are prohibited from:

- (1) licensure as a child care program;
- (2) ownership of a child care program;
- (3) employment in a child care program;
- (4) having unsupervised access to children; and/or
- (5) residing in a child care facility.

340:110-5-6. Organization and administration

(a) **Purpose.** ~~The purpose or function of the~~ child-placing agency (agency) purpose or function is clearly defined in a statement filed with ~~the Oklahoma Department of Human Services (DHS)~~ Licensing. This includes the philosophy, goals and objectives, ages and ~~characteristics of~~ children accepted for care characteristics, geographical ~~area of~~ service area, and ~~types of~~ services provided.

(b) **Organizational structure.** The legal basis or ownership of the agency's legal basis or ownership is fully documented and submitted to DHSLicensing with the initial request for license.

(1) **Publicly-operated agency.** Documentation of a publicly-operated agency identifies ~~the statutory basis of the agency~~ statutory basis and ~~the administrative framework of the governmental entity that operates administrative framework operating~~ the agency.

(2) **Privately-operated agency.** A privately-operated agency submits:

(A) as applicable, the charter, partnership agreement, constitution, and articles of incorporation resolution authorizing the agency operation;

(B) the names, titles, addresses, and ~~telephone~~ phone numbers for:

(i) ~~association members or corporate officers for nonprofit agencies~~ agencies' association members or corporate officers; or

(ii) ~~owners, partners, or corporate officers of for-profit agencies~~ agencies' owners', partners', or corporate officers';

(C) the physical address in Oklahoma where child-placing business is conducted; and

(D) a notification informing ~~DHS~~ of Licensing prior to any change in the legal basis for operation or ownership ~~before the change occurs~~.

(c) **Governing and advisory boards.** Private, nonprofit agencies establish a governing board and may also have an advisory board. Private, for-profit agencies without a governing board have an advisory board.

(1) The governing board:

(A) meets at least ~~two times each calendar year~~ twice annually and maintains accurate ~~minutes of each meeting~~ minutes;

(B) maintains ultimate responsibility for governing and delegates responsibility for ~~administration of the agency~~ administration to the executive director;

(C) specifies in the constitution and bylaws the ~~responsibilities of and relationship and responsibilities~~ between the governing board and executive director, and submits them to ~~DHSLicensing~~;

(D) submits to ~~DHSLicensing~~ a current list of names, titles, addresses, and ~~telephone~~ phone numbers ~~of the members~~ of the governing board members;

(E) members receive an orientation to board responsibilities ~~upon~~ on appointment; and

(F) is composed of a minimum of five members, the majority of whom:

(i) ~~may~~ are not be agency staff ~~members~~ personnel; and

(ii) reside in Oklahoma. Multi-state operations may have a governing board outside Oklahoma ~~if when~~ they establish local advisory boards ~~that meet~~ meeting the requirements in this subsection.

(2) The advisory board:

(A) meets at least ~~two times each calendar year~~ twice annually;

(B) ~~is comprised of members~~, the member majority of whom:

(i) ~~may~~ are not be agency staff ~~members~~ personnel; and

(ii) reside in Oklahoma;

(C) provides advice and counsel to the agency on the policies and ~~operation of the agency~~ operation, reflects local concerns, and represents the program to the community; and

(D) submits to Licensing a current list of advisory board members' names, addresses, and ~~telephone~~ phone numbers ~~of the members of the advisory board~~ to DHS.

(d) **Policy.**

(1) Agency policy:

(A) is clearly written and kept current;

(B) includes, ~~but is not limited to~~ a minimum, areas governing personnel, admission, program, behavior management, and care of children; and

(C) is available at the agency for Licensing ~~staff~~ to review.

(2) The agency maintains current written policy and procedure regarding:

(A) a ~~child who is absent~~ child's absence without permission. When a child is not located, the agency immediately notifies the child's custodian and the appropriate law enforcement agency. Efforts to locate the child and notify appropriate individuals are documented;

(B) grievance issues related to children. Grievance policy and procedure are explained, and a copy is provided to each child and the child's parents or custodian;

(C) religious training made known to the child and family prior to admission or placement. All children are provided an opportunity to participate in religious services;

(D) the care of children, including medical services and safe transportation by ~~staff~~ personnel, volunteers, and foster parents, that complies with all applicable state laws; and

(E) reporting child abuse and neglect, per Section 1-9-119.1 of Title 10A of Oklahoma Statutes (10A O.S. § 1-9-119.1).

(e) **Notifications.** The agency:

(1) notifies Licensing:

(A) prior to or within 30-calendar days of an address change;

(~~AB~~) on the next agency business day when:

(i) the agency is temporarily or permanently closed;

(ii) the executive director changes; ~~or~~

(iii) damage to the premises caused by fire, accident, or the elements seriously affects ~~the provision of~~ services;

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- (iv) changes to liability insurance coverage are made; ~~and~~ or
- (v) a child death occurred while the child was in care; and
- (~~B~~C) prior to making any program change;
- (2) submits a detailed written report for ~~any~~ serious incident involving staff personnel or children including, but not limited to:
 - (A) suicide attempts;
 - (B) injuries requiring medical treatment;
 - (C) runaways;
 - (D) commission of a crime committed; and
 - (E) allegations of abuse, neglect, mistreatment, or human trafficking allegations; and
 - (F) The date and time of the incident date and time, names of staff personnel and children involved, the nature of the incident nature, and the circumstances surrounding it circumstances are included in the report.
- (i) Any person who has reason to believe a child ~~has been~~ was abused or neglected, ~~as described in per Section 1-2-105 of Title 10A of the Oklahoma Statutes 10A O.S. § 1-1-105 is required to report the matter promptly to the DHS Child Abuse and Neglect Hotline, 1-800-522-3511, Section 1-2-101 of Title 10A of the Oklahoma Statutes (per 10A O.S. § 1-2-101).~~
- (ii) Failure to report abuse or neglect of a child is a misdemeanor offense and upon conviction is punishable by law. Failure to report with prolonged knowledge, six months or more, of ongoing abuse or neglect is a felony offense.
- (iii) Per 21 O.S. § 870, every person having reason to believe that a person or child-placing agency is engaging in the crime of trafficking in children, ~~as described in per 21 O.S. § 866 of the Oklahoma Statutes, reports the matter promptly to the Oklahoma Bureau of Narcotics and Dangerous Drugs Control.~~
- (f) **Records.** Agency records pertaining to child-placing activity are maintained within the state of Oklahoma and are made immediately accessible to authorized DHS representatives ~~of DHS~~.
- (g) **Legal compliance.** The agency follows all applicable state and federal laws, including:
 - (1) The Oklahoma Adoption Code, ~~Section~~ 10 O.S. §§ 7501-1.1 through 7505-7.2 et seq.;
 - (2) The Interstate Compact on the Placement of Children, 10 O.S. §§ 571 et seq.; and
 - (3) Federal and state Indian Child Welfare Acts, Section 1901 et seq. of Title 25 of the United States Code and 10 O.S. §§ 40 through 40.9.

340:110-5-7. Finances

- (a) **Evidence of sufficient funds.** The child-placing agency (agency) has evidence of sufficient funds.

- (1) New agencies submit a letter to Licensing from a licensed public accountant with the ~~application for an initial request for license. In the letter, the accountant documents that~~ documenting procedures are in place for operating the fiscal management system so ~~that the agency's financial statements can be audited at the end of the first fiscal year of operation~~ operational year end.
- (2) New agencies also submit a budget for the first ~~year~~ 12 months of operation with the ~~application for an initial request for license which includes~~ including a written plan to ~~document~~ documenting predictable funds for the first ~~year~~ 12 months of operation as well as reserve funds or ~~documentation of~~ reserve funds documentation.
- (3) Existing and new agencies have a written ~~plan of financing which projects~~ financial plan projecting sufficient funds to ~~enable them to carry out their~~ the program's defined purposes and provide proper care for children.
- (b) **Fiscal responsibility.** ~~The executive director of the agency executive director~~ is responsible for:
 - (1) maintaining complete financial records of all income and disbursements; and
 - (2) ensuring the ~~person~~ individual responsible for receiving cash funds is bonded.
- (c) **Accountability.** ~~The agency is financially accountable demonstrates financial accountability.~~
 - (1) ~~All financial records pertaining to the agency The agency's financial records are audited annually:~~
 - (A) by a ~~licensed~~ certified public accountant who is not a ~~staff or board member of the agency personnel or a board member~~; or
 - (B) ~~in accordance with~~ per the governmental funding source.
 - (2) A ~~When completed~~ a copy of the auditor's letter:
 - (A) is submitted ~~annually to the Oklahoma Department of Human Services (OKDHS) Licensing~~; and
 - (B) includes a statement that the agency's financial records accurately reflect the financial operations, ~~according to~~ per generally accepted accounting principles.
- (d) **Insurance.** The agency is covered by property casualty insurance and liability insurance unless operated by a government entity that is self-insured ~~in accordance with state statute, per Section 404.3 of Title 10 of the Oklahoma Statutes (10 O.S. § 404.3).~~ Coverage is at least \$200,000 for each occurrence of negligence. Form 07LC092E, Insurance Verification, that includes a certificate of insurance obtained from the insurance agent is completed annually, maintained at the child-placing agency, and made available to ~~licensing~~ Licensing.

340:110-5-9. Executive director qualifications

- (a) The executive director or administrator ~~hired after August 1, 1998~~ has a:
 - (1) bachelor's degree, knowledge in personnel management, and ~~five years experience in~~ 36 months children's services experience; or
 - (2) master's degree, knowledge in personnel management, and ~~two years experience in~~ 24 months children's services experience; or

- (3) doctorate degree, knowledge in personnel management, and one year of experience in 12 months children's services experience.
- (b) ~~In an agency where~~ When the executive director:
- (1) operates primarily as an administrator and is not directly involved in child-placing activities, there is a child placement supervisor; or
 - (2) places children, he or she meets the requirements of a child placement supervisor requirements.

340:110-5-10. Child placement supervisor qualifications

- (a) The child placement supervisor ~~hired after August 1, 1998~~ has at a minimum, a:
- (1) master's degree in social work and one year of experience 12 months in children's services experience;
 - (2) master's degree in a behavioral or social science or a related field and two years experience 24 months in children's services experience; or
 - (3) doctorate degree in a behavioral or social science or a related field and one year of experience 12 months in children's services experience; or
 - (4) bachelor's degree with at least nine college credit hours in family focus, individual function and interaction, child development, sociology, social work, and/or a closely related subject and 48 months in children's services experience.
- (b) The child-placing agency (agency) has written policy and procedure for ~~the duties and responsibilities of the child placement supervisor~~ duties and responsibilities.
- (1) ~~If~~ When the position is contracted, the agency has a written contract with the child placement supervisor ~~to include~~ including duties, and responsibilities, and frequency of service delivery frequency.
 - (2) ~~Documentation of contracted~~ Contracted services documentation is maintained by the agency.

340:110-5-11. Social services ~~staff~~ personnel qualifications

Social services ~~staff~~ hired after August 1, 1998 who provide personnel providing casework services ~~has~~ have at a minimum, a bachelor's degree:

- (1) ~~bachelor's degree~~ in social work; or
- (2) ~~bachelor's degree~~ in a behavioral or social science or a related field and one year of experience in 12 months children's or family services experience; or
- (3) with at least nine college credit hours in family focus, individual function and interaction, child development, sociology, social work, and/or a closely related subject and 24 months children's or family services experience.

340:110-5-12. Personnel records

- (a) The child-placing agency (agency) ~~keeps~~ maintains on file a ~~written~~ personnel record for ~~every staff person~~ each employee working at the agency. The personnel record includes:
- (1) ~~an application, resume, or staff information sheet provided by the~~ Oklahoma Department of Human

~~Services (DHS) that documents qualifications for the position~~ provided personnel information sheet, completed for each personnel and submitted to Licensing within two weeks of his or her employment;

- (2) ~~health records as required by the agency~~ an application, resume, or personnel information sheet documenting position specific qualifications;
- (3) ~~three written~~ references obtained prior to employment. References:
 - (A) include the date, interview questions, responses, and ~~the~~ interviewer's signature; and
 - (B) are maintained in the employee's personnel record;

- (4) reports and notes relating to the ~~person's individual's agency employment with the agency~~ and performance evaluations;
- (5) ~~dates of employment~~ dates and reason for leaving employment; and
- (6) ~~date and reason for leaving employment~~ agency required health records.

- (b) Personnel records are maintained for ~~a minimum of five years after a staff~~ 12 months following the personnel member's separation.
- (c) ~~Records of criminal~~ Criminal history investigations ~~records~~ are maintained in a confidential manner, ~~kept~~ separate from the ~~person's individual's~~ personnel record, and include:
- (1) ~~documentation of requests and/or results of criminal history reviews~~ review requests and documentation; and
 - (2) other applicable criminal history records.
- (d) Licensing has access to personnel and other confidential records relevant to the program's ~~employees~~ personnel.

PART 3. REQUIREMENTS FOR ADOPTION AGENCIES

340:110-5-32. Disposition of records and confidentiality

The adoption agency (agency):

- (1) establishes policy and procedure ~~to ensure~~ ensuring permanent retention of all finalized adoption records meeting the Oklahoma Adoption Code, Section 7508-1.1 et seq. of Title 10 of Oklahoma Statutes (10 O.S. §§ 7508-1.1 et seq.). ~~If~~ When the agency ceases ~~to operate~~ operating in the state of Oklahoma, adoption records are transferred to the Oklahoma Department of Human Services (~~OKDHS~~) (DHS) or, after giving notice to ~~OKDHS~~ DHS, to a transferee agency ~~that assumes~~ assuming responsibility for ~~the preservation of the records~~ preservation;
- (2) maintains all records in locked storage facilities; and
- (3) provides adult adoptees and birth parents information concerning the ~~circumstances of adoptees' origins and adoption circumstances, in accordance with~~ per the Oklahoma Adoption Code, Section 7501-1.1 et seq. of Title 10 of the Oklahoma Statutes 10 O.S. §§ 7501-1.1 et seq.

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PART 5. REQUIREMENTS FOR FOSTER HOME AGENCIES

340:110-5-63. Records

(a) **Child's case record.** Records maintained by the foster home agency (agency) for children in placement include, but are not limited to:

- (1) an intake form ~~that includes~~ including the child's full name, any known nickname(s), ~~if any, date of birth date and place, race, gender, place of birth place, religion, and names, addresses and telephone numbers of parents and other significant relatives~~ relatives' names, addresses, and phone numbers;
- (2) history of previous placements and dates;
- (3) the reason for the present placement;
- (4) ~~a description of the circumstances that led~~ leading to the child's present placement;
- (5) ~~a description of the child's relationship with other significant adults and children;~~
- (6) the admission assessment ~~that includes~~ including the child's current level of functioning level and medical history, including:
 - (A) current medications ~~the child is currently taking;~~
 - (B) immunizations immunization records;
 - (C) known allergies; and
 - (D) childhood diseases;
- (7) current court order(s) documenting legal custody of the child child's legal custody and other applicable court orders;
- (8) certified birth verification;
- (9) the child's medical information, including:
 - (A) the child's medical authorization number, if when applicable;
 - (B) a medical examination completed ~~no more than 60 within 30-calendar days prior to placement or scheduled within 10 days after following placement;~~ however, when a resident is transferred from another licensed program; a documented medical exam performed within the 12 months prior to admission is acceptable;
 - (C) written authorization to provide medical care;
 - (D) disabilities;
 - (E) psychosocial information;
 - (F) ~~name of the child's last doctor~~ licensed physician's name, if when known; and
 - (G) ~~documentation of medical services~~ documentation;
- (10) ~~history of the child's family of origin~~ history;
- (11) information regarding ~~the physical health of the child's family~~ family's physical health, including father, mother, and grandparents;
- (12) information regarding ~~the emotional stability of family members~~ members' emotional stability;
- (13) reports from schools, specialists, and other agencies;
- (14) documentation ~~that the child's rights have been~~ were explained to the child;

(15) documentation ~~that~~ the grievance policy ~~has been~~ was explained to the child;

(16) a service plan, per Oklahoma Administrative Code (OAC) 340:110-5-3 completed within 30-calendar days of placement and signed and dated by the child, staff, foster parents, and parent or guardian;

(17) ~~revision of the~~ a service plan revision every six months;

(18) ~~case notes that have been~~ signed and dated case notes;

(19) a discharge plan ~~that includes~~ including anticipated length of placement length and future placement;

(20) a discharge summary ~~that includes~~ including an assessment of the child's progress in placement progress, ~~the child's~~ continuing needs and plans, and recommendations for any follow-up services, ~~if any;~~

(21) documentation of efforts to obtain or inability to obtain any of the information contained in this Section ~~and efforts to obtain it.~~

(b) **Foster home record.** The agency maintains a current ~~record~~ case file on each foster home. Entries, dated in chronological order and identifying the ~~staff~~ personnel member who recorded the information, include:

- (1) the certification form and documents verifying certification per, OAC 340:110-5-57(b);
- (2) a complete ~~report of the~~ home study with report, including evaluation and recommendations as required;
- (3) records of all children placed in the home with dates, names, ages, and ~~rates of payment~~ rates for services, if when applicable;
- (4) records of all children removed from the home with dates, names, ages, and ~~reasons for removal~~ reasons;
- (5) financial agreements, if when applicable;
- (6) signed and dated case notes, visits or contacts, and conferences;
- (7) a copy of the placement agreement on each child;
- (8) correspondence;
- (9) ~~records of the~~ home study records, updated annually, per OAC 340:110-5-57(d);
- (10) ~~documentation of training~~ professional development documentation; and
- (11) written agreements and contracts between the agency and the foster parents.

PART 9. REQUIREMENTS FOR INDEPENDENT LIVING PROGRAMS

340:110-5-117. Program description

The child-placing agency (agency) has a written statement describing the agency's:

- (1) ~~the agency's~~ philosophy on ~~and approach to~~ independent living placements;
- (2) ~~the criteria used to select youth for~~ independent living placement selection criteria;
- (3) ~~the~~ approach used to assess the appropriateness of independent living placement;

- (4) ~~the nature and frequency of supervision provided to youth in the program;~~
 (5) ~~available programs and services available to the youth during placement;~~
 (6) ~~living environments provided by the agency; and~~
 (7) ~~a crisis response system that ensures ensuring youth have 24-hour access to agency staff personnel; and~~
 (8) supervision plan for youth and adults when utilizing any shared physical program space.

[OAR Docket #20-547; filed 7-7-20]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 10. LIFE, ACCIDENT AND HEALTH

[OAR Docket #20-593]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 5. Minimum Standards; Contract Guidelines
 Part 13. Medicare Supplement Insurance Minimum Standards
 365:10-5-129.1. Guaranteed Issue for eligible persons [AMENDED]
 365:10-5-132. Filing and approval of policies and certificates and premium rates [AMENDED]
 Appendix C. Rescission Reporting Form for Long-Term Care Policies [REVOKED]
 Appendix C. Rescission Reporting Form for Long-Term Care Policies [NEW]
 Appendix F. Credit Insurance [REVOKED]
 Appendix F. Credit Insurance Deviation Request Form [NEW]
 Appendix H. Inventory Credit Life and Disability Presumptive Rates [REVOKED]
 Appendix H. Inventory Credit Life and Disability Presumptive Rates [NEW]
 Appendix J. Credit Life Insurance Experience Report [REVOKED]
 Appendix J. Credit Life Insurance Experience Report [NEW]
 Appendix K. Credit Disability Insurance Experience Report [REVOKED]
 Appendix K. Credit Disability Insurance Experience Report [NEW]
 Appendix M. Credit Disability Insurance Experience Report [REVOKED]
 Appendix M. Credit Disability Insurance Experience Report [NEW]
 Appendix N. Credit Life Insurance Experience Reconciliation to State Page [REVOKED]
 Appendix N. Credit Life Insurance Experience Reconciliation to State Page [NEW]
 Appendix O. Credit Disability Insurance Experience Reconciliation to State Page [REVOKED]
 Appendix O. Credit Disability Insurance Experience Reconciliation to State Page [NEW]
 Appendix QQ. External Review Request Form [REVOKED]
 Appendix QQ. External Review Request Form [NEW]
 Appendix RR. Application for Registration as an Independent Review Organization [REVOKED]
 Appendix RR. Application for Registration as an Independent Review Organization [NEW]
 Appendix SS. Independent Review Organization External Review Annual Report Form [REVOKED]
 Appendix SS. Independent Review Organization External Review Annual Report Form [NEW]
 Appendix TT. Health Carrier External Review Annual Report Form [REVOKED]
 Appendix TT. Health Carrier External Review Annual Report Form [NEW]

AUTHORITY:

Insurance Commissioner; 36 O.S. §§ 307.1, 3611.1, 4427, 6475.12

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 24, 2020

COMMENT PERIOD:

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PUBLIC HEARING:

March 25, 2020

ADOPTION:

March 25, 2020

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 26, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 11, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The amendment to 365:10-5-129.1(e)(5) clarifies that Medicare supplement insurance due to disability falls within guaranteed issue. Additionally, Medicare supplement C and F are replaced with D and G plans. The other changes at 365:10-5-129.1(e) are to correct citations.

The amendment to 365:10-5-132 adds language to subsection 365:10-5-132(g) providing that an issuer will not present a Medicare supplement policy rate structure for filing or approval based on attained age rating greater than one year after age 67. It also adds language allowing a rate structure with groupings of attained ages greater than one year after the age of 90.

The amendments to the appendices update the Insurance Department's address, the date, or both.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 5. MINIMUM STANDARDS; CONTRACT GUIDELINES

PART 13. MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS

365:10-5-129.1. Guaranteed Issue for Eligible Persons

(a) Guaranteed Issue.

(1) Eligible persons are those individuals described in subsection (b) who apply to enroll under the policy not later than sixty-three (63) days after the date of the termination of enrollment described in subsection (b), and who submit evidence of the date of termination, disenrollment or Medicare Part D enrollment with the application for a Medicare supplement policy.

(2) With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection (c) that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status,

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claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

(b) **Eligible Persons.** An eligible person is an individual described in any of the following paragraphs:

(1) **Employee welfare benefit plan.** The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all or substantially all supplemental health benefits to the individual.

(2) **Medicare Advantage.** The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, and any of the following circumstances apply, or the individual is 65 years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the Social Security Act, and there are circumstances similar to those described below that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare Advantage plan:

(A) The certification of the organization or has been terminated;

(B) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(C) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856), or the plan is terminated for all individuals within a residence area;

(D) The individual demonstrates, in accordance with guidelines established by the Secretary, that:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(E) The individual meets such other exceptional conditions as the Secretary may provide.

(3) **Organizations.**

(A) The individual is enrolled with:

(i) An eligible organization under a contract under Section 1876 (Medicare risk or cost);

(ii) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(iii) An organization under an agreement under Section 1833(a)(1)(A) (health care prepayment plan); or

(iv) An organization under a Medicare Select Policy; and

(B) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under Section 365:10-5-129.1(b)(2).

(4) **Medicare supplement.** The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(A) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or because of other involuntary termination of coverage or enrollment under the policy;

(B) The issuer of the policy substantially violated a material provision of the policy; or

(C) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

(5) **Termination of enrollment and subsequent enrollment.** The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, any eligible organization under a contract under Section 1876 of the Social Security Act (Medicare risk or cost), any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act or a Medicare Select Policy; and an organization under an agreement under section 1833(a)(1)(A) (health care prepayment plan), or a Medicare Select policy; and the subsequent enrollment under this subparagraph is terminated by the enrollee during any period within the first twelve (12) months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1851(e) of the federal Social Security Act); or

(6) **Medicare Advantage disenrollment.**

(A) The individual, upon first becoming eligible for benefit under Part A of Medicare at age 65, enrolls in a Medicare Advantage plan under part C of Medicare, or with a PACE provider under Section 1894 of the Social Security Act, and disenrolls from the plan by not later than twelve (12) months after the effective date of enrollment.

(B) An individual, under age 65, who first becomes eligible for Medicare Part B and enrolls in a Medicare Advantage plan under part C of Medicare, and

disenrolls from the plan by not later than twelve (12) months after the effective date of enrollment.

(7) **Part D Benefit Enrollment.** The individual enrolls in a Medicare Part D plan during the initial enrollment period and, at the time of enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs and the individual terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in Subsection 365:10-5-129.1(e)(4).

(c) **Guaranteed issue time periods.**

(1) In the case of an individual described in Section 365:10-5-129.1(b)(1), the guaranteed issue period begins on the later of the date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of such a termination or cessation); or the date that the applicable coverage terminates or ceases; and ends sixty-three (63) days thereafter;

(2) In the case of an individual described in Section 365:10-5-129.1(b)(2), (b)(3), (b)(5) or (b)(6) whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends sixty-three (63) days after the date the applicable coverage is terminated;

(3) In the case of an individual described in Section 365:10-5-129.1(b)(4)(A), the guaranteed issue period begins on the earlier of the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any, and the date that the applicable coverage is terminated, and ends on the date that is sixty-three (63) days after the date the coverage is terminated.

(4) In the case of an individual described in Section 365:10-5-129.1(b)(2), (b)(4)(B), (b)(4)(C), (b)(5) or (b)(6) who disenrolls voluntarily, the guaranteed issue period begins on the date that is sixty (60) days before the effective date of the disenrollment and ends on the date that is sixty-three (63) days after the effective date;

(5) In the case of an individual described in Subsection 365:10-5-129.1(b)(6), the guaranteed issue period begins on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the sixty-day (60) period immediately preceding the initial Part D enrollment period and ends on the date that is sixty-three (63) days after the effective date of the individual's coverage under Medicare Part D; and

(6) In the case of an individual described in Section 365:10-5-129.1(b) but not described in the preceding provisions of this Subsection, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is sixty-three (63) days after the effective date.

(d) **Extended Medigap access for interrupted trial periods.**

(1) In the case of an individual described in Section 365:10-5-129.1(b)(5) (or deemed to be so described, pursuant to this paragraph) whose enrollment with an organization or provider described in Section 365:10-5-129.1(b)(5)(A) is involuntarily terminated within the first twelve (12) months or enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in Section 365:10-5-129.1(b)(5);

(2) In the case of an individual described in Section 365:10-5-129.1(b)(6) (or deemed to be so described, pursuant to this paragraph) whose enrollment with a plan or in a program described in Section 365:10-5-129.1(b)(6) is involuntarily terminated with the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in Section 365:10-5-129.1(b)(6); and

(3) For purposes of Sections 365:10-5-129.1(b)(5) and (b)(6), no enrollment of an individual with an organization or provider described in Section 365:10-5-129.1(b)(5)(a), or with a plan or in a program described in Section 365:10-5-129.1(b)(6), may be deemed to be an initial enrollment under this paragraph after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan or program.

(e) **Products to which eligible persons are entitled.** The Medicare supplement policy to which eligible persons are entitled under:

(1) **Section 365:10-5-129.1(b)(1), (2), (3) and (4).** Section 365:10-5-129.1(b)(1), (2), (3) and (4) is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, F D, G (including F or G with a high deductible), K or L offered by any issuer.

(2) **Section 365:10-5-129.1(b)(5).**

(A) Subject to subparagraph (B), Section 365:10-5-129.1(b)(5) is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in Section 365:10-5-129.1(e-e)(1).

(B) After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, a Medicare supplement policy described in this subparagraph is: The policy available from the same issuer but modified to remove outpatient prescription drug coverage; or at the election of the policyholder, an A, B, C, F D, G (including F or G with a high deductible, K or L policy that is offered by any issuer;

(3) **Section 365:10-5-129.1(b)(6)(A).** Section 365:10-5-129.1(b)(6)(A) shall include any Medicare supplement policy offered by any issuer.

(4) **Section 365:10-5-129.1(b)(7).** Section 365:10-5-129.1(b)(6-7)(B) is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F D, G (including F or G with a high deductible, K or L, and that

is offered and is available for issuance to new enrollees by the same issuer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage.

(5) For individuals who meet any of the conditions identified in subsection (b) and who are under age 65 and enrolled in Medicare due to disability shall be limited to the standardized Medicare supplement plan identified by the issuer as outlined in Section 365:10-5-129 (d). Such individuals would be subject to the timeframe stated under Section 365:10-5-129.1(a)(1). The premium rate charged for such disabled person may not exceed the lowest available aged premium rate for such plan.

(f) Notification provisions.

(1) At the time of an event described in Section 365:10-5-129.1(b) because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Section 365:10-5-129.1(a). Such notice shall be communicated contemporaneously with the notification of termination.

(2) At the time of an event described in Section 365:10-5-129.1(b) because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Section 365:10-5-129.1(a). Such notice shall be communicated within ten working days of the issuer receiving notification of disenrollment.

365:10-5-132. Filing and approval of policies and certificates and premium rates

(a) Policy forms and certificates filing and approval requirements. An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the Commissioner in accordance with filing requirements and procedures prescribed by the Commissioner.

(b) Removal of Prescription Drug benefit. An issuer shall file any rider or amendments to policy and certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, improvement, and Modernization Act of 2003 only with the commissioner in the state in which the policy or certificate was issued.

(c) Premium rates and rating schedule filing and approval requirements. An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with and approved by the Commissioner in

accordance with the filing requirements and procedures prescribed by the Commissioner.

(d) Additional policy or certificate forms.

(1) Except as provided in paragraph (2) of this subsection, an issuer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(2) An issuer may offer, with the approval of the Commissioner, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:

(A) The inclusion of new or innovative benefits;

(B) The addition of either direct response or agent marketing methods;

(C) The addition of either guaranteed issue or underwritten coverage;

(D) The offering of coverage to individuals eligible for Medicare by reason of disability.

(3) For the purposes of this section, a "type" means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.

(e) Policy forms and certificate forms availability for purchase after Commissioner's approval.

(1) Except as provided in (A) of this paragraph, an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this Part that has been approved by the Commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months.

(A) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the Commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the Commissioner, the issuer shall no longer offer for sale the policy form or certificate form in this state.

(B) An issuer that discontinues the availability of a policy form or certificate form pursuant to (A) of this paragraph shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the Commissioner of the discontinuance. The period of discontinuance may be reduced if the Commissioner determines that a shorter period is appropriate.

(2) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(3) A change in the rating structure or methodology shall be considered a discontinuance under (d)(1) of this section unless the issuer complies with the following requirements:

(A) The issuer provides an actuarial memorandum, in a form and manner prescribed by the Commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.

(B) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The Commissioner may approve a change to the differential which is in the public interest.

(f) **Combination of policy forms or certificate forms experience for purposes of refund or credit calculation.**

(1) Except as provided in (2) of this subsection, the experience of all policy forms or certificate forms of the

same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in 365:10-5-131.

(2) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

(g) **Attained age rating.** An issuer shall not present for filing or approval a rate structure for its Medicare supplement policies or certificates issued after the effective date of the amendment of this regulation based upon a structure or methodology with any groupings of attained ages greater than one year after age 67. The ratio between rates for successive ages shall increase smoothly as age increases. After the age of 90, a rate structure with groupings of attained ages greater than one year is allowed.

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APPENDIX C. RESCISSION REPORTING FORM FOR LONG-TERM CARE POLICIES [REVOKED]

APPENDIX C. RESCISSION REPORTING FORM FOR LONG-TERM CARE POLICIES [NEW]

FOR THE STATE OF _____
FOR THE REPORTING YEAR 20| |

Company Name: _____

Address: _____

Phone Number: _____

Due: March 1 annually

Instructions:

The purpose of this form is to report all rescissions of long-term care insurance policies or certificates. Those rescissions voluntarily effectuated by an insured are not required to be included in this report. Please furnish one form per rescission.

Policy Form #	Policy and Certificate #	Name of Insured	Date of Policy Issuance	Date/s Claim/s Submitted	Date of Rescission

Detailed reason for rescission: _____

Signature

Name and Title (please type)

Date

APPENDIX F. CREDIT INSURANCE [REVOKED]

APPENDIX F. CREDIT INSURANCE DEVIATION REQUEST FORM [NEW]

Part A.

NAIC Company Code _____

Company Name _____

Creditor Name _____

This deviation request form must be completed separately for each plan of credit life or credit disability insurance written by the creditor or group of creditors requesting the deviation. Experience of accounts may be combined only within the same plan of benefits and class of business. If experience of accounts is combined, attach a list of those included.

Based on the Experience Period commencing _____
and

(month/day/year)

ending _____.
(month/day/year)

Class of Business:

- A. ☐ Commercial Banks, Savings and Loan Associations, and Mortgage Loan Companies.
- B. ☐ Finance Companies and Small Loan Companies.
- C. ☐ Credit Unions.
- D. ☐ Production Credit Associations (Agricultural and Horticultural P.C.A.'s).
- E. ☐ Dealers (Auto and Truck Dealers, Other Dealers, Retail Stores, Etc.).
- F. ☐ Other than A thru E
(Specify _____).

Plan of Benefits: () Credit Life, Death Benefits Only
() Credit Disability

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_____ days
_____ retro _____ non-retro

Form CI-DRF: Part B - Case Experience.

	20__	20__	20__	Tota
1. Actual Earned Premiums	_____	_____	_____	_____
a. Net Written Premiums*	_____	_____	_____	_____
b. Premium Reserve, Beginning Period	_____	_____	_____	_____
c. Premium Reserve, End of Period	_____	_____	_____	_____
d. Earned Premiums, (a + b - c)	_____	_____	_____	_____
2. Earned Premiums at Presumptive Rates	_____	_____	_____	_____
3. Incurred Claims				
a. Claims Paid	_____	_____	_____	_____
b. Unreported Claims, Beginning of Period	_____	_____	_____	_____
c. Unreported Claims, End of Period	_____	_____	_____	_____
d. Claim Reserve, Beginning of Period	_____	_____	_____	_____
e. Claim Reserve, End of Period	_____	_____	_____	_____
f. Incurred Claims, (a - b + c - d + e)	_____	_____	_____	_____
4. Actual Loss Ratio for Case at Presumptive Rates: 3(f) / 2	_____	_____	_____	_____
5. Average Number of Life Years**	_____	_____	_____	_____
6. Incurred Claim Count**	_____	_____	_____	_____

* Net written premiums are to be determined as Gross Premium written (before deductions for dividends and experience rating)

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credits) less refunds on terminations.

** Entries on 5. or 6. should be based on the Credibility Table
elected by the insurer.

Form CI-DRF: Part C
Determination of Deviated Presumptive Case Rate

- (a) Single Account Cases: If the account is 100% credible or if it is within the definition of a single account case as filed by the insurer, the deviated presumptive case rate for the account will be determined by the appropriate formula set forth in (c) below.
- (b) Multiple Account Case: If the account is in a multiple account case, the deviated presumptive case rate for the account will be the case rate for that multiple account case determined by the appropriate formula set forth in (c) below.
- (c) Calculation of Deviated Presumptive Case Rates:
 - (1) Symbols and Definitions:
 - NCR=New Case Rate
 - PFR=Presumptive Rate
 - ALR=Actual Loss Ratio for Case at Presumptive Rate Basis
 - ELR=Expected Loss Ratio at Presumptive Rate Basis
 - Z =Credibility Factor for Case
 - CLR=Credibility Adjusted Case Loss Ratio at Presumptive Basis = $Z (ALR) + (1-Z) (ELR)$
 - (2) New Case Rate: Credit Life Insurance
 - (A) If CLR is greater than ELR, $NCR = PFR [1 + 1.1 (CLR - ELR)]$
 - (B) If CLR is less than ELR, $NCR = PFR [1 - (ELR - CLR)]$
 - (3) New Case Rate: Credit Disability Insurance
 - (A) If CLR is greater than ELR, $NCR = PFR [1 + 1.15 (CLR - ELR)]$
 - (B) If CLR is less than ELR, $NCR = PFR [1 - (ELR - CLR)]$

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APPENDIX H. INVENTORY CREDIT LIFE AND DISABILITY PRESUMPTIVE RATES [REVOKED]

APPENDIX H. INVENTORY CREDIT LIFE AND DISABILITY PRESUMPTIVE RATES [NEW]

FORM CI-I-PR

NAIC COMPANY CODE: _____

COMPANY NAME: _____

CLASS OF BUSINESS: (Check One)

A. ☐ Commercial Banks, Savings & Loan Associations & Mortgage Loan Companies

B. ☐ Finance Companies and Small Loan Companies

C. ☐ Credit Unions

D. ☐ Production Credit Associations (Agricultural & Horticultural P.C.A.'s)

E. ☐ Dealers (Auto & Truck Dealers, Other Dealers, Retail Stores, etc.)

F. ☐ Other than A thru E (Specify: _____)

SINGLE LIFE--PLAN OF BENEFITS	20 _____	20 _____	20 _____
SINGLE PREMIUM:			
Reducing Term.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Level Term	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OUTSTANDING BALANCE:			
Revolving Account.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other Than Revolving Account	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

JOINT LIFE--PLAN OF BENEFITS	20 _____	20 _____	20 _____
SINGLE PREMIUM:			
Reducing Term.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Level Term	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OUTSTANDING BALANCE:			
Revolving Account.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other Than Revolving Account	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DISABILITY--PLAN OF BENEFITS	20 _____	20 _____	20 _____
SINGLE PREMIUM:			
7 Day Retro	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14 Day Retro	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
30 Day Retro	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

14 Day Non-Retro	20	20	20
30 Day Non-Retro	20	20	20
90 Day Non-Retro	20	20	20
OUTSTANDING BALANCE REVOLVING ACCOUNT	20	20	20
7 Day Retro	20	20	20
14 Day Retro	20	20	20
30 Day Retro	20	20	20
14 Day Non-Retro	20	20	20
30 Day Non-Retro	20	20	20
90 Day Non-Retro	20	20	20
OUTSTANDING BALANCE OTHER THAN REVOLVING ACCOUNT	20	20	20
7 Day Retro	20	20	20
14 Day Retro	20	20	20
30 Day Retro	20	20	20
14 Day Non-Retro	20	20	20
30 Day Non-Retro	20	20	20
90 Day Non-Retro	20	20	20

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APPENDIX J. CREDIT LIFE INSURANCE EXPERIENCE REPORT [REVOKED]

APPENDIX J. CREDIT LIFE INSURANCE EXPERIENCE REPORT [NEW]

FORM CI-CX-L

STATE OF _____ FOR CALENDAR YEAR _____

NACI COMPANY CODE: _____

COMPANY NAME: _____

CLASS OF BUSINESS: (Check One)

- A. ☐ Commercial Banks, Savings & Loan Associations & Mortgage Loan Companies
- B. ☐ Finance Companies and Small Loan Companies
- C. ☐ Production Credit Associations (Agricultural & Horticultural P.C.A.'s)
- D. ☐ Dealers (Auto & Truck Dealers, Other Dealers, Retail Stores, etc.)
- E. ☐ Other than A thru E (Specify: _____)

PLAN OF BENEFITS: (Check One Only)

	Single Lives	Joint Lives
Single Premium Receiving Term	<input type="checkbox"/>	<input type="checkbox"/>
Single Premium Level	<input type="checkbox"/>	<input type="checkbox"/>

OUTSTANDING BALANCE:

Revolving Account (open end)	<input type="checkbox"/>	<input type="checkbox"/>
Other Than Revolving Account	<input type="checkbox"/>	<input type="checkbox"/>

Form CI-DRF: Part B - Case Experience

	20__	20__	20__	20__
1. Actual Earned Premiums*	_____	_____	_____	_____
a. Net Written Premiums*	_____	_____	_____	_____
b. Premium Reserve, Beginning of Period	_____	_____	_____	_____
c. Premium Reserve, End of Period	_____	_____	_____	_____
d. Actual Earned Premiums (a+b-c)	_____	_____	_____	_____
e. Earned Premiums at presumptive rate (Form CI-EP-L)	_____	_____	_____	_____

2. Incurred Claims

a. Claims Paid	_____	_____	_____	_____
b. Unreported Claims, Beginning of Period	_____	_____	_____	_____
c. Unreported Claims, End of Period	_____	_____	_____	_____
d. Claim Reserve, Beginning of Period**	_____	_____	_____	_____
e. Claim Reserve, End of Period	_____	_____	_____	_____
f. Incurred Claims, End of Period	_____	_____	_____	_____

3. Loss Ratios

a. Actual Loss Ratio (2f/1d)	_____	_____	_____	_____
b. Loss Ratio at presumptive rate (2f/1e)	_____	_____	_____	_____

4. Mean Insurance In Force*

_____	_____	_____	_____
-------	-------	-------	-------

5. Losses Per \$100 Mean
Insurance In Force (100x2f)
/ Item 4

_____	_____	_____	_____
-------	-------	-------	-------

6/ Losses Per \$100 Initial
Amount On Basis of 12 Month
Policy (13) / (24) x Item
5***

_____	_____	_____	_____
-------	-------	-------	-------

*See instructions.

**Must take into account reported claims due but unpaid.

***To be completed for reducing term insurance only.

NOTE: Mean Insurance In Force shall be used in arriving at the statewide loss ratios for purposes of developing presumptive premium rates.

APPENDIX K. CREDIT DISABILITY INSURANCE EXPERIENCE REPORT [REVOKED]

APPENDIX K. CREDIT DISABILITY INSURANCE EXPERIENCE REPORT [NEW]

FORM CI-EX-DIS

STATE OF _____ FOR CALENDAR YEAR _____

NAIC COMPANY CODE: _____

COMPANY NAME: _____

CLASS OF BUSINESS: (Check One)

A. ☐ Commercial Banks, Savings & Loan Associations & Mortgage Loan Companies

B. ☐ Finance Companies and Small Loan Companies

C. ☐ Credit Unions

D. ☐ Production Credit Associations (Agricultural & Horticultural P.C.A.'s)

E. ☐ Dealers (Auto & Truck Dealers, Other Dealers, Retail Stores, etc.)

F. ☐ Other than A thru E (Specify: _____)

PLAN OF BENEFITS: (Check One Only)

☐ SINGLE PREMIUM ☐ OUTSTANDING BALANCE

☐ 7 Day Retro. ☐ 7 Day Retro. ☐ 30 Day Non-Retro.

☐ 14 Day Retro. ☐ 14 Day Non-Retro. ☐ 90 Day Non-Retro.

☐ Revolving Account (open-end) Indebtedness

☐ Other Than Revolving Account Indebtedness

	20__	20__	20__	Total
1. Actual Earned Premiums				
a. Net Written Premiums*	_____	_____	_____	_____
b. Premium Reserve, Beginning Period	_____	_____	_____	_____
c. Premium Reserve, End of Period	_____	_____	_____	_____
d. Actual Earned Premiums (a+b-c)	_____	_____	_____	_____

e. Earned Premiums at
Presumptive Rate
(Form CI-EP-DIS)

2. Incurred Claims

a. Claims Paid

b. Unreported Claims,
Beginning of Period**

c. Unreported Claims,
End of Period**

d. Claim Reserve,
Beginning of Period***

e. Claim Reserve,
End of Period***

f. Incurred Claims
(a-b+c-d+e)

3. Loss Ratios

a. Actual Loss Ratio
(2f/1d)

b. Loss Ratio at presumptive
rate (2f/1e)

* See instructions.

** Must take into account unreported claims due but unpaid and pending but not due.

*** Must take into account reported claims due but unpaid and pending but not due.

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APPENDIX M. CREDIT DISABILITY INSURANCE EXPERIENCE REPORT [REVOKED]

APPENDIX M. CREDIT DISABILITY INSURANCE EXPERIENCE REPORT [NEW]

STATE OF _____
PRESUMPTIVE EARNED PREMIUM

FORM CI-EP-DIS

Class of Business _____ Calendar Year 20____

Premium Mode _____ Plan of Benefits _____

		Actual Earned Premium Col. 1	12 Mo. Col. 2	Premium Rates: 24 Mo. Col. 3	36 Mo. Col. 4	Pre- sumptive Earned Premium Col. 5
A.	Earned Premium at Presumptive Rate	_____	_____	_____	_____	_____
B.	Other Premium at Other Than Presumptive Rate:					
1.						
a.	Actual Rate	XXXX	_____	_____	_____	XXXX
b.	Ratio	XXXX	_____	_____	_____	XXXX
c.	Earned Premium	_____	_____	_____	_____	_____
2.						
a.	Actual Rate	XXXX	_____	_____	_____	XXXX
b.	Ratio	XXXX	_____	_____	_____	XXXX
c.	Earned Premium	_____	_____	_____	_____	_____
3.						
a.	Actual Rate	XXXX	_____	_____	_____	XXXX
b.	Ratio	XXXX	_____	_____	_____	XXXX
c.	Earned Premium	_____	_____	_____	_____	_____
Totals		_____	XXXX	XXXX	XXXX	_____
		To Form CI-EX- DIS Line 1d.				To Form CI-EX- DIS Line 1e.

APPENDIX N. CREDIT LIFE INSURANCE EXPERIENCE RECONCILIATION TO STATE PAGE
[REVOKED]

APPENDIX N. CREDIT LIFE INSURANCE EXPERIENCE RECONCILIATION TO STATE PAGE [NEW]

STATE OF _____
FOR THE CURRENT YEAR 20____

FORM CI-R-L

	Premiums		Claims	
	Written (Line 1a)	Earned (Line 1d)	Paid (Line 2a)	Incurred (Line 2f)
Credit Life:				
Page ____ of ____	_____	_____	_____	_____
Page ____ of ____	_____	_____	_____	_____
Page ____ of ____	_____	_____	_____	_____
Page ____ of ____	_____	_____	_____	_____
Page ____ of ____	_____	_____	_____	_____
Page ____ of ____	_____	_____	_____	_____
Page ____ of ____	_____	_____	_____	_____
Page ____ of ____	_____	_____	_____	_____
Page ____ of ____	_____	_____	_____	_____
Page ____ of ____	_____	_____	_____	_____
Total Life				
Annual Statement Page 46, Lines 4, 19, & 21	_____	_____	_____	_____

Explain any differences between "Total Life" and corresponding amounts on page 46 (Line 4, Col. 2, Line 19, Col. 2, and Line 21, Col. 2).

Note that "Total Life" amount for Earned Premiums is not reported on page 46 of the Texas Annual Statement.

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APPENDIX O. CREDIT DISABILITY INSURANCE EXPERIENCE RECONCILIATION TO STATE PAGE [REVOKED]

APPENDIX O. CREDIT DISABILITY INSURANCE EXPERIENCE RECONCILIATION TO STATE PAGE [NEW]

STATE OF _____
FOR THE CURRENT YEAR 20____

FORM CI-R-DIS

	Premiums		Claims	
Credit Disability:	Written (Line 1a)	Earned (Line 1d)	Paid (Line 2a)	Incurred (Line 2f)
Page ____ of ____	_____	_____	_____	_____
Page ____ of ____	_____	_____	_____	_____
Page ____ of ____	_____	_____	_____	_____
Page ____ of ____	_____	_____	_____	_____
Page ____ of ____	_____	_____	_____	_____
Page ____ of ____	_____	_____	_____	_____
Page ____ of ____	_____	_____	_____	_____
Page ____ of ____	_____	_____	_____	_____
Page ____ of ____	_____	_____	_____	_____
Page ____ of ____	_____	_____	_____	_____
Total Life				-
Annual Statement Page 46, Line 29	_____	_____	_____	_____

Explain any differences between "Total Disability" and corresponding amounts on
page 46 (Line 29, Cols. 1, 2, 3, 4 and 5).

APPENDIX QQ. EXTERNAL REVIEW REQUEST FORM [REVOKED]

APPENDIX QQ. EXTERNAL REVIEW REQUEST FORM [NEW]

This **EXTERNAL REVIEW REQUEST FORM** must be filed with the Oklahoma Insurance Department within **FOUR (4) MONTHS** after receipt from your insurer of a denial of payment on a claim or request for a health care service or treatment.

EXTERNAL REVIEW REQUEST FORM

APPLICANT NAME

Please Check One: ☐ Covered person/Patient ☐ Authorized Representative

COVERED PERSON/PATIENT INFORMATION

Covered Person Name: _____

Patient Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Covered Person Phone #: Home (____) _____ Work (____) _____

INSURANCE INFORMATION

Insurer/HMO Name: _____

Covered Person Insurance ID#: _____

Insurance Claim/Reference #: _____

Insurer/HMO Mailing Address: _____

City: _____ State: _____ Zip: _____

Insurer Telephone #: (____) _____

EMPLOYER INFORMATION

Employer's Name: _____

Employer's Phone #: (____) _____

Is the insurance you have through your employer a self-funded plan? _____. If you are not certain please check with your employer. Most self-funded plans are not eligible for external review. However, some self-funded plans may voluntarily provide external review, but may have different procedures. You should check with your employer.

HEALTH CARE PROVIDER INFORMATION

Treating Physician/Health Care Provider: _____

Address: _____

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City: _____ State: _____ Zip: _____

Contact Person: _____ Phone #: (____) _____

Medical Record #: _____

REASON FOR HEALTH CARRIER DENIAL (Please check one)*

- ☐ The health care service or treatment is not medically necessary.
☐ The health care service or treatment is experimental or investigational.

*You can describe in your own words the health care service or treatment in dispute using the attached pages below.

EXPEDITED REVIEW

If you need a fast decision, you may request that your external appeal be handled on an expedited basis. To complete this request, your treating health care provider must fill out the attached form stating that a delay would seriously jeopardize the life or health of the patient or would jeopardize the patient's ability to regain maximum function. Is this a request for an expedited appeal? ☐ Yes ☐ No

SIGNATURE AND RELEASE OF MEDICAL RECORDS

To appeal your health carrier's denial, you must sign and date this external review request form and consent to the release of medical records.

I, _____, hereby request an external appeal. I attest that the information provided in this application is true and accurate to the best of my knowledge. I authorize by insurance company and my health care providers to release all relevant medical or treatment records to the independent review organization and the Oklahoma Insurance Department. I understand that the independent review organization and the Oklahoma Insurance Department will use this information to make a determination on my external appeal and that the information will be kept confidential and not be released to anyone else. This release is valid for one year.

Signature of Covered Person (or legal representative)*

*(Parent, Guardian, Conservator or Other – Please Specify)

Date

APPOINTMENT OF AUTHORIZED REPRESENTATIVE

(Fill out this section only if someone else will be representing you in this appeal.)

You can represent yourself, or you may ask another person, including your treating health care provider, to act as your authorized representative. You may revoke this authorization at any time.

I hereby authorize _____ to pursue my appeal on my behalf.

Signature of Covered Person (or legal representative)*
*(Parent, Guardian, Conservator or Other—Please Specify)

Date

Address of Authorized Representative: _____

City: _____ State: _____ Zip: _____

Phone #: Daytime (____) _____ Evening (____) _____

HEALTH CARE SERVICE OR TREATMENT DECISION IN DISPUTE

DESCRIBE IN YOUR OWN WORDS THE DISAGREEMENT WITH YOUR HEALTH CARRIER. INDICATE CLEARLY THE SERVICE(S) BEING DENIED AND THE SPECIFIC DATE(S) BEING DENIED. EXPLAIN WHY YOU DISAGREE. ATTACH ADDITIONAL PAGES IF NECESSARY AND INCLUDE PERTINENT MEDICAL RECORDS, IF AVAILABLE. YOU MUST ALSO ATTACH ANY INFORMATION YOU RECEIVED FROM YOUR HEALTH CARRIER CONCERNING THE DENIAL, AND ANY ADDITIONAL INFORMATION FROM YOUR PHYSICIAN/HEALTH CARE PROVIDER THAT YOU WANT THE INDEPENDENT REVIEW ORGANIZATION REVIEWER TO CONSIDER.

WHAT TO SEND AND WHERE TO SEND IT

PLEASE CHECK BELOW (NOTE: YOUR REQUEST WILL NOT BE ACCEPTED FOR FULL REVIEW UNLESS ALL FOUR (4) ITEMS BELOW ARE INCLUDED*)

1. ☐ **YES**, I have included this completed application form signed and dated.
2. ☐ **YES**, I have included a photocopy of my insurance identification card or other evidence showing that I am insured by the health insurance company named in this application;
3. ☐ **YES****, I have enclosed the letter from my health carrier or utilization review company that states:
 - (a) Their decision is final and that I have exhausted all internal review procedures; or
 - (b) They have waived the requirement to exhaust all of the health carrier's internal review procedures.

****You may make a request for external review without exhausting all internal review procedures under certain circumstances. You should contact the Oklahoma Insurance Department for more information.**

4. ☐ **YES**, I have included a copy of my certificate of coverage or my insurance policy benefit booklet, which lists the benefits under my health benefit plan.

***Call the Oklahoma Insurance Department at 800-522-0071 or 405-521-2828 if you need help in completing this application or if you do not have one or more of the above items and would like information on alternative ways to complete your request for external review.**

If you are requesting a standard external review, send all paperwork to:

Oklahoma Insurance Department
External Review
400 N.E. 50th
Oklahoma City, Oklahoma 73105

If you are requesting an expedited external review, call the Insurance Department at 800-522-0071 or 405-521-2828 before sending your paperwork, and you will receive instructions on the quickest way to submit the application and supporting information.

CERTIFICATION OF TREATING HEALTH CARE PROVIDER FOR EXPEDITED CONSIDERATION OF A PATIENT'S EXTERNAL REVIEW APPEAL

NOTE TO THE TREATING HEALTH CARE PROVIDER

Patients can request an external review when a health carrier has denied a health care service or course of treatment on the basis of a utilization review determination that the requested health care service or course of treatment does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care or effectiveness of the health care service or treatment you requested. The Oklahoma Insurance Department oversees external appeals. The standard external review process can take up to 45 days from the date the patient's request for external review is received by our department. Expedited external review is available only if the patient's treating health care provider certifies that adherence to the time frame for the standard external review would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function. An expedited external review must be completed at most within 72 hours. This form is for the purpose of providing the certification necessary to trigger expedited review.

GENERAL INFORMATION

Name of Treating Health Care Provider: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Phone #: (____) _____ Fax #: (____) _____

Licensure and Area of Clinical Specialty: _____

Name of Patient: _____

Patient's Insurer Member ID#: _____

CERTIFICATION

I hereby certify that: I am a treating health care provider for _____
(hereafter referred to as 'the patient'); that adherence to the time frame for conducting a standard external review of
the patient's appeal would, in my professional judgment, seriously jeopardize the life or health of the patient or
would jeopardize the patient's ability to regain maximum function; and that, for this reason, the patient's appeal of
the denial by the patient's health carrier of the requested health care service or course of treatment should be
processed on an expedited basis.

Treating Health Care Provider's Name (Please Print)

Signature

Date

**PHYSICIAN CERTIFICATION
EXPERIMENTAL/INVESTIGATIONAL DENIALS
(To Be Completed by Treating Physician)**

I hereby certify that I am the treating physician for _____
(covered person's name) and that I have requested the authorization for a drug, device, procedure or therapy denied for coverage due to the insurance company's determination that the proposed therapy is experimental and/or investigational. I understand that in order for the covered person to obtain the right to an external review of this denial, as treating physician I must certify that the covered person's medical condition meets certain requirements:

In my medical opinion as the Insured's treating physician, I hereby certify to the following:
(Please check all that apply) (NOTE: Requirements #1 - #3 below must all apply for the covered person to qualify for an external review).

1) <input type="checkbox"/>	The covered person has a terminal medical condition, or a life threatening condition, or a seriously debilitating condition.
2) <input type="checkbox"/>	The covered person has a condition that qualifies under one or more of the following: [please indicate which description(s) apply]:
i. <input type="checkbox"/>	Standard health care services or treatments have not been effective in improving the covered person's condition;
ii. <input type="checkbox"/>	Standard health care services or treatments are not medically appropriate for the covered person; or
iii. <input type="checkbox"/>	There is no available standard health care service or treatment covered by the health carrier that is more beneficial than the requested or recommended health care service or treatment.
3) <input type="checkbox"/>	The health care service or treatment I have recommended and which has been denied, in my medical opinion, is likely to be more beneficial to the covered person than any available standard health care services or treatments.
4) <input type="checkbox"/>	The health care service or treatment I have recommended would significantly less effective if not promptly initiated. Explain: _____ _____
5) <input type="checkbox"/>	It is my medical opinion based on scientifically valid studies using accepted protocols that the health care service or treatment requested by the covered person and which has been denied is likely to be more beneficial to the covered person than any available standard health care services or treatments. Explain: _____ _____

Please provide a description of the recommended or requested health care service or treatment that is the subject of the denial. (Attach additional sheets as necessary.)

Physician's Name (Please Print)

Physician's Signature

Date

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APPENDIX RR. APPLICATION FOR REGISTRATION AS AN INDEPENDENT REVIEW ORGANIZATION [REVOKED]

APPENDIX RR. APPLICATION FOR REGISTRATION AS AN INDEPENDENT REVIEW ORGANIZATION [NEW]

Oklahoma Insurance Department
Five Corporate Plaza
3526 NW 56th Street, Suite 100
Oklahoma City, OK 73112
405-521-2828

☐ Initial Application
☐ Renewal

Application for Registration as an Independent Review Organization

Type of Entity: ☐ Corporation ☐ Partnership ☐ LLC ☐ Other _____

Contact Information for Application

Legal Name of Applicant	State of Domicile	Federal EIN	
Contact Person (Name and Title)	Phone ()	Email	
Business Address (Do not use PO Box)	City	State	Zip
Mailing Address (if different from business address)	City	State	Zip

Contact Information for Initiating External Reviews (also to be made available to carriers and consumers)

Contact Person (Name and Title) or Department		Phone ()	Email	
Mailing Address		City	State	Zip
Website	Toll-Free Telephone Number		Fax ()	
Other Contact Information				

A

Applicant Attestation and Certification

Applicant certifies that it will notify the Oklahoma Insurance Department immediately if its accreditation is lost with the American Accreditation Healthcare Commission/URAC. Applicant acknowledges that the Oklahoma Insurance Department may terminate this license if the applicant loses accreditation or no longer satisfies the minimum requirements for licensure.

Applicant acknowledges that payment of any fees associated with any external reviews conducted pursuant to 36 O.S. § 6475.1 et seq. are the sole responsibility of the health carrier whose medical decision is being reviewed. Applicant understands that it has no recourse against the Oklahoma Insurance Department or the state of Oklahoma to the extent that any health carrier fails to pay any medical reviewer fees. Applicant authorizes the Oklahoma Insurance Department to verify information with any federal, state, or local government agency, insurance company or accrediting organization.

Applicant acknowledges and represents that it understands and will comply with Oklahoma's insurance laws and the rules of the Oklahoma Insurance Department. Applicant hereby represents that it will comply with all requirements imposed under 36 O.S. § 6475.1 et seq. and assures that no conflict of interest or improper controlling interest as outlined in the statute exists. Applicant further agrees to maintain and provide to the Oklahoma Insurance Department the information set out in 36 O.S. § 6475.15.

I certify that, under penalty of perjury, I am the person named herein and know the contents thereof, and that all of the information submitted in this application and its attachments is true and complete. I attest that I have the authority and capacity to execute this certification on behalf of the applicant. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license denial or revocation and may subject me to civil or criminal penalties.

Signature of person who completed application

Signature of Officer, Director, or Board Member

Printed Name

Printed Name

Title

Title

Date

Date

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Please provide the following as separate attachments:

1. A narrative description and an organizational chart to provide an overview of the applicant's operations.
2. A list of names and official capacities of all persons responsible for the applicant's external review program, including:
 - a. all members of the governing body, the officers and directors of a corporation, and the partners or associates of a partnership or association; and,
 - b. disclosure of any contracts or arrangements between those persons and the applicant, including any appearance of a conflict of interest as specified in 36 O.S. 6475.13.
3. A written statement addressing the determination of any conflicts of interest involving the applicant and all clinical reviewers.
4. A copy of your most recent certificate from American Accreditation HealthCare Commission/URAC for Independent Review Organizations.
5. A list of specific areas of clinical expertise in which you conduct independent reviews, if applicable.
6. A schedule of fees.
7. A copy of your current Certificate of Authority provided by the Oklahoma Secretary of State.
8. A narrative description of the quality assurance mechanism in place to meet the requirements of 36 O.S. 6475.13(A)(1).
9. A narrative description of the process utilized to maintain the confidentiality of personally identifiable health information and of clinical reviewers' and contract specialists' identities.
10. A copy of the policy and procedures that govern all aspects of the external review process for both standard and expedited reviews, including experimental and investigational treatments.

Please submit this application and all required attachments to:

Oklahoma Insurance Department
External Review Program
400 N.E. 50th
Oklahoma City, OK 73105

APPENDIX SS. INDEPENDENT REVIEW ORGANIZATION EXTERNAL REVIEW ANNUAL REPORT FORM [REVOKED]

APPENDIX SS. INDEPENDENT REVIEW ORGANIZATION EXTERNAL REVIEW ANNUAL REPORT FORM [NEW]

Oklahoma Insurance Department

Independent Review Organization External Review Annual Report Form

External Review Annual Summary for 20_____		Due by January 31 for the previous calendar year.	
Each independent review organization (IRO) shall submit an annual report with information for each health carrier in the aggregate on external reviews performed in Oklahoma only.			
1. IRO name:		Filing date:	
2. IRO license/certification no:			
3. IRO address:			
City, State, Zip:			
4. IRO Website:			
5. Name of person completing this form:			
Email:	Phone:	Fax:	
6. Person responsible for regulatory compliance and quality of external reviews:			
Name:		Title:	
7. Total number of requests for external review received from the Oklahoma Insurance Department during the reporting period:			
8. Number of standard external reviews:			
9. Average number of days IRO required to reach a final decision in standard reviews:			
10. Number of expedited reviews completed to a final decision:			
11. Average number of days IRO required to reach a final decision in expedited reviews:			
12. Number of medical necessity reviews decided in favor of the health carrier:			
Briefly list procedures denied:			

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13. Number of medical necessity reviews decided in favor of the covered person:		
Briefly list procedures approved:		
14. Number of experimental/investigational reviews decided in favor of the health carrier:		
Briefly list procedures denied:		
15. Number of experimental/investigational reviews decided in favor of the covered person:		
Briefly list procedures approved:		
16. Number of reviews terminated as the result of a reconsideration by the health carrier:		
17. Number of reviews terminated by the covered person:		
18. Number of reviews declined due to possible conflict with	health carrier:	
	covered person:	
	health care provider:	
Describe possible conflicts of interest:		
19. Number of reviews declined due to other reasons not reflected in #18 above:		
Briefly list these reasons:		

Please submit to:
Oklahoma Insurance Department
400 N.E. 50th
Oklahoma City, OK 73105

APPENDIX TT. HEALTH CARRIER EXTERNAL REVIEW ANNUAL REPORT FORM [REVOKED]

APPENDIX TT. HEALTH CARRIER EXTERNAL REVIEW ANNUAL REPORT FORM [NEW]

Oklahoma Insurance Department

Health Carrier External Review Annual Report Form

External Review Annual Summary for 20_____		Due by January 31 for the previous calendar year.	
Each health carrier shall submit an annual report with information in the aggregate by State and by type of health benefit plan.			
1. Health carrier name:		Filing date:	
2. Health carrier address:			
City, State, Zip:			
3. Health carrier Website:			
4. Name of person completing this form:			
Email:	Phone:	Fax:	
5. Total number of external review requests received from the Oklahoma Insurance Department during the reporting period:			
6. From the total number of external review requests provided in Question 5, the number of requests determined eligible for a full external review:			

Please submit to:
Oklahoma Insurance Department
400 N.E. 50th
Oklahoma City, Oklahoma 73105

[OAR Docket #20-593; filed 7-13-20]

Permanent Final Adoptions

TITLE 365. INSURANCE DEPARTMENT CHAPTER 15. PROPERTY AND CASUALTY

[OAR Docket #20-594]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Appendix C. Excess Consent Rate Application [REVOKED]

Appendix C. Excess Consent Rate Application [NEW]

AUTHORITY:

Insurance Commissioner; 36 O.S. §§ 307.1

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

January 24, 2020

COMMENT PERIOD:

February 18, 2020 through March 23, 2020

PUBLIC HEARING:

March 25, 2020

ADOPTION:

March 25, 2020

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

March 26, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 11, 2020

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The amendment to Appendix C updates the Insurance Department's address.

CONTACT PERSON:

Sara Worten, Assistant General Counsel, Department, 400 NE 50th Street, Oklahoma City, OK 73105, (405) 522-6350

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

APPENDIX C. EXCESS CONSENT RATE APPLICATION [REVOKED]

APPENDIX C. EXCESS CONSENT RATE APPLICATION [NEW]

TO: Oklahoma Insurance Commissioner
400 N.E. 50th
Oklahoma City, Oklahoma 73105

Kindly file for _____
(Insurer)

the following rates, which I understand, are in excess of those otherwise applicable.

This percentage increase is understood to apply to the manual premium _____ %.

These rates are to apply to the following exposures: _____
_____ and any exposures determined at final audit.

Kind of coverage: _____

Policy Number: _____

Period of Coverage: _____

Policy Limits: _____

Manual Premium at above limits: _____
(estimate if policy is subject to audit)

Proposed premium at above limits is: _____
(estimate if policy is subject to audit)

I am agreeable to paying this premium because (2) _____

Named Insured _____
Signed By _____ 3)
Title _____
Date _____ 4)

- (1) Submit in duplicate with stamped self-addressed envelope
- (2) To be completed by insured
- (3) Excess form shall be signed by insured
- (4) Date insured signed form

[OAR Docket #20-594; filed 7-13-20]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 25. OTHER LICENSEES

[OAR Docket #20-595]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 7. Companies
Part 17. Corporate Governance [NEW]
365:25-7-90. Authority [NEW]
365:25-7-91. Purpose [NEW]
365:25-7-92. Definitions [NEW]
365:25-7-93. Filing procedures [NEW]
365:25-7-94. Contents of Corporate Governance Annual Disclosure [NEW]
365:25-7-95. Severability clause [NEW]
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365:25-7-100. Authority [NEW]
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365:25-7-104. Contents of annual audited financial report [NEW]
365:25-7-105. Designation of independent certified public accountant [NEW]
365:25-7-106. Qualifications of independent certified public accountant [NEW]
365:25-7-107. Consolidated or combined audits [NEW]
365:25-7-108. Scope of audit and report of independent certified public accountant [NEW]
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365:25-7-110. Communication of internal control related matters noted in audit [NEW]
365:25-7-111. Accountant's letter of qualifications [NEW]
365:25-7-112. Definition, availability and maintenance of independent certified public accountants work papers [NEW]
365:25-7-113. Requirements for audit committees [NEW]
365:25-7-114. Internal audit function requirements [NEW]
365:25-7-115. Conduct of insurer in connection with the preparation of required reports and documents [NEW]
365:25-7-116. Management's report of internal control over financial reporting [NEW]
365:25-7-117. Exemptions and effective dates [NEW]
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365:25-7-119. Severability provision [NEW]
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365:25-29-1. Purpose [AMENDED]
365:25-29-2. Scope [AMENDED]
365:25-29-3. Authority [AMENDED]
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365:25-29-5. Forms and contents of application for PBM license [AMENDED]
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365:25-29-13. Claims payment [NEW]
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Appendix B. Form B: Oklahoma Insurance Holding Company System Registration Statement [REVOKED]
Appendix B. Form B: Oklahoma Insurance Holding Company System Registration Statement [NEW]
Appendix D. Fidelity Bond [REVOKED]
Appendix D. Fidelity Bond [NEW]
Appendix E. Application to withdraw funds deposited for prepaid funeral expenses [REVOKED]
Appendix E. Application to withdraw funds deposited for prepaid funeral expenses [NEW]

Appendix F. Buyers application to terminate contract or withdraw funds previously deposited for prepaid funeral benefits under a non-specified or guaranteed contract [REVOKED]

Appendix F. Buyers application to terminate contract or withdraw funds previously deposited for prepaid funeral benefits under a non-specified or guaranteed contract [NEW]

Appendix G. Annual report Form PF-1-a filed in accordance with 36 O.S. § 6128 for prepaid funeral benefits and funds [REVOKED]

Appendix G. Annual report Form PF-1-a filed in accordance with 36 O.S. § 6128 for prepaid funeral benefits and funds [NEW]

Appendix H. Annual statement of financial condition (reconciliation of trust accounts) [REVOKED]

Appendix H. Annual statement of financial condition (reconciliation of trust accounts) [NEW]

Appendix N. Form C: Summary of registration statement [REVOKED]

Appendix N. Form C: Summary of registration statement [NEW]

Appendix O. Form D: Prior notice of a transaction [REVOKED]

Appendix O. Form D: Prior notice of a transaction [NEW]

Appendix Q. Form E [REVOKED]

Appendix Q. Form E [NEW]

Appendix R. Conversion from pre-paid funeral trust to insurance funded contracts [REVOKED]

Appendix R. Conversion from pre-paid funeral trust to insurance funded contracts [NEW]

AUTHORITY:

Insurance Commissioner; 36 O.S. §§ 307.1, 1541, 1641, 6123, 6958-6968; 59 O.S. § 358

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 24, 2020

COMMENT PERIOD:

February 18, 2020 through March 23, 2020

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Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 11, 2020

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 29. Pharmacy Benefits Managers

365:25-29-1. Purpose [AMENDED]

365:25-29-2. Scope [AMENDED]

365:25-29-3. Authority [AMENDED]

365:25-29-4. Definitions [AMENDED]

365:25-29-5. Forms and contents of application for PBM license [AMENDED]

365:25-29-6. Surety bond [AMENDED]

365:25-29-7.1. Retail pharmacy network access [NEW]

365:25-29-9. Contractual requirements - maximum allowable costs [AMENDED]

365:25-29-10. Penalty for noncompliance [AMENDED]

365:25-29-12. Commissioner's authority - advisory committee [NEW]

365:25-29-13. Claims payment [NEW]

365:25-29-14. Inquiry/complaint handling process [NEW]

365:25-29-15. Examinations of PBMs and health insurers [NEW]

Gubernatorial approval:

October 22, 2019

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37 Ok Reg 135

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19-794

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

365:25-7-90 through 365:25-7-95 is added to support the Corporate Governance Annual Disclosure Act (36 O.S. § 1534-1541) passed by the

legislature in 2019. The Corporate Governance Annual Disclosure Act was passed to provide the Commissioner a summary of an insurer or insurance group's corporate governance structure, policies and practices to permit the Commissioner to gain and maintain an understanding of the insurer's corporate governance framework, and to provide the requirements for completing the Corporate Governance Annual Disclosure.

365:25-7-100 through 365:25-7-119 is added to support the Oklahoma Annual Financial Report Act (36 O.S. §§ 311A.1-311A.18) which is to improve the surveillance of the Insurance Commissioner over the financial condition of insurers. This act was passed by the legislature in 2019.

365:25-29-1 and 365:25-29-3 are amended to include 36 O.S. §§ 6858-6968 in this subchapter.

365:25-29-2 is amended to provide clarification as to the applicability of the act.

365:25-29-4 is amended to provide a definition for "Preferred participating pharmacy" and "provider".

365:25-29-5 is amended for clarification and a word correction.

365:25-29-7.1 is added to address the standards required by the act for the retail pharmacy network access. Specifically, health insurers are required to audit their contracting PBMs to confirm compliance with the act and provide those audits along with verification of the audit to the Department to confirm compliance. The insurers are required to report situations of inadequate access to the Department. This section addresses the use of mail-order pharmacies for adequacy standards, clarification of the act applying to specialty drugs, and use of pharmacy, hospital or other providers on mail and ID cards.

365:25-29-9 is amended for formatting purposes and adds instructive language regarding the insurer's responsibility to confirm the PBM contracts are in compliance with the act. It requires insurers to conduct an audit of its contracting PBMs to confirm the requirements of 36 O.S. § 6962 are being met and provide that information to the Department.

365:25-29-10 is amended to include 36 O.S. §§ 6858-6968 and to include penalty language for insurers for failing to comply with the act.

365:25-29-12 is added to clarify the authority of the Commissioner over the advisory committee and the role of the advisory committee. The advisory committee will function in an advisory capacity. The committee members will be privy to confidential material and will therefore need to submit to a background check.

365:25-29-13 is added to clarify that claims payments are the obligation of the insurer that issues the policy.

365:25-29-14 addresses the inquiry or complaint handling process.

365:25-29-15 is added to address examinations of PBMs and insurers by the Department for compliance with the act.

The changes to the appendices B, D, E, F, G, H, N, O, and Q update the dates without any substantive changes. The change to appendix R is to strike the former requirement of 36 O.S. § 6136(C)(2) superseded November 1, 2009.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 7. COMPANIES

PART 17. CORPORATE GOVERNANCE

365:25-7-90. Authority

These regulations are promulgated pursuant to the authority granted by Sections 36 O.S. §§ 1534-1541 of the Insurance Law.

365:25-7-91. Purpose

The purpose of these regulations is to set forth the procedures for filing and the required contents of the Corporate Governance Annual Disclosure (CGAD), deemed necessary by the Oklahoma Insurance Commissioner to carry out the provisions of 36 O.S. §§ 1534-1541.

365:25-7-92. Definitions.

The following words and terms, when used in this Part 17 or Subchapter 7, shall have the following meaning, unless the context clearly indicates otherwise:

"Commissioner" means the Insurance Commissioner of the State.

"Insurance group" means those insurers and affiliates included within an insurance holding company system as defined 36 O.S. § 1631.

"Insurer" means as set forth in 36 O.S. § 103, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

"Senior Management" means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators and shall include, for example and without limitation, the Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"), Chief Operations Officer ("COO"), Chief Procurement Officer ("CPO"), Chief Legal Officer ("CLO"), Chief Information Officer ("CIO"), Chief Technology Officer ("CTO"), Chief Revenue Officer ("CRO"), Chief Visionary Officer ("CVO"), or any other "C" level executive.

365:25-7-93. Filing procedures

(a) An insurer, or the insurance group of which the insurer is a member, required to file a CGAD by Article 15b of Title 36 of the Oklahoma Statutes shall, no later than June 1 of each calendar year, submit to the Commissioner a CGAD that contains the information described in O.A.C. 365:25-7-94.

(b) The CGAD must include a signature of the insurer's or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the insurer or insurance group has implemented the corporate governance practices and that a copy of the CGAD has been provided to the insurer's or insurance group's Board of Directors (hereafter "Board") or the appropriate committee thereof.

(c) The insurer or insurance group shall have discretion regarding the appropriate format for providing the information required by these regulations and is permitted to customize the CGAD to provide the most relevant information necessary to permit the Commissioner to gain an understanding of the corporate governance structure, policies and practices utilized by the insurer or insurance group.

(d) For purposes of completing the CGAD, the insurer or insurance group may choose to provide information on governance activities that occur at the ultimate controlling parent

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level, an intermediate holding company level and/or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the CGAD disclosures at the level at which the insurer's or insurance group's risk appetite is determined, or at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on these criteria, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

(e) Notwithstanding Subsection (a) of this Section, and as outlined in 36 O.S. § 1536, if the CGAD is completed at the insurance group level, then it must be filed with the lead state of the group as determined by the procedures outlined in the most recent Financial Analysis Handbook adopted by the NAIC. In these instances, a copy of the CGAD must also be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer, upon request.

(f) An insurer or insurance group may comply with this section by referencing other existing documents (e.g., ORSA Summary Report, Holding Company Form B or F Filings, Securities and Exchange Commission (SEC) Proxy Statements, foreign regulatory reporting requirements, etc.) if the documents provide information that is comparable to the information described in O.A.C. 365:25-7-94. The insurer or insurance group shall clearly reference the location of the relevant information within the CGAD and attach the referenced document if it is not already filed or available to the regulator.

(g) Each year following the initial filing of the CGAD, the insurer or insurance group shall file an amended version of the previously filed CGAD indicating where changes have been made. If no changes were made in the information or activities reported by the insurer or insurance group, the filing should so state.

365:25-7-94. Contents of Corporate Governance Annual Disclosure

(a) The insurer or insurance group shall be as descriptive as possible in completing the CGAD, with inclusion of attachments or example documents that are used in the governance process, since these may provide a means to demonstrate the strengths of their governance framework and practices.

(b) The CGAD shall describe the insurer's or insurance group's corporate governance framework and structure including consideration of the following:

(1) The Board and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level(s) at which that oversight occurs (e.g., ultimate control level, intermediate holding company, legal entity, etc.). The insurer or insurance group shall describe and discuss the rationale for the current Board size and structure; and

(2) The duties of the Board and each of its significant committees and how they are governed (e.g., bylaws, charters, informal mandates, etc.), as well as how the Board's leadership is structured, including a discussion of the roles of Chief Executive Officer (CEO) and Chairman of the Board within the organization.

(c) The insurer or insurance group shall describe the policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following factors:

(1) How the qualifications, expertise and experience of each Board member meet the needs of the insurer or insurance group.

(2) How an appropriate amount of independence is maintained on the Board and its significant committees.

(3) The number of meetings held by the Board and its significant committees over the past year as well as information on director attendance.

(4) How the insurer or insurance group identifies, nominates and elects members to the Board and its committees. The discussion should include, for example:

(A) Whether a nomination committee is in place to identify and select individuals for consideration.

(B) Whether term limits are placed on directors.

(C) How the election and re-election processes function.

(D) Whether a Board diversity policy is in place and if so, how it functions.

(5) The processes in place for the Board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance (including any Board or committee training programs that have been put in place).

(d) The insurer or insurance group shall describe the policies and practices for directing Senior Management, including a description of the following factors:

(1) Any processes or practices (i.e., suitability standards) to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:

(A) Identification of the specific positions for which suitability standards have been developed and a description of the standards employed.

(B) Any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes.

(2) The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example:

(A) Compliance with laws, rules, and regulations; and

(B) Proactive reporting of any illegal or unethical behavior.

(3) The insurer's or insurance group's processes for performance evaluation, compensation and corrective action

to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the Commissioner to understand how the organization ensures that compensation programs do not encourage and/or reward excessive risk taking. Elements to be discussed may include, for example:

- (A) The Board's role in overseeing management compensation programs and practices.
 - (B) The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;
 - (C) How compensation programs are related to both company and individual performance over time;
 - (D) Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;
 - (E) Any clawback provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted;
 - (F) Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.
- (4) The insurer's or insurance group's plans for CEO and Senior Management succession.
- (e) The insurer or insurance group shall describe the processes by which the Board, its committees and Senior Management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including a discussion of:
- (1) How oversight and management responsibilities are delegated between the Board, its committees and Senior Management;
 - (2) How the Board is kept informed of the insurer's strategic plans, the associated risks, and steps that Senior Management is taking to monitor and manage those risks;
 - (3) How reporting responsibilities are organized for each critical risk area. The description should allow the Commissioner to understand the frequency at which information on each critical risk area is reported to and reviewed by Senior Management and the Board. This description may include, for example, the following critical risk areas of the insurer:
 - (A) Risk management processes (An ORSA Summary Report filer may refer to its ORSA Summary Report pursuant to the Risk Management and Own Risk and Solvency Assessment Model Act);
 - (B) Actuarial function;
 - (C) Investment decision-making processes;
 - (D) Reinsurance decision-making processes;

- (E) Business strategy/finance decision-making processes;
- (F) Compliance function;
- (G) Financial reporting/internal auditing; and
- (H) Market conduct decision-making processes.

365:25-7-95. Severability clause

If any provision of these regulations, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to that end the provisions of these regulations are severable.

PART 19. ANNUAL FINANCIAL REPORTING

365:25-7-100. Authority

This regulation is promulgated by the commissioner of insurance pursuant to 36 OS §§ 311a.1 through 311a.18 of the Oklahoma Insurance Code.

365:25-7-101. Purpose and scope

(a) The purpose of this regulation is to improve the Oklahoma Insurance Department's surveillance of the financial condition of insurers by requiring:

- (1) an annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants,
- (2) Communication of Internal Control Related Matters Noted in an Audit, and
- (3) Management's Report of Internal Control over Financial Reporting.

(b) Every insurer, as defined in O.A.C. 365:25-7-102 shall be subject to this regulation. Insurers having direct premiums written in this state of less than \$1,000,000 in any calendar year and less than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year shall be exempt from this regulation for the year (unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities) except that insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of \$1,000,000 or more will not be so exempt.

(c) Foreign or alien insurers filing the audited financial report in another state, pursuant to that state's requirement for filing of audited financial reports, which has been found by the commissioner to be substantially similar to the requirements herein, are exempt from O.A.C. 365:25-7-103 through O.A.C. 365:25-7-112 of this regulation if:

- (1) A copy of the audited financial report, Communication of Internal Control Related Matters Noted in an Audit, and the Accountant's Letter of Qualifications that are filed with the other state are filed with the commissioner in accordance with the filing dates specified in O.A.C.

365:25-7-103, 110, and 111, respectively (Canadian insurers may submit accountants' reports as filed with the Office of the Superintendent of Financial Institutions, Canada).

(2) A copy of any Notification of Adverse Financial Condition Report filed with the other state is filed with the commissioner within the time specified in O.A.C. 365:25-7-109.

(d) Foreign or alien insurers required to file Management's Report of Internal Control over Financial Reporting in another state are exempt from filing the report in this state provided the other state has substantially similar reporting requirements and the report is filed with the commissioner of the other state within the time specified.

(e) This regulation shall not prohibit, preclude or in any way limit the commissioner of insurance from ordering or conducting or performing examinations of insurers under the rules and regulations of the Oklahoma Department of Insurance and the practices and procedures of the Oklahoma Department of Insurance.

365:25-7-102. Definitions

The following words and terms, when used in this Part 19 of Subchapter 7, shall have the following meaning, unless the context clearly indicated otherwise:

"Accountant" or **"independent certified public accountant"** means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which he or she is licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.

"Affiliate" of, or person **"affiliated"** with, a specific person, means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

"Audit committee" means a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, the internal audit function of an insurer or group of insurers (if applicable), and external audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this regulation at the election of the controlling person. Refer to O.A.C. 365:25-7-113(f) for exercising this election. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

"Audited financial report" means and includes those items specified in O.A.C. 365:25-7-104 of this regulation.

"Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

"Independent board member" means independent board member as described in 365:25-7-113 (c).

"Insurer" means a licensed insurer as defined in 36 O.S. § 103. For purposes of the Oklahoma Annual Financial Report Act, insurer includes but is not limited to fraternal benefit societies, health maintenance organizations, multiple employer welfare arrangements, title insurers, and similar organizations licensed by the Insurance Commissioner.

"Group of insurers" means those licensed insurers included in the reporting requirements of [insert state law equivalent of the model Insurance Holding Company System Regulatory Act], or a set of insurers as identified by management, for the purpose of assessing the effectiveness of Internal control over financial reporting.

"Internal audit function" means a person or persons that provide independent, objective and reasonable assurance designed to add value and improve an organization's operations and accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

"Internal control over financial reporting" means a process effected by an entity's board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, i.e., those items specified in O.A.C. 365:25-7-104 (b)-(g) of this regulation and includes those policies and procedures that: pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets; provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in O.A.C. 365:25-7-104 (b)-(g) of this regulation and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements, i.e., those items specified in O.A.C. 365:25-7-104 (b)-(g) of this regulation.

"SEC" means the United States Securities and Exchange Commission.

"Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated thereunder.

"Section 404 Report" means management's report on "internal control over financial reporting" as defined by the SEC and the related attestation report of the independent certified public accountant as described in O.A.C. 365:25-7-102.

"SOX Compliant Entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002: (i) the preapproval requirements of Section 201 (Section 10A(i) of the Securities Exchange Act of 1934); (ii) the Audit committee independence requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934); and (iii) the Internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K).

365:25-7-103. General requirements related to filing and extensions for filing of annual audited financial reports and audit committee appointment

(a) All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the commissioner on or before June 1 for the year ended December 31 immediately preceding. The commissioner may require an insurer to file an audited financial report earlier than June 1 with ninety (90) days advance notice to the insurer.

(b) Extensions of the June 1 filing date may be granted by the commissioner for thirty-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting an extension and determination by the commissioner of good cause for an extension. The request for extension must be submitted in writing not less than ten (10) days prior to the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

(c) If an extension is granted in accordance with the provisions in subsection b, a similar extension of thirty (30) days is granted to the filing of Management's Report of Internal Control over Financial Reporting.

(d) Every insurer required to file an annual audited financial report pursuant to this regulation shall designate a group of individuals as constituting its audit committee, as defined in O.A.C. 365:25-7-102. The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee for purposes of this regulation at the election of the controlling person.

365:25-7-104. Contents of annual audited financial report

(a) The annual audited financial report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Department of Insurance of the state of domicile.

(b) The annual Audited financial report shall include the following:

- (1) Report of independent certified public accountant.
- (2) Balance sheet reporting admitted assets, liabilities, capital and surplus.
- (3) Statement of operations.
- (4) Statement of cash flow.
- (5) Statement of changes in capital and surplus.
- (6) Notes to financial statements. These notes shall be those required by the appropriate NAIC *Annual Statement Instructions* and the NAIC *Accounting Practices and Procedures Manual*. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to 36 O.S. § 311 of the Oklahoma Insurance Code with a written description of the nature of these differences.

(7) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner, and the financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. (However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted).

365:25-7-105. Designation of independent certified public accountant

(a) Each insurer required by this regulation to file an annual audited financial report must within sixty (60) days after becoming subject to the requirement, register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in this regulation. Insurers not retaining an independent certified public accountant on the effective date of this regulation shall register the name and address of their retained independent certified public accountant not less than six (6) months before the date when the first audited financial report is to be filed.

(b) The insurer shall obtain a letter from the accountant, and file a copy with the commissioner stating that the accountant is aware of the provisions of the insurance code and the regulations of the Insurance Department of the state of domicile that relate to accounting and financial matters and affirming that the accountant will express his or her opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that Insurance Department, specifying such exceptions as he or she may believe appropriate.

(c) If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall within five (5) business days notify the commissioner of this event. The insurer shall also furnish the commissioner with a separate letter within ten (10) business days of the above notification stating whether in the twenty-four (24) months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion. The disagreements required to be reported in response to this section include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this section are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the

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reasons for which he or she does not agree; and the insurer shall furnish the responsive letter from the former accountant to the commissioner together with its own.

365:25-7-106. Qualifications of independent certified public accountant

(a) The commissioner shall not recognize a person or firm as a qualified independent certified public accountant if the person or firm:

- (1) Is not in good standing with the AICPA and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or
- (2) Has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as indemnification) with respect to the audit of the insurer.

(b) Except as otherwise provided in this regulation, the commissioner shall recognize an independent certified public accountant as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the AICPA and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the Oklahoma Board of Public Accountancy, or similar code.

(c) A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under Article 18 and 19 of the Oklahoma Insurance Code, the mediation or arbitration provisions shall operate at the option of the statutory successor.

(d)

(1) The lead (or coordinating) audit partner (having primary responsibility for the audit) may not act in that capacity for more than five (5) consecutive years. The person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five (5) consecutive years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least thirty (30) days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:

- (A) Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;
- (B) Premium volume of the insurer; or
- (C) Number of jurisdictions in which the insurer transacts business.

(2) The insurer shall file, with its annual statement filing, the approval for relief from subsection (d)(1) with the states that it is licensed in or doing business in and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

(e) The commissioner shall neither recognize as a qualified independent certified public accountant, nor accept an annual

audited financial report, prepared in whole or in part by, a natural person who:

- (1) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961 to 1968, or any dishonest conduct or practices under federal or state law;
- (2) Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this regulation; or
- (3) Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this regulation.

(f) The commissioner of insurance, as provided in Section [insert applicable section] of the insurance code, may, as provided in [insert applicable citation], hold a hearing to determine whether an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial report made pursuant to this regulation and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this regulation.

(g) [RESERVED]

(1) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following non-audit services:

- (A) Bookkeeping or other services related to the accounting records or financial statements of the insurer;
- (B) Financial information systems design and implementation;
- (C) Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
- (D) Actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification ("opinion") on an insurer's reserves if the following conditions have been met:

- (i) Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;
- (ii) The insurer has competent personnel (or engages a third party actuary) to estimate the reserves for which management takes responsibility; and
- (iii) The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;

- (E) Internal audit outsourcing services;
 - (F) Management functions or human resources;
 - (G) Broker or dealer, investment adviser, or investment banking services;
 - (H) Legal services or expert services unrelated to the audit; or
 - (I) Any other services that the commissioner determines, by regulation, are impermissible.
- (2) In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant's independence. The principles are that the accountant cannot function in the role of management, cannot audit his or her own work, and cannot serve in an advocacy role for the insurer.
- (h) Insurers having direct written and assumed premiums of less than \$100,000,000 in any calendar year may request an exemption from subsection (g)(1). The insurer shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions. If the commissioner finds, upon review of this statement, that compliance with this regulation would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.
- (i) A qualified independent certified public accountant who performs the audit may engage in other non-audit services, including tax services, that are not described in subsection (g)(1) or that do not conflict with subsection (g)(2), only if the activity is approved in advance by the Audit committee, in accordance with subsection j.
- (j) All auditing services and non-audit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee. The preapproval requirement is waived with respect to non-audit services if the insurer is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity or:
- (1) The aggregate amount of all such non-audit services provided to the insurer constitutes not more than five percent (5%) of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the non-audit services are provided;
 - (2) The services were not recognized by the insurer at the time of the engagement to be non-audit services; and
 - (3) The services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.
- (k) The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by subsection j. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

(1) The commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer, was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. This section shall only apply to partners and senior managers involved in the audit. An insurer may make application to the commissioner for relief from the above requirement on the basis of unusual circumstances.

(2) The insurer shall file, with its annual statement filing, the approval for relief from subsection (l)(1) with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

365:25-7-107. Consolidated or combined audits

An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies that utilizes a pooling or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

- (1) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;
- (2) Amounts for each insurer subject to this section shall be stated separately;
- (3) Noninsurance operations may be shown on the worksheet on a combined or individual basis;
- (4) Explanations of consolidating and eliminating entries shall be included; and
- (5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

365:25-7-108. Scope of audit and report of independent certified public accountant

Financial statements furnished pursuant to O.A.C. 365:25-7-104 shall be examined by the independent certified public accountant. The audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the AICPA, *Consideration of Internal Control in a Financial Statement Audit*, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU 319, for those insurers required to file a Management's Report of Internal Control over Financial Reporting pursuant to 365:25-7-116, the

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independent certified public accountant should consider (as that term is defined in Statement on Auditing Standards (SAS) No. 102, *Defining Professional Requirements in Statements on Auditing Standards* or its replacement) the most recently available report in planning and performing the audit of the statutory financial statements. Consideration shall be given to the procedures illustrated in the *Financial Condition Examiners Handbook* promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.

365:25-7-109. Notification of adverse financial condition

(a) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five (5) business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under audit or that the insurer does not meet the minimum capital and surplus requirement of the Oklahoma insurance code as of that date. An insurer that has received a report pursuant to this paragraph shall forward a copy of the report to the commissioner within five (5) business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive the evidence within the required five (5) business day period, the independent certified public accountant shall furnish to the commissioner a copy of its report within the next five (5) business days.

(b) No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with the above paragraph if the statement is made in good faith in compliance with subsection a.

(c) If the accountant, subsequent to the date of the audited financial report filed pursuant to this regulation, becomes aware of facts that might have affected his or her report, the commissioner notes the obligation of the accountant to take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the AICPA.

365:25-7-110. Communication of internal control related matters noted in an audit

(a) In addition to the annual audited financial report, each insurer shall furnish the commissioner with a written communication as to any unremediated material weaknesses in its internal control over financial reporting noted during the audit. Such communication shall be prepared by the accountant within sixty (60) days after the filing of the annual audited financial report, and shall contain a description of any unremediated material weakness (as the term material weakness is defined by Statement on Auditing Standard 60, *Communication of Internal Control Related Matters Noted in an Audit*, or its replacement) as of December 31 immediately preceding (so as to coincide with the audited financial report discussed in O.A.C.

365:25-7-103(a)) in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state.

(b) The insurer is required to provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the accountant's communication.

365:25-7-111. Accountant's letter of qualifications

The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

(1) That the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and the Rules of Professional Conduct of the Oklahoma Board of Public Accountancy, or similar code;

(2) The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this regulation shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards;

(3) That the accountant understands the annual audited financial report and his opinion thereon will be filed in compliance with this regulation and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers;

(4) That the accountant consents to the requirements of O.A.C. 365:25-7-112 of this regulation and that the accountant consents and agrees to make available for review by the commissioner, or the commissioner's designee or appointed agent, the workpapers, as defined in O.A.C. 365:25-7-112;

(5) A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the AICPA; and

(6) A representation that the accountant is in compliance with the requirements of 365:25-7-106 of this regulation.

365:25-7-112. Definition, availability and maintenance of independent certified public accountants work papers

(a) Work papers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's audit of the financial statements of an insurer. Work papers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public

accountant in the course of his or her audit of the financial statements of an insurer and which support the accountant's opinion.

(b) Every insurer required to file an audited financial report pursuant to this regulation, shall require the accountant to make available for review by Insurance Department examiners, all work papers prepared in the conduct of the accountant's audit and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the Insurance Department or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit work papers and communications until the Insurance Department has filed a report on examination covering the period of the audit but no longer than seven (7) years from the date of the audit report.

(c) In the conduct of the aforementioned periodic review by the Insurance Department examiners, it shall be agreed that photocopies of pertinent audit work papers may be made and retained by the department. Such reviews by the department examiners shall be considered investigations and all working papers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination work papers generated by the department.

365:25-7-113. Requirements for audit committees

(a) This section shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity.

(b) The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant (including resolution of disagreements between management and the accountant regarding financial reporting) for the purpose of preparing or issuing the audited financial report or related work pursuant to this regulation. Each accountant shall report directly to the audit committee.

(c) The audit committee of an insurer or group of insurers shall be responsible for overseeing the insurer's Internal audit function and granting the person or persons performing the function suitable authority and resources to fulfill their responsibilities if required by 365:25-7-114 of this regulation.

(d) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subsection f and 365:25-7-102(c).

(e) In order to be considered independent for purposes of this section, a member of the audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if law requires board participation by otherwise non-independent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

(f) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.

(g) To exercise the election of the controlling person to designate the audit committee for purposes of this regulation, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

(h) [RESERVED]

(1) The audit committee shall require the accountant that performs for an insurer any audit required by this regulation to timely report to the audit committee in accordance with the requirements of SAS 61, Communication with Audit Committees, or its replacement, including:

(A) All significant accounting policies and material permitted practices;

(B) All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

(C) Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

(2) If an insurer is a member of an insurance holding company system, the reports required by subsection (g)(1) may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

(i) The proportion of independent audit committee members shall meet or exceed the following criteria for prior calendar year direct written and assumed premiums

(1) \$0 to \$300,000,000 no minimum requirements;

(2) Over \$300,000,000 to \$500,000,000 majority (50% or more) of members shall be independent;

(3) Over \$500,000,000 supermajority of members (75% or more) shall be independent.

(j) An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000 may make application to the commissioner for a waiver from this section's requirements based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from this section with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC,

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the insurer shall file the approval in an electronic format acceptable to the NAIC.

365:25-7-114. Internal audit function requirements

Exemption - An insurer is exempt from the requirements of this section if:

(1) The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000; and

(2) If the insurer is a member of a group of insurers, the group has annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1,000,000,000.

(A) Function - The insurer or group of insurers shall establish an internal audit function providing independent, objective and reasonable assurance to the Audit committee and insurer management regarding the insurer's governance, risk management and internal controls. This assurance shall be provided by performing general and specific audits, reviews and tests and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations.

(B) Independence - In order to ensure that internal auditors remain objective, the internal audit function must be organizationally independent. Specifically, the internal audit function will not defer ultimate judgment on audit matters to others, and shall appoint an individual to head the internal audit function who will have direct and unrestricted access to the board of directors. Organizational independence does not preclude dual-reporting relationships.

(C) Reporting - The head of the internal audit function shall report to the audit committee regularly, but no less than annually, on the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits and the appropriateness of corrective actions implemented by management as a result of audit findings.

(D) Additional Requirements - If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements set forth in this section at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level.

365:25-7-115. Conduct of insurer in connection with the preparation of required reports and documents

(a) No director or officer of an insurer shall, directly or indirectly:

(1) Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under this regulation; or

(2) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under this regulation.

(b) No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to this regulation if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

(c) For purposes of subsection b of this section, actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:

(1) To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances (due to material violations of statutory accounting principles prescribed by the commissioner, generally accepted auditing standards, or other professional or regulatory standards);

(2) Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

(3) Not to withdraw an issued report; or

(4) Not to communicate matters to an insurer's audit committee.

365:25-7-116. Management's report of internal control over financial reporting

(a) Every insurer required to file an audited financial report pursuant to this regulation that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of \$500,000,000 or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting, as these terms are defined in O.A.C. 365:25-7-102. The report shall be filed with the commissioner along with the Communication of Internal Control Related Matters Noted in an Audit described under O.A.C. 365:25-7-110. Management's Report of Internal Control over Financial Reporting shall be as of December 31 immediately preceding.

(b) Notwithstanding the premium threshold in subsection a, the commissioner may require an insurer to file Management's

Report of Internal Control over Financial Reporting if the insurer is in any RBC level event, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in (include reference to Corrective Action statute).

- (c) An insurer or a group of insurers that is
- (1) directly subject to Section 404;
 - (2) part of a holding company system whose parent is directly subject to Section 404;
 - (3) not directly subject to Section 404 but is a SOX Compliant Entity; or
 - (4) a member of a holding company system whose parent is not directly subject to Section 404 but is a SOX Compliant Entity; may file its or its parent's Section 404 Report and an addendum in satisfaction of this section, O.A.C. 365:25-7-116 "Section 116", requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in O.A.C. 365:25-7-104(b)-(g)) were included in the scope of the Section 404 Report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in O.A.C. 365:25-7-104(b)-(g)) excluded from the Section 404 Report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the Section 404 Report, the insurer or group of insurers may either file (i) a Section 116 report, or (ii) the Section 404 Report and a Section 116 report for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 Report.
- (d) Management's Report of Internal Control over Financial Reporting shall include:
- (1) A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;
 - (2) A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;
 - (3) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting; and
 - (4) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;
 - (5) Disclosure of any unremediated material weaknesses in the internal control over financial reporting

identified by management as of December 31 immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting;

- (6) A statement regarding the inherent limitations of internal control systems; and
- (7) Signatures of the chief executive officer and the chief financial officer (or equivalent position/title).

(e) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in subsection (d) above, are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

(1) Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost effective manner and, as such, may include assembly of or reference to existing documentation.

(2) Management's Report on Internal Control over Financial Reporting, required by subsection (a) above, and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the State Insurance Department.

365:25-7-117. Exemptions and effective dates

(a) Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provisions of this regulation if the commissioner finds, upon review of the application, that compliance with this regulation would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten (10) days from a denial of an insurer's written request for an exemption from this regulation, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with the regulations of the Oklahoma Department of Insurance pertaining to administrative hearing procedures.

(b) Domestic insurers retaining a certified public accountant on the effective date of this regulation who qualify as independent shall comply with this regulation for the year ending December 31, 2020, and each year thereafter unless the commissioner permits otherwise.

(c) Domestic insurers not retaining a certified public accountant on the effective date of this regulation who qualifies as independent may meet the following schedule for compliance unless the commissioner permits otherwise.

(1) As of December 31, 2020, file with the commissioner an audited financial report

(2) For the year ending December 31, 2020, and each year thereafter, such insurers shall file with the commissioner all reports and communication required by this regulation.

(d) Foreign insurers shall comply with this regulation for the year ending December 31, 2020, and each year thereafter, unless the commissioner permits otherwise.

(e) The requirements of O.A.C. 365:25-7-106(d) shall be in effect for audits of the year beginning January 1, 2020, and thereafter.

(f) The requirements of O.A.C. 365:25-7-113 are to be in effect January 1, 2020. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members (as opposed to a supermajority) because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one (1) year following the year the threshold is exceeded (but not earlier than January 1, 2010) to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one (1) calendar year following the date of acquisition or combination to comply with the independence requirements.

(g) The requirements of O.A.C. 365:25-7-116, except for O.A.C. 365:25-7-113 covered above, are effective beginning with the reporting period ending December 31, 2020, and each year thereafter. An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two (2) years following the year the threshold is exceeded (but not earlier than December 31, 2020) to file a report. Likewise, an insurer acquired in a business combination shall have two (2) calendar years following the date of acquisition or combination to comply with the reporting requirements.

(h) The requirements of O.A.C. 365:25-7-114 are to be in effect January 1, 2020. If an insurer or group of insurers that is exempt from the O.A.C. 365:25-7-114 requirements no longer qualifies for that exemption, it shall have one year after the year the threshold is exceeded to comply with the requirements of this article.

365:25-7-118. Canadian and British companies

(a) In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their supervision authority duly audited by an independent chartered accountant.

(b) For such insurers, the letter required in O.A.C. 365:25-7-105(b) shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the commissioner pursuant to O.A.C. 365:25-7-103 and shall affirm that the opinion expressed is in conformity with those requirements.

365:25-7-119. Severability provision

If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability

of the provision to other persons or circumstances shall not be affected.

SUBCHAPTER 29. PHARMACY BENEFIT MANAGERS

365:25-29-1. Purpose

The purpose of this Subchapter is to set:

(1) Set forth the regulations and procedures relating to the licensing and oversight of pharmacy benefits managers under 59 O.S. §§ 357-360—, and

(2) Set forth the regulations and procedures relating to the Patient's Right to Pharmacy Choice Act, 36 O.S. §§ 6958-6968.

365:25-29-2. Scope

This Subchapter shall apply to all pharmacy benefits managers, which must be licensed pursuant to 59 O.S. § 358(A), and to all health insurers subject to compliance with 36 O.S. § 6958 et seq.

365:25-29-3. Authority

This Subchapter is promulgated under the authority granted to the Insurance Commissioner in 59 O.S. § 358(B)- and 36 O.S. §§ 6958-6968.

365:25-29-4. Definitions

All definitions contained in 59 O.S. §§ 357-360 and 36 O.S. §§ 6958-6968 are applicable to this Subchapter and in addition:

(1) "Day" means a calendar day, unless otherwise defined or limited.

(2) The "act" means 59 O.S. §§ 357-360 and 36 O.S. §§ 6858-6968.

(3) Pharmacy benefits manager and PBM may be used interchangeably in this Subchapter.

(4) "Preferred participating pharmacy" means a pharmacy that is designated as a preferred participating pharmacy in a PBM's retail pharmacy network.

(5) "Provider" means an Oklahoma licensed retail pharmacy.

365:25-29-5. Forms and contents of application for PBM license

An application for PBM License shall be on a form provided by the Commissioner and shall include:

(1) The identity of the PBM and any company or organization controlling the operation of the PBM, including the name, business address, and contact person for the PBM and the controlling entity. For purposes of this subsection, "control" or "controlling" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the PBM, whether through the ownership of voting securities, by contract or

otherwise, unless, for an individual, the power is the result of an official position with or corporate office held by the person;

(2) The name and address of the corporate officers and directors, members and managers (if an LLC), or names of all partners (if a partnership) of the applicant PBM;

(3) A license fee in the amount of One Thousand Dollars (\$1,000.00);

(4) A "Certificate of Incorporation" or comparable organizational document from the domiciliary state of the PBM;

(5) In the case of a PBM domiciled ~~without~~outside the State of Oklahoma, a certificate that the PBM is in good standing in the state of domicile or organization;

(6) A report of the details of any suspension, sanction, penalty or other disciplinary action relating to the PBM and its officers and directors;

(7) The name and address of the agent of record for services of process in Oklahoma;

(8) The number of total covered individuals or lives served under all of the PBM's contracts or agreements in Oklahoma;

(9) The most recently concluded fiscal year-end financial statements for the PBM and its controlling entity, which statements have been audited by an independent certified public accountant (CPA) under U.S. generally accepted accounting principles (GAAP); and

(10) A certificate signed by an Executive Officer of the PBM attesting to the accuracy of the information contained in the filing.

365:25-29-6. Surety bond

(a) Prior to the issuance of a pharmacy benefits manager license, the PBM applicant shall file with the Commissioner and thereafter keep in effect, as long as the license remains in effect, a surety bond in an amount determined to be sufficient by the Commissioner. The bond shall be in a form acceptable to the Commissioner and for the purpose of securing conformity with the laws and regulations governing pharmacy benefits managers. The bond shall be for the benefit of parties protected by the provisions of 59 O.S. §§ 357-360 and 36 O.S. §§ 6958-6968.

(b) The surety bond must provide that no party may cancel the bond without first giving thirty (30) days written notice to the principal and the Commissioner.

(c) Absent a finding otherwise, a bond, shall be deemed to be sufficient if it meets the following requirements:

(1) For a PBM with not more than five thousand (5,000) annual Oklahoma covered lives, the bond shall have a minimum penal sum of fifty thousand dollars (\$50,000.00);

(2) For a PBM with more than five thousand (5,000) but not more than ten thousand (10,000) annual Oklahoma covered lives, the bond shall have a minimum penal sum of one hundred thousand dollars (\$100,000.00);

(3) For a PBM with more than ten thousand (10,000) but not more than twenty-five (25,000) annual Oklahoma covered lives, the bond shall have a minimum penal sum of two hundred fifty thousand dollars (\$250,000.00);

(4) For a PBM with more than twenty-five thousand (25,000) but not more than fifty thousand (50,000) annual Oklahoma lives covered, the bond shall have a minimum penal sum of five hundred thousand dollars (\$500,000.00);

(5) For a PBM with more than fifty thousand (50,000) but not more than one hundred thousand (100,000) annual Oklahoma lives covered, the bond shall have a minimum penal sum of seven hundred fifty thousand dollars (\$750,000.00); and

(6) For a PBM with more than one hundred thousand (100,000) annual Oklahoma covered lives, the bond shall have a minimum penal sum of one million dollars (\$1,000,000.00).

365:25-29-7.1. Retail pharmacy network access -audit

(a) Standards:

(1) Section 6960 of the act defines "member of a retail pharmacy network" as meaning retail pharmacy providers contracted with a PBM on behalf of a payor in which the pharmacy primarily fills and sells prescription medicine via retail storefront location.

(2) The act draws no distinction between regular or specialty drugs, both being prescription medications, therefore, specialty drugs fall within the contemplation of the act.

(3) Pharmacy benefits managers shall not in any manner on any material, including but not limited to mail and ID cards, include the name of any pharmacy, hospital or other providers unless it specifically lists all pharmacies, hospitals and providers.

(b) A PBM's retail pharmacy network access shall be monitored for compliance with this act by those insurers that utilize the services of such PBM. Health insurers are required to maintain retail pharmacy network access in conformity with the requirements set forth in § 6961 of this act.

(c) Every Insurer that utilizes the services of a PBM shall, as part of the annual general compliance audit required by 365:25-29-9, conduct a network adequacy audit. If the audit reveals the percentage of covered individuals is less than one hundred and five percent (105%) above any of the required percentages in 36 O.S. § 6961 the insurer shall conduct semi-annual network adequacy audits until such time that an audit indicates that the percentage of covered individuals is more than five percent 5% above the required percentage.

(d) The audits must be completed within ninety (90) days of the effective date of 36 O.S. § 6958-6968 and annually each year thereafter. The results of the audits shall be reported to the Commissioner within thirty (30) days of the completion of the audit.

365:25-29-9. Contractual requirements --~~maximum~~ allowable cost

(a) Maximum Allowable Cost.

(1) Contracts between a PBM and a provider shall conform to the following requirements:

(A4) Identify sources of information utilized by the PBM to create and modify the PBM's maximum allowable cost price specific to the pharmacy;

(B2) The PBM shall provide an electronic process, including but not limited to e-mail, for its pharmacy providers to readily access the MAC list specific to that provider. Upon a provider's written request, a PBM shall furnish its MAC list to the provider in paper form or other agreed format;

(C) (3) If a provider is unable to obtain a drug from a regional or national wholesaler at a price equal to or less than the PBM's multisource drug product reimbursement, the PBM shall provide a reasonable appeals procedure to contest the multisource drug product reimbursement amount;

(D4) A "reasonable appeals procedure" means a process which permits a provider or a provider's representative to contest a multisource drug product reimbursement amount based on the provider's contention that the drug is not generally available for purchase by Oklahoma pharmacies in the state at or below the PBM's multisource drug product reimbursement;

(E5) A provider's appeal shall contain information including but not limited to the date of claim, National Drug Code number, and the identity of the national or regional wholesalers from which the drug was found to be unavailable for purchase by the provider, at or below the PBM's multisource drug product reimbursement;

(F) (6) Appeals filed under this subsection shall be presented to the PBM within ten (10) business days following the final adjusted payment date. The PBM must respond to a provider within ten (10) business days following the receipt by the PBM of the notice that the provider is contesting the multisource drug product reimbursement amount;

(G) (7) If a provider's appeal is denied, the PBM shall provide the reason for the denial, including the National Drug Code number and the identity of the national or regional wholesalers from whom the drug was generally available for purchase by providers in the state at or below the PBM's multisource drug product reimbursement;

(H) (8) If a provider's appeal is found to be justified, the PBM shall make a change in the multisource drug product reimbursement amount, permit the provider to reverse and re-bill the claim in question, and make the multisource drug product reimbursement amount change applicable prospectively for all similarly contracted Oklahoma providers.

(2) (b) A PBM shall permit the submission of either paper or electronic documentation to perfect an appeal. A PBM shall not require the submission of appeals on an individual claim (non-batch) basis or refuse to accept appeals from a provider's designated representative or require procedures that have the effect of obstructing or

delaying the appeal process. All multisource drug product reimbursement appeals shall be properly documented.

(3e) Before beginning business, and as contracts are amended thereafter, each PBM shall submit to the Insurance Commissioner a certificate signed by an executive officer of the PBM attesting that the Oklahoma provider contracts utilized by such PBM satisfy the requirements of 59 O.S. § 360 and this subchapter the act.

(b) The relationship between a PBM and an insurer or other payor is controlled by contract whereby the PBM acts on behalf of the payor to facilitate the delivery of prescription medication benefits provided by such payor. Requirements and limitations contained within the act and applicable to such payors must be understood within this payor - contractor relationship.

(c) The act requires or limits certain conduct in the interaction between the PBM and retail pharmacy network providers. Consequently, the Department hereby requires that every insurer utilizing the services of a pharmacy benefit manager shall be responsible, as follows:

(1) for approving all contractual documents utilized by its contracted PBMs and its retail pharmacy network to ensure compliance with the act;

(2) for conducting an annual audit of transactions and practices utilized by its contracted PBMs and members of its retail pharmacy network to ensure compliance with the act; and

(3) any exceptions found shall be reported to the Department pursuant to the Commissioner's examination authority.

365:25-29-10. Penalty for noncompliance

(a) After notice and opportunity for hearing, and upon determining that the PBM has violated any of the provisions of 59 O.S. §§ 357-360 of the Oklahoma Statutes, or this Subchapter as it relates to 59 O.S. §§ 357-360, or upon finding the existence of grounds to refuse the issuance or renewal of such license, the Commissioner may suspend or revoke a PBM's license or assess a civil penalty of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) for each instance of violation, or both. Each day that a pharmacy benefits manager conducts business in the State of Oklahoma without a license shall be deemed to be an instance of violation. The payment of the penalty may be enforced in the same manner as civil judgments may be enforced.

(b) ~~Every PBM upon receipt of any inquiry from the Commissioner or the Commissioner's representative shall within thirty (30) days from the date of inquiry, furnish the Commissioner or the Commissioner's representative with an adequate response to the inquiry.~~

(b) After notice and opportunity for hearing, and upon determining that the PBM has violated any of the provisions of 36 O.S. §§ 6958-6968 of the Oklahoma Statutes, or this Subchapter as it relates to 36 O.S. §§ 6958-6968, the Commissioner may suspend or revoke a PBM's license and/or levy fines not to exceed Ten Thousand Dollars (\$10,000.00) for each count for which any PBM has violated the provisions of 36 O.S. §§

6958-6968. The payment of the penalty may be enforced in the same manner as civil judgments may be enforced.

(c) After notice and opportunity for hearing, and upon determining that the health insurer has violated any of the provisions of 36 O.S. §§ 6958-6968 of the Oklahoma Statutes, the Commissioner may suspend or revoke a health insurer's certificate of authority license or assess a civil penalty of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) for each instance of violation, or both. The payment of the penalty may be enforced in the same manner as civil judgments may be enforced.

(d) Every health insurer upon receipt of any inquiry from the Commissioner or the Commissioner's representative shall, within thirty (30) days from the date of inquiry, furnish the Commissioner or the Commissioner's representative with an adequate response to the inquiry.

365:25-29.12. Commissioner's authority - advisory committee

(a) Pursuant to 36 O.S. § 6966, the Insurance Commissioner shall establish an advisory committee composed of representatives from the following constituent groups:

- (1) Oklahoma Pharmacists Association;
- (2) Office of the Oklahoma Attorney General;
- (3) Consumers; and,
- (4) Insurers or PBMs.

(b) The advisory committee shall function in an advisory capacity only. Any investigation or enforcement action in consequence of the act shall be at the sole discretion of the Commissioner.

(c) Nominees for members of the advisory committee as provided in § 6966 (C) shall be representative of the interests of the stakeholders listed above and shall be submitted to the Commissioner for appointment.

(d) Because committee members will be dealing with confidential, proprietary, or competitively sensitive information the Commissioner shall implement the following protections to prevent such information from being viewed or used inappropriately:

- (1) Advisory committee members shall avoid conflicts of interest and recuse themselves from being involved in any proceedings where they may have insight into a competitor's pricing or proprietary information. The committee members must also avoid any conduct which could be viewed as a conspiracy to fix prices or otherwise restrict competition.
- (2) Committee members shall be required to sign conflict of interest forms that disclose potential conflicts before serving on the committee, and affirmatively recuse themselves when a potential conflict arises. A conflict arises when a committee member has a financial stake in the outcome of a complaint or issue before the committee, or has an existing contract with a PBM, pharmacy, or insurer that is the subject of the committee's review. In addition, committee members shall be required to sign confidentiality commitments that acknowledge the statutory

prohibition of any disclosure of confidential information that is available to the committee.

(3) All committee nominations must be supported by a National Association of Insurance Commissioners biographical affidavit and background check.

(e) Meetings of the advisory committee shall be convened by the Commissioner upon ten (10) days prior written notice or waivers thereof. The Commissioner or Commissioner's designee may attend any or all meetings of the committee.

365:25-29.13. Claims payment

Payment of claims arising under the terms and conditions of any policy of a medical insurance health benefit plan is the obligation of the insurer that issues such policy. Failure to properly handle such claims is addressed by other provisions of Title 36.

365:25-29.14. Inquiry/complaint handling process

(a) Complaints alleging failure by the PBM to comply with the act, shall be made in writing to the Commissioner, supported by evidentiary materials. All complaints must include a completed "PBM Complaint Form" as promulgated by the Commissioner.

(b) All audits of PBMs by health insurers shall include a review of complaints against the PBM to determine compliance with the terms of the contract between the PBM and the complainant.

(c) PBMs must provide the complainant with a written notice as to the final disposition of the complaint.

(d) As part of its response to the Department in connection with every complaint, the PBM must provide a statement to the Department that the complaint was carefully reviewed and could not be resolved under the terms and conditions of the contract.

365:25-29.15. Examinations of PBMs and health insurers

(a) Pursuant to 36 O.S. § 6965, the Commissioner may examine PBMs for compliance with the 59 O.S §§ 357-360 and 36 O.S. §§ 6958-6968.

(b) Pursuant to 36 O.S. § 309.1 through 309.7, the Commissioner may examine health insurers for compliance with 36 O.S. §§ 6958-6968.

(c) Any examination permitted under 36 O.S. § 6965 will follow the examination procedures and requirements applicable to insurers under 36 O.S. §§ 309.1 through 309.7.

(d) The Commissioner shall not be required to regularly examine a PBM under the same time constraints, as required under 36 O.S. §§ 309.1 through 309.7, applicable to insurers, however, the Commissioner may examine the PBM, pursuant to 36 O.S. § 6965, at any time, in which he or she believes it reasonably necessary to ensure compliance with 59 O.S §§ 357-360 and 36 O.S. §§ 6958-6968 or provisions of this subchapter.

Permanent Final Adoptions

APPENDIX B. FORM B: OKLAHOMA INSURANCE HOLDING COMPANY SYSTEM REGISTRATION STATEMENT [REVOKED]

APPENDIX B. FORM B: OKLAHOMA INSURANCE HOLDING COMPANY SYSTEM REGISTRATION STATEMENT [NEW]

OKLAHOMA INSURANCE HOLDING COMPANY SYSTEM ANNUAL REGISTRATION STATEMENT

Filed with the Insurance Commissioner for
the State of Oklahoma.

BY

Name of Registrant

On Behalf of the Following Insurance Companies

Name

Address

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Date: _____, 20____

Name, Title, Address and Telephone Number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

ITEM 1. Identity and control of registrant

Furnish the exact name of each insurer registering or being registered (hereinafter called "the Registrant"), the home office address and principal executive offices of each; the date on which each Registrant became part of the insurance holding company system; and the method(s) by which control of each Registrant was acquired and is maintained.

ITEM 2. Organizational chart

Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. No affiliate need be shown if its total assets are equal to less than 1/2 of 1% of the total assets of the ultimate controlling person within the insurance holding company system unless it has assets valued at or exceeding \$250,000. The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile.

ITEM 3. The ultimate controlling person

As to the ultimate controlling person in the insurance holding company system furnish the following information:

- (a) Name.
- (b) Home office address.
- (c) Principal executive office address.
- (d) The organizational structure of the person, i.e., corporation, partnership, individual, trust, etc.
- (e) The principal business of the person.
- (f) The name and address of any person who holds or owns 10% or more of any class of voting security, the class of such security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned.
- (g) If court proceedings looking toward a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings and the date when commenced.

ITEM 4. Biographical information. Furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, his principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years.

ITEM 5. Transactions, relationships and agreements

Briefly describe the following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the Registrant and its affiliates:

- (a) loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the Registrant or of the Registrant by its affiliates;
- (b) purchases, sales or exchanges of assets;
- (c) transactions not in the ordinary course of business;
- (d) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the Registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the Registrant's business;
- (e) all management agreements, service contracts and all cost-sharing arrangements;
- (f) reinsurance agreements;
- (g) dividends and other distributions to shareholders;
- (h) consolidated tax allocation agreements; and
- (i) any pledge of the Registrant's stock and/or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

No information need be disclosed if such information is not material for purposes of Section 1654 of the Act.

Sales, purchases, exchanges, loans or extensions of credit, investments or guarantees involving one-half of 1% or less of the Registrant's admitted assets as of the 31st day of December next preceding shall not be deemed material.

The description shall be in a manner as to permit the proper evaluation thereof by the Commissioner, and shall include at least the following: the nature and purpose of the transaction; the nature and amount of any payments or transfers of assets between the parties; the identity of all parties to such transaction; and the relationship of the affiliated parties to the Registrant.

ITEM 6. Litigation or administrative proceedings

A brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject; give the names of the parties and the court or agency in which such litigation or proceeding is or was pending:

- (a) Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto; and
- (b) Proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company including, but not necessarily limited to, bankruptcy, receivership or other corporate reorganizations.

ITEM 7. Statement regarding plan or series of transactions

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

ITEM 8. Financial statements and exhibits

- (a) Financial statements and exhibits should be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.
- (b) The financial statements shall include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year.

If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent such information is available. Such financial statements may be prepared on either an individual basis, or unless the Commissioner otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business.

Unless the Commissioner otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the Annual Statement of such insurer filed with the insurance department of the

insurer's domiciliary State and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of such state.

- (c) Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person; and any additional documents or papers required by Form B or 365:25-7-23 and 365:25-7-25.

ITEM 9. Form C required

A Form C, Summary of Registration Statement, must be prepared and filed with this Form B.

ITEM 10. Signature and certification

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of Section 1654 of the Act, the Registrant has caused this annual registration statement to be duly signed on its behalf in the City of _____ and State of _____ on the ____ day of _____, 20____.

(SEAL) _____
Name of Registrant

BY _____
(Name) (Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached annual registration statement dated _____, 20____, for an on behalf of _____; that

(Name of Company)

(s)he is the _____ of such company and that (s)he is authorized to execute
(Title of Officer)

and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature)

(Type or print name beneath)

APPENDIX D. FIDELITY BOND [REVOKED]

APPENDIX D. FIDELITY BOND [NEW]

Know All Men by These Presents: That we _____, of _____, Oklahoma, as Principal, and _____ a surety company duly authorized to do business in the State of Oklahoma, as Surety, are held and firmly bound unto the State of Oklahoma in the penal sum of \$ _____, lawful money of the United States, for the payment of which well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

The condition of the above obligation is such that, whereas, the Principal has applied for a permit from the Insurance Commissioner of the State of Oklahoma, to enter into contracts and receive payments thereon for prepaid funeral services and/or merchandise, in accordance with the terms and provisions of Title 36 Oklahoma Statutes 1981, Section 6121 et seq., and the issuance of such permit is conditional upon the Principal filing a bond in the amount above set forth in the office of such Insurance Commissioner, said bond and the surety thereon to be subject to approval by said Insurance Commissioner.

Now, if the above bounden Principal shall faithfully perform any and all such contracts, and shall faithfully account for and promptly pay over to those entitled thereto and all amounts or sums of money due under the terms of any and all such contracts, according to law, then this obligation shall be void, otherwise to remain in full force and effect.

Provided, however, that the liability of the Surety hereunder may be terminated by giving thirty days written notice thereof, by registered mail, to the Principal and the Insurance Commissioner; and the Surety shall be discharged from all liability for any act or omission of the Principal occurring after the expiration of thirty days from the date of service of such notice.

This obligation shall be effective from noon on _____, (Month,Day,Year) to noon on the date of cancellation or termination of this bond, standard time, at the Principal address as to each of said dates.

In witness whereof, the said Principal and Surety above named have subscribed this bond at _____, Oklahoma, this ____ day of _____, 20 ____.

Principal
By _____

Surety
By _____

APPENDIX E. APPLICATION TO WITHDRAW FUNDS DEPOSITED FOR PREPAID FUNERAL EXPENSES [REVOKED]

APPENDIX E. APPLICATION TO WITHDRAW FUNDS DEPOSITED FOR PREPAID FUNERAL EXPENSES [NEW]

(In the event of death and fulfillment of the contract)

Seller And The Authorized Person Selecting Funeral Merchandise And Services For The Beneficiary, _____ Account Number _____, Hereby Certify To The Oklahoma Insurance Commissioner That \$ _____ Was Available For Use At The Time of Death Of The Beneficiary, Which Was _____, 20 ____.

CHECK ONE

NON-SPECIFIED CONTRACT _____

The Above Total Includes 100% Of All Funds Deposited Together With Any And All Interest The Buyer Had Elected To Remain In The Account, And Less Administrative Fees As Seller May Have Deducted.

GUARANTEED CONTRACT _____

The Above Total Represents The Total Investment Agreed To By Buyer And Seller And Paid Into The Account In Return For The Funeral Merchandise And Services As Listed Below.

ITEMIZES MERCHANDISE AND SERVICES BY PRICE

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

The Excess Amount Of \$ _____ Under This Contract Shall Be Disposed Of (If A Guaranteed Contract, Write NOT APPLICABLE In Above Space)

As Follows: To _____ Address _____

Permanent Final Adoptions

City And State _____ As Was Designated In
The Original Contract, To Receive Excess Funds.

We Hereby Certify That All Information Contained Herein Is True And Correct, Regarding
This Particular Contract.

AUTHORIZED PERSON

Authorized Person of Funeral Home

Funeral Home Name (Seal)

Address

NOTARY PUBLIC

Subscribed And Sworn To Before Me This
____ Day Of _____,
20____.

My Commission Expires:

**APPENDIX F. BUYERS APPLICATION TO TERMINATE CONTRACT OR WITHDRAW FUNDS
PREVIOUSLY DEPOSITED FOR PREPAID FUNERAL BENEFITS UNDER A NON-SPECIFIED OR
GUARANTEED CONTRACT [REVOKED]**

**APPENDIX F. BUYERS APPLICATION TO TERMINATE CONTRACT OR WITHDRAW FUNDS
PREVIOUSLY DEPOSITED FOR PREPAID FUNERAL BENEFITS UNDER A NON-SPECIFIED OR
GUARANTEED CONTRACT [NEW]**

(Individual Refund)

The Undersigned Buyer Requests That \$_____ Be Withdrawn
From Either a Non-Specified _____ Or A Guaranteed _____ Contract.

If Funds Are Being Withdrawn Under A Guaranteed Price
Contract, Buyer Understands And Agrees That Seller Is Relieved Of
Responsibility To Furnish Funeral Merchandise And Services At A
Guaranteed Price As Was Set Forth In The Original Contract Unless
Seller Waves That Option.

Dated This ___ Day Of _____, 20___

BUYER
SIGNATURE

BUYER'S
NAME _____

ADDRESS

ACCOUNT NUMBER

STATEMENT OF SELLER

The Designated Seller Acknowledges Receipt Of The Above
Mentioned Application, And Certifies The Amount Requested To Be
Available And On Deposit In A Depository Previously Approved By
The Oklahoma Insurance Commissioner.

Permanent Final Adoptions

Seller Approves Buyer's Application And Agrees To Deliver A Copy Of This Application To The Buyer, A Copy To The Oklahoma Insurance Commissioner, And Agrees To Retain A Copy For A Period Of Time Specified By The Insurance Commissioner.

Dated This __ Day Of _____, 20__

SIGNED

Funeral Home Name & Address

APPENDIX G. ANNUAL REPORT [REVOKED]

APPENDIX G. ANNUAL REPORT [NEW]

Prepared By

(Name of Funeral Home Director)

(Name of Funeral Home Trust Fund)

FOR THE YEAR ENDING DECEMBER 31, 20____

QUESTIONNAIRE FOR VERIFICATION:

Were all prepaid funeral contracts signed by all parties involved? Yes_____ No_____

Were all prepaid funeral withdrawal forms properly signed, notarized and itemized if necessary? Yes_____ No_____

Do you have current addresses and phone numbers for each buyer? Yes_____ No_____

Do all contracts carry the name and address of your funeral home? Yes_____ No_____

Are all prepaid funeral customers notified at least annually of their current account monies and interest accrued to date? Yes_____ No_____

IF YOUR ANSWER TO ANY OF THE ABOVE IS NO, PLEASE DESCRIBE IN DETAIL THE REASONS WHY THE QUESTION(S) WERE ANSWERED IN THE NEGATIVE AND WHAT WILL BE DONE TO CORRECT THE SITUATION.

Signature of Director or Manager

Date

Permanent Final Adoptions

ANNUAL REPORT - 20__
Form PF-1-b CERTIFICATION
DUE MARCH 15, 20__

(Name of Funeral Home)

(Address)

(City, Zip)

The attached information is submitted on behalf of the above funeral home based on its records ending December 31, 20__ covering ALL contracts which have not been discharged as of December 31, 20__.

THIS FORM IS FOR USE ONLY IN REPORTING CONTRACTS FUNDED BY CASH.
(YOU MUST COMPLETE A SEPARATE FORM PF-1-b FOR EACH FINANCIAL INSTITUTION BEING USED BY YOUR FUND.)

(Name of Financial Institution)

(Address)

(City, State, Zip)

CERTIFICATION

The undersigned states and affirms that he/she has duly executed this annual report for and on behalf of the above funeral home, that he/she is the _____ (Title of Officer) of such organization and that he/she is authorized to execute and file such instrument. He/she further states that he/she is familiar with such instrument and contracts thereof, and that the facts herein set forth are true to the best of his/her knowledge, information and belief.

(Signature)

(Print or type name of Signature)

(Date)

TOTAL OF ALL MONIES HELD PLUS INTEREST: _____

Subscribed and sworn to before me this ____ day of _____, 20__.

My Commission Expires:

Notary Public

Permanent Final Adoptions

APPENDIX H. ANNUAL STATEMENT OF FINANCIAL CONDITION(RECONCILIATION OF TRUST
ACCOUNTS) [REVOKED]

APPENDIX H. ANNUAL STATEMENT OF FINANCIAL CONDITION(RECONCILIATION OF TRUST
ACCOUNTS) [NEW]

Filed in Accordance with 36 O.S. §6129
Form PF-3
For the Year 20____

Name of Funeral Home

Address, City, State

1. **BEGINNING BALANCE:**
Sum of all trust as of January 1, 20____. (The amount must agree with prior year's ending balance.) \$ _____
- ADD:**
2. Total of all new contracts sold, current year. (Please attach a listing of each new contract as Schedule 2.) \$ _____
3. Total of all contracts transferred into your Trust Fund, current year. (Please attach a listing of each contract received as Schedule 3.) \$ _____
4. Total of all deposits to existing contracts. **DO NOT** include interest earned or accrued. (Please attach a listing of each account increased by a deposit as Schedule 4.) \$ _____
5. Total Interest Earned:
- TOTAL ADDITIONS**
- SUBTRACT:**
6. Total of all contracts withdrawn/transferred prior to death. (Please attach a listing of each contract withdrawn/transferred as Schedule 6.) \$ _____
7. Total of all contracts withdrawn due to death. (Please attach a listing of each contract withdrawn because of death as Schedule 7.) \$ _____
8. Total Administrative fees charged.
- TOTAL SUBTRACTIONS** \$ _____
9. **ENDING BALANCE:**
SUM OF **ALL** TRUST AS OF
DECEMBER 31, 20____.

\$ _____

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* Please note this amount must agree with trust amount submitted to the State Insurance Department in your Annual Report (Form PF-1-b). Any differences must be explained in *detail* and be supported with appropriate documentation.

I, an Officer of the Trust, do hereby represent that this report is true and accurate:

Officer of Trust

Signature

Name of Funeral Home

The above Reconciliation of Trust Accounts is the representation of management (owners). I have not audited or reviewed the accompanying Trust Accounts and, accordingly, do not express an opinion or any other form of assurance on them:

[Certified] Public Accountant

Address

City, State Zip

APPENDIX N. FORM C: SUMMARY OF REGISTRATION STATEMENT [REVOKED]

APPENDIX N. FORM C: SUMMARY OF REGISTRATION STATEMENT [NEW]

FORM C

OKLAHOMA INSURANCE HOLDING COMPANY
SUMMARY OF REGISTRATION STATEMENT

Filed with the Insurance Commissioner for
the State of Oklahoma.

BY

Name of Registrant

On Behalf of the Following Insurance Companies

Name

Address

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Date: _____, 20__

Name, Title, Address and Telephone Number of Individual to
Whom Notices and Correspondence Concerning This Statement
Should Be Addressed:

Furnish a brief description of all items in the current annual registration statement which represent changes from the prior year's annual registration statement. The description shall be in a manner as to permit the proper evaluation thereof by the Commissioner, and shall include specific references to Item numbers in the annual registration statement and to the terms contained therein.

Changes occurring under Item 2 of Form B insofar as changes in the percentage of each class of voting securities held by each

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affiliate is concerned, need only be included where such changes are ones which result in ownership or holdings of 10 percent of more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

Changes occurring under Item 4 of Form B need only be included where: an individual is, for the first time, made a director or executive officer of the ultimate controlling person; a director or executive officer terminates his or her responsibilities with the ultimate controlling person; or in the event an individual is named president of the ultimate controlling person.

If a transaction discloses on the prior year's annual registration statement has been changed, the nature of such change shall be included. If a transaction disclosed on the prior year's annual registration statement has been effectuated, furnish the mode of completion and any flow of funds between affiliates resulting from the transaction.

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions whose purpose it is to avoid statutory threshold amounts and the review that might otherwise occur.

SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of Section 1654 of the Act, the Registrant has caused this summary of registration statement to be duly signed on its behalf in the City of _____ and State of _____ on the ____ day of _____, 20____.

(SEAL)

Name of Registrant

BY

(Name)

(Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached summary of registration statement dated _____, 20____, for an on behalf of _____; that (s)he is the (Name of Company) _____ of such company and that (s)he is authorized (Title of Officer) to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature)

(Type or print name beneath)

APPENDIX O. FORM D: PRIOR NOTICE OF A TRANSACTION [REVOKED]

APPENDIX O. FORM D: PRIOR NOTICE OF A TRANSACTION [NEW]

FORM D

OKLAHOMA INSURANCE HOLDING COMPANY
PRIOR NOTICE OF A TRANSACTION

Filed with the Insurance Commissioner for
the State of Oklahoma.

BY

Name of Registrant

On Behalf of the Following Insurance Companies

Name

Address

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Date: _____, 20__

Name, Title, Address and Telephone Number of Individual to
Whom Notices and Correspondence Concerning This Statement
Should Be Addressed:

ITEM 1. Identity of parties to transaction

Furnish the following information for each of the parties to the
transaction:

(a) Name.

- (b) Home office address.
- (c) Principal executive office address.
- (d) The organizational structure, i.e. corporation, partnership, individual, trust, etc.
- (e) A description of the nature of the parties' business operations.
 - (f) Relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties.
- (g) Where the transaction is with a non-affiliate, the name(s) of the affiliate(s) which will receive, in whole or in substantial part, the proceeds of the transaction.

ITEM 2. Description of the transaction

Furnish the following information for each transaction for which notice is being given:

- (a) A statement as to whether notice is being given under Section 1655(b) of the Act.
- (b) A statement of the nature of the transaction.
- (c) The proposed effective date of the transaction.

ITEM 3. Sales, purchases, exchanges, loans, extensions of credit, guarantees or investments

Furnish a brief description of the amount and source of funds, securities, property or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost and its fair market value, together with an explanation of the basis for evaluation.

If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount which the insurer will be obligated to make available under such loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

If the transaction involves an investment, guarantee or other arrangement, state the time period during which the investment, guarantee or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments,

guarantees or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the maximum amount which can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit or guarantee is less than, as of the 31st day of December next preceding:

- (a) in the case of non-life insurer's, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders or,
- (b) in the case of life insurers, 3% of the insurer's admitted assets.

ITEM 4. Loans or extensions of credit to a non-affiliate

If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of or make investments in any affiliate. Describe the amount and source of funds, securities, property or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the loan or extension of credit is one which equals less than, in the case of non-life insurer's, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders or, with respect to life insurers, 3% of the insurer's admitted assets, each as of the 31st day of December next preceding.

ITEM 5. Reinsurance

If the transaction is a reinsurance agreement or modification thereto, as described by Section 1655(b)(3)(ii) of the Act, furnish a description of the known and/or estimated amount of liability to be ceded and/or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and non-affiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given for reinsurance agreements or modifications thereto if the reinsurance premium or a change in the insurer's liabilities in connection with the reinsurance agreement or modification thereto is less than 5% of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding.

ITEM 6. Management agreements, service agreements and cost-sharing arrangements

For management and service agreements, furnish:

- (a) a brief description of the managerial responsibilities, or services to be performed.
- (b) a brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.

For cost-sharing arrangements, furnish:

- (a) a brief description of the purpose of the agreement.
- (b) a description of the period of time during which the agreement is to be in effect.
- (c) a brief description of each party's expenses or costs covered by the agreement.
- (d) a brief description of the accounting basis to be used in calculating each party's costs under the agreement.

ITEM 7. Signature and certification

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of Section 1655 of the Act, _____ has caused this notice to be duly signed on its behalf in the City of _____ and State of _____ on the ____ day of _____, 20____.

(SEAL)

Name of Applicant

BY

(Name) (Title)

Attest:

(Signature of Officer)

(Title)

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CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached notice dated _____, 20____, for an on behalf of _____; that (s)he is the

(Name of Applicant) (Title of Officer)
of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature)

(Type or print name beneath)

APPENDIX Q. FORM E [REVOKED]

APPENDIX Q. FORM E [NEW]

PRE-NOTIFICATION FORM
REGARDING THE POTENTIAL COMPETITIVE IMPACT
OF A PROPOSED MERGER OR ACQUISITION BY A
NON-DOMICILIARY INSURER DOING BUSINESS IN THIS
STATE OR BY A DOMESTIC INSURER

Name of Applicant

Name of Other Person
Involved in Merger or
Acquisition

Filed with the Insurance Department of

Dated: _____, 20_____.

Name, title, address and telephone number of person completing this statement:

ITEM 1. NAME AND ADDRESS

State the names and addresses of the persons who hereby provide notice of their involvement in a pending acquisition or change in corporate control.

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ITEM 2. NAME AND ADDRESSES OF AFFILIATED COMPANIES

State the names and addresses of the persons affiliated with those listed in Item 1. Describe their affiliations.

ITEM 3. NATURE AND PURPOSE OF THE PROPOSED MERGER OR ACQUISITION

State the nature and purpose of the proposed merger or acquisition.

ITEM 4. NATURE OF BUSINESS

State the nature of the business performed by each of the persons identified in response to Item 1 and Item 2.

ITEM 5. MARKET AND MARKET SHARE

State specifically what market and market share in each relevant insurance market and persons identified in Item 1 and Item 2 currently enjoy in this state. Provide historical market and market share data for each person identified in Item 1 and Item 2 for the past five years and identify the source of such data.

For purposes of this question, market means direct written Insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state.

NOTE: State Insurance Departments may additionally choose to make these calculations using their own data or data provided by the NAIC.

**APPENDIX R. CONVERSION FROM PRE-PAID FUNERAL TRUST TO INSURANCE FUNDED
CONTRACTS [REVOKED]**

**APPENDIX R. CONVERSION FROM PRE-PAID FUNERAL TRUST TO INSURANCE FUNDED
CONTRACTS [NEW]**

Name of Applicant Permit #

Name of Insurer Oklahoma Certificate of Authority #

FILED WITH THE INSURANCE COMMISSIONER FOR
THE STATE OF OKLAHOMA

Dated: _____, 20_____.

Name, Title, Address and Telephone Number of Individual to Whom Notices and
Correspondence Concerning This Statement Should Be Addressed:

ITEM 1. Copy of Letter from Insurer to Applicant.

Furnish a letter to the applicant from an insurer authorized to do business in Oklahoma evidencing the policy form number and setting out the insurer's agreement to issue insurance policies to convert the prepaid funeral contracts from trust funded benefits to insurance funded benefits.

ITEM 2. Copy of Written Commitment to Commissioner.

Furnish a copy of the written commitment to the Commissioner containing the agreement between or among the insurer, the applicant, and the post-conversion administrator regarding the transfer, receipt, and the application of trust funds upon conversion, which commitment must require a copy of each insurance policy issued be furnished to the owner of the insurance policy and that a copy be made available to the respective prepaid funeral contract purchasers upon request, in the event they are not the owners of the policies.

ITEM 3. Pre-conversion Summary.

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Furnish a pre-conversion summary of the individual prepaid funeral contracts, which must include, at a minimum, the following information (as of a date within thirty (30) days of the date of application), as well as aggregated totals for each category of information, if appropriate:

- (A) individual prepaid funeral benefits contract purchaser's name and/or the owner;
- (B) date of execution of pre-converted prepaid funeral contract;
- (C) face amount of the contract;
- (D) amount paid in and the unpaid balance;
- (E) accumulated earnings;
- (F) amount due the prepaid funeral contract purchaser upon cancellation and the amount due the application upon death of the prepaid funeral contract owner, assuming death or cancellation were to occur on or about the date of application;
- (G) amount retained by the applicant under the Title 36 O.S. §6125; and
- (H) whether the pre-converted contract is or was a contract pursuant to Sections 6125(B)(1) or 6125(B)(2).

ITEM 4. Post-conversion Summary.

Furnish a post-conversion summary of the individual prepaid funeral contracts, which must include, at a minimum, the following information (as of the same date of the pre-conversion summary), as well as aggregated totals for each category of information, if appropriate:

- (A) annuitant's name;
- (B) original prepaid funeral contract amount;
- (C) amount paid in and the unpaid balance;
- (D) amount applied to the purchase of the insurance policy;
- (E) initial cash surrender value and initial death benefit under the insurance policy; and
- (F) amount retained by the applicant under the Title 36 O.S. §6125.

ITEM 6. Actuarial Certification.

Furnish an actuarial certification certifying that the reserves to be held by the insurance company with respect to the conversion will be adequate to pay claims as they become due (dated no more than six (6) months prior to the date of the application).

ITEM 8. Form of Assignment.

Furnish a copy of the form of assignment, if any, to be used in assigning insurance policy rights or proceeds to the post-conversion administrator.

ITEM 7. Signature and Certification.

Signature and certification required as follows:

I, _____, being first duly sworn, state that I have read the within and foregoing application and that the answers supplied by me therein are true and correct to the best of my knowledge and belief.

TITLE 380. DEPARTMENT OF LABOR CHAPTER 55. AMUSEMENT RIDE SAFETY RULES

[OAR Docket #20-617]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 15. Waiver Self-Inspections
380:55-15-2 [AMENDED]

AUTHORITY:

Department of Labor; 40 O.S. §§ 460, 463, and 469, Amusement Ride Safety

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 23, 2020

COMMENT PERIOD:

February 18, 2020 through March 25, 2020

PUBLIC HEARING:

March 25, 2020

ADOPTION:

March 26, 2020

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 26, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 15, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The adopted rule amendments provide that inflatable amusement devices must be inspected by the Oklahoma Department of Labor ("ODOL") annually.

CONTACT PERSON:

Daniel A. Mares, Assistant General Counsel, (405) 521-6186 or daniel.mares@labor.ok.gov or Don Schooler, Chief of Staff and General Counsel, (405) 521-6181 or don.schooler@labor.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2020:

SUBCHAPTER 15. WAIVER SELF-INSPECTIONS

380:55-15-2. Waiver requirements

(a) Waiver self-inspection requirements are as follows:

(1) Owners/Operators must retain, on each site, manufacturers' ride manuals with all bulletins and changes updated and Department of Labor approved ride inspection checklists. The ride manuals and ride inspection checklists shall be under control of the waiver inspector. Current copies of the ride inspection checklists shall be provided to the Department of Labor to be retained on file. Owners/Operators must also retain, on each site, a current copy of the Oklahoma Amusement Ride Safety Act.

(2) For homemade or out-of-production rides, the owner/operator shall develop an inspection checklist, to be approved by the Department of Labor. The inspection checklist shall be retained on site, under the control of the waiver inspector. Current copies of the ride inspection checklist shall be provided to the Department of Labor to be retained on file.

(3) After the initial Department of Labor inspection and waiver approval, the ride owner/operator shall cause the initial pre-opening inspections of all amusement rides at each site, including the generator(s), electrical systems, and general midway safety by the approved waiver inspector. The waiver inspector shall be responsible for inspecting all rides on the midway including booked in rides. Inspection documents shall be provided by the owner/operator. The waiver inspector shall also monitor that all rides are being operated in a safe manner on a daily basis. In the event of an unforeseeable emergency or illness, the approved waiver inspector may appoint a substitute waiver inspector who must be approved by the Commissioner of Labor or the Commissioner's designee prior to the inspection.

(4) The ride owner/operator shall cause the daily pre-opening inspection of each ride, by the operator. Inspection documents shall be maintained by the owner/operator.

(5) The waiver inspector shall review the operators' daily pre-opening inspection documents on a daily basis. The waiver inspector shall supervise the operators performing daily pre-opening inspections.

(6) Waiver inspection reports shall be maintained at each site and held for the remainder of the current operating season or calendar year. They shall then be maintained at winter quarters location for not less than 3 (three) years. The Department of Labor may request copies of waiver inspection reports at no charge.

(7) Waiver self-inspections shall not apply to the Oklahoma State Fair, the Tulsa State Fair, and any midway sites with over 25 (twenty-five) rides.

(8) The Department of Labor shall be informed of all show dates and locations within Oklahoma. The ride owner/operator must provide the Department with itinerary updates with new additions, cancellations, or other changes. The Department will also be provided a complete list of all rides owned/operated. The list will include ride name, manufacturer, serial number, and Oklahoma registration number, where possible.

(9) Waiver requests will be granted on an annual basis.

(10) Department of Labor inspectors may spot check rides and self-inspection documentation at any time, without prior notification.

(11) If the approved waiver inspector is not the actual ride/show owner, he must have on file with the Department of Labor a formal letter from the ride/show owner that said waiver inspector is empowered to order cessation of ride operation due to unsafe conditions (mechanical or operational) to include booked in rides.

- (12) Non-compliance with waiver requirements, or public safety violations found at the time of the spot checks may result in any or all of the following:
- (A) Shut down of the ride(s).
 - (B) Department of Labor inspection(s) at next set-up(s).
 - (C) Formal Department of Labor hearing regarding the cancellation of the waiver request for the remainder of the Oklahoma operating season or a period to be determined by the hearing officer.
 - (D) Issuance of an administrative penalty.
- (13) Only approved Department of Labor waiver inspectors may conduct waiver inspections. The Department shall maintain a list of persons who are approved to act as a waiver inspector. No other person may act as, or perform any part of, the waiver inspection.
- (b) In addition to the requirements contained in subsection (a), complex temporary amusement device waiver inspections must meet the following requirements:
- (1) All complex temporary amusement devices shall have the initial inspection completed by the Department of Labor prior to final waiver approval or operation. After the Oklahoma Department of Labor completes initial inspection, the Department will conduct one mid-season inspection and an annual safety compliance audit. The dates of state inspections are at the discretion of the Department of Labor. The designated waiver inspector for an owner/operator of complex temporary amusement devices shall be required to perform waiver self-inspections on rides that are included in the initial inspection conducted by Department of Labor.
 - (2) Owners may add new devices to their current waiver cycle only after they have submitted a revised ride list and have been inspected by the Department of Labor.
 - (3) Complex temporary amusement device waiver self-inspections are subject to NAARSO inspector certification requirements.
- (c) In addition to the requirements contained in subsection (a), non-complex temporary amusement device waiver inspections must meet the following requirements:
- (1) Non-complex temporary amusement devices shall have the initial inspection completed by the Department of Labor prior to final waiver approval or operation. After the Department of Labor completes the initial inspection, rides requiring less than one (1) man-hour setup time shall receive one Department of Labor mid-season inspection and a Department of Labor annual safety compliance audit.
 - (2) Owners may add new devices to their current waiver cycle only after they have submitted a revised ride list and have been inspected by the Department of Labor.
 - (3) Non-complex temporary amusement device self-inspections are exempt from NAARSO inspector certification requirements and may be inspected by the business owner designee who must maintain all inspection records and make said records available to the Department of Labor.

- (d) Inflatable amusement devices must meet the following requirements:

- (1) At the beginning of each year, and any time an owner or operator of inflatable amusement devices adds a new inflatable device for operation, the owner or operator shall provide an inventory to the Department of Labor and shall pay the registration fee for each inflatable. If the inflatable device is set up with temporary amusement devices or permanent amusement devices, the inspection schedule will coincide with the temporary and/or permanent amusement devices.
- (2) The Department of Labor shall inspect any and all inflatable devices at least annually. The Department of Labor may inspect any and all inflatable devices at any time upon complaint, or at the request of the owner/operator or the public, or if the Commissioner of Labor determines inspection is necessary for the safety of the public.
- (3) An inflatable amusement device is subject to all the other provisions regarding amusement devices included in these rules and the Oklahoma Statutes including requirements for maintaining liability insurance and reporting injuries.

[OAR Docket #20-617; filed 7-15-20]

TITLE 380. DEPARTMENT OF LABOR CHAPTER 70. ELEVATOR SAFETY ACT

[OAR Docket #20-618]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
380:70-1-2 [AMENDED]
Subchapter 3. Administration
380:70-3-4 [AMENDED]
380:70-3-9 [AMENDED]
Subchapter 5. Licenses
380:70-5-1 [AMENDED]
380:70-5-2 [AMENDED]

AUTHORITY:

Department of Labor; 59 O.S. §§ 3023 and 3024, Elevator Safety Act

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 23, 2020

COMMENT PERIOD:

February 18, 2020 through March 25, 2020

PUBLIC HEARING:

March 25, 2020

ADOPTION:

March 26, 2020

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND

LEGISLATURE:

March 26, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 15, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

Permanent Final Adoptions

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The adopted rule amendments adopt the American National Standard for Transport Platforms, ANSI/SIA A92.10-2009, to provide guidance regarding the use of transport platforms in the State of Oklahoma. The adopted rule amendments also define "Transport Platform," allow elevator contractor licenses and elevator mechanic licenses to be issued for work on transport platforms, and provide for the issuance of temporary certificates of operation for the operation of transport platforms.

CONTACT PERSON:

Daniel A. Mares, Assistant General Counsel, (405) 521-6186 or daniel.mares@labor.ok.gov or Don Schooler, Chief of Staff and General Counsel, (405) 521-6181 or don.schooler@labor.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

380:70-1-2. Definitions

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

"Acceptance Test" means a test or a group of tests required by the applicable standard that are performed prior to a conveyance being placed into service or after an approved alteration.

"The Act" means the Oklahoma Elevator Safety Act, Title 59 of the Oklahoma Statutes, Sections 3020 et seq. and the Administrative Rules contained in this Chapter.

"Alteration" means any change, including major repair, made to an existing elevator, escalator, moving walkway or conveyance, its hoistway, enclosure, doors, and controls, other than the repair or replacement of damaged, worn, or broken parts necessary for normal operation. The changing of the speed governor shall be considered an alteration.

"Annually" means a period of twelve (12) calendar months.

"ANSI" means the American National Standards Institute, 1819 L Street NW, 6th Floor, Washington, D.C., 20036.

"ASME" means the American Society of Mechanical Engineers, 3 Park Avenue, New York, NY, 10016-5990.

"ASSE" means the American Society of Safety Engineers, 1800 E. Oakton St., Des Plaines, IL., 60018.

"AWS" means the American Welding Society, 550 N.W. LeJune Road, Miami, Florida 33126.

"Chief Elevator Inspector" means the Chief Elevator Inspector appointed under the Act.

"Commissioner" means the Commissioner of Labor or his/her authorized representative.

"Certificate of Operation" means a document issued by the Commissioner of Labor, affixed to an elevator or conveyance that indicates it has been inspected, tested and found to be in compliance for operation as required by the Act.

"Conveyance" means any elevator, escalator, moving walkway, wheelchair lift or other such device subject to the provisions of the Act.

"Department" means the Oklahoma Department of Labor, 3017 N. Stiles, Suite 100, Oklahoma City, OK 73105.

"Deputy Inspector" means an inspector appointed by the Chief Elevator Inspector subject to the approval of the Commissioner under the provisions of the Act.

"Elevator" means any device for lifting or moving people, cargo, or freight within, or adjacent and connected to, a structure or excavation, and includes any escalator, power driven stairway, moving walkway or stairway chair lift. It does not mean any of the following:

(A) Amusement ride or device subject to inspection and regulation under the provisions of Section 460 et seq. of Title 40 of the Oklahoma Statutes;

(B) Mining equipment subject to inspection and regulation by the Department of Mines;

(C) Aircraft, railroad car, boat, barge, ship, truck, or other self-propelled vehicle or component thereof;

(D) Any boiler grate stoker or other similar firing mechanism subject to inspection under the provisions of the Oklahoma Boiler and Pressure Vessel Safety Act; or

(E) A dumbwaiter, conveyor, chain or bucket hoist, construction hoist or similar devices used for the primary purpose of elevating or lowering materials. This list is not exhaustive.

"Elevator Apprentice" means an unlicensed person registered with the Department of Labor who works under the direct supervision of a licensed elevator mechanic, licensed elevator contractor, or licensed elevator inspector.

"Existing Installation" means any elevator, escalator, moving walkway or other conveyance subject to the provisions of this Act in operation before the effective date of this Act.

"Expedited Inspection" means an inspection performed by the Commissioner, Chief Elevator Inspector, or Deputy Inspector that is to be performed during the same calendar month as it is requested.

"Freight Elevator" means an elevator used for carrying freight and on which only the operator and the person(s) necessary for loading and unloading are permitted to ride.

"Installation Permit" means a document issued by the Commissioner to a licensed elevator contractor upon receipt of an application to install or construct an elevator or conveyance which indicates Department approval of the proposed installation or construction project.

"ICC" means the International Code Council, 5360 Workman Mill Road, Whittier, California, 90601-2298.

"Maintenance" means a process of routine examination, lubrication, cleaning, and adjustment of parts, components, and/or subsystems for the purpose of ensuring performance in accordance with the applicable Code requirements.

"May" means that an action or requirement is optional and non-mandatory.

"Mobility Restricted" means a person or persons unable to move freely without the aid of mechanical assistance such as walkers, wheelchairs, crutches or canes, and/or an inability to

move freely because of a physical or mental disability, handicap or restriction.

"New Installation/New Construction" means a completely new elevator or conveyance installation or construction occurring on or after the effective date of this Act.

"NFPA" means The National Fire Protection Association, Inc., One Batterymarch Park, Quincy, Massachusetts, 02169-7471.

"Night Time Inspection" means any inspection that does not occur during "reasonable hours."

"Occurrence" means any event involving an elevator, escalator, moving walkway, wheel chair lift or other conveyance subject to the provisions of this Act, that the operation of which has caused personal injury or property damage.

"Owner-Occupied Private Residence" means a separate dwelling, or a separate apartment in a multiple dwelling/complex, which is occupied by the legal owner and/or his/her family.

"Periodic Test" means a group of tests performed at common time intervals required by the authority having jurisdiction.

"Personnel Hoist" means a mechanism and its hoistway for use in connection with the construction, alteration, ongoing maintenance or demolition of a building, structure or other work. It is used for hoisting and lowering workers or materials or both, and is equipped with a car that moves vertically on guide members

"Professional Engineer" means a mechanical engineer registered as such in one or more states, or the equivalent certification registration if from another country.

"Reasonable Hours" means that period of time beginning one hour prior to normal advertised business hours and ending one hour after normal advertised business hours. For facilities normally open twenty-four (24) hours, reasonable hours shall be that period of time beginning at 7:00 a.m. and ending at 6:00 p.m.

"Red Tag" means a document issued by a licensed elevator inspector and attached to an elevator or conveyance declaring that any further operation of the elevator or conveyance shall constitute a violation of the Oklahoma Elevator Safety Act.

"Repair" means reconditioning or renewal of parts, components, and/or subsystems, not constituting an alteration, necessary to keep equipment in compliance with applicable Code requirements and for which a permit is not required.

"Responsible Party" means that person(s) so named and designated on an elevator contractors license required to have met and maintain training credentials and knowledge necessary to satisfy the requirements of the Act.

"Shall" means that an action or requirement as stated in this Chapter is mandatory.

"Special Inspector" means an inspector, licensed by the Department, who is regularly employed by an insurance company providing liability insurance on an elevator, escalator, moving walkway, chairlift or conveyance subject to the provisions of the Act.

"State Special" means the designation applied to an elevator or conveyance subject to the provisions of this Act that

is of special or unique construction and cannot be constructed, installed and/or operated in accordance with the applicable ASME Code and the provisions of this Act.

"Temporarily Dormant" means an elevator or conveyance whose power supply has been disconnected by removing fuses and placing a padlock on the mainline disconnect switch in the "OFF" position.

"Temporary Certificate of Operation" means a document issued by a licensed elevator inspector granting the temporary continued operation of a non-compliant elevator or conveyance for a period not to exceed sixty (60) days so that repairs can be performed; or to a licensed elevator contractor for the temporary continued operation of an elevator, transport platform, or personnel hoist for a specified period of time not to exceed the length of the applicable construction project.

"Transport platform" means an elevator consisting of a platform that is elevated by a mechanical drive system and guided by and moving along its supporting masts, where the mast requires lateral restraint from separate supporting structures, that is primarily used to vertically transport authorized persons, along with materials and necessary tools, to various access levels on a building or structure for construction, renovation, maintenance, or other types of work.

"Triennially" means a period of thirty-six (36) calendar months.

SUBCHAPTER 3. ADMINISTRATION

380:70-3-4. National standards, adoption and availability

(a) The following American National Standards are hereby adopted:

- (1) Safety Code for Elevators and Escalators, ASME A17.1, latest edition and most current addenda.
- (2) Safety Code for Existing Elevators and Escalators, ASME A17.3, latest edition and most current addenda.
- (3) Safety Standard for Platform Lifts and Stairway Chairlifts, ASME A18.1, latest edition and most current addenda.
- (4) Safety Standard for Belt Manlifts, ASME A90.1, latest edition and most current addenda.
- (5) Safety Requirements for Personnel Hoists and Employee Elevators, ASSE A10.4, latest edition.
- (6) The National Electrical Code, NFPA 70, latest edition.
- (7) The International Building Code, latest edition.
- (8) American National Standard for Transport Platforms, ANSI/SIA A92.10-2009.

(b) Standards referenced in this chapter are available for public viewing in the office of the Chief Elevator Inspector and may be purchased from the American Society of Mechanical Engineers, the National Fire Protection Association, the American Society of Safety Engineers, and the International Code Council.

(c) Compliance with the provisions of the Elevator Safety Act does not relieve an owner, operator, or licensed Elevator Contractor from the requirement to comply with Codes and

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Standards as may be adopted and enforced by the Construction Industries Board and the Office of the State Fire Marshal, or other such state or jurisdictional agency as may be required.

(d) Where there is a conflict between the adopted standard and this Chapter, the requirements of this Chapter shall take precedence.

380:70-3-9. Temporary Certificates of Operation

(a) Temporary Certificates of Operation may be issued for established elevators or conveyances after the required inspection to renew a Certificate of Operation subject to the following conditions:

(1) When a routine inspection is performed and the inspector finds that the elevator or conveyance does not comply with the provisions of the Act, the inspector will explain what the violations are, what repairs are required, and shall also document them on an inspection report and/or checkoff list. Upon agreement of a reinspection date between the inspector and the owner or lessee of not more than 60 days, the inspector may issue a Temporary Certificate of Operation for the elevator or conveyance.

(2) Elevators or conveyances granted a Temporary Certificate of Operation shall be re-inspected prior to the expiration date of the Temporary Certificate of Operation. If any of the conditions that caused the issuance of a Temporary Certificate of Operation are found to have not been corrected, no further Certificates shall be issued and the Chief Elevator Inspector shall be consulted about future operations of the unit including but not limited to extensions of time, restricted operations or up to being Red Tagged.

(3) The issuance of a Temporary Certificate of Operation shall be reported to the Department by the inspector within 24 hours or the first working day after its issuance.

(b) Temporary Certificates of Operation may be issued for new elevators or conveyances at the request of a licensed elevator contractor for elevators or conveyances and personnel hoists in accordance with the following requirements:

(1) **Issuance for Elevators.** The Chief Elevator Inspector or a Special or Certificate Inspector may allow the temporary use of any elevator for passenger or freight service, not for use by the general public, during its new installation or alteration under the authority of a Temporary Certificate of Operation, issued for each class of service. Such limited certificates shall not be issued for elevators until the elevator has been tested, electric elevators with a capacity of 125% load test of the brake holding and stopping, and rated load test of the car safeties, hydraulic elevators test with the rated load, working and relief pressure, hoistway door interlocks, car door switch, and terminal stopping devices have been tested to determine the safety of the equipment for the specified construction purposes. These test reports shall be kept on site for the inspector to review.

(2) **Issuance for Personnel Hoists and Transport Platforms.** The Chief Elevator Inspector may allow the temporary use of any personnel hoist or transport platform under the authority of a Temporary Certificate of

Operation. Such limited certificate shall not be issued until the personnel hoist or transport platform has been tested with a rated load, and the car safety, hoistway door interlocks, car door switch, and terminal stopping devices, as applicable, have been tested to determine the safety of the equipment.

(3) **Expiration.** Temporary Certificates of Operation issued in accordance with Subsections (b)(1) and (b)(2) shall expire pursuant to the following:

(A) Temporary Certificates of Operation for new elevators or conveyances may be issued for a period not to exceed ninety (90) days.

(B) Temporary Certificates of Operation for personnel hoists and transport platforms may be issued for a period not to exceed ninety (90) days.

(C) Such certificates may be renewed at the discretion of the Chief Elevator Inspector upon receiving a written request showing justifiable cause for renewal.

(c) In addition to any other fee provided for in the Act, a fee for the issuance of a Temporary Certificate of Operation shall be assessed and paid to the Department.

SUBCHAPTER 5. LICENSES

380:70-5-1. Elevator Contractor's License: Issuance, denial and renewal

(a) Upon the effective date of this Chapter, no elevator or conveyance subject to the provisions of this Act shall be installed in this state by any sole proprietor, firm or corporation not having first been issued at the time of the construction or installation a valid elevator contractor's license, issued by the Department of Labor. There shall be a six (6) month grace period from the date of enactment of this Chapter to allow new and existing elevator contractors an opportunity to comply with the provisions of this section.

(b) Any sole proprietor, firm or corporation wishing to engage in the business of installation, alteration, service, repair, replacement or maintenance of elevators, escalators, moving walkways, wheelchair lifts, or other such conveyances within the state of Oklahoma shall make application for an elevator contractor's license to the Oklahoma Department of Labor.

(c) No license shall be granted to any sole proprietor, firm or corporation that has not demonstrated the requisite qualifications and abilities. Duly authorized applicants for an elevator contractor's license must have in their employ licensed elevator mechanic(s) who perform the work described herein.

(d) Application for elevator contractor's license shall be on forms provided by the Department and shall contain, as a minimum, the following information:

(1) If a person or sole proprietor, the name, residence and business address of the applicant;

(2) If a partnership, the name, residence and business address of each partner;

(3) If a domestic corporation, the name and business address of the corporation and the name and residence address of the principal officer of said corporation;

- (4) If a corporation other than a domestic corporation, the name and address of the local agent located in the State of Oklahoma who shall be authorized to accept service of process and/or official notices;
- (5) The approximate number of licensed elevator mechanics expected to be employed by the elevator contractor applicant, and if applicable, satisfactory evidence that the employees are or will be covered by workers' compensation insurance;
- (6) Verification of liability insurance as required by the Chapter;
- (7) Such other information as the Chief Elevator Inspector may require;
- (8) Designation of at least one but not more than two responsible parties to be named on the license. Such responsible parties shall have and maintain the training credentials required for a valid contractor's license. Documentation of satisfactory completion of the required training and all subsequent refresher training shall accompany the application;
- (A) In the absence of such responsible party in the employ of the contractor, the contractor shall not be allowed to perform elevator or conveyance installation, service, repair, alteration, testing or maintenance work in the State of Oklahoma.
- (B) Responsible party(ies) may be changed or added to the license at any time by providing written notice to the Department of such change.
- (9) Written notice of change shall be provided to the Department when any item on the application changes.
- (10) A limited contractor license may be issued to those facilities that have a maintenance program for elevators and/or conveyances using mechanics trained in elevator and/or conveyance maintenance and employed by that facility. The limited contractor license shall not apply to installation, major repair or alterations as required by the applicable ASME code.
- (A) The limited contractor shall be required to submit an application for approval listing qualifications, scope of work to be performed under the license, and any additional information deemed necessary by the Chief Elevator Inspector.
- (B) Mechanics working under a limited contractor license shall be required to make application to the Department and provide evidence to the Commissioner or Chief Elevator Inspector they are qualified to perform the work under the limited contractor scope of work.
- (C) All other requirements of the Elevator Safety Act shall apply.
- (11) Whether the scope of work to be performed by the applicant shall be limited to or shall include the installation, operation, alteration, service, repair, replacement, or maintenance of transport platforms.
- (e) Upon approval of an application and receipt of fees as provided for by the Act, the Commissioner may issue the elevator contractor's license- which may authorize or be limited to authorizing the installation, operation, alteration, service, repair, replacement, or maintenance of transport platforms, if appropriate.
- (f) Upon receipt of fees as established in the Act, and such additional documentation as may be required by the Commissioner, a license may be issued to a sole proprietor, firm or corporation holding a valid license from a state or jurisdiction having standards substantially equal to those contained in this Act.
- (g) The Department may deny approval or renewal of an elevator contractor's license for cause. The Department shall mail written notice to the applicant of the denial, the reason for the denial, and a statement that the applicant may appeal to the Commissioner provided their written request is received by the Department within fifteen (15) days of the date of the denial notice.
- (h) Elevator Contractor's licenses not renewed on or before the expiration date shall become invalid.
- (i) Elevator Contractor's licenses not renewed prior to the expiration date shall be subject to late fee and renewal fees as provided for in the Act.
- (j) Elevator contractors may have in their employ elevator inspectors licensed in accordance with the provisions of this Chapter for the purpose of witnessing and certifying conveyance tests as required by the Act, this Chapter and the applicable ASME Code(s).
- 380:70-5-2. Elevator Mechanic's License: Issuance, denial, and renewal**
- (a) Upon the effective date of this Chapter, no person shall work as an elevator mechanic to install, service, repair, alter, remodel or maintain any elevator or conveyance subject to the provisions of this Act and this Chapter without having first been issued a valid elevator mechanic's license by the Department. There shall be a six (6) month grace period after the effective date of this Chapter to allow new and existing elevator mechanics to comply with the requirements of this Section.
- (b) No license shall be granted to any person who has not sufficiently demonstrated their qualifications and abilities. Applicants for an elevator mechanic's license must demonstrate the following qualifications:
- (1) An acceptable combination of documented experience and education credits: Not less than three (3) years work experience in the elevator industry, in construction, maintenance and service/repair, as verified by current and previous employers licensed to do business in this state or other such jurisdiction having an elevator program substantially equal to this Act; Satisfactory completion of a written examination administered by the Chief Elevator Inspector on the most recent referenced codes, standards, and this Act;
- (2) Any person who furnishes the Commissioner with acceptable and verified proof that they have previously worked in elevator construction, maintenance, or repair may, upon making application for an elevator mechanic's license and paying the license fee, be entitled to receive a license without an examination. They shall have worked without direct or immediate supervision for an elevator contractor licensed to do business in this state or other

jurisdiction having a program substantially equal to this Act. This employment shall not be less than three (3) years immediately prior to the effective date of this Act;

(3) Provide certificates of completion demonstrating successful passage of a mechanic's examination of a nationally recognized training program for the elevator industry such as the National Elevator Industry Education Program or its equivalent; or

(4) Provide certificates of completion of an apprenticeship program for elevator mechanic's registered with the Bureau of Apprenticeship and Training, of the U.S. Department of Labor or a state apprenticeship council;

(5) A license may be issued to an individual holding a valid elevator mechanic's license from a state having standards substantially equal to those of this Act, upon application and payment of such fees as provided for in this Act, without examination.

(6) An elevator mechanic's license may be issued to an individual demonstrating, in the judgment of the Chief Elevator Inspector, sufficient training and experience in the erection, maintenance, and operation of transport platforms. The elevator mechanic's license issued pursuant to this paragraph shall not authorize an individual to install, service, repair, alter, remodel, or maintain any elevator or conveyance other than a transport platform.

(c) Applications for an elevator mechanic's license shall be on forms provided by the Department.

(d) Elevator mechanic's licenses shall be valid for a period of one (1) year and expire on the last day of the month of initial issuance. The Department shall notify holders of valid elevator mechanic's licenses not less than sixty (60) days prior to the expiration date of the license that it must be renewed within the next sixty (60) days. Elevator mechanic's licenses not renewed on or before the expiration date shall become invalid.

(e) Elevator mechanic's licenses not renewed on or before the expiration date shall be subject to late fee and renewal fees as provided for in the Act.

(f) Elevator mechanic's licenses once issued become the property of the licensee and must be carried on his/her person at all times when working on elevators or conveyances and made available upon request by the Commissioner, Chief or Deputy Elevator Inspector, or any Special Inspector.

(g) The Department may deny approval or renewal of an elevator mechanic's license for cause. The Department shall mail written notice to the applicant of the denial, the reason for the denial, and a statement that the applicant may be afforded the opportunity for a hearing pursuant to the provisions of the Administrative Procedures Act, provided their written request is received by the Department within fifteen (15) days of the date of the denial notice

(h) Whenever an emergency exists in this state due to disaster, act of God or work stoppage and the number of persons in the state holding licenses granted by the Commissioner is insufficient to cope with the emergency, temporary elevator mechanic's licenses may be issued. A licensed elevator contractor shall notify the Chief Elevator Inspector when there are no licensed personnel available to perform elevator or conveyance work. The licensed elevator contractor may request

that the Chief Elevator Inspector issue temporary elevator mechanic's licenses to persons certified by the licensed elevator contractor to have an acceptable combination of documented experience and education to perform elevator work without direct or immediate supervision. Any person certified by a licensed elevator contractor to have an acceptable combination of documented experience and education to perform elevator work without direct or immediate supervision shall immediately seek a temporary elevator mechanic's license from the Chief Elevator Inspector and shall pay such fees as provided for in this Act. Each such license shall recite that it is only valid for a period of thirty (30) days from the date of issuance and while employed by a licensed elevator contractor that certified the individual as qualified. It shall be renewable as long as the shortage of license holders shall continue, as determined by the Chief Elevator Inspector.

[OAR Docket #20-618; filed 7-15-20]

TITLE 380. DEPARTMENT OF LABOR CHAPTER 75. ALARM AND LOCKSMITH INDUSTRY RULES

[OAR Docket #20-619]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. License Requirements

380:75-3-2 [AMENDED]

380:75-3-3 [AMENDED]

Subchapter 5. Special Provisions

380:75-5-1 [AMENDED]

AUTHORITY:

Department of Labor; 59 O.S. § 1800.17, Alarm, Locksmith and Fire Sprinkler Industry Act

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The adopted rule amendments provide that an applicant for a temporary fire sprinkler trainee license may work for a licensed fire sprinkler company on unoccupied commercial new-construction projects while the applicant's application is being processed by the Department of Labor, for up to (30) thirty days, provided the applicant has first undergone a national criminal history records search by a third party and the applicant meets the applicable background requirements. The applicant, prior to licensure, shall not be authorized to perform work or otherwise be present at any job site located at or

immediately adjacent to a school, church, long-term care facility, or hospital. The adopted amendments also provide that a licensed fire sprinkler company may display an identifying sign on job sites rather than on company vehicles on job sites. The adopted rule amendments also separate the burglar alarm sales license from the fire alarm sales license, so that a burglar alarm salesperson will no longer need to be licensed as a residential fire alarm salesperson as well. The adopted rule amendments also modify the fire alarm inspection green tag to include information regarding deficiency repairs.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2020:

SUBCHAPTER 3. LICENSE REQUIREMENTS

380:75-3-2. Application and license fees, period and display, and examination alternatives or prerequisites

(a) **Application and license fees.** The following fees apply to alarm and locksmith industry licensure:

- (1) Initial application and licensing fees
 - (A) Company application and license - \$250.00. A company that is owned and operated by the company manager, with only a locksmith category license and which employs no additional employees, shall be exempted from a company license fee. A company shall submit a list of employees licensed in accordance with the Alarm and Locksmith Industry Act, to the Department, with each application or renewal application for a company license.
 - (B) Company manager and plan and design - Application \$70.00 and Licensing fee \$100.00
 - (C) Inspector, technician, salesperson - Application \$14.00 and Licensing fee \$35.00
 - (D) Technician trainee - Application \$40.00 and License fee \$35.00
 - (E) Fire Sprinkler Technician Trainee \$20.00
 - (F) Duplicate or revised license - \$25.00

- (2) Renewal fees
 - (A) Company license - \$250.00; A company that is owned and operated by the company manager, with only a locksmith category license and which employs no additional employees, shall be exempted from a company license fee.
 - (B) Company manager and plan and design - \$100.00
 - (C) Inspector, technician, salesperson - \$35.00
 - (D) Trainee - \$25.00
 - (E) Fire Sprinkler Technician Trainee \$15.00

(b) **License period.**

- (1) All individual licenses shall expire annually on the last day of the licensee's birth month. Each such license shall be prorated in accordance with the licensing

procedures adopted by the Department. All company licenses shall expire annually on the last day of the month the license was initially issued. A manager may choose to renew the company license in the same month as the manager license. An expired license may be renewed by paying the renewal fee no later than thirty (30) days after the license's expiration date. An expired license may be renewed later than thirty (30) days after the license's expiration date by paying double the renewal fee. Any individual license renewal shall require the licensee to be listed as an employee of a licensed company on the companies' renewal form or in a separate letter from the company which has been signed by the licensed manager of record. If an individual licensee cannot supply to the Department the required employment information, the licensee may request the Department to designate his or her license as inactive. The inactive designation of the license shall remain until the employment information is provided to the Department. The requirement of employment by an employer specifically licensed as a company under this Section shall not apply for individual licensees employed by a general services provider engaged by the Department of Defense for broad, general DOD facility services which would include fire sprinkler, locksmith, alarm, access control, nurse call or locksmith services.

(2) Initial applications for managers, technicians, salespersons, plan and design and trainees shall be submitted to the Department. Each applicant shall comply with the licensing procedures adopted by the Department. This registration shall be contingent on a security background investigation. Each license applicant shall provide either:

(A) An application and a current criminal history record check dated within thirty (30) days of application from the Oklahoma State Bureau of Investigation. If the applicant has resided in any other state within the past ten (10) years, a current criminal history record check from each state of previous residence will be required. In addition, the applicant shall submit two (2) classifiable sets of fingerprints. The Commissioner may allow for the option of electronic submission of the applicant's fingerprints under licensing procedures adopted by the Department. The applicant shall be photographed by the Department of Labor or an entity approved by the Department in accordance with the licensing procedures adopted by the Department. (This provides for temporary licensure for trainees only.); or

(B) An application and two (2) classifiable sets of fingerprints. The Commissioner may allow for the option of electronic submission of the applicant's fingerprints under licensing procedures adopted by the Department. The applicant shall be photographed by the Department of Labor or an entity approved by the Department in accordance with the licensing procedures adopted by the Department. (This does not provide for temporary licensure.)

(3) A license which has been expired for more than two (2) years shall not be renewed. An individual may obtain

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a valid license by successful completion of the appropriate examination and/or certification and other licensure requirements.

(4) A temporary trainee license will be issued to an individual who has provided the documents required in 380:75-3-2(b)(2)(A). The temporary license will be valid for a period not to exceed (90) ninety days. An individual may be issued a second temporary license for good cause shown as determined by the Department. An applicant for a temporary fire sprinkler trainee license may work for a licensed fire sprinkler company on unoccupied commercial new-construction projects only, upon application for licensure while the applicant's application is being processed by the Department of Labor, for up to (30) thirty days, subject to the requirements of 380:75-3-6(a)(4), and provided the applicant has first undergone a national criminal history records search by a third party commercial provider of national criminal history records search services and the applicant meets the requirements of 59 O.S. § 1800.7 and 59 O.S. § 1800.13. The applicant, prior to licensure, shall not be authorized to perform work or otherwise be present at any job site located at or immediately adjacent to a school, church, long-term care facility, or hospital.

(c) **Examination and re-examination.** Any applicant failing to pass the appropriate examination shall be required to retake the same category examination after payment of a retest fee. Any person who fails to appear for a scheduled examination shall forfeit his/her examination fee.

(d) **Company license display.** While actively engaged in any activity regulated by this Chapter, the state issued company license number, or a statement referring to a website or toll free phone number to obtain licensing information shall be placed on all advertising and marketing materials including but not limited to, letterhead stationery, business cards, invoices, statements, contracts, bids, estimates, printed advertisements, electronic media advertisements, decals and yard signs. The license number shall be prominently displayed on any publicly accessible website, either on the home page or on every page advertising a product or service regulated by this Chapter. The state issued license number shall be displayed in numerals of two (2) inches or more in height and shall be located on all vehicles that display the company name while actively engaged in any activity regulated by this Chapter. The license number shall be placed on every side of the vehicle which displays the company name. Display shall be in letters and numerals of two (2) inches or more in height. The required license number and company name shall be displayed in either a temporary or permanent manner on at least one company vehicle at any job site unless exempted by a specific written request of the customer, except that a licensed fire sprinkler company may prominently display a durable sign, at least 2'x2' in size, bearing the company name and license number in letters and numerals of two (2) inches or more in height, at the main location of vehicle ingress to a commercial job site in lieu of having a vehicle bearing the company name and license number present at the job site while work is being performed.

(e) **Personal license display.** Each manager, technician, technician trainee, or salesperson, shall possess the state issued card any time the person is working in such capacity. The individual license shall be presented to any authorized representative of the Department of Labor or other authorities having jurisdiction. In addition the individual shall have a valid, state-issued photo I.D. in their possession while engaged in the licensed activity.

(f) **Personal license information.**

(1) Each individual license holder shall notify the Department of Labor, on a form specified and provided by the Department, within fourteen (14) days of the following:

- (A) Any change in the home address.
- (B) Any separation from an employer or change in employer.
- (C) Any conviction for a felony or entry of a plea of guilty or nolo contendere to a felony charge.

(2) No individual licensed under this Chapter shall contract for his/her services as an independent contractor without applying for and being issued a company and manager license under this Chapter. No company shall contract for the independent services of a holder of an individual license under this Section.

380:75-3-3. Burglar alarm license requirements

Licensing requirements for the burglar alarm industry are as follows:

(1) **Company.**

(A) Each burglar alarm company shall employ an Oklahoma licensed burglar alarm manager who is responsible for the operations of the company's office. A burglar alarm company shall notify the Department within fourteen (14) days in event of the death of the burglar alarm company manager or the manager's separation from the company for any other reason, and the company shall designate another licensed burglar alarm manager within (30) thirty days from separation.

(B) A licensed burglar alarm technician or manager shall be on site for any work being performed.

(C) A burglar alarm company may operate multiple activity offices provided each office has the same name and ownership of the parent company and shall operate in compliance with 380:75-3-3(1)(A). The company will notify the Department of the physical address and telephone number for each office in accordance with 59 O.S. Section 1800.10.

(D) Each alarm company engaged in alarm business that sells a burglar alarm system to a consumer upon request from the consumer shall within forty-eight (48) hours return the lockout, installer, or programming code of the system to the factory default setting when the consumer cancels the contract on customer-owned equipment. If a system is installed without a written contract with the consumer, the system shall have the lockout code, installer or programming code set at default.

(E) A company shall maintain and provide the customer with the following information prior to any agreement for service becoming effective. Any early termination clause applicable to military personnel, or the lack of such a clause, shall be fully disclosed in writing and shall be separately acknowledged by the customer. All monitoring and/or lease contracts shall include, as a minimum, the following information: the initial term of the agreement, the renewal term of the agreement, the terms for notification of cancellation of the agreement as well as the costs involved of all the terms of the agreement, the company name and the state issued license number, the sales representative's name and state issued license number, and the address where service will be provided. The minimum contract information described above shall be disclosed in one of the following ways:

- (i) Printed on the front or face of the written contract in not less than twelve (12) point bold type and at least two (2) points larger than the rest of type size of the remaining text in the written contract;
 - (ii) On a separate disclosure form appended to the written contract and dated, and signed by the customer and the licensed alarm company representative who made the sale; or
 - (iii) Electronically in a format and language that is understandable to the average consumer using bold type which is at least two (2) points larger than the type size of the remaining text in the contract.
- (2) **Manager.**
- (A) Each application for licensure as a manager shall include verification of four (4) years of experience in the burglar alarm business. The experience shall include two (2) years verified/or licensed experience as a burglar alarm technician or other related experience approved by the Committee.
- (B) Each burglar alarm manager applicant must pass an examination prescribed by the Commissioner.
- (C) Each licensed burglar alarm company manager shall be responsible for all activities conducted within the State of Oklahoma by the office where they are listed as manager.
- (D) Each licensed burglar alarm company manager shall have a security background verification.
- (E) Each licensed burglar alarm company manager shall also be licensed as a residential fire alarm manager.
- (3) **Technician.**
- (A) Each technician shall work for a licensed burglar alarm company and under the supervision of a burglar alarm company manager.
- (B) Each burglar alarm technician applicant must pass an examination prescribed by the Commissioner.
- (C) Each technician shall have a security background verification.

(D) Each licensed burglar alarm technician shall also be licensed as a residential fire alarm technician.

(E) An individual that holds a technician license in this category can engage in any licensed category as a trainee pursuant to this Chapter.

(4) **Technician/Salesperson Trainee.**

(A) A technician/salesperson trainee shall be employed by a licensed Oklahoma burglar alarm company.

(B) A technician/salesperson trainee shall work under the direct supervision of a licensed burglar alarm company manager, burglar alarm technician or a burglar alarm salesperson.

(C) There shall be no more than three (3) technician/salesperson trainees per burglar alarm company manager, burglar alarm technician or burglar alarm salesperson per job site or project.

(D) Each technician/salesperson trainee shall have security background verification.

(E) Each licensed burglar alarm trainee shall also be licensed as a residential fire alarm trainee.

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

(G) An individual who holds a trainee license can engage in the rough-in cabling or wiring under the direct supervision of a licensed company holding the appropriate license category.

(H) A technician trainee must submit a trainee application to the Department of Labor within fifteen (15) business days of being hired by a burglar alarm company.

(5) **Salesperson.**

(A) Each salesperson shall work for a licensed burglar alarm company and under the supervision of a burglar alarm company manager.

(B) Each salesperson shall have a security background verification.

~~(C) Each licensed burglar alarm salesperson shall also be licensed as a residential fire alarm salesperson.~~

SUBCHAPTER 5. SPECIAL PROVISIONS

380:75-5-1. Commercial fire alarm tagging requirements

(a) **White Tag (installation sticker).** The White Tag shall be the permanent visual record of the original installation and certification. The following additional requirements shall apply to the use of the White Tag:

- (1) The tag must be permanently affixed to the main control panels as long as the system is in service.
- (2) The tag shall be five inches (5") in height by four inches (4") in width and shall be water durable and have a self-adhesive backing.
- (3) The tag shall bear the following information:

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- (A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL";
 - (B) The certifying company's name, address, and telephone number (local office);
 - (C) The certifying company's commercial fire alarm license number;
 - (D) The signature and license number of the commercial fire alarm technician certifying the system;
 - (E) The fire alarm permit number;
 - (F) The model of the control panel;
 - (G) The date of certification; and
 - (H) The code, edition and year under which the system was installed.
- (4) Only the fire code official may remove an installation tag.
- (b) **Traffic Light Bright Green Tag (Annual inspection tag/sticker and inspection deficiency repair tag).** The Green Tag shall be the visual record of the last annual inspection, ~~or~~ initial certification testing, or deficiency repair testing where the system was found to be operable with no impairments. The following additional requirements shall apply to the use of the Green Tag:
- (1) The annual inspection must be conducted in accordance with NFPA testing standards and manufacturer's specifications.
 - (2) The annual inspection's deficiency repairs must be conducted in accordance with NFPA testing standards and manufacturer's specifications.
 - (3) The tag shall be five inches (5") in height by four inches (4") in width and shall have a self-adhesive backing or made of colored card stock placed in a plastic sleeve.
 - (~~3~~4) The tag shall bear the following information:
 - (A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL";
 - (B) "Annual Inspection Tag" or "Deficiency Repair Tag";
 - (~~C~~) The service company's name, address, and telephone number (local office);
 - (~~C~~D) The service company's commercial fire alarm license number;
 - (~~D~~E) The signature and license number of the commercial fire alarm technician certifying the system; ~~and~~
 - (~~E~~F) The date the inspection or deficiency repair(s) was/were performed; and
 - (G) The inspection company's name, ODOL company license number, and the date of the inspection.
 - (45) Within five (5) days of the inspection deficiency repairs, a copy of the repair document is to be provided to the authority having jurisdiction.
 - (6) Only a commercial fire alarm technician, employed by a fire alarm company or the fire code official may remove the tag.
- (c) **Traffic Light Bright Yellow Tag (Annual inspection tag/sticker) Operational Fire Alarm System but with minor impairments.** The intent of the Yellow Tag is to provide notification to the authority having jurisdiction of a system that is operable with impairments that do not severely compromise

the system's functional operation. The Yellow Tag shall be the visual record of the last annual inspection where the system was found to be operable but with minor impairments. The following additional requirements shall apply to the use of the Yellow Tag:

- (1) The annual inspection must be conducted in accordance with NFPA testing standards and manufacturer's specifications.
 - (2) The tag shall be five inches (5") in height by four inches (4") in width and shall have a self-adhesive backing or made of colored card stock placed in a plastic sleeve.
 - (3) The tag shall bear the following information:
 - (A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL";
 - (B) The service company's name, address, and telephone number (local office);
 - (C) The service company's commercial fire alarm license number;
 - (D) The signature and license number of the commercial fire alarm technician certifying the system;
 - (E) The date the inspection was performed; and
 - (F) A list of the impairments.
 - (4) Only a commercial fire alarm technician, employed by a commercial fire alarm company or the fire code official may remove the tag.
 - (5) If a Yellow Tag is placed on a fire alarm system the commercial fire alarm company shall notify the building owner or agent and the fire code official in writing of all impairments immediately or as soon as practicable, but no later than seventy-two (72) hours.
- (d) **Traffic Light Bright Red Tag (Annual inspection tag/sticker) Fire Alarm System Inoperable.** The intent of the Red Tag is to provide notification to the authority having jurisdiction of a fire alarm system that is inoperable.
- (1) The annual inspection must be conducted in accordance with NFPA testing standards and manufacturer's specifications.
 - (2) The tag shall be five inches (5") in height by four inches (4") in width and shall have a self-adhesive backing or made of colored card stock placed in a plastic sleeve.
 - (3) The tag shall bear the following information:
 - (A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL";
 - (B) The service company's name, address, and telephone number (local office);
 - (C) The service company's commercial fire alarm license number;
 - (D) The signature and license number of a commercial fire alarm technician certifying the system;
 - (E) The date the inspection was performed;
 - (F) A list of the deficiencies that render the system inoperable; and
 - (G) A list of any deficiencies present that do not render the system inoperable.
 - (4) Only a commercial fire alarm technician, employed by a commercial fire alarm company or the fire code official may remove an annual inspection tag.

(5) If a Red Tag is placed on a fire alarm system the commercial fire alarm company shall notify the building owner or agent and the fire code official in writing of all impairments immediately or as soon as practicable, but no later than twenty-four (24) hours.

[OAR Docket #20-619; filed 7-15-20]

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

[OAR Docket #20-610]

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PERMANENT final adoption

RULES:

390:1-1-4. [AMENDED]

390:1-1-14. [NEW]

AUTHORITY:

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Amendments to 390:1-1-4. Objectives of the Council Annual quarterly attendance for CLEET Advisory Council, Drug Dog Advisory Council, Bomb Dog Advisory Council, Curriculum Review Board and the Private Security Advisory Committee.

New rule to 390:1-1-14. Employee performance recognition program Pursuant to the Incentive Awards for the State Employees Act, 74 O.S. Section 4111 et seq., the Director may establish an employee performance recognition program from existing budget funds.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

390:1-1-4. Objectives of the Council

The objectives of the Council are:

(1) To raise the level of professional competence and integrity of law enforcement by:

(A) Establishing and administering minimum standards for the training and certification of law enforcement officers, to include physical, mental, and moral standards.

(B) Establishing and administering minimum curriculum and instructional standards for law enforcement training at a variety of levels.

(C) Providing these and other services to law enforcement officers as directed by law.

(D) Recommending legislation necessary to upgrade Oklahoma law enforcement to professional status.

(E) Appointing a larger Advisory Council.

(i) The Advisory Council shall be composed of seventeen (17) members who are certified full-time peace officers employed by a campus, city, county, state or federal law enforcement agency. At least one member shall be appointed from each of the ten (10) geographic CLEET training regions.

(ii) Advisory Council members shall serve for a term of three years and may be reappointed for additional terms, unless removed by the Council.

(iii) An Advisory Council member may be removed and that position declared vacant by the Council for any reason.

(iv) When a vacancy occurs on the Advisory Council, the Advisory Council shall recommend an individual to the Council for the vacant position.

(v) Annual quarterly meetings. Any Advisory Council member with more than two (2) absences from either regular or special meetings in a calendar year will be subject to review and possible removal from the Advisory Council by the Council.

(F) Appointing a Drug Dog Advisory Council.

(i) The Drug Dog Advisory Council shall be composed of members as provided in 70 O.S. Section 3311~~(L)~~(K) (2).

(ii) Drug Dog Advisory Council members shall serve for a term of three years and may be reappointed for additional terms, unless removed by the Council.

(iii) The Drug Dog Advisory Council shall meet as the business of the Drug Dog Advisory Council demands.

(iv) A Drug Dog Advisory Council member may be removed and that position declared vacant by the Council for any reason.

(v) The Drug Dog Advisory Council shall report research, recommendations and other matters related to minimum standards, educational needs, and other matters imperative to the certification of canines and canine teams trained to detect

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- controlled dangerous substances to ~~the larger Advisory Council for review prior to submission to the Council for final action.~~
- (vi) When a vacancy occurs on the Drug Dog Advisory Council, the Drug Dog Advisory Council shall recommend an individual to the Council for the vacant position.
- (vii) Annual quarterly meetings. Any DDAC member with more than two (2) absences from either regular or special meetings in a calendar year will be subject to review and possible removal from the DDAC by the Council.
- (G) Appointing a Bomb Dog Advisory Council
- (i) The Bomb Dog Advisory Council shall be composed of members as provided in 70 O.S. Section 3311~~(M)~~(L) (2).
- (ii) Bomb Dog Advisory Council members shall serve for a term of three years and may be reappointed for additional terms, unless removed by the Council.
- (iii) The Bomb Dog Advisory Council shall meet as the business of the Bomb Dog Advisory Council demands.
- (iv) A Bomb Dog Advisory Council member may be removed and that position declared vacant by the Council for any reason.
- (v) The Bomb Dog Advisory Council shall report research, recommendations and other matters related to minimum standards, educational needs, and other matters imperative to the certification of canines and canine teams trained to detect explosives, explosive materials, explosive devices, and materials which could be used to construct an explosive device to ~~the larger Advisory Council for review prior to submission to the Council for final action.~~
- (vi) When a vacancy occurs on the Bomb Dog Advisory Council, the Bomb Dog Advisory Council shall recommend an individual to the Council for the vacant position.
- (vii) Annual quarterly meetings. Any BDAC member with more than two (2) absences from either regular or special meetings in a calendar year will be subject to review and possible removal from the BDAC by the Council.
- (H) Appointing a Curriculum Review Board as provided in 70 O.S., Section 3311(B)(16). Six Annual meetings. Any CRB member with more than three (3) absences from either regular or special meetings in a calendar year will be subject to review and possible removal from the CRB by the Council.
- (I) Approve New Law Enforcement Agencies and Police Departments as provided in 70 O.S., Section 3311~~(B)~~(20).
- (J) Entities must submit the following information 60 days prior to the creation of a law enforcement agency:
- (i) the need for the agency in the community,

- (ii) the funding sources and proof that no more than fifty percent (50%) of the funding of the entity will be derived from ticket revenue and/or fines,
- (iii) the physical resources available to officers,
- (iv) the physical facilities that the law enforcement agency or police department will operate, including descriptions of the evidence room, dispatch area, restroom facilities, and public area,
- (v) law enforcement policies of the law enforcement agency or police department, including published policies on the use of force, vehicle pursuit, mental health, professional conduct of officers, domestic abuse, response to missing persons, supervision of part-time officers, and impartial policing,
- (vi) the administrative structure of the law enforcement agency or police department,
- (vii) liability insurance, and
- (viii) any other information CLEET requires by rule.
- (K) CLEET will respond within sixty (60) days of receiving the request and will forward to the entity by certified mail, return receipt requested, a letter of authorization or denial.
- (L) If denied, the entity may appeal the decision of the director or the director's designee to the full CLEET Council.
- (2) To raise the level of professional competence and integrity of the private security industry by:
- (A) Establishing and administering minimum standards for the employment of security guards and private investigators, and the establishment of private security and investigative agencies, through a licensing program based on physical, mental, and moral standards.
- (B) Establishing and supervising a validated training program for security guards and private investigators.
- (C) Enforcing the provisions for the Oklahoma Security Guard and Private Investigator Act (Title 59, Sections 1750.1 *et seq*).
- (D) Appointing an Advisory Committee comprised of representatives from security guard and investigative agencies.
- (i) The Committee shall be comprised of seven (7) representatives from licensed security guard and private investigative agencies as follows: One (1) from each quadrant of the state, one (1) at large, one (1) selected by the American Society for Industrial Security (ASIS) and one (1) selected by the Oklahoma Private Investigators Association (OPIA).
- (ii) Committee representatives shall serve for a term of three years and may be reappointed for additional terms unless removed by the Council.
- (iii) A Committee representative may be removed and that position declared vacant by the

Council for any reason including but not limited to the following:

- (I) Failure to be in good standing with their license;
- (II) Use of their appointment on the Committee for threats or perceived personal gain; or
- (III) ~~Repeated absences. Annual quarterly meetings. Any PSAC member with more than two (2) absences from either regular or special meetings in a calendar year will be subject to review and possible removal from the PSAC by the Council.~~
- (iv) When a vacancy occurs on the Advisory Committee, the Advisory Committee shall recommend an individual to the Council for the vacant position.
- (v) Committee representatives shall meet at least quarterly or more often as the business of the Committee demands.
- (vi) The Committee shall report research, recommendations and other matters related to licensure of security guards, security agencies, private investigators and private investigative agencies to the Advisory Council for review prior to submission to the Council for final action.

390:1-1-14. Employee performance recognition program

- (a) Pursuant to the Incentive Awards for State Employees Act, 74 O.S. Section 4111 et seq., the Director may, at his or her discretion, establish an employee performance recognition program from existing budget funds. Any such program shall comply with the provisions of applicable rules of the Office of Management and Enterprise Services.
- (b) Recognition awards may consist of distinctive wearing apparel, service pins, plaques, writing pens, challenge coins, or other awards.

[OAR Docket #20-610; filed 7-15-20]

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

[OAR Docket #20-611]

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390:2-1-2. [AMENDED]

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Amendments to 390:2-1-2. Denials, reprimands, suspensions, revocations, disciplinary penalties, fines

(a) Persons affected by individual actions. Added (6) Certified bomb dogs, handlers and applicants.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

390:2-1-2. Denials, reprimands, suspensions, revocations, disciplinary penalties, fines

(a) **Persons affected by individual actions.** Under the authority of 70 O.S., Section 3311 et seq.; 59 O.S., Section 1750.1 et seq.; 59 O.S., Sections 1451-1476; 20 O.S., Section 1313.2, 21 O.S., Section 1289.9 and 21 O.S. Section 1290.1 et seq., and 59 O.S. 1350.1 et seq., CLEET may take Administrative Actions against the following parties for violations of said statutes and the Rules and Regulations of CLEET:

- (1) Certified peace officers and applicants;
- (2) Basic Peace Officer Academy students and applicants;
- (3) Private security training schools and applicants;
- (4) Armed and unarmed security guards, private investigators, security agencies, investigative agencies and applicants;
- (5) Certified drug detector dogs, handlers and applicants;
- (6) Certified bomb dogs, handlers and applicants;
- (67) CLEET certified instructors for Law Enforcement;
- (78) Counties, cities and towns involved in the penalty assessment program;
- (89) Private security training instructors and applicants;
- (910) Approved SDA Firearms Instructors;
- (4011) Retired municipal, county, state and federal peace officers;

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- (~~41~~12) Certified Reserve Peace Officers and applicants;
(~~42~~13) Bail Enforcement training schools and applicants;
(~~43~~14) Bail Enforcement training instructors and applicants;
(~~44~~15) Bail Enforcement persons and applicants; and
(~~45~~16) Any other parties for which CLEET has statutory authority.
- (b) **Type of sanctions.** CLEET may take the following actions against the parties mentioned in (a) of this section:
- (1) Oral Reprimand
 - (2) Written Reprimand
 - (3) Denial
 - (4) Suspensions
 - (5) Revocation and/or
 - (6) Disciplinary penalty or fine.
- (c) **Disciplinary procedures.** In the event CLEET, or its designated agent, has determined that an action will be taken, the following procedures shall apply in accordance with the Administrative Procedures Act, Section-250, et. seq. Title 75 of the Oklahoma Statutes.
- (1) The issuance or denial of a new license or new certification is not an individual proceeding, and is not subject to review by the administrative hearing process set forth below.
 - (2) CLEET or its designated agent shall serve by certified mail, return receipt requested, or by personal delivery by an individual authorized by CLEET, a "Notice of Council Action" containing information required by 75 O.S. Section 309 et. seq., to the party at his last known residential address as reflected by the records of CLEET or current employing department or agency address if the personal address is unknown. If said letter is returned and notation of U.S. Postal Service indicates "unclaimed," "moved," "refused" or any non-delivery markings and the Council's records indicate no change of address as required by rule 390:35-5-13, and 70 O.S., §3311 the notice and any subsequent order shall be deemed served. Any order issued shall be deemed valid as if said individual or agency had been served.
 - (3) The notice shall provide that CLEET action shall commence and become effective fifteen (15) days after receipt of said notice by the party, unless the party timely files a written request for a hearing with CLEET except as follows:
 - (A) When CLEET determines that an allegation warrants immediate action, the commencement and effective date of fifteen (15) days will be waived and the action will be effective upon receipt of said notice.
 - (B) A request for hearing will be timely filed if said request is in writing and received by CLEET, its Director, or designated agent within ten (10) days of the date the party received notice.
 - (C) If a timely written request for a hearing is not received by CLEET, the allegations shall be deemed confessed by the party and the action will become final.

- (D) If the written request for hearings is timely received by CLEET, such hearings shall be scheduled within sixty (60) days from the date said request is received to be heard at the date to be determined.
- (4) The timely filing of a written request for a hearing will stay CLEET's action pending disposition of the hearing, unless the notice and allegations fall within (3)(A) of this subsection.
 - (5) The hearings will be held at a location designated by the Council.
 - (6) The hearing officer will be designated by CLEET or the Director thereof, and each party shall be afforded an opportunity to be heard and present evidence.
 - (7) The hearing will be electronically recorded and the tapes of said hearing will be preserved until all avenues of appeal have expired or been exhausted. If a party desires a court reporter, or certified stenographer, it shall be the party's burden to provide and bear the cost of said services and subsequent transcription.
 - (8) If a party fails to appear at the scheduled hearings without prior notification or good cause, the hearing officer shall default the party, and enter an order sustaining the allegations set forth in the notice and imposing the sanctions set forth therein; or if the State sustains its burden, the hearing examiner shall rule accordingly.
 - (9) If the complaining party fails to show or the state otherwise fails to prove the allegations by clear and convincing evidence, the action against the party shall be dismissed without sanctions.
 - (10) The designated hearing officer shall render a decision based upon the law and the evidence presented at the hearing.
 - (11) Each party shall be notified, in written order form, of the findings of fact and conclusions of law relating to the action.
 - (12) A party may appeal the hearing officer's decision as set forth in 75 O.S. Section 250 et. seq. of the Administrative Procedures Act.

[OAR Docket #20-611; filed 7-15-20]

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

[OAR Docket #20-612]

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Amendments to 390:10-1-7. Withdrawal, voluntary withdraw, suspension, revocation and reinstatement of certification

(a) Adding verbiage to definition of "Withdrawal".

(b) Adding Voluntary surrender.

(c) Suspension, added and CLEET rules.

(d) Added Revocation.

(e) Amended verbiage in Reinstatement and added (4) Time for reinstatement applications.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

390:10-1-7. Withdrawal, voluntary withdraw, suspension, revocation and reinstatement of certification

(a) **"Withdrawal" defined.** A withdrawal of certification is the voluntary surrender of peace officer certification by an officer that has been certified pursuant to the provisions of 70 O.S. 3311 et seq and who is the subject of an investigation into, or a pending or concluded proceeding involving, allegations of violation of any of the provisions of 70 O.S. 3311 et seq or CLEET rules. "Withdrawal" does not include the voluntary surrender of peace officer certification by an officer who is in good standing with CLEET and is not the subject of such an investigation or proceeding.

(1) An officer requesting a withdrawal of certification must notify CLEET of his or her intent in writing to voluntarily surrender peace officer certification and have his name withdrawn from the list of Oklahoma certified peace officers.

(2) If an officer is requesting withdrawal by voluntary surrender of peace officer certification based upon completed, pending or contemplated criminal proceedings, the officer must include in the notice to withdraw certification, a certified copy of the charges, sentencing agreement or other information to support the action. This would include any deferred sentencing agreement.

(3) When a request for withdrawal of certification has been received by CLEET, the supporting documents will be verified and an investigation conducted to determine the facts for the stated underlying purpose of the withdrawal of certification.

(4) CLEET will enter a Final Order of Withdrawal ~~or Surrender~~ which will include the peace officer's request to voluntarily surrender pending investigation or proceeding and/or any documentation requiring the voluntary surrender of a certification. The Final Order must be signed by the Director and must include:

(A) A statement by the officer that the withdrawal and surrender of peace officer certification is voluntary; and/or is ordered by the court.

(B) A statement of the underlying facts for the withdrawal; ~~or surrender;~~

(C) A statement that the information gathered during the investigation of the request for withdrawal or surrender may be submitted as evidence at a hearing upon the request of the officer for reinstatement of certification;

(D) A statement that the officer cannot file a request for reinstatement for a minimum of five (5) years from the date of the entry of the Final Order of Withdrawal ~~or Surrender~~.

(b) **Voluntary surrender.** A peace officer who is in good standing with CLEET and who is not the subject of an investigation into, or a pending or concluded proceeding involving, allegations of violation of any of the provisions of 70 O.S. 3311 et seq or CLEET rules, may voluntarily surrender such officer's peace officer certification.

(1) An officer wishing to voluntarily surrender certification must notify CLEET of his or her intent in writing to voluntarily surrender peace officer certification and have his or her name removed from the list of Oklahoma certified peace officers, provide a signed and notarized statement that such request is not made to avoid investigation or the outcome of a pending or concluded proceeding involving allegations of violation of any of the provisions of 70 O.S. 3311 et seq or CLEET rules, and return to CLEET his or her CLEET card.

(2) Upon receipt of the officer's written intent to voluntarily surrender and the officer's CLEET card, CLEET will enter a Final Order of Voluntary Surrender which will include the peace officer's request and statement described in subparagraph (1) above and will be signed by the Director.

(3) An officer who voluntarily surrendered his or her certification pursuant to this subsection may apply for reinstatement without regard to any particular time restriction.

(~~b~~c) **Suspension.** The certification of a peace officer may be suspended pursuant to the provisions of 70 O.S. Section 3311 et seq. and CLEET rules.

(1) If any action against a peace officer results in the suspension of peace officer certification, the suspended officer shall not engage in law enforcement activities of any type during the period of suspension. Any peace officer

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found to be engaging in law enforcement activities of any kind during the period of suspension shall be subject to revocation of peace officer certification without prior notice but otherwise subject to administrative proceedings.

(2) When permitted by law, the officer and CLEET may enter an agreement for the suspension of peace officer certification. The Agreed Final Order of Suspension must include the length of the suspension.

(3) Administrative actions involving actions against a peace officer in which suspension of peace officer certification is provided by law, shall be conducted in accordance 70 O.S. 3311, the Administrative Procedures Act, OAC 390:2-1 et. seq. and this chapter.

(4) A suspension ordered after administrative hearing shall state the term of the suspension. Unless otherwise provided by law, the Hearing Examiner may establish a reasonable length of suspension.

(d) Revocation. The certification of a peace officer may be revoked pursuant to the provisions of 70 O.S. Section 3311 et seq. and CLEET rules.

(1) If any action against a peace officer results in the revocation of peace officer certification, the revoked officer shall immediately cease to engage in law enforcement activities of any type. Any peace officer found to be engaging in law enforcement activities of any kind may be subject to additional administrative or criminal actions.

(2) Administrative actions involving actions against a peace officer in which revocation of peace officer certification is provided by law, shall be conducted in accordance 70 O.S. 3311, the Administrative Procedures Act, OAC 390:2-1 et. seq. and this chapter.

(ee) Reinstatement.

(1) After five years, an officer who has had peace officer certification withdrawn, suspended or revoked, who has voluntarily withdrawn/surrendered his or her certification, may have peace officer certification reinstated through the following procedures:

(A) The officer shall file a request for reinstatement in writing, under oath.

(B) The request shall require the applicant to furnish information reasonably required to enable the Council to determine the fitness of the applicant for certification.

(2) The request for reinstatement shall be referred to the Assistant Director for processing of the request.

(3) The request will be reviewed by the Assistant Director and General Counsel to approve or deny the request. The following factors will be considered during the review:

(A) Circumstances surrounding the withdrawal, suspension, revocation or voluntary withdrawal/surrender of certification;

(B) Successful completion of the any terms for of suspension, or voluntary withdrawal of certification;

(C) Any pending charges or actions in this state or any other state; any convictions, including verdicts of guilt or entry of pleas of guilty or nolo contendere or an "Alford" plea or any plea other than not guilty

to any felony, crime of domestic violence, or crime of moral turpitude in this state or any other state, and any final orders of protection entered against the applicant; and

(D) Activities of applicant during the period of suspension or following withdrawal, revocation, or voluntary surrender.

(4) Time for reinstatement applications:

(A) An applicant who voluntarily surrendered his or her certification while in good standing with CLEET and not the subject of an investigation into, or a pending or completed proceeding involving, allegations of violation of 70 O.S. 3311 et seq. or CLEET rules, may apply for reinstatement at any time;

(B) An applicant whose certification was suspended may apply for reinstatement upon the expiration of the suspension period;

(C) An applicant whose certification was revoked or who withdrew his or her certification while the subject of an investigation into, or a pending or completed proceeding involving, allegations of violation of 70 O.S. 3311 et seq. or CLEET rules, may apply for reinstatement after at least five (5) years have passed since the entry of the Final Order of Withdrawal or Revocation.

(D) That an applicant has waited the appropriate time period before applying for reinstatement does not guarantee that a reinstatement will be granted. Such application is subject to review as provided for in these rules.

[OAR Docket #20-612; filed 7-15-20]

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

[OAR Docket #20-613]

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Subchapter 1. Basic Academy Programs
390:15-1-13. [AMENDED]

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Subchapter 1. Basic Academy Programs

Amendments to 390:15-1-13. Academic requirements

Amending verbiage in (e), removing (f) and amending verbiage in ~~(g)~~ (f).

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. BASIC ACADEMY PROGRAMS

390:15-1-13. Academic requirements

(a) In order to successfully complete the basic academy program, trainees must achieve a minimum passing score as designated by CLEET or a higher standard if so required by an approved academy entity. All training standards and academic requirements must be completed within the time frame specified in Section 3311 of Title 70 of the Oklahoma Statutes.

(b) Any trainee who fails a specific block examination will be permitted to retake that block examination within a time frame established by CLEET.

(c) If the trainee fails the block examination a second time, the trainee's agency head may request that the trainee repeat the block of instruction and take the examination for a third time.

(d) If a trainee fails to complete any block of instruction the trainee will not be allowed to take the certification examination.

(e) Trainees who fail the certification examination will be permitted to retake the examination within ten (10) business days. A second failure will necessitate reenrollment into a basic academy. In accordance with 390:10-1-2 (d) for not completing basic certification according to 70 O.S., section 3311 (E) (4).

~~(f) When a trainee fails a proficiency test in the Custody Control block, or the Law Enforcement Driver Training block, the trainee will not be certified, and will be scheduled for up to two remedial training sessions at a later time. If the trainee does not successfully complete remedial training, no further testing will be allowed until student has retaken the entire block of instruction.~~

~~(g)~~ If the trainee fails a proficiency test in the ~~Firearms Block~~Custody Control block, the Law Enforcement Driver

~~Training block or firearms block, the trainee will not be certified, and shall be required to obtain additional firearms training through his/her employing agency; such training to be conducted by a CLEET certified firearms instructor, discipline specific, within ninety (90) calendar days of the student's original academy completion date. Upon completion of such training, the student's employing agency administrator must, within ninety (90) calendar days of the student's original academy completion date, in writing, notify the Director of CLEET or the director's designee that the student is ready to be scheduled for firearms remedial proficiency testing by CLEET firearms staff. Such testing shall be completed by allowing the student up to three (3) attempts to attain the CLEET required proficiency in firearms the skills area needed. If the trainee does not successfully complete additional remedial training testing, no further testing will be allowed until the student has retaken the entire firearms block of instruction.~~

~~(h)~~ Trainees are expected to attend all blocks of instruction. If a trainee misses any time during the academy, the trainee must state in writing the reasons for the absence.

~~(i)~~ Absences due to unforeseen emergencies, illnesses, subpoenas, or other unusual circumstances may be approved by the Training Division Manager or Assistant Director for make-up during the current academy. Each case will be reviewed to evaluate the length of time missed and the impact upon the instructional staff and class to remediate the trainee. The trainee may be required to provide documentation for excused absences such as a copy of the subpoena, doctor's statement, etc. Absences of more than five (5) hours in any training block may require the trainee to attend the entire block in the next subsequent academy.

~~(j)~~ Each applicant is required to attend all class sessions, subject to previously state exceptions. Unexcused absences or repeated tardiness requires makeup work during a current or future academy, and may result in administrative discipline. Decisions that the Training Manager or Assistant Director make, regarding attendance and makeup requirements, may be appealed to the Director.

~~(k)~~ It is mandated by the Council that all examinations, and all proficiency tests must be successfully completed to meet the requirements for peace officer certification.

~~(l)~~ If a health condition or an injury exists, prohibiting a trainee from fully participating in any block of instruction, a signed release from the trainee's physician must be submitted before the trainee will be allowed to further participate in that block.

~~(m)~~ If the trainee cannot be so released by a physician to fully participate in that block then participation is prohibited.

~~(n)~~ Approved academy entities shall establish their own requirements for academy testing, retesting, and attendance except that no academic standards shall be less than those established by CLEET in 390:15-1-13.

[OAR Docket #20-613; filed 7-15-20]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING CHAPTER 25. CONTINUING LAW ENFORCEMENT EDUCATION

[OAR Docket #20-614]

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390:25-1-8. [AMENDED]

390:25-1-10. [AMENDED]

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Amendments to 390:25-1-8. Outside law enforcement schools and seminars

(b) Amending verbiage to replace the word accreditation with cataloging.

Amendments to 390:25-1-10. Requirements for basic instructor certification Adding (b) Inactive Peace Officers.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
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DATE OF SEPTEMBER 11, 2020:**

390:25-1-8. Outside law enforcement schools and seminars

(a) Centralized peace officer training records.

(1) CLEET shall maintain a centralized depository of training records for every peace officer, reserve and full-time, which has been certified by the State of Oklahoma as either a reserve or fulltime peace officer in accordance with applicable Oklahoma statute. Schools and Seminars attended by such officers may be entered into their individual training files upon request.

(2) Local "in-service" training or informational sessions of less than one (1) hour shall not be entered.

(3) Requests for individual training record entries shall be in format approved by CLEET.

(4) Requests for training entries shall minimally contain the following documentation:

(A) The date(s), location and title of the school or seminar; and

(B) An official school Attendance Roster or electronic roster, showing the name, CLEET number, and employing agency of each full-time, certified officer in attendance; and

(C) One of the following:

(i) The name and address of the instructor(s); or

(ii) A copy of the completion or attendance certificate issued by the school, and the requesting officer's name, CLEET number, and employing agency and the authorized signature of the agency head or designee certifying attendance.

(D) Training may not be recorded when names provided on the roster or electronic record cannot be matched to CLEET records by the CLEET number or name until additional identifying information is provided.

(E) Agencies or individuals submitting rosters or electronic records shall maintain a file copy, subject to inspection, for a period of three years.

(b) Local training incentive ~~accreditation~~ cataloging.

(1) For the purposes of this sub-section, "~~ACCREDITATION~~" "~~CATALOGING~~" means that CLEET will assign a course catalog number and send a confirmation letter to the agency requesting such ~~accreditation~~ ~~cata-~~ ~~loging~~ for a lesson plan submitted by that agency. It will be the responsibility of the agency requesting ~~accredita-~~ ~~tion~~ ~~cataloging~~ to retain the lesson plan and all supporting material. All lesson plans and supporting materials on file with the agency requesting ~~an accreditation~~ ~~a~~ ~~catalog~~ number will be considered by CLEET to be copyrighted. Regarding any law enforcement concepts, practices, methods, techniques, products, or devices as might be taught, promoted, or otherwise espoused in outside schools or seminars, there is no intent, expressed or implied, that "~~ae-~~ ~~reditation~~" "~~cataloging~~" indicates or in any way conveys "CLEET approval" of such concepts, practices, methods, techniques, products, or devices, unless such approval is explicitly stated by CLEET.

(2) For the purpose of qualifying for training or educational pay increases, or for other training incentives which might be initiated by law enforcement agencies, and for which CLEET ~~accreditation~~ ~~cataloging~~ is a requisite, the rules and procedures set forth in (3) and (4) of this subsection shall apply.

(3) Requests for local training incentive ~~accredita-~~ ~~tion~~ ~~cataloging~~ for any outside school or seminar, shall be made in writing in a format approved by CLEET and shall minimally contain the following information:

- (A) A description of the subject of the school or seminar;
- (B) A resume' or summary of each known instructor's qualifications, describing his or her training and experience in the particular subject.

390:25-1-10. Requirements for basic instructor certification

(a) **Qualification.** To qualify for basic instructor certification, applicants must meet the following qualifications:

- (1) Have a minimum of two (2) years of full-time experience in law enforcement after completing the basic certification course, and be in compliance with 70 O.S., Section 3311, and
- (2) Successfully complete a CLEET recognized instructor development school, or
- (3) Possess a teaching certificate for secondary education; or
- (4) Possess an advanced degree in the field of secondary or adult education, or
- (5) Be qualified to instruct at an accredited 4-year college or university.

(b) **Inactive Peace Officers.** Any instructor who has been inactive as a peace officer for over five years shall not be allowed to use his/her Oklahoma Basic Instructor Development certification to teach CLEET courses. Instructors who are listed in an inactive status over five years must meet the requirements outlined for an adjunct instructor (390:25-1-13) if they intend to teach any CLEET course, including basic academy, reserve academy and continuing education. This provision is designed to insure students receive current subject matter expertise throughout the training.

[OAR Docket #20-614; filed 7-15-20]

**TITLE 390. COUNCIL ON LAW
ENFORCEMENT EDUCATION AND
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CHAPTER 35. REGULATION OF PRIVATE
SECURITY INDUSTRY**

[OAR Docket #20-615]

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Subchapter 5. License Requirements
390:35-5-1. [AMENDED]
390:35-5-2.1. [AMENDED]
390:35-5-3. [AMENDED]
Subchapter 7. Application Procedure
390:35-7-4. [AMENDED]
390:35-7-8. [AMENDED]
Subchapter 9. Violations and Investigations
390:35-9-1. [AMENDED]
Subchapter 15. Training Requirements
390:35-15-6. [AMENDED]
APPENDIX A. [REVOKED]
APPENDIX A. [NEW]

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Subchapter 5. License Requirements
Amendments to 390:35-5-1. Agency license requirements
Amending verbiage to (c), (d) (3) (4) (5) (6)
Amendments to 390:35-2.1. Renewals and continuing education
Amending verbiage to (a) (1) (2) (3), (5) (C) (i) (ii) (iii), (b) added (1).
Amendments to 390:35-35-3. Conditional licenses
Amending verbiage to add (e)
Subchapter 7. Application Procedure
Amendments to 390:35-7-4. Background investigation of applicants
Amending verbiage in (f) (1) (2)
Amendments to 390:35-7-8. Individual private security applicant requirements
Amending verbiage in (a) (4) (5) (6) (A) (B) (C) (7), (b), (c) and adding (r).
Subchapter 9. Violations and Investigations
Amendments to 390:35-9-1. Classifications of actions against licensees
Amending verbiage by removing ~~These investigations may result in one or more of the following classifications of actions to be taken against a licensee:~~
Amending verbiage in (a) and adding (b).
Subchapter 15. Training Requirements
Amendments to 390:35-15-6. Psychological evaluations
Amending verbiage to add (f)
Amendments to APPENDIX A. Disqualifying Convictions
Amending verbiage.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 5. LICENSE REQUIREMENTS

390:35-5-1. Agency license requirements

(a) All licensed security guard and private investigative agencies, shall maintain a place of business within the State of Oklahoma, and shall maintain an operative telephone having a published listing, in the agency name. The agency must also provide proof of published phone number in a format

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specified by CLEET. Every license issued under this chapter shall be posted conspicuously in the licensee's principal place of business in this state. The phone number shall be on file with CLEET. The office of such business may be maintained at the personal residence of the executive officer, manager, or supervisor of such office. Such notification shall include both the geographical location (street address) and the mailing address. Any changes in the above shall be submitted to CLEET in writing, with an original signature, within 10 days of the effective date of the change. Notice of change of address will not be accepted over the phone, fax or by email.

(b) The executive officer, manager, or other person in charge of supervising security guards and/or private investigators shall be a resident of the State of Oklahoma.

(1) The executive officer, manager, or other person in charge of supervising security guards in the performance of their duties shall be a licensed security guard.

(2) The executive officer, manager, or other person in charge of supervising private investigators in the performance of their duties shall be a licensed private investigator.

(c) ~~Agency licenses are not transferrable upon the sale of a company issued in the name of a corporation, limited liability company (LLC), or other non-natural person legal entity recognized by the State of Oklahoma remain with the corporation, LLC, or other non-natural person legal entity regardless of changes in ownership interests. Agency licenses issued in the name of an individual or in the name of a company which is not a corporation LLC, or other non-natural person legal entity, such as a "doing business as" (d/b/a) company, are not transferrable upon the sale of the company. Any agency licensee shall notify CLEET in writing, with an original signature, of changes in agency head, security guard and/or private investigator supervisor, and/or branch manager and such substitutes must satisfy the requirements listed in (d) of this section and be approved by CLEET. Such notices must be made within ten (10) days of any changes and will not be accepted over the phone, by fax, or by email. The Council may approve the transfer of a license to a new entity providing that one or more of the original licensees retain ownership in the new entity, and the new licensee meets the qualifications listed in (d) of this section. The licensee shall notify CLEET in writing, with an original signature, within ten (10) days of any change of identity of the licensee, or as it relates to an agency license, any of its owners, partners, directors, or in the case of a corporation, officers and registered agents (branch managers); and any substitute in the person enumerated must satisfy the requirements listed in (d) of this section; and be approved by CLEET. Notice will not be accepted over the phone, by fax, or by email.~~

(d) Every applicant for an agency license, ~~or any of its owners, partners, directors, or in the case of a corporation, LLC, or other non-natural person legal entity, the agency head, security guard and/or private investigator supervisor, and/or branch manager each officer and registered agent (branch manager),~~ shall meet the following qualifications before ~~at the agency~~ may engage in any business licensed under this chapter:

- (1) be 21 years of age;
- (2) be a citizen of the United States or a resident alien;

(3) ~~not have been convicted of a felony that substantially relates to the occupation of a security guard or private investigator and poses a reasonable threat to public safety or crimes involving moral turpitude enumerated in the Act or CLEET rules unless waived by the Council pursuant to O.S. Title 59, Section 1750.5 (H);~~

(4) ~~not have had his or her license revoked or application for such license denied by CLEET or any other state and must provide a letter of good standing from any other state previously licensed;~~

(5) ~~be of good moral character; and~~

(6) ~~in the case of a corporation, be incorporated under the laws of this state, or shall be duly qualified to do business within this state.~~

(e) Alarm Companies who respond to electrical, electronic or mechanical alarm signal devices, burglar alarms, television cameras or still cameras used to manually or automatically signal or detect burglary, fire, breaking or entering, shoplifting, pilferage, theft, or hold-up are required to be licensed as a Security Agency, and individually license employees as security guards, or armed security guards, who provide the response.

(f) Temporary employment agencies who provide guards or private investigators to its clients on a contractual basis falls within the definition of a contract security or investigative company and must be licensed pursuant to the Act.

(g) Employee leasing services who provide an administrative service only for handling the payroll, employee's salaries, and benefits, who do not make assignments, supervise or direct the work of the employee, or select the employees, but who lease the employee back to the licensed agency, do not fall within the definition of a contract security or investigative company and are not required to obtain an agency license. Licensed agencies who utilize the employee leasing services, are responsible for the duties such as reporting employments, terminations, address changes to our agency, providing appropriate liability insurance coverage, etc., as if the employee were paid by the agency.

(h) CLEET retains the right to inform an agency applicant that the Agency Name they are submitting is a duplicate too similar to an existing agency name licensed in the state.

(i) Agency licenses that have expired for a period of more than thirty (30) days must complete the entire application process. If an agency renewal application is received more than thirty (30) days after the agency license expiration date, a letter will be mailed to the Agency address of record with instructions to submit a completed new application and complete licensing fee.

390:35-5-2.1. Renewals and continuing education

(a) Continuing education training is required for renewal of an individual license.

(1) Private Investigators must complete a minimum ~~number of sixteen~~ (16) hours of continuing education training from an approved source, during the licensing period to maintain their license, pursuant to Title 59, O.S., § 1750.3.

(2) Security Guards must complete a minimum ~~number of eight~~ (8) hours of continuing education training from an

approved source, during the licensing period to maintain their pursuant to Title 59 O.S., § 1750.3.

(3) A person holding both a security guard license and private investigator license or a combination license must complete a ~~total of sixteen (16) minimum number of~~ hours of continuing education training during the licensing period to maintain their license, pursuant to Title 59, O.S., § 1750.3.

(4) Any expenses incurred for continuing education courses by any licensee shall be the responsibility of the licensee.

(5) Firearms requalification courses will not count towards mandate training. Approved sources for mandated training are:

(A) College credit hours. Fifteen hours of mandate training will be granted for each successfully completed college hour. Proof of attendance needed is a certified copy of the grade report. Requests for credit must be submitted within one (1) calendar year from the date the college credit is obtained;

(B) Established Entities (Recognized county, state, and federal associations, professional associations, vocational-technical schools). One hour of training will be granted for each hour attended in a topic which directly relates to the performance of duties under the respective license. Proof of attendance needed is a copy of a certificate, sign-in roster, electronic notification or other proof from the sponsor accepted by CLEET; or

(C) ~~CLEET Accredited~~ approved or cataloged Schools, Seminars, and Conferences. One hour of mandate training credit will be granted for each hour of instruction. For approval to conduct mandate training, sponsors must:

- (i) Submit a written request for program ~~accreditation~~ cataloging to CLEET;
- (ii) Provide ~~course outline, and~~ course information, including course objectives;
- (iii) Provide ~~Resume~~ resume for ~~Instructors~~ instructors; and
- (iv) After training, submit a roster of attendees completing the training to CLEET.

(D) Completion of training courses required for initial licensing will satisfy the continuing education requirements for the first licensing period of an initial license.

(6) Continuing education training may be reported to CLEET as it is completed or at the time of license renewal. Verification of the minimum hours of continuing education training will be made by CLEET when the licensee requests renewal. A licensee will be subject to the following disciplinary sanctions for failure to comply with the mandate training requirements:

- (A) Written Reprimand
- (B) Denial
- (C) Suspension
- (D) Revocation and/or
- (E) Disciplinary penalty or fine

(b) Renewal applications will be accepted up to thirty (30) days after the date of expiration of the applicant's license. If the renewal application is received more than thirty (30) days after the expiration date of the applicant's license, a letter will be mailed to the applicant with instructions to submit a completed new application and complete licensing fee. Continuing education will still be required even if the applicant has to submit a new application. Renewal applications will be accepted no more than sixty (60) days before the date of expiration of the applicant's license. If the renewal application is received more than sixty (60) days before the expiration date of the applicant's license, the payment received and a letter will be mailed to the applicant with instructions of when to submit a completed renewal application and licensing fee.

(c) A renewal license will be issued only after CLEET receives a completed renewal application, the renewal fee, current passport size and quality photographs, verification of current employment with a licensed Agency or verification of current insurance or bond coverage, and verification of the minimum hours of continuing education training for the license period.

(d) A licensee who has timely submitted a request for renewal with payment and has failed to meet the minimum training requirements will be mailed a letter along with a penalty citation as listed in Appendix C requiring proof of continuing education and disposition of the fine within fifteen (15) days. No license will be issued without verification of the minimum hours of continuing education and disposition of the above mentioned citation.

(e) A licensee who has failed to meet the minimum training requirements and continues to work after his/her license expiration date, will be subject to disciplinary action under Chapter 2 of this Title.

(f) If the renewal applicant is the defendant in a disqualifying charge that is pending in any court in this state, another state, tribal court, or pursuant to the United States Code, no license will be issued.

(g) If the renewal applicant is the subject of an order deferring imposition of judgment and sentence or deferred prosecution in this state or another state or pursuant to federal authority for the commission of a disqualifying offense, no license will be issued. The preclusive period shall be for five (5) years and shall begin upon final determination of the matter.

(h) Any person seeking an Oklahoma Security Guard or Private Investigators license, who has been licensed by a state whose training and standards have been deemed comparable to and approved by the Oklahoma Council on Law Enforcement Education and Training may obtain a license by reciprocity, under the following conditions:

- (1) The applicant must meet the minimum license requirement standards set forth by Oklahoma Law including fingerprint requirements. Such fingerprints requirement may be waived by CLEET where a verified records check has been made within a reasonable period of time in the context of existing law requiring fingerprint checks. The individual must also complete the "Legal Block" of Phase IV Firearms Training.

(2) The applicant must have an active license in the original licensing state, and not be subject to any administrative action regarding the active status in the licensing state. A letter of good standing must be received from the original licensing state.

(3) The applicant receiving a license by reciprocity in Oklahoma shall at all times while working as a security guard or private investigator in Oklahoma be subject to all laws regarding security guards and private investigators including all applicable fees for such license.

(4) Reciprocity may be granted only from the state in which the applicant was originally licensed and not from any intervening state by reciprocity to the original licensing state.

(5) The applicant must sign a statement of irrevocable consent that service of process, in any complaint or disciplinary action filed against the applicant, arising out of the applicant's private investigative activities in the reciprocating state, may be made by the delivery of such process on the administrator of the private investigation regulatory agency in his/her/its state of residence.

(6) An armored car employee who is primarily employed by an armored car company in another state, and is properly licensed by that state to carry a weapon while acting in the services of that company in the home state, and meets the minimum home state requirements, would be exempt from other requirements of 59 O. S. Section 1750.1 et seq. during such time as the armored vehicle from that state is actively engaged in interstate commerce within Oklahoma pursuant to 15 U.S.C. Section 5901, the "Armored Car Industry Reciprocity Act of 1993."

390:35-5-3. Conditional licenses

(a) Conditional licenses may be issued only to employees of security or investigative agencies and will only be issued for unarmed security guard applicants or unarmed private investigator applicants. Conditional licenses will NOT be issued for armed security guard applicants or armed private investigator applicants.

(b) Conditional licenses may be issued to such employees when the following requirements have been met:

(1) Receipt of an applicant's completed license application form. An application form shall be considered complete when all applicable spaces have been filled in properly, required documents have been provided, and it has been signed and notarized;

(2) Receipt of two (2) properly completed, CLEET-issued "applicant" fingerprint cards or fingerprints submitted electronically through a fingerprint system approved by CLEET;

(3) Receipt of correct license fees;

(4) Receipt of a completed OSBI records name check.

(c) Conditional licenses may be issued to an applicant one time per new application every five (5) years. This does not include renewal applications.

(d) If after a conditional license has been issued, disqualifiers are discovered or the applicant fails to respond to requests for additional information within thirty (30) days of request,

the conditional license will become null and void. The applicant and employer will be notified that the application is null and void and no further action will be taken.

(e) If, after a conditional license has been issued, the employee-employer relationship under which the application was made ceases to exist, the conditional license will become null and void. The application approval process for a security guard license will continue, however, and upon final approval a regular security guard license may issue. The application process for a private investigator becomes null and void when the employee-employer relationship ends and no further action on the application will be taken.

SUBCHAPTER 7. APPLICATION PROCEDURE

390:35-7-4. Background investigation of applicants

(a) The requirements of the Act will necessitate an investigation into the personal history, employment history, and moral character of each applicant. Local, state, and federal criminal indices will be examined in the normal processing of applications for evidence of any prior criminal record. In addition to those offenses set forth in the Statutes, convictions of crimes set forth in Appendix A of this Chapter, may be deemed as disqualifying convictions.

(b) Failure to provide the information necessary to complete this background investigation, including certified copies of final dispositions, shall preclude any further processing and shall result in denial of said application.

(c) Fingerprint cards or electronically captured fingerprints submitted by an applicant which have been rejected by the Oklahoma State Bureau of Investigation (OSBI) or Federal Bureau of Investigation (FBI), have failed to meet the statutory requirement of 59 O. S. Section 1750.6 (A)(1) for providing "classifiable fingerprints to enable the search of criminal indices for evidence of prior criminal record".

(1) Upon notice to CLEET from the OSBI or FBI that fingerprints have been rejected, CLEET shall send written notice to the applicant requesting resubmission of fingerprints.

(2) Failure to resubmit fingerprints within thirty (30) days of the request for resubmittal shall preclude any further processing and shall result in denial, suspension or revocation of any license held by the applicant.

(3) Upon the third rejection of fingerprints by the OSBI or FBI or the expiration of one-hundred-eighty days (180) days, whichever occurs first, from the original date of issuance of any license, such license shall be suspended or revoked until such time that classifiable fingerprints have been submitted and criminal history reports have been received from OSBI and FBI.

(d) An applicant shall state any and all names previously used by the applicant, and the date of any name change.

(e) An applicant shall provide information on any previous licenses held as a private security guard or private investigator, whether in this state or other state, and any previous revocations or suspensions of any such license.

(f) No license shall be issued under the following circumstances:

(1) A new license shall not be issued if a disqualifying charge is pending against the applicant in any court in this state, another state, tribal court, or pursuant to the United States Code.

(2) The A new or renewal license shall not be issued if the applicant is subject to the provisions of a deferred sentence or deferred prosecution in any court in this state, another state, tribal court, or pursuant to federal authority for the commission of any disqualifying offense. The preclusive period shall be for five (5) years and shall begin upon the final determination of the matter.

(g) An applicant who has been reported to CLEET to have been involuntarily committed at anytime, will be notified in writing of the alleged involuntary commitment along with the applicant's employer. The applicant shall provide to CLEET written notification of a psychological evaluation conducted by a licensed physician or psychologist which attests and states by affidavit that the licensee and the evaluation test data of the licensee have been examined and that, in the professional opinion of the physician or psychologist, the licensee is psychologically suitable to be a security guard or private investigator.

390:35-7-8. Individual private security applicant requirements

(a) Applicants for a License issued pursuant to Title 59, Section 1750.1 through 1750.13 must:

(1) Be a citizen of the United States or an alien legally residing in the United States and have a minimum of six (6) months legal residence documented in this state;

(2) Be at least Eighteen (18) years of age for an unarmed license and at least twenty one (21) years of age for an armed license;

(3) Proof of successful completion of the training and psychological evaluation requirements for the license applied for, and related testing, as prescribed by CLEET;

(4) Be of good moral character;

(5) Have no final victim protection orders issued in any state in which applicant is the respondent / defendant;

(6) Have no record of a felony conviction or any expungement or a deferred judgment or suspended sentence for a felony offense that substantially relates to the occupation of a security guard or private investigator and poses a reasonable threat to public safety;

(A) If the applicant is the defendant in such a felony criminal prosecution that is pending, no license will be issued until final resolution of the criminal prosecution.

(B) If the applicant is the subject of an Order Deferring Imposition of Judgment and Sentence in such a felony case, no license will be issued until completion of the deferred sentence and dismissal of the criminal prosecution without a finding of guilt.

(C) If the Applicant was convicted of a felony that substantially relates to the occupation of a security

guard or private investigator, and the sentence was completed more than five

(5) ~~fifteen~~ (15) years prior to the date of application, and the Applicant otherwise meets the licensing requirements, an Unarmed Security or Private Investigator License may be issued, but an Armed Security Guard or Armed Private Investigator License may not be issued to the Applicant if the felony involved the use of a firearm or was violent in nature. The Applicant must supply provide all documentation required by CLEET.

(7) ~~Have no record of conviction for assault or assault and battery, aggravated assault and battery, larceny, theft, false pretense, fraud, embezzlement, false impersonation of an officer, any offense involving moral turpitude, any offense involving a minor as a victim, any nonconsensual sex offense, any offense involving the possession, use, distribution, or sale of a controlled dangerous substance, any offense of driving while intoxicated or driving under the influence of intoxicating substance, any offense involving a firearm, or any other offense as prescribed by the Council.~~

(b) If an applicant was convicted of a disqualifying crime, and the sentence was completed more than five (5) years prior to the application date and the Council is convinced the offense constituted an isolated incident and the applicant has been rehabilitated, the Council may, in its discretion, waive the conviction disqualification as provided for in this paragraph and issue an unarmed Security or Private Investigator license, but shall not issue an armed Security or Private Investigator license if the offense was a felony and involved the use of a firearm, or was violent in nature, or was a felony offense other than a driving offense. The passage of five (5) years from completion of the sentence does not mean that the applicant is entitled to a license. The decision on whether the disqualifying conviction is waived is within the sole discretion of CLEET. The applicant must supply all documentation required by CLEET for consideration of a possible waiver.

(c) If it is discovered that a disqualifying conviction exists, other than one that was waived pursuant to this section, the Council shall immediately revoke or deny any license;

(d) Under oath, the applicant shall certify that the applicant has no disqualifying convictions as specified in the Private Security Licensing Act or by CLEET rule, or must disclose the disqualifying convictions and state that more than five (5) years have lapsed since the completion of the sentence for a disqualifying conviction.

(e) The applicant must provide CLEET and the Oklahoma State Bureau of Investigation with individual fingerprints for a state and national criminal history records search.

(f) The applicant must supply CLEET two (2) current individual passport - sized photographs with the completed CLEET application.

(g) The applicant must provide certified copies of all court documents showing the disposition of any criminal charges. If no certified copies are available, the applicant must provide a "no records letter" from the appropriate court. Obtaining and providing certified copies is the responsibility of the applicant.

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- (h) The applicant must state, under oath, that the applicant is not currently undergoing treatment for a mental illness, condition, or disorder.
- (i) The applicant must state, under oath, whether the applicant has ever been adjudicated incompetent or committed to a mental institution.
- (j) The applicant must state, under oath, whether the applicant has any history of illegal drug use or alcohol abuse.
- (k) Upon presentation by the Council of the name, gender, date of birth, and address of the applicant to the Department of Mental Health and Substance Abuse Services, the Department of Mental Health and Substance Abuse Services shall notify the Council within ten (10) days whether the computerized records of the Department indicate the applicant has ever been involuntarily committed to an Oklahoma state mental institution.
- (l) The applicant must state, under oath, whether the applicant has ever been charged with any misdemeanor domestic violence offense.
- (m) The applicant must provide proof of liability insurance or an individual bond in a minimum amount established by the Private Security Licensing Act.
- (n) The applicant must complete all the training requirements, and pass the appropriate examinations related to training.
- (o) The signature of the applicant on the Application shall be considered an attestation that the Applicant has read these Rules, and agrees to obey these Rules.
- (p) Private Security guard and or private investigator licenses are not transferrable.
- (q) Any changes in licensee's information shall be provided to CLEET in writing within ten (10) days of the effective date of the change. Notice of changes of Licensee information will not be accepted over the phone.
- (r) An applicant who previously voluntarily surrendered an Unarmed Security Guard, Armed Security Guard, Unarmed Private Investigator, Armed Private Investigator license, any combination license, or an Agency license shall complete all application requirements, including paying the applicable licensing fee, as if he or she is a new applicant. If said applicant was in good standing with CLEET and was not the subject of an investigation into, or a pending or completed proceeding involving, allegations of violation of the Act or CLEET rules at the time of such voluntary surrender, no particular time requirement shall be imposed before such applicant can make a new application. If such applicant voluntarily surrendered his or her license(s) while a subject of an investigation into, or a pending or completed proceeding involving, allegations of violation of the Act or CLEET rules, such applicant will not be eligible to apply for another license under the Act until five (5) years have passed from the date of such voluntary surrender.

SUBCHAPTER 9. VIOLATIONS AND INVESTIGATIONS

390:35-9-1. Classifications of actions against licensees

(a) Pursuant to the Act, CLEET shall have the responsibility and authority to investigate alleged violations of the Act and of the rules of this Chapter. ~~These investigations may result in one or more of the following classifications of actions to be taken against a licensee:~~

(b) These investigations may result in one or more of the following classifications of actions to be taken against a licensee:

- (1) Written reprimand, without probation;
- (2) Written reprimand, with probation;
- (3) Suspension of license or identification card;
- (4) Revocation of license or identification card;
- (5) Denial of license application;
- (6) Non-renewal of license;
- (7) Arrest; and/or
- (8) Disciplinary penalty or fine.

(c) A licensee may choose to voluntarily surrender his or her license(s) or identification card while subject to an investigation into, or a pending or concluded proceeding involving, allegations of violation of any of the provisions of the Act or CLEET rules. Such voluntary surrender will be treated as a revocation of said license(s) or identification card. Any licensee who voluntarily surrenders his or her license(s) or identification card under such circumstances shall not be eligible to apply for a new license under the Act until five (5) years have passed from the date of such voluntary surrender.

SUBCHAPTER 15. TRAINING REQUIREMENTS

390:35-15-6. Psychological evaluations

(a) Prior to Phase 4 "Firearms" training, all students shall be administered a Minnesota Multi-Phasic Personality Inventory (MMPI), or a CLEET approved equivalent psychological examination, by a person qualified to administer such examinations. The school coordinator shall arrange for the examinations to be evaluated by a licensed psychologist of each student's choice and at each student's expense. The results of the psychological evaluations shall be forwarded to CLEET by the evaluating psychologist on forms to be provided by CLEET.

(b) If, after evaluating this initial psychological testing instrument, an evaluating psychologist is not able to form an opinion as to whether or not an applicant is "at risk" or "capable" of exercising appropriate judgement, restraint, and self-control in the use of a firearm, the Act directs the psychologist to "employ whatever other psychological measuring instruments or techniques deemed necessary to form his professional opinion". For the purposes of this subsection, an evaluating psychologist is not necessarily obliged to find an applicant "at risk", by virtue of deficiencies in any particular area (judgement, restraint, and self-control), but may consider the applicant's psychological traits in light of all three areas in formulating his opinion. For example, the test scores may indicate that an applicant is likely to lose his temper, but he also has a strong sense of ethics; so he may not be likely to shoot someone just because he tends to get angry easily.

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

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

(e) No psychological evaluation shall be accepted as valid for the purposes of this Act when the following conditions have not been satisfied:

(1) The evaluation results may be used for up to six (6) months from the date of the evaluation; and

(2) The evaluation must have been performed for the specific purpose of evaluating an applicant's capability of exercising appropriate judgement, restraint, and self-control in the use of a firearm.

(f) No armed security guard license, armed private investigator license, armed bail enforcer license, or any other license permitting a person to carry a firearm or weapon may be issued or renewed by CLEET if the applicant has been involuntarily committed for a mental illness, condition or disorder as provided in the Act. The preclusive period shall be permanent unless the applicant has been granted relief from the disqualifying disability pursuant to 21 O.S. Section 1290.27.

APPENDIX A. DISQUALIFYING CONVICTIONS [REVOKED]

APPENDIX A. DISQUALIFYING CONVICTIONS [NEW]

In addition to those crimes specified in 59 O.S., Section 1750.1, et seq., the following is a list of additional crimes which may disqualify a person from obtaining or holding an unarmed or armed security guard license, or a private investigator license:

1. Assault and battery
2. Theft (petty or grand)
3. Larceny (petty or grand)
4. Any sex offense - involving violence or a minor
5. Any offense involving Controlled Dangerous Substances
6. Fraud
7. Extortion
8. Treason
9. Murder
10. Manslaughter
11. Shoplifting
12. Forgery
13. Arson
14. Kidnapping
15. Perjury
16. Tax Evasion
17. Unauthorized use of a Motor Vehicle
18. Conspiracy to commit one of offenses listed herein
19. Accessory after the fact to one of the offenses listed herein
20. Hijacking
21. Receiving or possession of stolen property
22. Burglary
23. Tax Fraud
24. Swindling
25. Inciting or being involved with a riot
26. Any conviction of a civil rights violation
27. Desertion
28. Escape from jail, prison, or custody
29. Resisting Arrest
30. Assault and battery upon police officer
31. False and Bogus Checks
32. Terrorist Activities
33. Assist in Suicide
34. Bigamy
35. An attempt to commit one of the above offenses.
36. Entry of a final order of protection against an applicant or licensee.

[OAR Docket #20-615; filed 7-15-20]

**TITLE 390. COUNCIL ON LAW
ENFORCEMENT EDUCATION AND
TRAINING
CHAPTER 60. REGULATING BAIL
ENFORCERS**

[OAR Docket #20-616]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
390:60-1-6. [AMENDED]
Subchapter 7. Disciplinary Actions
390:60-7-3. [AMENDED]

AUTHORITY:

Council on Law Enforcement Education and Training; 59 O.S., §§ 1301, 1303, 1327, 1328, 1329, 1332, 1332.1.1, 1350.1 through 1350.20, and 1750.1 through 1750.14; 70 O.S., §§ 3311 et seq.

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Subchapter 1. General Provisions
Amendments to 390:60-1-6. Eligibility for licensing
Amending verbiage to add (d) (1) (2).
Subchapter 7. Disciplinary Actions
Amendments to 390:60-7-3. Possible disciplinary actions against
licensees

Amending verbiage to add (b) and amend (c) (d).

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 1. GENERAL PROVISIONS

390:60-1-6. Eligibility for licensing

(a) Applicants for Bail Enforcer licenses must meet and satisfy the requirements of The Oklahoma Bail Enforcement and Licensing Act.

(b) A Sheriff, Deputy Sheriff, Police Officer, or officer of the law who is not on duty and who assists in the apprehension of a defendant is not required to be licensed as a Bail Enforcer.

(c) The following persons are not eligible for licensing as a Bail Enforcer or as a Bail Enforcement Agency.

- (1) Jailers;
- (2) Police officers;
- (3) Committing judges;
- (4) District or Municipal judges;
- (5) Prisoners;
- (6) Sheriffs, deputy sheriffs and any person having the power to arrest or having anything to do with the control of federal, state, county or municipal prisoners.
- (7) Any person who possesses a permit pursuant to the provisions of Section 163.11 of Title 37 of the Oklahoma Statutes or is an officer, director or stockholder of any corporation holding such a permit;
- (8) Any person who is an agent or owner of any establishment at which low-point beer is sold for on-premises consumption;
- (9) Any person who holds any license provided for in Section 518 of Title 37 of the Oklahoma Statutes or is an agent or officer of any such Licensee, except for an individual holding an employee license pursuant to paragraph 20 of subsection A of Section 518 of Title 37 of the Oklahoma Statutes;
- (10) Any person who holds any license or permit from any city, town, county, or other governmental subdivision for the operation of any private club at which alcoholic beverages are consumed or provided;
- (11) Any person or agent of a retail liquor package store;
- (12) Any person whose bail bondsman license has been revoked by the Insurance Commissioner;
- (13) Any person whose employment prohibits that person from being licensed as a bail bondsman;
- (14) Any district attorney, or assistant district attorney, or employee of a district attorney; and
- (15) Any employee of the Department of Corrections.

(d) A licensee who is in good standing with CLEET and who is not subject to an investigation into, or a pending or concluded proceeding involving, allegations of violation of any of the provisions of the Act or CLEET rules, may voluntarily surrender his or her license by doing the following:

- (1) A licensee wishing to voluntarily surrender his or her license must notify CLEET of his or her intent in writing, provide a signed and notarized statement that such request is not made to avoid investigation or the outcome of a pending or concluded proceeding involving allegations of violation of any of the provisions of the Act or CLEET rules, and return to CLEET his or her CLEET license and identification card.
- (2) Upon receipt of the licensee's written intent to voluntarily surrender and the licensee's CLEET license and identification card, CLEET will enter a Final Order of Voluntary Surrender which will include the licensee's request and statement described in subparagraph (1) above and will be signed by the Director.

SUBCHAPTER 7. DISCIPLINARY ACTIONS

390:60-7-3. Possible disciplinary actions against licensees

(a) Pursuant to the Act, CLEET shall have the responsibility and authority to investigate alleged violations of the Act and of the Rules of this Chapter. These investigations may result in one or more of the following classifications of actions to be taken against a Licensee:

- (1) Written reprimand, without probation;
- (2) Written reprimand, with probation;
- (3) Suspension of license;
- (4) Revocation of license;
- (5) Denial of license application;
- (6) Non-renewal of license;
- (7) Arrest; and/or
- (8) Disciplinary penalty or fine found in Appendix B of this Chapter.

(b) A licensee may choose to voluntarily surrender his or her license while subject to an investigation into, or a pending or concluded proceeding involving, allegations of violation of any of the provisions of the Act or CLEET rules. Such voluntary surrender will be treated as a revocation of said license. Any licensee who voluntarily surrenders his or her license under such circumstances shall not be eligible to be reinstated.

(bc) The following, in addition to all other laws, Rules and regulations shall constitute unacceptable practices for licensed Bail Enforcers possibly subjecting the violator(s) to administrative actions.

- (1) Failure to provide written reports/summaries of activities to clients, when requested.
 - (2) Providing false or misleading information to a client, or to CLEET.
 - (3) Giving false statements, oral, written or otherwise to any member of the CLEET staff or any law enforcement officer in this state.
 - (4) Failing to maintain good moral character.
- (ed) Complaints of violations subject to investigation may be made in person, by telephone, or in writing to CLEET.

[OAR Docket #20-616; filed 7-15-20]

TITLE 405. OKLAHOMA DEPARTMENT OF LIBRARIES CHAPTER 10. PUBLIC LIBRARY SYSTEMS

[OAR Docket #20-481]

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RULES:

Subchapter 5. Library System Reporting and Development
405:10-5-2 [AMENDED]

AUTHORITY:

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n/a

GIST/ANALYSIS:

The purpose of the amendment to OAC 405:10-5-2 Annual Audit and Inventory is to raise the dollar amount of the cost of equipment, from \$100 to \$1,000, which must be included in the inventory of a Library System.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 5. LIBRARY SYSTEM REPORTING AND DEVELOPMENT

405:10-5-2. Annual audit and inventory

An annual audit for each public library system prepared by an independent certified public accountant following accepted auditing standards shall be filed with the Board of the Oklahoma Department of Libraries within ninety (90) days following the close of the fiscal year. The system shall maintain an inventory record of equipment costing more than ~~\$100~~\$1,000 per unit.

[OAR Docket #20-481; filed 6-29-20]

TITLE 405. OKLAHOMA DEPARTMENT OF LIBRARIES CHAPTER 30. DISTRIBUTION OF MAILING LABELS [REVOKED]

[OAR Docket #20-482]

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RULES:

405:30-1-1 [REVOKED]

405:30-1-2 [REVOKED]

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n/a

GIST/ANALYSIS:

The purpose of the change is to revoke sections related to services the Department no longer provides. The Department no longer provides mailing labels prepared from automated mailing lists to non-profit groups for library educational purposes.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

405:30-1-1. Purpose [REVOKED]

This Chapter details the policies regarding production and distribution of Department generated mailing labels.

405:30-1-2. Mailing label distribution [REVOKED]

(a) It shall be the policy of the Oklahoma Department of Libraries to provide mailing labels produced from our automated mailing lists only to non-profit libraries, library associations or their sub-sections, and other non-profit groups for library educational purposes.

(b) Eligible groups, as described by (a) of this Section, shall be charged on an at cost basis for mailing labels.

[OAR Docket #20-482; filed 6-29-20]

**TITLE 405. OKLAHOMA DEPARTMENT OF LIBRARIES
CHAPTER 35. FEES**

[OAR Docket #20-483]

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GIST/ANALYSIS:

The purpose of the change to Title 405 Chapter 35 Fees is to revoke sections related to fees for services the Department no longer provides. For example, the Department no longer provides print copies of certain publications, such as the Oklahoma Almanac or Bureau of Land Management publications because they are available at no charge online. The Department no longer provides mailing labels or the Oklahoma Union List of Serials. The Department no longer contracts with state agencies for online legal research services.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

405:35-1-2. Fee schedule

(a) **Photocopy or computer print out.** The following fees shall be charged for photocopying and computer print outs:

- (1) In-house paper to paper photocopy or computer print out - \$.10 per copy.
- (2) In-house staff assisted paper to paper - \$.25 per copy.
- (3) Mailed paper to paper - \$.25 per copy and \$1.00 handling fee (\$2.50 minimum)
- (4) In-house large format - \$1.50 per copy.
- (5) Mailed large format - \$1.50 per copy and \$1.00 handling fee (\$2.50 minimum).
- ~~(6) In-house Bureau of Land Management - \$1.50 per copy.~~
- ~~(7) Mailed Bureau of Land Management - \$1.50 per copy and \$1.00 handling fee (\$2.50 minimum).~~
- ~~(8) In-house corner records - \$.25 per copy.~~
- ~~(9) Mailed corner records - \$.25 per copy (\$2.50 minimum).~~
- ~~(10) Color copies:~~
 - (A) 8 1/2" x 11" and 8 1/2" x 14" - \$1.50 per copy.
 - (B) Larger than 8 1/2" x 11" and 8 1/2" and 14" - \$2.50 per copy.
- (9) Microfilm and microfiche to paper - \$.30 per copy.

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(b) ~~Microfilm.~~ The following fees shall be charged for microfilming:

(1) ~~Film to film—Fee based on film size, footage and service.~~

(2) ~~Film to paper—\$.30 per copy.~~

(c) ~~Microfiche.~~ The following fees shall be charged for microfiche:

(1) ~~Fiche to fiche—\$.50 first copy, \$.25 each additional copy.~~

(2) ~~Fiche to paper—\$.30 per copy.~~

(db) **FAX.** The following fees shall be charged for FAX:

(1) \$1.00 first page.

(2) \$0.25 each additional page.

(e) ~~The following fees shall be charged for online legal research, (e.g. LEXIS/NEXIS and Westlaw database searching):~~

(1) ~~State agencies contracting with the ODL for online legal research service are billed at the contract amount. Any charges outside the contract will be billed at the amount charged by the service provider plus 10%.~~

(2) ~~Non-contracting state agencies will be billed for online legal research in the amount charged by the service provider plus 10%.~~

(3) ~~Online legal research performed by library staff for the public will be billed at \$4.00 for the initial search and \$4.00 each for every modification thereof.~~

(f) ~~Mailing labels.~~ The fee for mailing labels shall be \$.05 each.

(g) ~~Publications.~~ The following fees shall apply to the following publications:

(1) ~~Oklahoma Almanac \$15.00 each + shipping.~~

(2) ~~ABC—free + shipping~~

(hc) **Lost book replacement.** The following fees shall be charged for replacement of lost books:

(1) In-print - Actual cost plus \$45.00 processing.

(2) Out-of-print - Average cost plus \$45.00 processing.

(i) ~~Oklahoma Union List of Serials.~~ Fee based upon budget of the user library.

(jd) **Search Fee.** The direct cost of a search, when allowed in accordance with 51 O.S. § 24.A.5, Paragraph 3, will be calculated at a rate of fifteen dollars (\$15.00) per hour.

(ke) **Public Land Survey Corner Record Filing Fee.** As allowed in accordance with 65 O.S. § 3-120(c), a \$5.00 fee is required for the filing of each public land survey corner record. The fee is payable to the Oklahoma Department of Libraries and shall be due and paid when the record is submitted to the Oklahoma Department of Libraries for filing. The Department shall make no refunds of filing fees for records filed in error.

[OAR Docket #20-483; filed 6-29-20]

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 10. PHYSICIANS AND SURGEONS

[OAR Docket #20-631]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 13. Supervision of Physician Assistants and Advanced Practice Nurse-Nurses with Prescriptive Authority
435:10-13-1. Purpose [AMENDED]

435:10-13-2. Eligibility to supervise physician assistants and advanced practice nurse-nurses with prescriptive authority [AMENDED]

AUTHORITY:

Title 59 O.S. §§ 567.1 et seq and §§ 519 et seq; Oklahoma Board of Medical Licensure and Supervision

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

April 4, 2019

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APPROVED BY GOVERNOR'S DECLARATION:

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will allow a physician to supervise up to six (6) advanced practice nurses and/or physician assistants in any combination. The Medical Board believes this revision of supervision will assist in easing the shortage of healthcare practitioners in Oklahoma's rural areas

CONTACT PERSON:

Barbara J. Smith, Executive Secretary, Oklahoma State Board of Medical Licensure and Supervision, 101 NE 51st Street, Oklahoma City, Oklahoma 73105, (405) 962-1422, bsmith@okmedicalboard.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 13. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSE-NURSES WITH PRESCRIPTIVE AUTHORITY

435:10-13-1. Purpose

The purpose of this Subchapter is to set forth the requirements for allopathic physicians to supervise ~~the~~ physician assistants pursuant to 59 O.S., §519 et seq., and advanced

practice ~~nurse~~nurses with prescriptive authority pursuant to 59 O.S., §567.1 et seq.

435:10-13-2. Eligibility to supervise physician assistants and advanced practice ~~nurse~~nurses with prescriptive authority

(a) To be eligible to serve as supervising physician for ~~the physician assistants and/or advanced practice nurse~~nurses with prescriptive authority, an allopathic physician shall meet the following criteria:

(1) Have possession of a full and unrestricted Oklahoma medical license with Drug Enforcement Agency (DEA) and Oklahoma Bureau of Narcotics (OBN) permits for any drug on the formulary as defined in the Physician Assistant Practice Act and the Oklahoma Nursing Practice Act.

(2) The physician shall be in an active clinical practice in which no less than twenty (20) hours per week shall involve direct patient contact.

(3) The supervising physician shall be trained and fully qualified in the field of the physician assistant's and/or advanced practice nurse's specialty.

(4) No physician shall supervise more than ~~two (2) a total of six (6) full-time equivalent physician assistants and/or advanced practice nurses regarding their prescriptive authority advanced practice nurses regarding their prescriptive authority at any one time. For purposes of this section, each "full-time equivalent" advanced practice nurse position equals forty (40) hours per week collectively worked by the part-time advanced practice nurses being supervised by the physician. Notwithstanding the provisions for the supervision of two (2) full-time equivalent advanced practice nurses above, no physician shall supervise more than a total of four (4) advanced practice nurses.~~ The Board may make an exception to any limit set herein upon request by the physician.

(b) Proper physician supervision of the advanced practice nurse with prescriptive authority is essential. The supervising physician should regularly and routinely review the prescriptive practices and patterns of the advanced practice nurse with prescriptive authority. Supervision implies that there is appropriate referral, consultation, and collaboration between the advanced practice nurse and the supervising physician.

[OAR Docket #20-631; filed 7-17-20]

**TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION
CHAPTER 15. PHYSICIAN ASSISTANTS**

[OAR Docket #20-632]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Licensure of Physician Assistants

435:15-3-13. Supervising physician; alternatives [AMENDED]

AUTHORITY:

Title 59 O.S. §§ 519 et seq; Oklahoma Board of Medical Licensure and Supervision

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Approved by Governor's declaration on June 25, 2020

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will allow a physician to supervise up to six (6) advanced practice nurses and/or physician assistants in any combination. The Medical Board believes this revision of supervision will assist in easing the shortage of healthcare practitioners in Oklahoma's rural areas.

CONTACT PERSON:

Barbara J. Smith, Executive Secretary, Oklahoma State Board of Medical Licensure and Supervision, 101 NE 51st Street, Oklahoma City, Oklahoma 73105, (405) 962-1422, bsmith@okmedicalboard.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 3. LICENSURE OF PHYSICIAN ASSISTANTS

435:15-3-13. Supervising physician; alternatives

(a) Qualifications.

(1) Pursuant to 59 O.S. § 519.2, a supervising physician must be licensed as a physician by either the:

(A) State Board of Medical Licensure and Supervision, or

(B) State Board of Osteopathic Examiners.

(2) A license under subsection (a)(1) must be unrestricted.

(3) The board may waive the requirement under (a)(2) if the board determines the restriction will not impede the ability of the supervising physician to supervise a physician assistant.

(b) **Review.** A supervising physician shall review the care provided to each patient receiving health care services by a physician assistant with a temporarily approved license.

(c) Physician assistants supervised.

(1) A supervising physician shall not serve as the supervising physician for more than ~~four (4) physician~~

~~assistants practicing a total of six (6) physician assistants and/or advanced practice nurses regarding their prescriptive authority at any one time.~~

(2) Subsection (c)(1) shall not apply to a supervising physician who is a medical director or supervising physician of a state institution, correctional facility, or hospital.

(3) On the request of an applicant or supervising physician, the board may waive the requirement under subsection (c)(1).

(d) A physician assistant may have more than one (1) supervising physician.

(e) **Alternate supervising physician.** The duties of a primary supervising physician may be delegated to an alternate supervising physician that:

(1) Meets the requirements of this section 435:15-3-13; and

(2) Has a practice that is reasonably similar to the primary supervising physician.

[OAR Docket #20-632; filed 7-17-20]

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 20. PHYSICAL THERAPISTS AND ASSISTANTS

[OAR Docket #20-635]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. ~~Continuing Education~~ Professional Development

435:20-9-1. Definitions [AMENDED]

435:20-9-2. ~~Continuing education~~ Professional development requirements for renewal [AMENDED]

435:20-9-3. ~~Continuing education~~ Professional development categories [AMENDED]

435:20-9-3.1. Approval of providers [NEW]

435:20-9-4. Guidelines for the audit process [AMENDED]

AUTHORITY:

Title 59 O.S. §§ 887.1 et seq; Oklahoma Board of Medical Licensure and Supervision

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions realign the Physical Therapy administrative rules with national trend in the physical therapy profession moving from continuing education and competency to professional development, and they provide for and clarify certain definitions related to professional development. The revisions also set forth a process wherein certain organizations' programs may automatically qualify as professional development. While the current rules separate continuing education and competency into two categories, the revisions eliminate these categories and instead distinguish between synchronous, asynchronous, and other educational and competency opportunities. The methods for earning professional development units have also been significantly expanded.

CONTACT PERSON:

Barbara J. Smith, Executive Secretary, Oklahoma State Board of Medical Licensure and Supervision, 101 NE 51st Street, Oklahoma City, Oklahoma 73105, (405) 962-1422, bsmith@okmedicalboard.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 9. ~~CONTINUING EDUCATION~~ PROFESSIONAL DEVELOPMENT

435:20-9-1. Definitions

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

"Activities" means activities that a licensee participates in to either assess his/her competence or to develop competency. An activity is assigned a value toward meeting professional development requirements.

"APTA" means the American Physical Therapy Association.

"Asynchronous instruction" means instructional interaction whereby instructional delivery and learner participation occurs other than simultaneously, offering either a delayed opportunity or no opportunity for instructional feedback.

"Board" means the Board of Medical Licensure and Supervision.

"Clinical practice" means physical therapy consultation or patient care or client management or the supervision thereof.

"Committee" means the Physical Therapy Advisory Committee.

"Compliance period" means the ~~initial compliance period from February 1, 1998 through January 31, 2000 and each successive two calendar year period from January 1, 2000 to December 31, 2002~~ initial compliance period starting on February 1, 2022 through January 31, 2024.

"Competence" means the application of knowledge, skills, and behaviors required to function effectively, safely, ethically and legally within the context of the patient/client's role and environment.

"Continuing competence" means the lifelong process of maintaining and documenting competence through ongoing self-assessment, development, and implementation of a personal learning plan, and subsequent reassessment.

"**Continuing education**" means those appropriate learning experiences physical therapists and physical therapist assistants undertake to expand their scope of knowledge beyond the basic preparation for the profession of physical therapy and these experiences should be referenced to one of four areas: administration, education, patient care, or research.

"**Documentation**" means evidence of completion of continuing education and competence activities.

"**FSBPT**" means the Federation of State Boards of Physical Therapy.

"**IACET**" means the International Association for Continuing Education and Training.

"**Jurisprudence assessment**" means an outline set of questions concerning the Oklahoma Physical Therapy Practice Act, Board rules, and Position Statement posted on the Board's website at www.okmedicalboard.org.

"**Licensee**" means a Physical Therapist or Physical Therapist Assistant licensed in Oklahoma.

"**One (1) contact hour**" means one sixty (60) minute instructional period.

"**One (1) Continuing Education Unit or CEU**" means ten (10) contact hours.

"**OPTA**" means the Oklahoma Physical Therapy Association.

"**Pre-approval**" means the continuing education professional development experience has received approval prior to the end of the compliance period.

"**Professional development**" means the fusion of continuing competence and continuing education, which demonstrates and evidences a licensee's ability and knowledge to practice physical therapy consistent with the requirements of Oklahoma law and the standards of the physical therapy profession.

"**Professional Development Unit or PDU**" means one contact hour (60 minutes) of continuing education coursework or an approved PDU activity (detailed in section 435:20-9d)

"**Provider**" means an entity that has been approved by the Board to provide professional development activities for licensees as provided in the rules of this section.

"**Synchronous instruction**" means instructional interaction conducted in real time where the instructional delivery and learner participation occurs concurrently with an immediate opportunity for instructional feedback.

435:20-9-2. **Continuing education Professional development requirements for renewal**

(a) Beginning with the renewal period ending January 31, 2000 and every two years thereafter, the applicant for renewal of licensure shall sign a statement indicating whether or not continuing education professional development requirements have been fulfilled for the preceding two-year period.

(b) Effective February 1, 2004, 2022 and every two years thereafter, physical therapists will be required to show proof of forty (40) approved contact hours and/or PDU equivalent and Physical Therapist Assistants will be required to show proof of thirty (30) approved contact hours and/or PDU equivalent.

(1) At least half of the required hours must be Category A as set out in subsection 435:20-9-3(b) except as

~~provided in 435:20-9-3(a)(3) professional development coursework.~~

(2) Three of the required hours must contain ethics education that includes the APTA Guide for Professional Conduct and the APTA Code of Ethics.

(3) No ~~continuing education~~ professional development hours may be carried over from one compliance period to another.

(c) Any applicant for renewal who cannot meet the requirements for ~~continuing education~~ professional development may not renew until deficient ~~hours~~ professional development units (PDUs) are obtained and verified. Additionally, within the next compliance period the licensee will be required to obtain double the required ~~hours~~ units of approved ~~continuing education~~ PDUs. ~~At least half of the required hours must be Category A. Proof of meeting the additional requirements, as verified by an audit, will be required in order to renew at the end of the next compliance period. Failure to meet these additional requirements will result in disciplinary action.~~

(d) Each licensee is responsible for maintaining evidence/proof/record of participation in a ~~continuing education~~ professional development experience for a minimum of four years, ~~two compliance periods~~. Copies of such proof shall be submitted to the Board upon request. Such proof shall include:

- (1) date, place, course title, schedule, presenter(s), etc.,
- (2) number of contact hours/PDUs for the activity,
- (3) proof of completion, such as abstracts, certificates of attendance, or other certification of completion.

(e) Any physical therapist or physical therapist assistant initially licensed in Oklahoma during the second year of a ~~an accounting~~ compliance period shall be exempt from the ~~continuing education~~ professional development requirements for that first renewal period.

(f) The Physical Therapy Committee shall conduct random audits of the ~~continuing education~~ professional development records of the number of licensees that time and resources permit. The Physical Therapy Committee may appoint a sub-committee to review audits and requests for approval of ~~continuing education~~ professional development experiences and make recommendations to the Physical Therapy Committee for disposition.

(g) Penalties for failure to comply with ~~continuing education~~ professional development requirements may be assessed after notice and hearing as required by law. Penalties may include imposition of additional ~~PDU~~ ~~continuing education~~ contact hours, probation of license, suspension of license, or revocation of license.

(h) Failure to maintain records of ~~professional development~~ ~~continuing education~~ rebuts the presumption that ~~continuing education~~ professional development requirements have been completed.

(i) Misrepresenting compliance with ~~continuing education~~ professional development requirements constitutes a fraudulent application.

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435:20-9-3. ~~Continuing education Professional development categories~~

(a) ~~Approval for continuing education professional development activities~~

(1) To receive initial approval for a ~~continuing education professional development~~ offering of either category, submission of an Application for Approval of ~~Continuing Physical Therapy Education~~ Physical Therapy Professional Development form is required. The application must include the following information:

(A) Course title with an abstract, summary or course syllabus and sufficient evidence demonstrating relevancy, recency and consistency with current practice.

(B) A program agenda complete with a breakdown of all time spent in instructional and non-instructional periods to include ~~break time, meals, etc.~~ (Contact hours/PDU will be awarded for instructional hours only.) (If a course is six hours or longer, the agenda must include at least a 30 minute lunch ~~and two 15 minute breaks.~~)

(C) The course or program's goals and objectives sufficient to provide information for evaluation of relevance and practical application to the field of physical therapy beyond basic preparation of the licensee. If basic information is needed, the licensee will complete the professional self-reflection form to demonstrate current knowledge and competency of the topic and rationale as to why this course should be approved.

(D) Documentation of instructor background/expertise relevant to the field of physical therapy.

(E) Location of the program, including the address, city, state, and zip, or Internet site.

(F) Contact name, phone number and address of course sponsors or publishers.

(G) Specific date(s) of course participation.

(H) Method of certifying attendance and ~~contact instructional hours.~~ (Adjustment of ~~contact hours~~ PDU awarded may occur within the approval process.)

(2) Individual participants are responsible for maintaining these records.

(3) Physical therapists and physical therapist assistants working less than 250 hours per year may ~~request permission from the to earn all contact hours from Category B and/or Category C~~ submit a request for a lesser professional development requirement.

(4) Pre-approval is required for guaranteed credit ~~under either Category.~~

(b) ~~Category A Synchronous educational professional development opportunities.~~ At least half of the required contact hours must be acquired from Category A.

(1) Synchronous education - ~~Attendance at a synchronous education course with real time interaction between the course instructor and physical therapists or physical therapist assistants, with opportunity for~~

~~immediate feedback~~ Real time participation in a course, workshop or conference.

(2) Presentation of program - A licensee who presents an original ~~continuing education~~ professional development program targeted towards peers and other health care professionals may receive ~~continuing education~~ professional development credit ~~once per compliance period of 1.5 PDU per contact hour of instruction for the first presentation of this original material. No additional PDU for subsequent presentations within the compliance period.~~

(3) Post Graduate Studies - Successful completion of post graduate education course work related to physical therapy will be awarded ~~continuing education~~ professional development credit of up to 16 ~~contact hours~~ PDU for each college credit ~~hour~~ course based on credit hours, syllabus, and learning objectives.

(c) **Asynchronous educational and competence opportunities.** For licensees participating in a non-interactive course offered by videotape, satellite transmission, webcast, DVD, or other electronic media, one hour of participation earns one PDU. This method must include a post-test proficiency assessment in order to be accepted.

(ed) ~~Category B—other~~ Other professional development activities.

(1) Opportunities under Category B continuing education include:

(A1) Publication - Writing for professional publication may be awarded ~~continuing education professional development~~ credit. ~~Actual number of contact hours CECU granted will be determined by the Committee.~~ Acceptance for publication must occur within the current compliance period. Contact hours will not be approved for repeat publication of the same material. Licensee must present copy of published material to receive credit.

(iA) Each published paper/book and/or chapter/or case study ~~may will~~ receive a ~~maximum of fifteen (15) contact hours~~ PDUs.

(iB) Each published book review ~~may will~~ receive a ~~maximum of ten (10) contact hours~~ PDUs.

(B2) Study groups - A series of ~~synchronous or asynchronous~~ meetings designed for intense study in a physical therapy related topic. A minimum of four participants and four hours of participation are required for ~~continuing education~~ professional development eligibility. Those seeking approval for a group study project shall submit a full description including an outline of the topics and subtopics, references, or copies of the printed materials, a time and place of study, the methods to be used, the number of hours of credit sought, and any other information relevant to the evaluation of the proposed projects. The maximum number of PDUs of this type allowed during a compliance period is 12.

(3) Collaboration with educational programs:

(A) Supervising Physical Therapist or Physical Therapist Assistant students as a clinical instructor.

(i) Continuous direct supervision of students and/or candidates for licensure can earn up to 10 PDUs in this category in a compliance period.

- Forty (40) hours of direct supervision will earn one (1) PDU regardless of the number of students and/or candidates for licensure being supervised.
- (ii) The licensee shall submit materials listing the licensee as a clinical instructor with the name of the school/program and the length of time of clinical placement.
- (B) Presentations as a guest lecturer for Physical Therapist and Physical Therapist Assistant Programs earns 2 PDU for the first presentation of original material, up to 4 PDU for two presentations of original material in a compliance period. No additional PDU for subsequent presentation may be earned within a compliance period. The licensee shall submit materials including: syllabus, curriculum vitae demonstrating expertise, statement of objectives, and strength of evidence demonstrating references used within last 5 years.
- (4) Research/Publication/Presentations
- (A) Publication:
- (i) Authorship or co-authorship of a book relating to physical therapy earns up to fifteen (15) PDU in a compliance period.
- (ii) The licensee must present a copy of published material to receive credit.
- (B) Research (published only):
- (i) Principal or co-investigator, project director, or research assistant earns five (5) PDU, up to ten (10) PDU in a compliance period, provided a licensee may only earn five (5) PDU for one original publication.
- (ii) The licensee shall submit research proposal/abstract, final results and a summary of the licensee's involvement.
- (C) Presentations at professional workshops, seminars, conferences related to physical therapy earns 1.5 PDU per contact hour of instruction for the first presentation of original materials. A licensee may not earn additional PDU for subsequent presentations of the same materials within the compliance period. The licensee shall submit materials including: brochures or program, curriculum vitae demonstrating expertise, a statement of objectives and strength of evidence demonstrating references used within last 5 years.
- (5) Advanced Training:
- (A) Specialty certification. Achievement of an APTA or APTA Section-recognized specialty certification related to physical therapy/Advanced Proficiency for PTA will be awarded ten (10) PDU for initial certification and five (5) PDU for recertification. Credit will be granted for certification obtained with the compliance period in which the certification was granted. The licensee shall submit proof of certification for PDU determination.
- (B) Residences/Fellowships. For fellowships conferred by organizations credentialed by APTA in a specialty area of the practice of physical therapy, ten
- (10) PDU shall be awarded for each full year of clinical participation up to a maximum of twenty (20) PDU per compliance period for this activity.
- (i) The licensee shall submit the certificate conferred on the licensee or evidence that all requirements of the fellowship program have been met.
- (ii) For completion of a residency program in physical therapy offered by an APTA credentialed organization, ten (10) PDU shall be awarded for each full year of clinical participation, up to a maximum of twenty (20) PDU per compliance period for this activity.
- (iii) The licensee shall submit the certificate conferred on the licensee or evidence that all requirements of the fellowship program have been met.
- (6) Physical Therapy organizations
- (A) Participation in the national physical therapy or multidisciplinary organization that includes physical therapy:
- (i) Participation as a board member, committee chair, task force member or delegate to a national assembly earns five (5) PDU per position for a maximum of ten (10) PDU.
- (ii) The licensee shall submit materials documenting the licensee as a participant (for example minutes) as well as a description of the position and a summary of the licensee's involvement.
- (B) Participation in a state physical therapy or multidisciplinary organization that includes physical therapy:
- (i) Participation as a voting board member or committee chair earns five (5) PDU per position for a maximum of ten (10) PDU in a compliance period.
- (ii) The licensee shall submit materials listing the licensee as a participant (for example minutes) as well as a description of the position and a summary of the licensee's involvement.
- (C) Participation in a regional or district physical therapy or multidisciplinary organization that includes physical therapy:
- (i) Participation as a district officer earns two (2) PDU per position for a maximum of four (4) PDU in a compliance period.
- (ii) The licensee shall submit materials listing the licensee as a participant (for example minutes) as well as a description of the position and a summary of the licensee's involvement.
- (D) Membership in the APTA for one year earns one PDU, up to two PDU in a compliance period.
- (i) The licensee shall submit membership card or certificate for each year of the compliance period.
- (ii) Membership in an APTA section for one year earns one half PDU, up to one PDU in a compliance period. Additional PDU are not awarded

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for membership in more than one section. Section membership is validated by membership card.

~~(C) Individualized instruction—This includes home study or Internet courses relating to physical therapy practice extending beyond basic preparation of the licensee. In order to count any individualized instruction toward Category B hours, the licensee must submit proof of a passing score on a post test and a certificate of completion.~~

~~(D) Learning opportunities not listed above may be considered for continuing education professional development credit, but will require pre-approval if submitted by the requested deadline.~~

~~(E) Activities—Learning opportunities not accepted include but are not limited to: Examples of activities that will not be accepted include but are not limited to:~~

- (i) Regularly scheduled education opportunities provided within an institution, such as: rounds or on-the-job required in-service training such as CPR, blood-borne pathogens, equipment or procedural updates.
- (ii) Staff meetings.
- (iii) Meetings, workshops or seminars held by personnel with less medical training than registered physical therapists or physical therapist assistants.
- (iv) Publications for the lay public.
- (v) Presentations to lay groups and non-professionals.
- (vi) Teaching personnel, students or staff within one's job requirement.
- ~~(vii) Non-educational meetings, entertainment or recreational activities at professional meetings.~~
- ~~(viii) APTA, chapter or section offices or committee appointment.~~

~~(d) Category C.—Federation of State Boards of Physical Therapy's Practice Review Tool. Actual number of contact hours granted will be determined by the Committee. Pre approval required for credit.~~

435:20-9-3.1. Approval of providers

(a) The Board shall approve a provider if it is satisfied that the provider's programs have met the standard set forth in 435:20-9-4(a) of this section.

(b) Once a provider is approved, the professional development activities offered by that organization are approved for credit and no application must be made to the Board for approval.

(c) The provider must submit the course information to the Board for posting on the Board website.

(d) The following organizations are considered approved providers:

- (1) Any agency or board responsible for licensing individuals to practice physical therapy in the United States or Canada.

(2) The American Physical Therapy Association (APTA), including any Sections, Academies, credentialed residencies and fellowships and its accrediting subsidiaries.

(3) State Chapters of APTA.

(4) The Federation of State Boards of Physical Therapy (FSBPT) and any accrediting subsidiary.

(5) The International Association for Continuing Education and Training (IACET).

(6) Any providers approved or accredited by the agencies or organizations listed in subparagraphs (1) through (5) of this paragraph.

(7) Physical therapist and physical therapist assistant programs approved by an agency recognized by either the U.S. Department of Education or the Council on Postsecondary Accreditation.

435:20-9-4. Guidelines for the audit process

(a) The Physical Therapy Committee will, each compliance period, randomly or for cause select licensees for verification that all ~~continuing education professional development~~ requirements have been met.

(b) Those being audited will receive notification and have thirty (30) calendar days from the date of the letter of notification date of the correspondence to submit proof of ~~continuing education professional development~~ to the Committee.

(c) The Physical Therapy Committee or its appointed sub-committee shall review the documentation of each individual for compliance with established ~~continuing education professional development~~ standards.

(d) Those found to be in compliance shall be notified.

(e) Those found not to be in compliance shall be notified, by certified mail, within five (5) working days following the determination of non-compliance. They will be given specific information concerning areas of deficiency, what further information is needed to bring them into compliance, given opportunity to submit additional documentation and/or appear in person at the next Physical Therapy Committee meeting.

(f) A summarized report shall be submitted to the Physical Therapy Committee listing the names of those audited who are in compliance with ~~continuing education professional development~~ requirements. Those not in compliance shall be listed with notation of deficiencies found and/or recommendations.

[OAR Docket #20-635; filed 7-17-20]

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 25. ATHLETIC TRAINERS AND APPRENTICES

[OAR Docket #20-629]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

435:25-1-2. Definitions [AMENDED]

Subchapter 3. Licensure of Athletic Trainers
 435:25-3-1. Licensure by examination [AMENDED]
 435:25-3-2. Licensure by endorsement [AMENDED]
 Subchapter 5. Regulation of Athletic Trainer Practice
 435:25-5-2. Initial licensure; renewal; reinstatement [AMENDED]
 435:25-5-4. ~~Prescribing drugs~~ Documentation and use of drugs in practice [AMENDED]
 435:25-5-5. Disclosure of examination contents by licensee prohibited [REVOKED]
 Subchapter 7. Licensure of Apprentice Athletic Trainers
 435:25-7-1. Definitions [REVOKED]
 Subchapter 11. Disciplinary Action
 435:25-11-2. Investigatory hearings [REVOKED]

AUTHORITY:

Title 59 O.S. §§ 525 et seq; Oklahoma Board of Medical Licensure and Supervision

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will bring the rules up to date and consistent with updated educational curriculum being taught to Athletic Trainers and pathway for licensure. The name of the national certifying body has been corrected in the proposed amendment. Certification is currently required for initial licensure but not renewal of licensure. The proposed rule amendments also close that loophole, and certification will now be required for licensure renewal as well. ATs will be able to administer and dispense scheduled and legend drugs under the supervision of a physician, but ATs have not been and will not be allowed to prescribe scheduled and legend drugs. These revisions also consolidate the definitions used in the rules related to ATs into one section. Additionally, contradictory language regarding the Committee conducting investigatory hearings that are currently performed by the Board consistent with its statutory authority under the Oklahoma Athletic Trainers Act is being repealed along with a prohibition on disclosure of examination contents as neither the Board nor the Committee administer the BOC Certification Examination.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

435:25-1-2. Definitions

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

"Apprentice Athletic Trainer" means a person who is putting in clock hours toward becoming a licensed Athletic Trainer.

"Athlete" means a person who engages in physical activity or is physically active.

"Direct supervision" means on-site, personal supervision. The supervisor will delineate specific tasks and duties to be performed. Supervisee will not perform duties or tasks for which he/she is not trained.

"General supervision" means responsible supervision and control. The supervisor is regularly and routinely on site to provide supervision. When not on site, the supervisor is available physically or through direct telecommunication for consultation.

"National Athletic Trainers' Association Board of Certification, Inc., or its successor organization" means, herein referred to as "BOC", the national certifying body for the profession of Athletic Training

"Physical activity" means activity that consists of athletic, recreational or occupational activities that require physical skills and utilize strength, power, endurance, speed, flexibility, range of motion or agility.

"Physically active" means individuals that engage in athletic, recreational or occupational activities that require physical skills and utilize strength, power, endurance, speed, flexibility, range of motion or agility.

"Poses a reasonable threat" means the nature of criminal conduct for which the person was convicted involved an act or threat of harm against another and has a bearing on the fitness or ability to serve the public or work with others in the occupation.

"Substantially relates" means the nature of criminal conduct for which the person was convicted has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation

SUBCHAPTER 3. LICENSURE OF ATHLETIC TRAINERS

435:25-3-1. Licensure by examination

Requirements for Athletic Trainer licensure by examination are as follows:

(1) **Statutory requirements.** All applicants for licensure by examination must meet the statutory requirements set forth in the Oklahoma Athletic Trainers Act, hereinafter referred to as Act.

(2) **Required examination.** The State Board of Medical Licensure and Supervision, hereinafter referred to as Board, recognizes and adopts the ~~National Athletic Trainer's Association~~ Certification Examination of ~~(hereinafter referred to as NATA)~~ BOC as the examination required for licensure of an Athletic Trainer.

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(3) **Filing application.** Application for licensure by examination must be on file at the office of the Board at least 30 days prior to examination.

(4) **Admittance.** No person shall be admitted to the examination until satisfactory evidence is submitted to the Board of her/his qualifications to be admitted to such examination.

(5) **Proof of scores—Certification.** Submission of documentation of certification proof of scores of a passing grade, as awarded determined by the National Athletic Trainers' Association BOC shall constitute satisfactory evidence of an applicant's educational qualifications for licensure. Applicants must have the scores documentation submitted to this Board through the Interstate Reporting Service.

(6) **Failure of written portion of examination.** In the event of failure to pass the written portion of the NATA examination, the applicant must re take said part of the examination until such time as a passing score is obtained.

(7) **Failure of oral/practical portion of examination.** In the event of failure to pass the oral/practical portion of the examination, the applicant must re take said part of the examination until such time as a passing score is obtained.

(8) **Administration of oral/practical examination.**

(A) The oral/practical portion of the examination will be administered by one licensed physician and two licensed Athletic Trainers.

(B) The Secretary of the State Board of Medical Licensure and Supervision is authorized to appoint the physician and licensed Athletic Trainers who are to administer the examination each time the examination is given.

(9) **Fees.**

(A) The application for licensure by examination shall be accompanied with a fee to cover the actual cost of purchasing the examination and the cost of administering the examination which is to be determined on a per capita basis.

(B) The Secretary of the Board is hereby authorized to assess the actual cost of the examination and the administration costs of said examination and to notify the respective applicants of the cost for the examination or any respective parts thereof.

(C) The application for licensure by examination shall be accompanied with a fee of \$50.00 in addition to the examination fee.

(10) **Team or consulting physician application and written protocol.** An Athletic Trainer's License shall only be issued by the Board upon application filed by both the Athletic Trainer-applicants and the team physician or consulting physician with a written protocol approved by said physician.

435:25-3-2. Licensure by endorsement

Requirements for Athletic Trainer licensure by endorsement are as follows:

(1) **Statutory requirements.** Applicants for licensure by endorsement must meet all statutory requirements

required of applicants for licensure by examination, as set forth in the Act.

(2) **Examination standard; personal interview.** Any person who is currently licensed by examination as an athletic trainer in another state of the United States of America, the District of Columbia or Puerto Rico, is eligible for licensure by endorsement provided the written examination and grade standard were that of the NATABOC. Scores must be submitted through the Interstate Reporting Service or other recognized reporting service. If the applicant has not been employed as an athletic trainer during the year prior to application, such applicant may be requested to present herself/himself for a personal interview with the members of the Advisory Committee or the Board.

(3) **Fees.** The application shall be accompanied by a fee as set in 435:1-1-7.

SUBCHAPTER 5. REGULATION OF ATHLETIC TRAINER PRACTICE

435:25-5-2. Initial licensure; renewal; reinstatement

(a) Initial licensure of an Athletic Trainer shall be for one year, and shall be renewed annually, and shall require documentation of current good standing with the BOC.

(b) Athletic Trainers with licenses lapsed twelve months or less wishing to apply for reinstatement of licensure will be required to file an application on forms provided by the Board. Athletic Trainers may be required to meet one or more of the following guidelines:

(1) Personal appearance before the Advisory Committee;

(2) Practice under the direct supervision of a licensed Athletic Trainer and/or licensed physician for up to ninety (90) days. The supervising Athletic Trainer and/or supervising Physician will provide to the Committee a report on the applicant's performance prior to licensure; or

(3) Provide proof of current National Athletic Trainers Association Board of Certification (NATABOC) BOC certification.

(c) Athletic Trainers with licenses lapsed more than twelve months wishing to re-enter the practice of Athletic Trainer will be required to file a new application on forms provided by the Board. Athletic Trainers may be required to meet one or more of the following guidelines:

(1) Personal appearance before the Advisory Committee;

(2) Practice under the direct supervision of a licensed Athletic Trainer and/or licensed Physician for one month (at least 22 days) for each year the license was lapsed. The supervising Athletic Trainer and/or supervising Physician will provide to the Committee a report on the applicant's performance prior to licensure;

(3) Provide proof of up to 25 continuing education units for each year the license was lapsed or proof of current NATABOC Certification;

- (4) Provide proof of current good standing with the BOC-; or
 (5) Retake and pass the National Athletic Trainers Association Board of Certification (NATABOC)-BOC examination or a Committee-determined equivalent thereof.

435:25-5-4. Prescribing drugsDocumentation and use of drugs in practice

The athletic trainer shall not prescribe, administer or dispense any scheduled or legend drug.

- (a) The athletic trainer under the supervision of a physician, shall document the specific condition/injury of the athlete being treated and indicate the non-drug treatment regimen being proposed; and,
 (b) If drugs are being considered, the athletic trainer shall not prescribe, but may administer or dispense onsite, any legend drug or scheduled drug excluding Schedule II and opiates, benzodiazepines or Carisporodol to be noted and signed by the supervising physician within 72 hours; and,
 (c) The athlete shall be directed/documented to make contact with the supervising physician or with their personal physician for follow up care.

435:25-5-5. Disclosure of examination contents by licensee prohibited [REVOKED]

An athletic trainer shall not reproduce in written form or reveal in any other manner, any part of the written or oral/ practical examination for the purpose of aiding licensure of candidates.

SUBCHAPTER 7. LICENSURE OF APPRENTICE ATHLETIC TRAINERS

435:25-7-1. Definitions [REVOKED]

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

"**Apprentice Athletic Trainer**" means a person who is putting in clock hours toward becoming a licensed Athletic Trainer.

"**Direct supervision**" means on site, personal supervision. The supervisor will delineate specific tasks and duties to be performed. Supervisee will not perform duties or tasks for which he/she is not trained.

"**General supervision**" means responsible supervision and control. The supervisor is regularly and routinely on site to provide supervision. When not on site, the supervisor is available physically or through direct telecommunication for consultation.

SUBCHAPTER 11. DISCIPLINARY ACTION

435:25-11-2. Investigatory hearings [REVOKED]

Investigatory hearings may be conducted by the Advisory Committee to ascertain facts, make conclusions and recommendations to the Board.

- (1) **Notices.** All notices or other papers requiring service in an individual proceeding shall be served in the manner set forth in 435:1-1-4 (c).
 (2) **Time.** The time set for a hearing shall not be less than thirty days after the date the notice is completed.
 (3) **Discovery techniques.** All parties to said hearing are authorized to use discovery techniques available to parties in a civil action in the state courts of Oklahoma.
 (4) **Hearing.** The hearing shall be conducted in an orderly manner by the Chairman of the Advisory Committee. The order of procedure will follow that which applies in civil proceedings of law.
 (5) **Administrative Procedures Act.** All hearings shall be conducted in accordance with and be governed by the provisions of the Oklahoma Administrative Procedures Act, 75 O.S. 1971, Sections 301 through 327, as now or hereinafter may be amended.
 (6) **Hearing recorded.** The hearing will be tape recorded and a record preserved by the Chairman of the Advisory Committee. If the respondent desires a certified court reporter to be present, that party shall be responsible for securing the attendance of the same. Neither the Advisory Committee nor the Board shall be responsible for the cost for the attendance of the reporter or a transcription of the hearing.
 (7) **Transcript of hearing.** If a transcript of the hearing is desired, the requesting party must deposit sufficient funds to cover the transcription cost. The fees previously adopted by this Board for such transcription shall be applicable.
 (8) **Continuances.** Requests for continuances received prior to the hearing date may be granted by the Chairman of the Advisory Committee for good cause shown.
 (9) **Recommendations to the Board.** The Advisory Committee shall conduct the hearing, receive all evidence and shall thereafter make its recommendations to the Board for an appropriate order. Such recommendations shall be made within 15 days after the hearing.
 (10) **Appeal to the Board.** An aggrieved party may appeal such finding to the Board within thirty (30) days of the issuance of the Advisory Committee's Recommendations. The appeal to the Board will be on the record; parties will be afforded an opportunity to make oral arguments to the Board.

[OAR Docket #20-629; filed 7-17-20]

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 30. OCCUPATIONAL THERAPISTS AND ASSISTANTS

[OAR Docket #20-633]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

435:30-1-2. Definitions [AMENDED]

435:30-1-4. Licensure by endorsement [AMENDED]

435:30-1-5. License renewal; late fees; continuing education; re-entry guidelines [AMENDED]

435:30-1-15. Supervision of students, new graduates, techs and aides [AMENDED]

435:30-1-18. Telehealth regulations [NEW]

AUTHORITY:

Title 59 O.S. §§ 888.1 et seq; Oklahoma Board of Medical Licensure and Supervision

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Approved by Governor's declaration on June 25, 2020

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The Board of Medical Licensure and Supervision with the cooperation of the Occupational Therapy Advisory Committee intends to establish rules regulating the use of telemedicine while providing occupational therapy. In addition to establishing telemedicine rules, there are a number of amendments to a number of sections under Chapter 30 of Title 435. The first amendment allows an applicant for licensure by endorsement to get a temporary license for a period of not more than ninety (90) days once the Board has received an application for licensure. Secondly, another amendment clarifies the potential penalty for failing to comply with the continuing education requirements as well as ramifications for failing to produce records of continuing education. Third, the Occupational Therapy Advisory Committee will now have an audit process to ensure licensees are meeting the continuing education requirements. Finally, an amendment regarding the rule governing supervision makes clear that an occupational therapist is accountable and responsible for the use of unlicensed personnel during a therapy session or service delivery regardless of whether it is in person or by telehealth.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

435:30-1-2. Definitions

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

"Alternate supervisor" means an Oklahoma licensed Occupational Therapist who has signed a Form #5, Verification of Supervision, agreeing to provide supervision to the Occupational Therapy Assistant or applicant for licensure in the absence of the supervising Occupational Therapist. The alternate supervisor assumes all duties and responsibilities of the primary supervisor during that absence.

"Consultation" means periodic meetings to review and to provide recommendations and resource information regarding methods of implementation of the occupational therapy programs.

"Direct supervision" means personal supervision and specific delineation of tasks and responsibilities by an Oklahoma licensed occupational therapist who has signed a Form #5, Verification of Supervision, agreeing to supervise the Occupational Therapy Assistant or applicant for licensure. Direct supervision shall include the responsibility for personally reviewing and interpreting the results of any habilitative or rehabilitative procedures conducted by the supervisee. It is the responsibility of the supervising occupational therapist to be onsite during treatment to ensure that the supervisee does not perform duties for which he is not trained.

"Distant site" means the location of the Occupational Therapist via telecommunications systems.

"General supervision" means responsible supervision and control by an Oklahoma licensed occupational therapist who has signed a Form #5, Verification of Supervision, agreeing to supervise the Occupational Therapy Assistant or applicant for licensure. The supervising occupational therapist provides both initial direction in developing a plan of treatment and periodic inspection of the actual implementation of the plan. Such plan of treatment shall not be altered by the supervised individual without prior consultation with and approval of the supervising occupational therapist. The supervising occupational therapist need not always be physically present or on the premises when the assistant is performing services; however, except in cases of emergency, supervision shall require the availability of the supervising occupational therapist for consultation with and direction of the supervised individual. Supervision is an interactive process, more than a paper review or a co-signature, and requires direct in-person contact.

"In association with" means a formal working relationship in which there is regular consultation.

"Occupational therapist of record" means the occupational therapist who assumes responsibility for the provision and /or supervision of occupational therapy services for a client, and is held accountable for the coordination, continuation and progression of the plan of care.

"Originating site" means the location of the patient at the time the service being furnished via a telecommunications system occurs.

"Poses a reasonable threat" means the nature of criminal conduct for which the person was convicted involved an act or threat of harm against another and has a bearing on the

fitness or ability to serve the public or work with others in the occupation.

"Primary supervisor" means the Oklahoma licensed Occupational Therapist who has signed a Form #5, Verification of Supervision, agreeing to provide supervision to the Occupational Therapy Assistant or applicant for licensure. The Primary Supervisor must have access to the client's plan of care.

"Substantially relates" means the nature of criminal conduct for which the person was convicted has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation.

"Telehealth" means, and shall have, the same meaning as it does under 59 O.S. § 888.3(8).

"Telemedicine" means, and includes, the practice of healthcare delivery, diagnosis, consultation, treatment, including but not limited to, the treatment and prevention of conditions appropriate to treatment by telehealth management, transfer of medical data, or exchange of medical education information by means of audio, video, or data communications. Telemedicine is not a consultation provided by telephone or facsimile machine.

"Telerehabilitation" means, and shall have, the same meaning as it does under 59 O.S. § 888.3(9).

435:30-1-4. Licensure by endorsement

Requirements for licensure by endorsement for Occupational Therapists or Occupational Therapy Assistants are as follows:

- (1) Applicants for licensure by endorsement must meet all statutory requirements required of applicants for licensure by examination, as set forth in the Act.
- (2) Any person who is currently licensed by examination as an occupational therapist or occupational therapy assistant in another state of the United States of America, the District of Columbia or Puerto Rico, is eligible for licensure by endorsement provided the written examination and grade standard were that of the National Board for Certification in Occupational Therapy or any other group approved by the Board. Submission of proof of having passed the licensure examination shall be required. If the applicant has not been employed as an occupational therapist or occupational therapy assistant during the year prior to application, such applicant may be requested to present himself/herself for a personal interview with the members of the Advisory Committee or the Board.
- (3) Applicants who have not taken and passed the approved licensure examination within the past five years may be required to provide proof of continued competence as evidenced by one or more of the following:

(A) Continuing education consisting of up to two hours for each month out of practice, obtained with the last two years and approved by the Committee;

(B) Practice under the direct supervision of a licensed Occupational Therapist for one to three months. The supervising Therapist will provide to the Committee a report on the applicant's performance prior to licensure;

(C) Retake the approved licensure examination.

(4) The completed application form must be submitted to the Board office accompanied by fees as set by the Board.

(5) The Board may issue a temporary license to any applicant for licensure by endorsement for no more than ninety (90) days upon the Board's receipt of an application for licensure together with a completed Verification of Supervision form issued pursuant to 59 O.S. § 888.5(5)

435:30-1-5. License renewal; late fees; continuing education; re-entry guidelines

(a) **Yearly license renewal.** The occupational therapist and occupational therapy assistant license is required to be renewed yearly on October 31 upon forms provided by the Board and shall be accompanied by fees set by the Board. In addition, late fees shall be assessed as set by the Board.

(b) **Continuing education for renewal.**

(1) Continuing education for renewal of licensure has been established to require therapists' involvement in activities which keep their skills and knowledge of current practice up to date. A point is the equivalent of 1 contact hour. Twenty contact hours every 2 years will be required. Penalties for failure to comply with continuing education requirements may be assessed after notice and hearing as required by law. Penalties may include imposition of additional continuing education contact hours, probation of license, suspension of license, or revocation of license. Failure to produce records of continuing education rebuts the presumption that continuing education requirements have been completed. The willful and intentional misrepresentation of compliance with continuing education requirements shall constitute prima facie evidence of a fraudulent application for licensure renewal.

(2) A Sub-Committee, composed of Occupational Therapists and Occupational Therapy Assistants, may review all points submitted. The Sub-Committee will forward recommendations to the Occupational Therapy Advisory Committee for approval or denial. Reasons for denial will be given to each therapist. Should any individual therapist have questions as to the appropriateness of a program, the therapist could consult the Committee. The Committee would have the authority to decide on any type of program not listed and assign appropriate hours. The responsibility for showing how a particular activity is relevant to maintaining skills as an Occupational Therapist or Occupational Therapy Assistant will be with the therapist applying for approval. The Committee will automatically accept programs offered or approved by the American Occupational Therapy Association or the Oklahoma Occupational Therapy Association as proved courses.

(3) The Committee recognizes the role that ongoing practice plays in maintaining competence as an Occupational Therapist or Occupational Therapy Assistant. Continuing education requirements are designed to update knowledge and skills. Synthesis takes place when the therapist has the opportunity to apply this knowledge and these skills to their practice. Therefore, therapists will

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be asked to provide information about their practice of occupational therapy at the time of renewal.

(4) Traditional method of points/value/documentation:

(A) Traditional methods of points:

- (i) Workshops
- (ii) Inservices (6 point maximum per compliance period)
- (iii) Seminars
- (iv) Conferences
- (v) Programs offered by or approved by the American Occupational Therapy Association or the Oklahoma Occupational Therapy Association or the National Board for Certification in Occupational Therapy
- (vi) Programs at Special Interest Section meetings
- (vii) Occupational Therapy Education Council of Oklahoma workshops (points as assigned on request from Committee)

(B) Assigned Value: 1 point per hour of participation.

(C) Documentation: Verification of attendance and copies of supporting documentation such as program brochure, syllabus, etc. If unable to verify attendance, use Form B **Verification of Conference Attendance**, attach a copy of receipt for conference fee and statement of relevancy to practice of Occupational Therapy if not obvious from the program materials.

(5) Alternative methods of points:

(A) Presentations of occupational therapy programs

- (i) Presentations at workshops, seminars, conferences
- (ii) Presentations as guest lecturer at accredited occupational therapy curriculum
- (iii) Presentations as guest lecturer at other programs on topics related to occupational therapy department inservices
- (iv) Assigned Value: 2 points per hour for first presentation of original material. No additional points for subsequent presentations.
- (v) Documentation: Copies of supporting documentation such as brochures, programs, or syllabus and a statement of objectives of presentation.

(B) Clinical Instruction of Occupational Therapist students or Occupational Therapy Assistant students.

- (i) Assigned Value: 1 point per week of continuous direct supervision.
- (ii) Documentation: Copy of letter of verification of fieldwork from educational program.

(C) Publications (published or accepted for publication)

- (i) Authorship or co-authorship of a book relating to occupational therapy:
 - (I) Maximum of 20 points.
 - (II) Documentation: Copy of Title page.

(ii) Authorship of a chapter in a book or journal article appearing in a professional journal:

- (I) Maximum of 10 points.
- (II) Documentation: Copy of table of contents and first page of chapter or article.

(iii) Authorship of an article, book review or abstract in a newsletter (such as OOTA Newsletter, OT Newsworld, SIS Newsletter, or other related newsletters):

- (I) Maximum of 10 points per compliance period.
- (II) Documentation: Copy of article, book review or abstract evidencing title of newsletter and date of publication.

(iv) Alternative media such as video tapes, slide/tape presentations, etc., that would be available for general viewing. Media or description of media to be submitted to Committee for approval and assignment of points as appropriate.

- (I) Assigned Value: 10-20 points per publication or finished product
- (II) Documentation: Copy of approval letter from Committee.

(D) Research

(i) Principal or co-investigator, project director or research assistant. Research proposal and final results submitted to Committee for approval:

- (I) 10 points
- (II) Documentation: Statement of participation and abstract of proposal and results.

(ii) Quality assurance studies completed and published in journal or newsletter:

- (I) 5 points Assigned Value: 5-10 points per project
- (II) Documentation: Manuscript acknowledgment or copy of article.

(E) Formal Coursework

(i) College and university coursework courses directly relating to improvement, advancement, or extension of one's skills as an Occupational Therapist. One credit course would be 10 points, 2-credit course 20 points, and 3-credit course would be 30 points. Assigned Value: 10-30 points as approved.

(ii) College or university courses which are indirectly related, yet support skills and knowledge will be evaluated individually and assigned value accordingly.

(iii) Documentation: Course description with statement of relevance to Occupational Therapy and transcript or other documentation of passing grade.

(F) Self-Study: (Independent Learning Projects). A combination of activities which may include, but are not limited to a combination of reading, observing other therapists, viewing video tapes and quality assurance studies and related professional activities which enhance knowledge and skill in a specific area.

A Report of Professional Self-Study should be submitted to Committee for approval (Form C). Points will be assigned by the Committee based on the relevance to practice and complexity. Documentation: Copy of approval letter from OT Advisory Committee.

(G) Specialty Certification. Achievement of a specialty certification by a recognized body such as Neuro Developmental Techniques, Sensory Integration, American Society of Hand Therapists will be awarded 20 points one time only. Credit will be granted for Certification obtained within the compliance period in which certification was granted or the next subsequent compliance period only.

(H) Professional Activities

(i) American Occupational Therapy Association membership: 2 points Documentation: Copy of current AOTA membership card.

(ii) Oklahoma Occupational Therapy Association or American Occupational Therapy Association elected office (up to 8 points per year). Documentation: Copy of annual report submitted to OOTA or AOTA listing activities of office.

(iii) AOTA or OOTA Committee chair - points awarded based on the extent to which activities are relative to maintaining involvement in the profession as evidenced by their annual report (up to 8 points per year). Documentation: Copy of approval letter from OT Advisory Committee.

(iv) Member of Committee - based on evidence of involvement in appropriate activities (up to 4 points per year). Documentation: Copy of approval letter from OT Advisory Committee.

(v) Active involvement in related organizations and committee upon approval by the Committee (up to 4 points per year). Documentation: List of dates of activities and types of activities, signed by committee chair, with a statement of relevance of the organization or committee to the practice of occupational therapy.

(6) Guidelines for the audit process.

(A) The Occupational Therapy Committee will, ninety (90) days before expiration date of each compliance period, randomly or for cause, select licensees for audit to ensure that all continuing education requirements have been met.

(B) Licensees being audited have thirty (30) calendar days from the date of the letter of notification to submit proof of continuing education to the Committee.

(C) The Occupational Therapy Committee or its appointed sub-committee shall review the documentation of each individual for compliance with established continuing education standards.

(D) Licensees found to be in compliance shall be notified of such and that no further action regarding the audit is required.

(E) Licensees found not to be in compliance shall be notified within (5) working days following the determination of non-compliance. The Board shall provide to the licensee specific information concerning areas of deficiency and what further information, if any, is needed to bring them into compliance. The licensee shall be given the opportunity to submit additional documentation for the Committee to consider, or he or she may elect to personally appear at the next Occupational Therapy Committee meeting. Provided, nothing in this provision shall prevent the Committee from requiring the licensee to personally appear for the purposes of ensuring compliance with the continuing education requirements.

(F) A summarized report shall be submitted to the Occupational Therapy Committee listing the names of those audited who are in compliance with continuing education requirements. Those not in compliance shall be listed with notation of deficiencies found and/or recommendation.

(c) **Renewal license identification card.** The Board shall issue to a licensee who has met all requirements for renewal a renewal license identification card.

(d) **Re-entry guidelines.** Therapists with licenses lapsed more than twelve months wishing to re-enter the practice of Occupational Therapy will be required to file an application on forms provided by the Board. Therapists may be required to meet one or more of the following guidelines:

(1) Personal appearance before the Advisory Committee.

(2) At least 2 Continuing Education Units for each month license was lapsed.

(3) Practice under the direct supervision of a licensed Occupational Therapist for one month (at least 22 days) for each year license was lapsed up to three months. The supervising Therapist will provide to the Committee a report on the applicant's performance prior to licensure.

(4) NBCOT certification examination.

(e) **Personal appearance requirement.** Therapists with licenses lapsed more than sixty months wishing to re-enter practice will be required to make a personal appearance before the Committee and meet any of the above guidelines as directed by the Committee.

435:30-1-15. Supervision of students, new graduates, techs and aides

The Occupational Therapist is responsible and accountable for the overall use and actions of unlicensed personnel under his/her supervision and control during a therapy session or service delivery whether in person or by telehealth.

(1) **Students.** Supervision of the student must occur by one of the following methods:

(A) Direct, on-site supervision will be provided by the Oklahoma licensed Occupational Therapist for the Occupational Therapy student in models of healthcare or educational systems. Supervision of the Occupational Therapy Assistant student may be provided by an Oklahoma licensed Occupational

Therapy Assistant working under supervision of an Oklahoma licensed Occupational Therapist.

(B) In emerging occupational therapy models, areas of innovative community-based and social systems-based occupational therapy practice where there is no occupational therapy practitioner on site, the occupational therapy practitioner must provide a minimum of six hours of weekly supervision. Supervision must include role modeling for the student, direct observation of client interaction, meeting with the student, review of student paperwork, and availability for communication and consultation. The supervisor must be readily available during all working hours. It is understood that supervision begins with more direct supervision and gradually decreases to a minimum of six hours weekly as the student demonstrates competence. The supervisor must be cognizant of the individual student's needs and must use judgment in determining when an individual student may need more of the supervisor's time.

(2) **New graduates.** Direct on-site supervision will be provided by the Occupational Therapist for new Occupational Therapist and Occupational Therapist Assistant graduates practicing under a letter authorizing practice temporarily.

(3) **Techs and aides.** Direct on-site supervision will be provided by the Occupational Therapist or Occupational Therapy Assistant for aides/technicians providing patient care. Occupational Therapists and Occupational Therapy Assistants will delegate only those tasks that are of a routine nature and do not require interpretation or professional judgment. The occupational therapy practitioner must ensure the aide/technician has demonstrated competency in the delegated tasks.

435:30-1-18. Telehealth regulations

(a) In order to provide occupational therapy services via telehealth defined in 435:30-1-2 of the Code, an occupational therapist or occupational therapy assistant providing services to a patient or client in this State must have a valid and current Occupational Therapy or Occupational Therapy Assistant license issued by State of Oklahoma.

(b) An occupational therapist shall determine whether an in-person evaluation or in-person interventions are necessary in lieu of telehealth provision, considering: the complexity of the patient's/client's condition; the provider's own knowledge, skills and abilities; the nature and complexity of the intervention; the requirements of the practice setting; and the patient's/client's context and environment. Clinical reasoning for providing occupational therapy via teletherapy must be documented at the onset of treatment in the patient's/client's record.

(c) All legal, regulatory, and ethical rules applicable to the delivery of in-person occupational therapy shall also apply to the delivery of occupational therapy via telehealth technology.

(d) Audio and video equipment must allow for interactive, real-time communications which permit the occupational therapist or occupational therapy assistant and the patient to see and hear each other. Any telehealth technology used by any

occupational therapist or occupational therapy assistant must comply with confidentiality requirements imposed by federal or state law concerning network connection security in place for video and non-video connections, specifically including requirements under HIPAA.

(e) An occupational therapist or occupational therapy assistant providing occupational therapy services via telehealth shall:

(1) Exercise the same standard of care when providing occupational therapy services via telehealth as with any other mode of delivery of occupational therapy services;

(2) Provide occupational therapy in a manner consistent with the standards of practice, ethical principles, rules and regulations for Oklahoma occupational therapy practitioners. Therefore, it is the occupational therapy practitioner's responsibility to determine when a telehealth encounter is not the appropriate treatment model;

(3) Determine if it is medically and clinically necessary for a licensed healthcare provider or technician trained in the use of the equipment to be utilized at the originating site to "present" the patient, manage the cameras, and perform any physical activities to successfully complete the initial patient evaluation; and

(4) Be proficient in the use of the telehealth and/or telemedicine technology.

(f) An occupational therapist or occupational therapy assistant that is providing therapy services via telehealth as a mode of service delivery will be required to have two (2) continuing education units in the area of telehealth practice each reporting period.

(g) An occupational therapist may utilize telehealth methods for routine and general supervision of Form 5-registered supervisees, but not when direct on-site supervision is required under 435: 30-1-2.

(h) Fieldwork students must follow the Accreditation Council for Occupational Therapy Education ("ACOTE") standards, academic program rules, and practice setting policies regarding the use of telehealth service delivery as well as follow all applicable supervision rules under 435:30-1-15 and 435:30-1-16.

(i) Failure to comply with telehealth regulations shall be considered unprofessional conduct as set forth in Section 9 of the Occupational Therapy Practice Act.

[OAR Docket #20-633; filed 7-17-20]

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 35. LICENSED DIETITIANS AND PROVISIONAL DIETITIANS

[OAR Docket #20-630]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

435:35-1-2. Definitions [AMENDED]

435:35-1-4. Standards of professional conduct [AMENDED]

435:35-1-5. Academic requirements for examination and licensure [AMENDED]

435:35-1-11. Disciplinary hearings [REVOKED]

AUTHORITY:

Title 59 O.S. §§ 1721 et seq; Oklahoma Board of Medical Licensure and Supervision

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions will bring the rules up to date and consistent with updated law. These revisions add several definitions as well as a code of ethics, which has been included by the Advisory Committee on Dietetic Registration to incorporate the ethical standards adopted by the Commission on Dietetic Registration ("Commission") and Academy of Nutrition and Dietetics ("Academy"). The Commission is the national credentialing body for dietetics and nutrition professionals, and the Academy serves as the national association for these professionals. Additionally, contradictory language regarding the Committee conducting investigatory hearings that are currently performed by the Board consisted with its statutory authority under the Licensed Dietitian Practice Act is being repealed.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

435:35-1-2. Definitions

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

"Association" **"Academy"** means the American Dietetic Association Academy of Nutrition and Dietetics and is the national professional association for registered dietitians which accredits education and pre-professional training programs in dietetics.

"ACEND" means the Accreditation Council for Education in Nutrition and Dietetics which accredits educational and pre-professional training programs in dietetics.

"Act" means the Licensed Dietitian Act, 59 O.S. Supp. 1984, Section 1721 et seq.

"Autonomy" means ensures a patient, client, or professional has the capacity and self-determination to engage in individual decision-making specific to personal health or practice.

"Beneficence" means encompasses taking positive steps to benefit others, which includes balancing benefit and risk.

"Board" means the Oklahoma State Board of Medical Licensure and Supervision.

"Competence" means a principle of professional practice, identifying the ability of the provider to administer safe and reliable services on a consistent basis.

"Conflict(s) of Interest(s)" means defined as a personal or financial interest or a duty to another party which may prevent a person from acting in the best interests of the intended beneficiary, including simultaneous membership on boards with potentially conflicting interests related to the profession, members or the public.

"Commission" means the Commission on Dietetic Registration and is the agency which evaluates credentials, administers proficiency examinations and issues certificates of registration to qualifying dietitians and is a member of the National Commission on Health Certifying Agencies.

"Customer" means any client, patient, resident, participant, student, consumer, individual/person, group, population, or organization to which the nutrition and dietetics practitioner provides service.

"Diversity" means The Academy values and respects the diverse viewpoints and individual differences of all people. The Academy's mission and vision are most effectively realized through the promotion of a diverse membership that reflects cultural, ethnic, gender, racial, religious, sexual orientation, socioeconomic, geographical, political, educational, experiential and philosophical characteristics of the public it serves. The Academy actively identifies and offers opportunities to individuals with varied skills, talents, abilities, ideas, disabilities, backgrounds and practice expertise.

"Evidence-based Practice" means Evidence-based practice is an approach to health care wherein health practitioners use the best evidence possible, i.e., the most appropriate information available, to make decisions for individuals, groups and populations. Evidence-based practice values, enhances and builds on clinical expertise, knowledge of disease mechanisms, and pathophysiology. It involves complex and conscientious decision-making based not only on the available evidence but also on client characteristics, situations, and preferences. It recognizes that health care is individualized and ever changing and involves uncertainties and probabilities. Evidence-based practice incorporates successful strategies that improve client outcomes and are derived from various sources of evidence including research, national guidelines, policies, consensus statements, systematic analysis of clinical experience, quality improvement data, specialized knowledge and skills of experts.

"Justice" means (social justice): supports fair, equitable, and appropriate treatment for individuals and fair allocation of resources.

"LD" means a person duly licensed as a licensed dietitian under the Licensed Dietitian Act.

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"Non-Maleficence" means is the intent to not inflict harm.

"PLD" means a person duly licensed as a provisional licensed dietitian under the Licensed Dietitian Act.

"RD" means registered dietitian.

"RDN" means represents an accepted abbreviation for a registered dietitian according to the Commission.

435:35-1-4. Standards of professional conduct

(a) **Purpose.** The rules in this section on the profession of dietetics shall be to establish the standards of professional conduct required of a licensee.

(b) **Statutory standards.** Examples of activities included in the statutory definition of dietetics are as follows:

- (1) Planning, developing, controlling and evaluation of food service systems.
- (2) Coordinating and integrating clinical and administrative aspects of dietetics to provide quality nutritional care.
- (3) Establishing and maintaining standards of food production, service, sanitation, safety and security.
- (4) Planning, conducting and evaluating educational programs relating to nutritional care.
- (5) Developing menu patterns and evaluating them for nutritional adequacy.
- (6) Planning layout designs and determining equipment requirements for food service facilities.
- (7) Developing specifications for the procurement of food and food service equipment and supplies.
- (8) Developing and implementing plans of nutritional care for individuals, both enteral and parenteral, based on assessment of nutritional needs.
- (9) Counseling and educating individuals, families and groups in nutritional principles, meal patterns and plans, insulin administration, food selection, food and drug interactions, and economics, as appropriate.
- (10) Communicating appropriate diet history and nutritional care data through written ~~record—systems~~ and electronic record systems.
- (11) Participating with physicians and allied health personnel as the provider of nutritional care using tools and procedures such as, but not limited to, diet histories, calipers, BMI tables, finger stick blood sugar measurements, blood pressure and vital sign measurement, ~~and oral cavity assessment, and nutrition-focused physical exam.~~
- (12) Planning, conducting or participating in and interpreting, evaluating and utilizing pertinent current research related to nutritional care.
- (13) Providing consultation and nutritional care to community groups and identifying and evaluating needs to establish priorities for community nutrition programs.
- (14) Publishing and evaluating technical and lay food and nutrition publications for all age, socioeconomic and ethnic groups.
- (15) Planning, conducting and evaluating dietary studies and participating in nutritional epidemiologic studies with a nutritional component.

(c) **Code of Ethics.** The following shall constitute a code of ethics in dietetics:

(1) Professional representation and responsibilities.

(A) A licensee shall not misrepresent any professional qualifications or credentials.

(B) A licensee shall not make any false or misleading claims about the efficacy of any services or methods of treatment.

(C) A licensee shall not permit the use of his/her name for the purpose of certifying that dietetic services have been rendered unless he/she has provided or supervised the provision of those services.

(D) A licensee shall not promote or endorse products in a manner that is false or misleading.

(E) A licensee shall maintain knowledge and skills required for continuing professional competence.

(F) A licensee shall not abuse alcohol or drugs in any manner which detrimentally affects the provision of nutritional services.

(G) A licensee shall comply with the provisions of the Oklahoma Controlled Substances Act, 63 O.S. 1981, Sections 2-101 et seq.

(H) A licensee shall have the responsibility of reporting alleged misrepresentations or violations of Board rules to the office of the Board.

(I) A licensee shall keep his/her Board file updated by notifying the executive secretary of changes in preferred mailing address.

(J) A licensee shall not make any false, misleading or deceptive claims in any advertisement, announcement, or in competitive bidding.

(K) A licensee shall not aid or abet, directly or indirectly, the practice of dietetics by any person not duly authorized under the laws of Oklahoma.

(L) A licensee shall not violate any provision of the Academy's Code of Ethics for the Profession.

(2) Professional relationships with clients.

(A) A licensee shall make known to a prospective client the important aspects of the professional relationship including fees and arrangement for payment which might affect the client's decision to enter into the relationship.

(B) A licensee shall not receive or give a commission or rebate or any other form of remuneration for the referral of clients for professional services.

(C) A licensee shall disclose to clients any interest in commercial enterprises which the licensee promotes for the purpose of personal gain or profit.

(D) A licensee shall take reasonable action to inform a client's physician and any appropriate allied health care provider in cases where a client's nutritional status indicates a change in medical status.

(E) A licensee shall provide nutritional services without discrimination based on race, creed, sex, religion, national origin or age.

(F) A licensee shall not violate any provision of any federal or state statute relating to confidentiality of client communication and/or records.

(3) Academy's Code of Ethics - Principles and Standards.

(A) Competence and professional development in practice (Non-maleficence) Nutrition and dietetics practitioners shall:

- (i) Practice using an evidence-based approach within areas of competence, continuously develop and enhance expertise, and recognize limitations.
- (ii) Demonstrate in depth scientific knowledge of food, human nutrition and behavior.
- (iii) Assess the validity and applicability of scientific evidence without personal bias.
- (iv) Interpret, apply, participate in and/or generate research to enhance practice, innovation, and discovery.
- (v) Make evidence-based practice decisions, taking into account the unique values and circumstances of the patient/client and community, in combination with the practitioner's expertise and judgment.
- (vi) Recognize and exercise professional judgment within the limits of individual qualifications and collaborate with others, seek counsel, and make referrals as appropriate.
- (vii) Act in a caring and respectful manner, mindful of individual differences, cultural, and ethnic diversity.
- (viii) Practice within the limits of their scope and collaborate with the inter-professional team.

(B) Integrity in personal and organizational behaviors and practices (Autonomy) Nutrition and dietetics practitioners shall:

- (i) Disclose any conflicts of interest, including any financial interests in products or services that are recommended. Refrain from accepting gifts or services which potentially influence or which may give the appearance of influencing professional judgment.
- (ii) Comply with all applicable laws and regulations, including obtaining/maintaining a state license or certification if engaged in practice governed by nutrition and dietetics statutes.
- (iii) Maintain and appropriately use credentials.
- (iv) Respect intellectual property rights, including citation and recognition of the ideas and work of others, regardless of the medium (e.g. written, oral, electronic).
- (v) Provide accurate and truthful information in all communications.
- (vi) Report inappropriate behavior or treatment of a patient/client by another nutrition and dietetics practitioner or other professionals.
- (vii) Document, code and bill to most accurately reflect the character and extent of delivered services.

(viii) Respect patient/client's autonomy. Safeguard patient/client confidentiality according to current regulations and laws.

(ix) Implement appropriate measures to protect personal health information using appropriate techniques (e.g., encryption).

(C) Professionalism (Beneficence) - Nutrition and dietetics practitioners shall:

- (i) Participate in and contribute to decisions that affect the well-being of patients/clients.
- (ii) Respect the values, rights, knowledge, and skills of colleagues and other professionals.
- (iii) Demonstrate respect, constructive dialogue, civility and professionalism in all communications, including social media.
- (iv) Refrain from communicating false, fraudulent, deceptive, misleading, disparaging or unfair statements or claims.
- (v) Uphold professional boundaries and refrain from romantic relationships with any patients/clients, surrogates, supervisees, or students.
- (vi) Refrain from verbal/physical/emotional/sexual harassment.
- (vii) Provide objective evaluations of performance for employees, coworkers, and students and candidates for employment, professional association memberships, awards, or scholarships, making all reasonable efforts to avoid bias in the professional evaluation of others.
- (viii) Communicate at an appropriate level to promote health literacy.
- (ix) Contribute to the advancement and competence of others, including colleagues, students, and the public.

(D) Social responsibility for local, regional, national, global nutrition and well-being (Justice) - Nutrition and dietetics practitioners shall:

- (i) Collaborate with others to reduce health disparities and protect human rights.
- (ii) Promote fairness and objectivity with fair and equitable treatment.
- (iii) Contribute time and expertise to activities that promote respect, integrity, and competence of the profession.
- (iv) Promote the unique role of nutrition and dietetics practitioners.
- (v) Engage in service that benefits the community and to enhance the public's trust in the profession.
- (vi) Seek leadership opportunities in professional, community, and service organizations to enhance health and nutritional status while protecting the public.

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435:35-1-5. Academic requirements for examination and licensure

The purpose of this section is to set out the academic requirements for examination and licensure as a dietitian or provisional licensed dietitian.

(1) The Board shall accept as meeting licensure requirements baccalaureate and post-baccalaureate degrees received from American colleges or universities which held accreditation, at the time the degree was conferred, from accepted regional educational accrediting associations as reported by the American Association of Collegiate Registrars and Admissions Officers.

(2) Degrees and course work received at foreign colleges and universities shall be acceptable only if such course work could be counted as transfer credit from accredited colleges or universities as reported by the American Association of Collegiate Registrars and Admissions Officers.

(3) The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other means acceptable to the Board.

(4) The Board shall accept no course which an applicant's transcript indicates was not completed with a passing grade or for credit.

~~(5) In evaluating transcripts, the Board shall consider a quarter hour of academic credit as 2/3 of a semester hour.~~

~~(6)~~ In the event that an academic deficiency is present, an applicant may re-apply by submitting proof that the deficiency has been corrected and payment of appropriate fees.

~~(7)~~ Persons applying for licensure must possess a baccalaureate or post-baccalaureate degree including a minimum of 24 semester hours from the fields of human nutrition, food and nutrition, dietetics, or food systems management, or an equivalent major course of study as may be approved by the Board. A substantial equivalent major course of study shall be defined as either:

~~(A) a baccalaureate or post baccalaureate degree including a minimum of 30 semester hours specifically designated to train a person to apply and integrate scientific principles of human nutrition under different health, social, cultural, physical, psychological and economic conditions to the proper nourishment, care and education of individuals or groups through the life cycle. Of these 30 semester hours, a minimum of 18 semester hours must be from human nutrition, food and nutrition, dietetics, or food systems management; or~~

~~(A) and have completed a didactic program in dietetics (DPD) accredited by ACEND and earned a verification statement~~

~~(B) or have a bachelor's or post-baccalaureate degree in another field of study and also have completed a didactic program in dietetics (DPD) accredited by ACEND and earned a verification statement.~~

~~(B) a baccalaureate or post baccalaureate degree including a major course of study meeting the minimum academic requirements to qualify for examination by the Commission.~~

~~(8)~~ Persons applying for licensure must be registered or registry eligible with the Commission on Dietetic Registration by having satisfactorily completed a supervised practice program an internship or pre-planned professional experience program (e.g. Coordinated Program, AP4) approved by the American Dietetic Association accredited by ACEND.

435:35-1-11. Disciplinary hearings [REVOKED]

Investigatory hearings may be conducted by the Advisory Committee on Dietetic Registration to ascertain facts, make conclusions and recommendations to the Board.

~~(1) All notices or other papers requiring service in an individual proceeding shall be served in the manner set forth in 435:1-1-4 (c).~~

~~(2) The time set for a hearing shall not be less than thirty days after the date the notice is completed.~~

~~(3) All parties to said hearing are authorized to use discovery techniques available to parties in a civil action in the state courts of Oklahoma.~~

~~(4) The hearing shall be conducted in an orderly manner by the Chairman of the Advisory Committee. The order of procedure will follow that which applies in civil proceedings of law.~~

~~(5) All hearings shall be conducted in accordance with and be governed by the provisions of the Oklahoma Administrative Procedures Act, 75 O.S. 1981, Sections 301 through 327, as now or hereinafter may be amended.~~

~~(6) The hearing will be tape recorded and a record preserved at the Board office. If the respondent desires a certified court reporter to be present, that party shall be responsible for securing the attendance of the same. Neither the Advisory Committee nor the Board shall be responsible for the cost for the attendance of the reporter or a transcript of the hearing.~~

~~(7) If a transcript of the hearing is desired, the requesting party must deposit sufficient funds to cover the transcription cost. The fees previously adopted by this Board for such transcription shall be applicable.~~

~~(8) Requests for continuances received prior to the hearing date may be granted by the Chairman of the Advisory Committee for good cause shown.~~

~~(9) The Advisory Committee shall conduct the hearing, receive all evidence and shall thereafter make its recommendations to the Board for an appropriate order. Such recommendations shall be made within 15 days after the hearing. An aggrieved party may appeal such finding to the Board within thirty (30) days of the issuance of the Advisory Committee's Recommendations.~~

(10) Appeals to the Board must be made by written request of the appellee. Parties will be afforded an opportunity to make oral arguments to the Board.

[OAR Docket #20-630; filed 7-17-20]

TITLE 465. OKLAHOMA MOTOR VEHICLE COMMISSION CHAPTER 10. LICENSES

[OAR Docket #20-698]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. License Identification Licenses and Changes Registrations
465:10-3-1 [AMENDED]
465:10-3-3 [AMENDED]
465:10-3-5 [AMENDED]
465:10-3-6 [NEW]

AUTHORITY:

Oklahoma Motor Vehicle Commission; Title 47, Sections 563(F), 564, and Title 75, Section 302(A)(2)

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Subchapter 3. License Identification Licenses and Changes Registrations
465:10-3-1 [AMENDED]
465:10-3-3 [AMENDED]
465:10-3-5 [AMENDED]
465:10-3-6 [NEW]

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37 OK Reg 139

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n/a

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HB1094 removes the statutory requirement for salesperson licensing and replaces with a requirement for salesperson registration. Therefore, the first three amended sections remove any reference of salesperson "license", "licensing" and substituting with verbiage "registration" "registered" or "certificate of registration". The new section is required to comply with the Oklahoma Tax Commission's law, Title 47, Section 1128(A) concerning a licensed salesperson's exemption from the 72 hour limit on operating a motor vehicle with a dealer's tag affixed.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 3. LICENSE IDENTIFICATION LICENSES AND CHANGES REGISTRATIONS

465:10-3-1. Purpose

The rules in this subchapter outline additional requirements for licensing of ~~dealers and dealerships~~, registration of salespersons and renewal of those licenses and registrations.

465:10-3-3. Salespersons' ~~license~~ registration

(a) License Registration. Contemporaneous with the employment of a new Salesperson being employed, an application for Salesperson License registration shall be submitted to the Commission on forms prescribed by the Commission along with the appropriate fee paid by the employing licensed dealer. A license certificate of registration for a Motor Vehicle Salesperson will ~~not be issued, issued, renewed, or endorsed until the employing Dealer is licensed and has certified that the applicant for said license is in his or her employ. It is not intended that the Dealer pay for licenses for its Salespersons. However, for convenience, the Dealer may do so on a reimbursable basis or any other plan satisfactory to its organization by the Commission within ten days of receipt of a completed application and the proper fee.~~ All Salespersons' license certificates of registration will be sent to the Dealer for distribution to his or her respective applicants, and the Dealer will determine that all its personnel required to obtain license be registered have done so. Salesperson Licenses registrations are required for anyone involved in the selling of new or used vehicles, including sales managers and F&I personnel.

(b) Identification card. A Salesperson's license certificate of registration shall consist of an identification card. The card shall be carried upon his or her person when acting as a Salesperson.

(c) Termination of employment. Upon termination of employment of a licensed registered Salesperson, the dealership must notify the Motor Vehicle Commission in writing within ten days.

(d) One license registration and employer at a time. No Salesperson may ~~hold be registered with more than one licensed dealer~~ at any ~~one~~ time or be employed by, or sell for, any Dealer other than the Dealer designated on the Salesperson's license certificate of registration, except as follows:

(1) A Salesperson may ~~hold be registered with more than one licensed dealer~~ only in instances where the salesperson is employed by multiple dealerships which have the same majority ownership;

(2) ~~The~~ A Salespersons' ~~new or renewal license registration~~ application shall reflect all dealerships must be submitted for each dealership which have the

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same majority ownership for which the Salesperson seeks a Salesperson's license to be registered;

(3) The identification card or cards which are issued in accordance with OAC Title 465:10-3-3(b), shall contain the names of all commonly owned dealerships for which the Salesperson is licensed-registered; and,

(4) The Salesperson shall only sell for the dealerships designated on the Salespersons' identification card.

(e) **Change of employment.** ~~A licensed Salesperson shall, on Upon change of employment to another dealership, surrender the Salesperson's License to the new employer, who shall submit the License along with the appropriate Transfer form and fee to the Commission for issuance of a replacement License reflecting the change of employers. The existing certificate of registration shall be invalid. A new application for registration along with the appropriate fee paid by the employing dealer shall be submitted to the Commission. Within ten days of receipt of a completed application and required fee the Commission will issue a certificate of registration for a New Motor Vehicle Salesperson.~~

465:10-3-5. **Renewal of licenses and salesperson registrations**

~~Application~~Notification for renewal of all licenses and salesperson registrations shall be ~~mailed~~sent by the Commission to each of its licensees by May 1 of each year and all licensees shall return the completed renewal ~~application~~applications, along with the proper fees, by June 1 of each year.

465:10-3-6. **Compliance with dealer's tag provision**

A Salesperson Certificate of Registration issued in accordance with the procedures set forth in 465:10-3 shall be considered "a valid salesman's license issued by the Oklahoma Motor Vehicle Commission" for purposes of 47 O.S. § 1128(A), concerning a licensed salesperson's exemption from the seventy-two hour limit on operating a motor vehicle with a dealer's tag affixed.

[OAR Docket #20-698; filed 7-24-20]

TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL CHAPTER 20. SECURITY REQUIREMENTS

[OAR Docket #20-657]

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PERMANENT final adoption

RULES:

475:20-1-4. Physical security controls for nonpractitioners; manufacturing areas [AMENDED]

AUTHORITY:

The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control; 63 O.S. §§ 2-301, 2-309H

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n/a

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Incorporated standards:

Code of Federal Regulations, Title 21, Sections 1301.72 and 1301.73

Incorporating rules:

475:20-1-4

Availability:

8:30 a.m. to 5:00 p.m., Monday through Friday at the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, 419 NE 38th Terrace, Oklahoma City, OK 73105, (405) 521-2885

GIST/ANALYSIS:

The adopted rule amendment provides the required physical security controls for Schedule I medical marijuana retail storage areas, growers, processors, packagers, and manufacturers. The amendment clarifies that any entry gate shall have the same security requirement as a door.

CONTACT PERSON:

Russell S. Cochran, General Counsel, OBND, 419 NE 38th Terrace, Oklahoma City, OK, 73105, (405) 521-2885, rcochran@obn.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

475:20-1-4. Physical security controls for nonpractitioners; manufacturing areas

Physical security controls for nonpractitioners and manufacturing areas shall be in compliance with Title 21 Code of Federal Regulations §1301.73, except physical security controls for medical marijuana commercial growers, processors, packagers, and manufacturers shall, at a minimum, meet the following requirements:

(1) All in-process medical marijuana shall be returned to the storage area at the termination of the process. If the process is not terminated at the end of a workday (except where a continuous process or other normal manufacturing operation should not be interrupted), the processing area or tanks, vessels, bins or bulk containers containing medical marijuana shall be securely locked, with adequate security for the area or building.

(2) Each building shall require a security alarm system, that upon unauthorized entry, shall transmit a signal directly to a central station protection company, or local or state police agency that has a legal duty to respond, or a 24-hour control station operated by the registrant, or to such other source of protection as the Director may approve.

(3) Each building shall be equipped with self-closing, self-locking doors constructed of substantial material commensurate with the type of building construction, provided, however, a door which is kept closed and locked at all times when not in use and when in use is kept under direct observation of a responsible employee or agent of the registrant is permitted in lieu of a self-closing, self-locking door. Doors may be sliding or hinged. If doors hinges are mounted on the outside, such hinges shall be sealed, welded or otherwise constructed to inhibit removal. Locking devices for such doors shall be either of the multiple-position combination, keyless entry, or key lock type and;

(A) In the case of key locks, shall require key control which limits access to a limited number of employees, or;

(B) In the case of multiple-position combination or keyless entry systems, the system shall be limited to a minimum number of employees and can be changed upon termination of employment of an employee having knowledge of the combination.

(4) Any outdoor or greenhouse facilities shall provide adequate security measures for the area or building including the following:

(A) The entire outdoor or greenhouse facility shall be surrounded by a fence and entry gates. Acceptable fencing shall be a metal chain link fence with a wire diameter at least nine (9) gauge or larger, or another similarly secure material or wood. The fence shall measure at least eight (8) feet from the ground to the top of the fence. The fence may be at least six (6) feet of acceptable fencing with a top guard of fencing wire with sharp edges or points, such as barbed wire, to enhance the overall height of the fence to the minimum of eight (8) feet. All support posts shall be steel and securely anchored.

(B) All entry gates shall measure at least eight (8) feet from the ground to the top of the entry gate and shall be constructed of acceptable fencing. The entry gate may be at least six (6) feet of acceptable fencing with a top guard of fencing wire with sharp edges or points, such as barbed wire, to enhance the overall height of the entry gate to the minimum of eight (8) feet. All entry gates shall be kept closed and securely locked at all times when not in use and when in use shall be kept under direct observation of a responsible employee or agent of the registrant.

(C) The fence and entry gates shall be in good repair and obscure the outdoor or greenhouse facility so that it is not easily viewed from outside the fence or entry gates.

(5) The medical marijuana commercial growing, processing, packaging, and manufacturing areas shall be accessible only to an absolute minimum number of authorized employees. When it is necessary for employee maintenance personnel, nonemployee maintenance personnel, business guests, or visitors to be present in or pass through areas where controlled dangerous substances are

present, the registrant shall provide for adequate observation of the area by an employee specifically authorized in writing.

(6) A registrant may, in writing, request that the OBN waive one or more of the security requirements described in subsection (4) of this rule, by submitting on a form provided by the OBN a security waiver request for OBN approval. The OBN may in its discretion and on a case-by-case basis, approve the security waiver if it finds that the alternative safeguard proposed by the registrant meets the goals of the above security requirements. Approved security waivers expire at the same time as the underlying registration. The registrants request for a waiver shall include:

(A) The specific portion(s) of subsection (4) that is requested to be waived;

(B) The reason for the waiver; and,

(C) A description of an alternative safeguard the registrant will implement in lieu of the requirement that is the subject of the waiver.

[OAR Docket #20-657; filed 7-22-20]

TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL CHAPTER 25. RECORDS AND REPORTS OF REGISTRANTS

[OAR Docket #20-658]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

475:25-1-20. Reports for manufacturers and distributors [NEW]

AUTHORITY:

The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control; 63 O.S. §§ 2-301, 2-307, 2-309H

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET

SECRETARY:

January 24, 2020

COMMENT PERIOD:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

310:681-5-6

Incorporating rules:

475:25-1-20

Permanent Final Adoptions

Availability:

8:30 a.m. to 5:00 p.m., Monday through Friday at the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, 419 NE 38th Terrace, Oklahoma City, OK 73105, (405) 521-2885

GIST/ANALYSIS:

The adopted rule amendment specifies the reporting requirements for manufacturers and distributors. It also differentiates the reporting requirements of pharmaceutical manufacturers and distributors from Schedule I medical marijuana manufacturers and distributors.

CONTACT PERSON:

Russell S. Cochran, General Counsel, OBNDD, 419 NE 38th Terrace, Oklahoma City, OK, 73105, (405) 521-2885, rcochran@obn.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

475:25-1-20. Reports for manufacturers and distributors

(a) Except Schedule I medical marijuana registrants, manufacturers required to register pursuant to Title 63 Okla.St. Ann §2-302 shall provide the following data on every sale of any controlled dangerous substance in Schedules I, II, III, IV, and V.

- (1) The manufacturer's or distributor's name, address, phone number, DEA registration number and controlled dangerous substance registration number issued by the Bureau;
- (2) The name, address and DEA registration number of the entity to whom the controlled dangerous substance was sold;
- (3) The date of the sale of the controlled dangerous substance
- (4) The name and National Drug Code of the controlled dangerous substance sold; and
- (5) The number of containers and the strength and quantity of controlled dangerous substances in each container sold.

(b) Except for Schedule I medical marijuana registrants, distributors required to register pursuant to Title 63 Okla.St. Ann §2-302 shall provide the following data on every sale of any controlled dangerous substance in Schedules I, II, III, IV, and V.

- (1) The manufacturer's or distributor's name, address, phone number, DEA registration number and controlled dangerous substance registration number issued by the Bureau;
- (2) The name, address and DEA registration number of the entity to whom the controlled dangerous substance was sold;
- (3) The date of the sale of the controlled dangerous substance
- (4) The name and National Drug Code of the controlled dangerous substance sold; and
- (5) The number of containers and the strength and quantity of controlled dangerous substances in each container sold.

(c) Schedule I medical marijuana registrants required to register pursuant to Title 63 Okla.St. Ann §2-302 shall report in the format set forth in OAC 310:681-5-6.

[OAR Docket #20-658; filed 7-22-20]

TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL CHAPTER 30. LABELING REQUIREMENTS

[OAR Docket #20-659]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- 475:30-1-2. Persons entitled to issue prescriptions [AMENDED]
- 475:30-1-4. Manner of issuance of prescriptions [AMENDED]
- 475:30-1-6. Requirements of prescriptions for controlled dangerous substances listed in Schedule II [AMENDED]
- 475:30-1-7. Partial filling of Schedule II prescriptions [AMENDED]
- 475:30-1-10. Requirements of prescriptions for controlled dangerous substances listed in Schedules III and IV [AMENDED]
- 475:30-1-14. Dispensing, prescribing, administering, or distributing without prescription [AMENDED]

AUTHORITY:

The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control; 63 O.S. §§ 2-301, 2-309H

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INCORPORATIONS BY REFERENCE:

Incorporated standards:

United States Code, Title 42, Section 1395
Code of Federal Regulations, Title 21, Sections 1306.11 and 1311

Incorporated rules:

475:25-1-14
475:30-1-5

Availability:

8:30 a.m. to 5:00 p.m., Monday through Friday at the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, 419 NE 38th Terrace, Oklahoma City, OK 73105, (405) 521-2885

GIST/ANALYSIS:

The adopted rule amendments update language to be consistent with state statute on how prescriptions can be transmitted to the pharmacy. They also clarify when a pharmacy is authorized to fill a prescription. The proposed rule amendments also remove an inconsistency on when an identification is required.

CONTACT PERSON:

Russell S. Cochran, General Counsel, OBNDD, 419 NE 38th Terrace, Oklahoma City, OK, 73105, (405) 521-2885, rcochran@obn.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

475:30-1-2. Persons entitled to issue prescriptions

Only a registered individual practitioner may issue a prescription for a Schedule II, III, IV and V controlled dangerous substance. Except as otherwise prohibited by law or rule. ~~An~~ an individual practitioner, an authorized employee of the practitioner, or an authorized employee of the facility at which the practitioner works may communicate by telephone an oral prescription for any controlled dangerous substance in Schedules III, IV or V being prescribed by the individual practitioner. It remains the responsibility of the practitioner to guard against the diversion of CDS by employees authorized by him/her to call in such prescriptions.

475:30-1-4. Manner of issuance of prescriptions

(a) The practitioner shall sign a ~~written~~ prescription in the same manner he/she would sign a check or legal document and shall also type, stamp, or print the practitioner's name on the face of each prescription. Where an oral order is not permitted or an electronic prescription is not utilized, prescriptions shall be written with ink. All written prescriptions shall be manually signed by the practitioner. The prescriptions may be prepared by an agent for the signature of a practitioner, but the prescribing practitioner is responsible in the event the prescription does not conform in all essential respects to the Uniform Controlled Dangerous Substances Act and this Chapter.

(b) A resident or staff practitioner, an intern of a teaching hospital, or a limited institutional practitioner of a federal, state, or local government hospital or institution, exempted from registration or registered in fee-exempt status with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control (OBN), shall include on all prescriptions issued by him/her the hospital or institutional Federal Drug Enforcement Administration (DEA) registration number with the special internal code number assigned by the hospital or other institution; or include on all prescriptions he/she issues his/her personal DEA registration number. Such prescriptions issued by interns of a teaching hospital, if for outpatients, must be countersigned by a practitioner licensed by the practitioner's appropriate State of Oklahoma licensing board.

(c) A practitioner must state on a ~~written~~ prescription for any controlled dangerous substance the name, address, and DEA registration number of the practitioner; the date of delivery of the prescription; the name, dosage, and strength per dosage unit of the controlled dangerous substance; the name and address of the patient, or if it is a veterinary prescription, the species of the animal and the name and address of the owner; the directions for use and any cautionary statements required; and if allowable, the number of times to be refilled.

(1) The face of a prescription must not be materially altered; if an error is made in filling out the prescription, a

new prescription must be ~~written~~ issued by the prescribing practitioner.

(A) A pharmacist may add to the prescription the patient's address or age, the prescribing practitioner's DEA registration number, or the generic drug name if used.

(B) After confirming with the prescribing practitioner, the pharmacist may add information indicating the strength, whether tablet or capsule form, and whether it is compounded if such additions would not materially alter the prescription.

(C) If omitted, the directions (Sig) or the quantity, may be added by the pharmacist after confirming with the prescribing practitioner.

(D) Documentation of contacting the prescribing practitioner will be noted on the back of the prescription regarding (B) and (C) above.

(2) A ~~written~~ prescription for a controlled dangerous substance in Schedule II becomes invalid thirty (30) days after the ~~date of issuance~~ earliest date on which a pharmacy may fill the prescription, with day one (1) of the thirty (30) day period being the first day after the ~~date of issuance~~ earliest date on which a pharmacy may fill the prescription. After issuing an initial prescription pursuant to Section 2-309I of Title 63, an individual practitioner may issue one (1) subsequent prescription for an immediate-release opioid drug in Schedule II in a quantity not to exceed seven (7) days if:

(A) The subsequent prescription is due to a major surgical procedure and/or "confined to home" status as defined in 42 U.S.C. 1395n(a);

(B) The practitioner provides the subsequent prescription on the same day as the initial prescription;

(C) The practitioner provides written instruction on the subsequent prescription indicating the earliest date on which the prescription may be filled (i.e. "do not fill until" date); and,

(D) The subsequent prescription is dispensed no more than five (5) days after the "do not fill until" date indicated on the prescription.

(3) Each scheduled drug shall be written on a single prescription form, and no other prescriptions (controlled or non-controlled) shall be written on the same prescription form.

(d) Upon receiving an oral prescription, the pharmacist must reduce the oral prescription to the form specified in (c) of this Section, including the typewritten name of the prescribing practitioner. The pharmacist filling any prescription for any controlled dangerous substance must enter the date of filling and handwrite the initials of the pharmacist on the prescription. If the practitioner is not known to the pharmacist, he/she must make a reasonable effort to determine that the oral authorization came from a registered practitioner.

(e) Upon receiving an oral prescription, the pharmacist may use a computer printout label if the label meets all requirements for a prescription as set out by the Uniform Controlled Dangerous Substances Act and this Chapter. On computer labeling for oral prescriptions, it is not necessary that the DEA registration

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number be on the label used as an oral prescription, but it must be recorded on the document prepared by the pharmacist.

(f) Written prescriptions may be transmitted by a practitioner to a dispensing pharmacy by facsimile. In such cases, the prescribing practitioner shall print "FAXED" on the face of the prescription, and the facsimile received must be on non-fading standard paper. Thermographic paper is not acceptable for any prescriptions for drugs in any Schedule.

(1) For drugs in Schedules III, IV, and V, a facsimile of a written, signed prescription transmitted directly by the prescribing practitioner to the pharmacy can serve as an original prescription.

(2) For drugs in Schedule II, the original written prescription must still be presented and verified against the facsimile at the time the substance is actually dispensed and the original document must be properly annotated and retained for filing subject to the exceptions listed in (3) below.

(3) Exception to (2): A facsimile copy of a prescription for a Schedule II drug when sent by facsimile by the prescribing practitioner:

(A) To a Home Infusion Pharmacy.

(B) When the prescription is for a patient in a Long Term Care Facility (LTCF).

(C) When the prescription is for a patient in a Hospice program certified by Medicare under Title XVIII or licensed by the state.

(D) If the facsimile is sent from a LTCF or hospice instead of the prescribing practitioner's office, the original must be presented at the time any controlled dangerous substance is dispensed.

(g) The pharmacist still bears the responsibility for ensuring that prescriptions for controlled dangerous substances have been issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his/her professional practice. This responsibility applies equally to an order transmitted by facsimile. Measures to be considered in authenticating prescriptions sent by facsimile equipment would include maintenance of a practitioner's facsimile number reference file, verification of the telephone number of the originating facsimile equipment, and/or telephone verification with the practitioner's office that the prescription was both written by the practitioner and transmitted by the practitioner or the practitioner's agent.

(h) Electronic prescriptions are permitted as provided by 21 CFR §§ 1311 et. seq.

475:30-1-6. Requirements of prescriptions for controlled dangerous substances listed in Schedule II

(a) A pharmacy may dispense directly a controlled dangerous substance listed in Schedule II which is a prescription drug as determined under the Uniform Controlled Dangerous Substances Act, only pursuant to a ~~written~~ prescription or as otherwise provided for in this Title.

(b) A registered individual practitioner may administer or dispense directly a controlled dangerous substance listed

in Schedule II in the course of his/her professional practice without a prescription, subject to 475:30-1-5.

(c) An institutional physician limited in practice by the individual's appropriate Oklahoma state licensing board, other than those registered in a fee-exempt status with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, may administer or dispense directly (but not prescribe) a controlled dangerous substance listed in Schedule II, only pursuant to a ~~written~~ prescription signed by the "Limited Institutional Practitioner's" supervising chief medical practitioner or to an order for medication made by an individual supervising chief medical practitioner which is dispensed for immediate administration to the ultimate user.

(d) In case of an emergency situation, as defined by the Oklahoma State Board of Pharmacy pursuant to Title 63 Okl.St. Ann. §2-309, and Title 21 Code of Federal Regulations, §1306.11, the pharmacist of a registered or otherwise authorized pharmacy may dispense a controlled dangerous substance listed in Schedule II upon receiving oral authorization of a prescribing registered individual; PROVIDED that:

(1) The quantity prescribed and dispensed is limited to the amount adequate to treat the patient during the emergency period (dispensing beyond the emergency period must be pursuant to a ~~written~~ prescription signed by the prescribing registered individual practitioner).

(2) The prescription shall be immediately reduced to writing by the pharmacist and shall contain all information required in Title 63 Okl.St. Ann. §2-309 and OAC 475, except for the signature of the prescribing registered individual practitioner.

(3) If the prescribing registered individual practitioner is not known to the pharmacist, he/she must make a reasonable effort to determine that oral authorization came from a registered individual practitioner, which may include a callback to the prescribing registered individual practitioner, using his/her phone number as listed in the telephone directory and/or good faith effort to ensure his/her identity.

(4) In emergency situations, reasonable effort must be made to determine the identity of the person picking up the prescription if that person is not known to the pharmacist.

(5) Within seventy-two (72) hours after authorizing an emergency oral prescription, the prescribing registered individual practitioner shall cause a ~~written~~ prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of Title 63 Okl.St. Ann. §2-309(F), the prescription shall have written on its face "Authorization for Emergency Dispensing", and the date of the oral order. The ~~written~~ prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail, it must be postmarked within the 72-hour period. Upon receipt, the dispensing pharmacist shall attach this prescription to the oral emergency prescription which had earlier been reduced to writing. The pharmacy shall notify the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control if the prescribing registered individual practitioner fails to deliver to him/her a ~~written~~ prescription; failure of

the pharmacy to do so shall void the authority conferred by this paragraph to dispense without a ~~written~~ prescription of a prescribing registered individual practitioner.

475:30-1-7. Partial filling of Schedule II prescriptions

(a) The partial filling of a prescription for a controlled dangerous substance listed in Schedule II is permissible if the pharmacy is unable to supply the full quantity called for in ~~a written or emergency oral~~ on the prescription, or where the partial fill is requested by the patient or the practitioner that wrote the prescription. A notation of the quantity supplied on the face of the ~~written~~ prescription (or written record of the emergency oral prescription) is required. Except as otherwise prohibited by law or rule, if the remaining portion of the prescription is going to be filled, it shall be filled not later than thirty (30) days after the ~~issuance of~~ earliest date on which a pharmacy may fill the prescription; however, in the case of emergency oral prescriptions, the remaining portion of a partially filled prescription shall be filled not later than seventy-two (72) hours after the earliest date on which a pharmacy may fill the prescription is issued.

(b) For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or on another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. Prior to any subsequent partial filling, the pharmacist is to determine that the additional partial filling is necessary. The total quantity of Schedule II controlled dangerous substances dispensed in all partial fillings must not exceed the total quantity prescribed. Schedule II prescriptions for patients in a LTCF or patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of medication.

475:30-1-10. Requirements of prescriptions for controlled dangerous substances listed in Schedules III and IV

(a) A pharmacy may dispense controlled dangerous substances listed in Schedules III or IV only pursuant to either a ~~written~~ prescription signed by a registered or otherwise authorized individual practitioner, except as otherwise prohibited by law or rule, an oral prescription made by a prescribing registered or otherwise authorized individual practitioner and promptly reduced to writing by the pharmacist, containing all the information required by Title 63 Okl.St. Ann. § 2-309 and 2-314, and this Chapter, or pursuant to an electronic prescription in compliance with the terms of 21 CFR §§ 1311 et. seq. Computer labels meeting these requirements are acceptable.

(b) A registered or otherwise authorized individual practitioner may administer or dispense directly a controlled dangerous substance listed in Schedule III or IV in the course of his/her professional practice without a prescription, subject to 475:30-1-5.

(c) An institutional practitioner limited in practice by the individual's appropriate State of Oklahoma professional licensing board, other than those registered as fee-exempt by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, may administer or dispense directly (but not prescribe) a controlled dangerous substance listed in Schedule III or IV pursuant to a ~~written~~ prescription signed by the "Limited Institutional Practitioner's" supervising chief medical practitioner, or, except as otherwise prohibited by law or rule, pursuant to oral prescription made by the "Limited Institutional Practitioner's" supervising chief medical practitioner and promptly reduced to writing by the pharmacist containing all information required by 475:30-1-4, except for the signature of the "Limited Institutional Practitioner's" supervising chief medical practitioner or pursuant to an order for medication made by an individual supervising chief medical practitioner which is dispensed for immediate administration to the ultimate user, subject to 475:30-1-5.

475:30-1-14. Dispensing, prescribing, administering, or distributing without prescription

A controlled dangerous substance listed in Schedule V which is not a prescription drug as determined by the Oklahoma State Board of Pharmacy and/or the Federal Food and Drug Administration, may be dispensed by a pharmacy without a prescription to a purchaser at retail level; PROVIDED that:

(1) Such dispensing is made only by a pharmacist that has been licensed by the Oklahoma State Board of Pharmacy to dispense controlled dangerous substances and not by a non-pharmacist employee, even if under the supervision of a pharmacist (although after the pharmacist has fulfilled his/her professional and legal responsibilities set forth in this Section, the actual cash, credit transaction or delivery may be completed by a non-pharmacist).

(2) No person shall dispense, prescribe, administer or distribute to any one person, for the use of any one person or animal, any preparation(s) included in Title 63 Okl.St. Ann. § 2-313(B)(1), when the dispensing, prescribing, administering or distributing person knows, or can by reasonable diligence ascertain, that such dispensing, prescribing, administering or distributing will provide the person to whom or for whose use, or the owner of the animal for the use of which, such preparation is prescribed, administered, dispensed or distributed, within any forty-eight (48) consecutive hours, with more than 320 milligrams of opium, or more than 40 milligrams of morphine or any of its salts, or more than 160 milligrams of codeine or any of its salts, or will provide such person or the owner of such animal, within forty-eight (48) consecutive hours, more than one preparation exempted by Title 63 Okl.St. Ann. § 2-313.

(3) Except as otherwise authorized by the Act, OAC 475:30-1-14 shall not apply to the following cases:

(A) Prescribing, administering, dispensing or selling at retail not more than one of any of the following medicinal preparations that contain in thirty (30) milliliters or if a solid or semi-solid preparation, in one (1) avoirdupois ounce:

- (i) Not more than one hundred sixty (160) milligrams of opium.
- (ii) Not more than twenty (20) milligrams of morphine or any of its salts.
- (iii) Not more than eighty (80) milligrams of codeine or any of its salts.

(B) Prescribing, administering, dispensing or selling at retail of liniments, ointments and other preparations that are susceptible of external use only and that contain narcotic drugs in such combinations as to prevent their being readily extracted from such liniments, ointments or preparations, except that this shall apply to all liniments, ointments and other preparations that contain coca leaves in any quantity or combination.

(C) Any compound, mixture or preparation which contains not more than one drachma of paregoric per thirty (30) milliliters.

(D) The labeling requirements set forth in this Chapter shall not apply to medicinal preparations excepted by Title 63 Okl.St. Ann. § 2-313, and OAC 475.

(4) The medicinal preparation or the liniment, ointment or other preparation susceptible of external use only, prescribed, administered, dispensed or distributed shall contain, in addition to the narcotic drug therein, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone. Such preparation shall be prescribed, administered, dispensed and distributed in good faith as a medicine and not for the purpose of evading the provisions of the Uniform Controlled Dangerous Substances Act and this Chapter.

(5) The pharmacy, through its agent who is duly licensed by the Oklahoma State Board of Pharmacy, shall not dispense to persons under eighteen (18) years of age.

~~(6) The pharmacy requires every purchaser of controlled dangerous substances under this Chapter not known to him/her to furnish suitable identification (including proof of age where appropriate).~~

~~(76) A bound record book for dispensing controlled dangerous substances under this Section is maintained by the pharmacy, which book shall contain the name and address of the purchaser, the date of each purchase, and the name or initials of the pharmacist who dispensed the substance to the purchaser (the book shall be maintained in accordance with the record-keeping requirements of 475:25-1-4).~~

~~(87) The pharmacy agent dispensing controlled dangerous substances listed in Schedule V shall, pursuant to Title 63 Okl.St. Ann. § 2-314(B), affix to the package a label showing the prescription number, if any, the date dispensed, the purchaser's name, the name of the prescribing physician, if any, name and address of the pharmacy, if the patient or ultimate user is an animal, the name of the owner of the animal and the words "for veterinary use only".~~

[OAR Docket #20-659; filed 7-22-20]

TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL CHAPTER 35. TRANSFER AND DISPOSAL OF CONTROLLED DANGEROUS DRUGS

[OAR Docket #20-660]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

475:35-1-3. Distribution upon discontinuance or transfer of business
[AMENDED]

475:35-1-4. Procedure for disposing of controlled dangerous substances
[AMENDED]

AUTHORITY:

The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control; 63 O.S. §§ 2-301, 2-309H

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Incorporated standards:

Code of Federal Regulations, Title 31, Section 1304, 1305, and 1317

Incorporated rules:

475:25-1-5

475:25-1-12

310:681-5-6

Availability:

8:30 a.m. to 5:00 p.m., Monday through Friday at the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, 419 NE 38th Terrace, Oklahoma City, OK 73105, (405) 521-2885

GIST/ANALYSIS:

The adopted rule amendments provide that disposal for Schedule I medical marijuana shall be in accordance with the 63 Okla.St. Ann. § 429. Transfers of Schedule I medical marijuana will not require the use of forms in accordance with the Code of Federal Regulations, but will require the Schedule I medical marijuana registrants to comply with transfer rules promulgated by the Oklahoma State Department of Health.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

475:35-1-3. Distribution upon discontinuance or transfer of business

(a) Any registrant desiring to discontinue business activities altogether or with respect to controlled dangerous substances (without transferring such business activities to another person) shall return for cancellation of his/her Certificate of Registration. Any controlled dangerous substances in his/her possession shall be disposed of in accordance with Title 21 Code of Federal Regulations, part 1317. Schedule I medical marijuana shall be disposed pursuant to standards set forth in ~~the Uniform Controlled Dangerous Substances Act, 63 Okla.St. Ann. §2-101 et seq., and OAC 252§429.~~

(b) Any registrant desiring to discontinue business activities altogether or with respect to controlled dangerous substances (by transferring such business activities to another person) shall submit in person or by registered or certified mail, return receipt requested, to the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control (OBN) at least fourteen (14) days in advance of the date of the proposed transfer (unless the Director waives this time limitation in individual instances), the following information:

- (1) The name, address, registration number, and authorized business activity of the registrant discontinuing the business (registrant-transferor).
- (2) The name, address, registration number, and authorized business activity of the person acquiring the business (registrant-transferee).
- (3) Whether the business activities will be continued at the location registered by the person discontinuing the business or moved to another location (if the latter, the address of the new location should be listed).
- (4) Whether the registrant-transferor has a quota to manufacture or procure any controlled dangerous substance listed in Schedule I or II (if so, the basic class or classes of the substance should be indicated).
- (5) The date on which the transfer of controlled dangerous substances will occur.

(c) Unless the registrant-transferor is informed by the OBN, before the date on which the transfer was stated to occur, that the transfer may not occur, the registrant-transferor may distribute (without being registered to distribute) controlled dangerous substances in his/her possession to the registrant-transferee in accordance with the following:

- (1) On the date of transfer of the controlled dangerous substances, a complete inventory of all controlled dangerous substances being transferred shall be taken in accordance with 475:25-1-5 through 475:25-1-12. This inventory shall serve as the final inventory of the registrant-transferor and the initial inventory of the registrant-transferee, and a copy of the inventory shall be included in the records of each person. It shall be necessary to file a copy of the inventory with the OBN unless waived by the Director. Except for Schedule I medical marijuana, transfers of any substances listed in Schedule I or II ~~require~~ require the use of order forms in accordance with Title 21 Code of Federal Regulations, § 1305.

- (2) On the date of transfer of the controlled dangerous substances, all records required to be kept by the registrant-transferor with reference to the controlled dangerous substances being transferred, pursuant to this Chapter and Title 21 Code of Federal Regulations, § 1304, or OAC 310:681-5-6, shall be transferred to the registrant-transferee. Responsibility for the accuracy of records prior to the date of transfer remains with the transferor, but responsibility for custody and maintenance shall be upon the transferee.

475:35-1-4. Procedure for disposing of controlled dangerous substances

Any registrant in possession of any controlled dangerous substances and desiring or required to dispose of such substances shall do so according to the provisions of Title 63 Okl.St. Ann. §2-315 and Title 21 of the Code of Federal Regulations, part 1317, except Schedule I medical marijuana shall be disposed pursuant to standards set forth in ~~the Uniform Controlled Dangerous Substances Act, 63 Okla.St. Ann. §2-101 et seq., and OAC 252§429.~~

[OAR Docket #20-660; filed 7-22-20]

TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL
CHAPTER 45. OKLAHOMA CONTROL REPORTING REQUIREMENTS

[OAR Docket #20-661]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

475:45-1-2. Required reporting of certain information [AMENDED]

AUTHORITY:

The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control; 63 O.S. §§ 2-301, 2-309H

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

Permanent Final Adoptions

GIST/ANALYSIS:

The adopted rule amendment specifies what information on the dispensation of Schedule II, III, IV, and V drugs must be submitted to the central repository to be consistent with what is specified in statute.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

475:45-1-2. Required reporting of certain information

(a) Every pharmacy or dispensing practitioner filling any ~~schedule~~ Schedule II, III, IV, or V prescriptions must report the following information to a central repository maintained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control (OBN). The information must include, but not be limited to, the following:

- (1) Recipient's name;
- (2) Recipient's address;
- (3) Recipient's date of birth;
- (24) Recipient's identification number;
- (35) National Drug Code number of the substance dispensed;
- (46) Date of the dispensation;
- (57) Quantity of the substance dispensed;
- (68) Prescriber's U.S. Drug Enforcement Administration registration number;
- (79) Dispenser's U.S. Drug Enforcement Administration registration number and location; and
- (810) ~~Recipient's phone number~~ Other information as required by the most recent version of the American Society for Automation in Pharmacy's (ASA) Telecommunications Format for Controlled Substances.

(b) The term 'recipient' is also intended to include reporting the required information concerning the recipient's agent as defined by 63 O.S. § 2-309B.

(c) Dispensations of controlled dangerous substances for veterinary use shall report, to the central repository, the owner information as the recipient.

[OAR Docket #20-661; filed 7-22-20]

TITLE 485. OKLAHOMA BOARD OF NURSING CHAPTER 10. LICENSURE OF PRACTICAL AND REGISTERED NURSES

[OAR Docket #20-498]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Regulations for Approved Nursing Education Programs
485:10-3-2 [AMENDED]

485:10-3-5 [AMENDED]

Subchapter 5. Minimum Standards for Approved Nursing Education Programs

485:10-5-5.2 [AMENDED]

Subchapter 7. Requirements for Registration and Licensure as a Registered Nurse

485:10-7-2 [AMENDED]

Subchapter 9. Requirements for Registration and Licensure as a Licensed Practical Nurse

485:10-9-2 [AMENDED]

Subchapter 10. Advanced Unlicensed Assistant

485:10-10-9 [AMENDED]

Subchapter 11. Disciplinary Action

485:10-11-4 [NEW]

Subchapter 15. Requirements for Practice as an Advanced Practice Registered Nurse

485:10-15-4 [AMENDED]

Subchapter 16. Requirements for Prescriptive Authority for Advanced Practice Registered Nurses

485:10-16-6 [AMENDED]

485:10-16-7 [AMENDED]

AUTHORITY:

Oklahoma Board of Nursing; 59 O.S. §§ 567.2(A); 567.4(F); 567.4a; 567.5(B)(5)(D); 567.5a(C); 567.6(B)(5)(D); 567.6a(B); 567.12; 567.4a; and 59 O.S. § 4100.8(F)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 11. Disciplinary Action

485:10-11-4 [NEW]

Subchapter 16. Requirements for Prescriptive Authority for Advanced Practice Registered Nurses

485:10-16-6 [AMENDED]

Gubernatorial approval:

October 25, 2019

Register publication:

37 Ok Reg 221

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19-822

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions to rules in 485, subchapters 3, 5, and 10 remove the requirement for the submission of faculty qualification records for faculty, allowing those records to be maintained onsite at the nursing education programs.

The proposed new rules in 485, subchapters 7, 9 and 15, in accordance with S.B. 670, allow for expedited licensure at no cost of active military and active military spouses relocated to Oklahoma and hold a valid, unencumbered license at the same level in another state or territory.

The proposed new rules in 485:10-11-4 sets out a list of criminal offenses that disqualify one from becoming or remaining a licensed nurse or certified Advanced Unlicensed Assistant. In addition, it prescribes a method for a potential applicant with a criminal history to obtain an initial determination of eligibility for licensure or certification, including the required fee. The rule implements the requirements of 59 O.S. §§567.1 et seq. and new law codified in 59 O.S. § 4000.1 that become effective November 1, 2019.

The proposed new rules in 485-10-16-6 includes the additional two hours of education requirements for prescriptive authority for Advanced Practice Registered Nurses who hold a valid federal Drug Enforcement Administration registration number. S.B. 848, signed by the Governor on May 19, 2019 with an emergency clause, amended the ONPA prescriptive authority renewal requirements in 59 O.S. § 567.4a. The rule revisions in 485-10-16-6 are necessary to ensure the requirements are in compliance with the law.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

**SUBCHAPTER 3. REGULATIONS FOR
APPROVED NURSING EDUCATION PROGRAMS**

**485:10-3-2. Establishment of new nursing education
programs**

(a) Step I. Initial application.

- (1) An institution wishing to establish a new nursing education program shall advise the Board of its intent in writing, and shall seek Board consultation in the initial planning.
- (2) The institution shall submit the Step I Initial Application to the Board office at least eight weeks prior to a regularly-scheduled Board meeting, which provides the following information for the Board's consideration:
 - (A) mission and organization of the educational institution;
 - (B) accreditation status of the educational institution;
 - (C) type of nursing program to be established;
 - (D) relationship of nursing program to the educational institution;
 - (E) documentation of the rationale for the establishment of the nursing program in Oklahoma;
 - (F) tentative time-table for program development and implementation;
 - (G) source of potential qualified Nurse Administrator and faculty, with projected times of employment;
 - (H) tentative budget plans including evidence of financial resources adequate for developing, implementing, and continuing the nursing program;
 - (I) source of anticipated student population;
 - (J) description of support staff for the proposed program;
 - (K) description of physical facilities;
 - (L) description of available clinical resources with letters from clinical resources supporting development of a new program in nursing.
- (3) The application shall be signed by the controlling institution's administrative official with evidence that the institution is authorized to offer educational programs in

Oklahoma. Regional accreditation is recommended for institutions offering programs in nursing education.

(4) The Board shall advise the institution in writing of its decision to:

- (A) approve proceeding with development of the program-Step II; or
 - (B) defer approval pending a visit to the institution and/or receipt of further information; or
 - (C) deny approval specifying reasons for denial.
- (5) The application shall be limited to fifteen (15), single-sided pages, with at least a one inch margin, no less than 1.5 line spacing and no less than an 11 point font size.
- (b) Step II. Application for Provisional Approval.**
- (1) The institution shall employ a qualified Nurse Administrator ensuring adequate time is provided to develop Step II. A consultative visit will be conducted by Board staff at least one month prior to submission of the Step II application. The institution shall provide a DRAFT of the Step II application for the Board staff to review not less than 14 days before the consultative visit. A report of the findings from this visit will be submitted to the Board with the Step II application.
 - (2) The Nurse Administrator shall prepare the following materials following the Guidelines for Provisional Approval for the Board's consideration:
 - (A) philosophy, program and course objectives;
 - (B) curriculum plan;
 - (C) policy statements;
 - (D) survey of clinical facilities, with evidence that a sufficient amount and variety of clinical experience is available to support an additional nursing education program in the service area;
 - (E) faculty qualifications, criteria and job descriptions;
 - (F) budget plan projected for a three (3) year period;
 - (G) learning resources; and
 - (H) institutional and program organizational plans.
 - (3) At least four months prior to the anticipated admission of students and at least eight weeks prior to a regularly-scheduled Board meeting, the Nurse Administrator shall submit the "Application for Provisional Approval" for Board review.
 - (4) Nursing education and institutional representatives may be present during the Board meeting. The Board shall advise the institution in writing of its decision to:
 - (A) grant Provisional Approval, authorizing the institution to proceed with implementation of the nursing education program and admission of students; or
 - (B) defer Provisional Approval and program implementation pending further development; or
 - (C) deny Provisional Approval.
 - (5) The program cannot admit students until Provisional Approval is granted.
 - (6) Faculty qualification ~~forms~~ form ~~for the Nurse Administrator~~ must be submitted to the Board ~~and qualified~~

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~~faculty employed at least thirty days prior to the admission of students.~~

(7) Qualified faculty must be employed at least thirty days prior to the admission of students.

(8) Progress reports shall be made by the Nurse Administrator as requested by the Board while on Provisional Approval.

(89) The application shall be limited to fifty (50), single-sided pages, with at least a one inch margin, no less than 1.5 line spacing and no less than an 11 point font size.

485:10-3-5. Reports to the Board

The Board shall take action on all reports as appropriate.

(1) Faculty qualification report.

(A) A Faculty Qualification Record shall be submitted for ~~all instructional staff (full time, part time, classroom, or clinical)~~ the Nurse Administrator, and shall include educational preparation and employment experience.

(B) The Faculty Qualification Record for the Nurse Administrator must be submitted to the Board office by the Nurse Administrator on a form provided by the Board within thirty days of day of appointment, a change in title or status of position, and any time that an advanced degree is attained. The Faculty Qualification Record may be submitted electronically to a designated email address.

(2) **Enrollment and annual reports.** Enrollment and annual reports shall be submitted in formats requested by the Board.

(3) **Special reports.** Special reports to the Board shall include but not be limited to:

(A) notification in writing of administrative changes relating to and affecting the program within thirty days of the change, to include a change in Nurse Administrator;

(B) requests in writing to obtain approval prior to implementation for:

(i) major curriculum changes that alter the length of the program, substantially change the objectives, or reflect a significant philosophical or conceptual shift. Board staff may approve minor changes including but not limited to such matters as reorganizing existing course offerings, transferring existing objectives or content from one course to another, or alterations in the leveling of course objectives.

(ii) extended, distance learning, or off-campus offerings, when any nursing course is offered;

(iii) a significant change in instructional format;

(iv) a pilot or experimental program.

(4) **Pass Rate Reports.** Pass Rate Reports are required when the first-time NCLEX writer pass rate falls ten (10) percentage points or more below the national average and at least ten candidates wrote the examination (based on a calendar year.)

(5) **Completion Rate Reports.** A completion rate report is required when the program completion rate average is less than 70% for the most recent three (3) annual report years. Program completion rate shall be calculated as 200% of the program length as defined by selective admission to the nursing program's first nursing course. Admission is defined as the grade of the first nursing course that is transcribed with a letter grade of A, B, C, D, or F, which are used to calculate the grade point average. Individual exceptions to the calculation of completion rate include death, military, and peace corp.

(6) All reports shall be limited to ten (10), single-sided pages, with at least a one inch margin, no less than 1.5 line spacing and no less than an 11 point font size.

SUBCHAPTER 5. MINIMUM STANDARDS FOR APPROVED NURSING EDUCATION PROGRAMS

485:10-5-5.2. Faculty for nursing education programs

(a) There shall be sufficient number of qualified full-time faculty to meet the purpose and student learning outcomes of the nursing program.

(b) Qualifications, rights, and responsibilities of faculty members shall be available in writing.

(c) Faculty policies shall be available in writing, shall include those used in evaluating performance, specify the teaching load for the faculty and Nurse Administrator, and be in keeping with accepted educational standards.

(d) Sufficient time shall be provided for faculty to accomplish those activities related to the teaching-learning process.

(e) All nurse faculty shall:

(1) hold a valid unencumbered license to practice as a Registered Nurse in the State of Oklahoma;

(2) present evidence of a minimum of two (2) years full-time equivalent practice as a Registered Nurse in a clinical setting preceding the first date of first employment as a nursing faculty member, PROVIDED: any person employed in the faculty position on September 1, 2016, is deemed to meet this requirement; and

(3) ~~submit a Faculty Qualification Record to the Board office on a form provided by the Board and in accordance to OAC 485:10-3-5(1); and~~

(4) engage in teaching, scholarship, service and/or practice in keeping with the mission, goals, and expected faculty outcomes.

(f) All programs leading to licensure as a Registered Nurse in this state shall establish comparable educational qualifications for the nursing faculty as required for other teaching faculty in the governing organization. The minimum requirements shall be as follows:

(1) a master's or higher degree in nursing; or

(2) a baccalaureate degree in nursing plus evidence of continued progress toward a master's or higher degree in nursing with completion of a minimum of six (6) semester hours per calendar year; and

(3) at least one-half of the full-time faculty having a master's or higher degree in nursing; and

- (4) part-time clinical instructors, regardless of title used, having a minimum of a baccalaureate degree in nursing.
- (g) All programs leading to licensure as a Practical Nurse in this state shall establish requirements for nursing faculty as follows:
 - (1) minimum of an associate degree or diploma in nursing in this state, and effective January 1, 2017, has evidence of continued progress toward a baccalaureate or higher degree in nursing with completion of a minimum of six (6) semester hours per calendar year, **PROVIDED:** any person employed in the position of faculty of a practical nursing education program on December 31, 2016, is deemed to meet this requirement; and
 - (2) teacher certification, as established by the State Department of Education, when employed in schools conducted by public comprehensive high school systems.
- (h) There shall be a faculty organization with written policies and procedures to guide its activities and shall:
 - (1) hold regular meetings for all members to participate in planning, developing, implementing, and evaluating the nursing program;
 - (2) establish committees as necessary to carry out the functions of the program;
 - (3) provide for student participation; and
 - (4) maintain minutes of all meetings documenting actions and decisions of the faculty.

SUBCHAPTER 7. REQUIREMENTS FOR REGISTRATION AND LICENSURE AS A REGISTERED NURSE

485:10-7-2. Licensure by endorsement

(a) Qualifications.

- (1) The applicant must submit an application containing such information as the Board may prescribe;
- (2) Be a minimum of eighteen (18) years of age on or before the date the license is issued;
- (3) An applicant for licensure by endorsement as a Registered Nurse must meet the requirements of the Oklahoma Nursing Practice Act. An evaluation of educational requirements may be completed to ensure the applicant meets educational standards.
- (4) An applicant licensed in another state or U.S. territory since January 1, 1952 must have written the licensing examination adopted by the Board with a passing score as established by the Board. A license to practice nursing in Oklahoma will not be issued until this requirement is met.
- (5) An applicant must submit evidence of either:
 - (A) successful completion of the National Council Licensure Examination for Registered Nurses since July 1, 1982; or
 - (B) passing the State Board Test Pool Examination for Registered Nurse licensure prior to July 1, 1982.
- (6) In addition to meeting other requirements for endorsement established by the Board in these Rules, each applicant for endorsement must demonstrate evidence of

continued qualifications for practice through completion of one or more of the following requirements within the last five (5) years prior to receipt of the completed application in the Board office:

- (A) Submission of an official transcript or certificate of completion verifying completion of a nurse refresher course with content consistent with Board policy;
 - (B) Successfully pass the National Council Licensure Examination for Registered Nurses;
 - (C) Cause submission of an official transcript, provided by an entity approved and recognized by the U.S. Department of Education as a primary source for providing education transcripts, verifying successful completion of at least six (6) academic semester credit hours of nursing courses which include classroom and clinical instruction;
 - (D) Present evidence of licensure as a registered nurse in another state, territory or country with employment in a position that requires nursing licensure with verification of at least 520 work hours during the past five (5) years;
 - (E) Submit evidence of completing at least twenty-four (24) contact hours of continuing education applicable to nursing practice;
 - (F) Submit current certification in a nursing specialty area.
- (7) Applicants for endorsement who took the National Council Licensure Examination for Registered Nurses for initial licensure within the last two years must:
- (A) Provide evidence of completion of the nursing education program within two years of initial application for licensure by examination; or
 - (B) Provide evidence of at least six months work experience as a registered nurse in the state, U.S. territory, or country of licensure; or
 - (C) Successfully complete a Board-approved refresher course in accordance with the Board's policy; or
 - (D) Successfully complete nursing didactic coursework and faculty-supervised clinical experience in a board-approved nursing education program at the appropriate educational level, to include at least 80 hours in classroom and skills laboratory review and at least 80 hours participating in patient care activities in the clinical setting.
- (b) **Applications.**
- (1) Applications must be completed and filed with the Board.
 - (2) Endorsement may be accepted from the original state or U.S. territory of licensure by examination.
 - (3) If the applicant has written the licensing examination adopted by the Board in a state other than the state or U.S. territory of original licensure, an endorsement will be requested from that state, also.
 - (4) If the application is not completed within one (1) year after receipt of fee, the application must be refilled.
- (c) **Fee for licensure by endorsement.**

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- (1) The fee shall accompany the application.
 - (2) The fee is not refundable.
 - (3) If the application is not completed within one (1) year, a new application and new fee will be required for licensure.
- (d) **Qualifications for applicants educated in foreign countries or in a U.S. territory.** An applicant educated in a foreign country must meet the current educational requirements for licensure in Oklahoma. An applicant educated in a U.S. territory not recognized as a full member of National Council of State Boards of Nursing (NCSBN) must meet the requirements for applicants educated in foreign countries. An applicant educated in a U.S. territory that is a full member of NCSBN but in a nursing education program not included on the NCSBN state-approved programs of nursing list at the time of the applicant's graduation from the program must meet the requirements for applicants educated in foreign countries.
- (1) The applicant must present evidence of:
 - (A) graduation from a government-approved post-secondary nursing education program, as verified from the Commission of Graduates of Foreign Nursing Schools (CGFNS);
 - (B) completion of formal courses including theory and clinical experience in nursing care of the adult, nursing care of children, maternal-infant nursing, psychiatric-mental health nursing as evidenced by:
 - (i) a translated transcript with certified proof of translation received directly from the nursing education program in the original country of licensure, or
 - (ii) a certified copy of original transcript obtained directly from the Commission of Graduates of Foreign Nursing Schools (CGFNS)
 - (C) licensure or registration as required in country of graduation as evidenced by official verification received directly from the Commission of Graduates of Foreign Nursing Schools;
 - (D) competence in oral and written English as evidenced by receipt of scores directly from the approved testing service or from CGFNS verifying successful completion of:
 - (i) Test of English for International Communication (TOEIC), to include the Listening and Reading Test, and the Speaking and Writing Test of the Educational Testing Service, or
 - (ii) International English Language Testing System (IELTS), or
 - (iii) Test of English as a Foreign Language Internet-based test (TOEFL iBT) of the Educational Testing Service, or
 - (iv) Michigan English Language Assessment Battery (MELAB).
 - (E) An evaluation of educational credentials as evidenced by:
 - (i) CGFNS Certificate Status or Visa Screen Certificate; or
 - (ii) CGFNS Credentials Evaluation Service Professional Report;
 - (iii) Reports received from CGFNS must have been completed within the five (5) years immediately preceding the date of application for licensure by endorsement. The five-year requirement is waived if the applicant holds a license in another state.
- (F) Evidence of either:
- (i) successful completion of the National Council Licensure Examination for Registered Nurses since July 1, 1982; or
 - (ii) passing the State Board Test Pool Examination for Registered Nurse licensure prior to July 1, 1982;
- (2) The requirement for verification by CGFNS is waived for applicants currently licensed in another state when the state validates that the credential review report was prepared by an independent credentials review agency.
- (3) The requirements for competence in spoken and written English are waived for applicants who are:
- (A) Graduates of nursing education programs taught in English in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, Trinidad, Tobago, Jamaica, Barbados, South Africa, and the United States.
 - (B) Licensed in another US State or Territory and have successfully completed the licensure examination approved by the Board.
- (4) Applicants must submit a completed application and the required fee.
- (e) **Temporary license for endorsement applicants.**
- (1) A temporary license may be issued to the applicant on proof of:
 - (A) Current unrestricted licensure in another state, territory or country with no history of arrest or disciplinary action requiring further review;
 - (B) Evidence of having successfully passed the licensure examination adopted by the Oklahoma Board of Nursing;
 - (C) Evidence of meeting educational qualifications through completion of a state board-approved nursing education program meeting the educational standards established by the Board, or an evaluation of educational credentials and nursing licensure or registration as required in country of origin for the foreign-educated nurse as evidenced by:
 - (i) Commission on Graduates of Foreign Nursing Schools (CGFNS) Credentials Evaluation Service Professional Report with verification of equivalent educational credentials and unrestricted licensure in country of origin, or
 - (ii) Commission on Graduates of Foreign Nursing Schools (CGFNS) Certificate status or Visa Screen Certificate, accompanied by a verification of graduation from a government approved nursing education program, the translated transcript, and verification of unrestricted nursing

licensure or registration as required in country of graduation;

(D) Payment of the fee for licensure by endorsement and temporary license;

(E) Foreign-educated applicants must provide evidence of competence in oral and written English by meeting the requirements of 485:10-7-2(d)(1)(D) unless 485:10-7-2(d)(3) applies;

(F) Demonstrating evidence of continued qualifications for practice through meeting the requirements of 485:10-7-2(a)(6) or (7); and

(G) Submission of fingerprint images with the fee established by the Oklahoma State Bureau of Investigation and/or vendor for the purpose of permitting a state and national criminal history records search to be completed.

(2) The temporary license may not be issued for a period longer than ninety (90) days.

(3) The temporary license may be extended, but such period shall be no longer than one (1) year for any applicant.

(f) Licensure of active duty military or the spouse of an active military individual. Applications must be completed and filed with the Board.

(1) Submit with the endorsement application a copy of the United States Uniformed Services Identification and Privilege Card and a copy of the Permanent Change of Station orders for the active military individual;

(2) The requested Oklahoma license and/or temporary license shall be issued within thirty (30) days for their currently held valid license from another state or territory provided the license from the other state is found to be in good standing and reasonably equivalent to the requirements of this state; and

(3) The fee for licensure, including temporary license, of active duty military or the spouse of an active duty military individual is waived with the license expiration date extended through the first renewal cycle.

SUBCHAPTER 9. REQUIREMENTS FOR REGISTRATION AND LICENSURE AS A LICENSED PRACTICAL NURSE

485:10-9-2. Licensure by endorsement

(a) **Qualifications.**

(1) The applicant must submit an application containing such information as the Board may prescribe;

(2) Be a minimum of eighteen (18) years of age on or before the date the license is issued;

(3) An applicant for licensure by endorsement as a Licensed Practical Nurse shall meet the requirements of the Oklahoma Nursing Practice Act. An evaluation of educational requirements may be completed to ensure the applicant meets educational standards.

(4) An applicant licensed in another state or U.S. territory since June 30, 1954, must have passed the licensing examination adopted by the Board. A license to practice

practical nursing in Oklahoma will not be issued until this requirement is met.

(5) In addition to meeting other requirements for endorsement established by the Board in these rules, each applicant for endorsement must demonstrate evidence of continued qualifications for practice through completion of one or more of the following requirements within the last five (5) years prior to receipt of the completed application in the Board office:

(A) Submission of an official transcript or certificate of completion verifying completion of a nurse refresher course with content consistent with Board policy;

(B) Successfully pass the National Council Licensure Examination for Practical Nurses;

(C) Cause submission of an official transcript, provided by an entity approved and recognized by the U.S. Department of Education as a primary source for providing education transcripts, verifying successful completion of at least six (6) academic semester credit hours or 105 contact hours of nursing courses in a state-approved practical or registered nursing education program, which includes classroom and clinical instruction;

(D) Present evidence of licensure as a practical nurse in another state, territory or country with employment in a position that requires practical nursing licensure with verification of at least 520 work hours during the past five (5) years;

(E) Submit evidence of completing at least twenty-four (24) contact hours of continuing education applicable to nursing practice;

(F) Submit current certification in a nursing specialty area.

(6) Applicants for endorsement who took the National Council Licensure Examination for Practical Nurses for initial licensure within the last two years must:

(A) Provide evidence of completion of the nursing education program within two years of initial application for licensure by examination; or

(B) Provide evidence of at least six months work experience as a Licensed Practical Nurse in the state, U.S. territory, or country of licensure; or

(C) Successfully complete a Board-approved refresher course in accordance with the Board's policy; or

(D) Successfully complete nursing didactic coursework and faculty-supervised clinical experience in a board-approved nursing education program at the appropriate educational level, to include at least 80 hours in classroom and skills laboratory review and at least 80 hours participating in patient care activities in the clinical setting.

(b) **Applications.**

(1) Applications must be completed and filed with the Board.

(2) Endorsement may be accepted from the original state of licensure by examination.

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- (3) If the applicant has written the licensing examination adopted by the Board in a state other than the state or U.S. territory of original licensure, an endorsement will be requested from that state, also.
- (4) If the application is not completed within one (1) year after receipt of fee, the application must be refiled.
- (c) **Fee for licensure by endorsement.**
- (1) The fee shall accompany the application.
- (2) The fee is not refundable.
- (3) If the application is not completed within one (1) year, a new application and new fee will be required for licensure.
- (d) **Qualifications for applicants educated in foreign countries or in a U.S. territory.** An applicant educated in a foreign country must meet the current educational requirements for licensure in Oklahoma. An applicant educated in a U.S. territory not recognized as a full member of National Council of State Boards of Nursing (NCSBN) must meet the requirements for applicants educated in foreign countries. An applicant educated in a U.S. territory that is a full member of NCSBN but in a nursing education program not included on the NCSBN state-approved programs of nursing list at the time of the applicant's graduation from the program must meet the requirements for applicants educated in foreign countries.
- (1) The applicant must present evidence of:
- (A) competence in oral and written English as evidenced by receipt of scores directly from the testing service or from CGFNS verifying successful completion of:
- (i) Test of English for International Communication (TOEIC), to include the Listening and Reading Test, and the Speaking and Writing Test of the Educational Testing Service; or
- (ii) International English Language Testing System (IELTS); or
- (iii) Test of English as a Foreign Language Internet-based test (TOEFL iBT) of the Educational Testing Service; or
- (iv) Michigan English Language Assessment Battery (MELAB).
- (B) graduation from a government approved post-secondary practical nursing education program or equivalent courses in a government approved post-secondary nursing education program, as verified from the Commission of Graduates of Foreign Nursing Schools (CGFNS);
- (C) licensure or registration as required in country of graduation as evidenced by official verification completed within the last twelve (12) months immediately preceding the date of application for licensure by endorsement received directly from the Commission of Graduates of Foreign Nursing Schools,
- (D) completion of formal courses including theory and clinical experience in nursing care of the adult, nursing care of children, and maternal-infant nursing in a government-approved school of nursing as evidenced by:
- (i) a translated transcript received directly from the nursing education program in the original country of licensure with certified proof of translation; or
- (ii) a certified copy of the transcript received directly from the Commission on Graduates of Foreign Nursing Schools (CGFNS).
- (E) An evaluation of educational credentials as evidenced by:
- (i) Commission on Graduates of Foreign Nursing Schools (CGFNS) Credentials Evaluation Service Professional Report, or
- (ii) Commission on Graduates of Foreign Nursing Schools (CGFNS) Certificate or Visa Screen Certificate status;
- (iii) Reports received from CGFNS must have been completed within the five (5) years immediately preceding the date of application for licensure by endorsement. The five-year requirement is waived if the applicant holds a license in another state.
- (2) The requirement for verification by CGFNS is waived for applicants currently licensed in another state when the state validates that the credential review report was prepared by an independent credentials review agency.
- (3) The applicant must successfully complete the licensing examination adopted by the Oklahoma Board of Nursing.
- (4) The requirements for competence in spoken and written English are waived for applicants who are:
- (A) Graduates of nursing education programs taught in English in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, Trinidad, Tobago, Jamaica, Barbados, South Africa, and the United States, or
- (B) Licensed in another US State or Territory and have successfully completed the licensure examination approved by the Board.
- (5) Applicants must submit a completed application with the required application and evaluation fees.
- (e) **Temporary license for endorsement applicants.**
- (1) A temporary license may be issued to the applicant on proof of
- (A) Current unrestricted licensure in another state, territory or country with no history of arrest or disciplinary action requiring further review;
- (B) Evidence of having successfully passed the licensure examination adopted by the Oklahoma Board of Nursing;
- (C) Evidence of meeting educational qualifications through completion of a state board-approved nursing education program meeting the educational standards established by the Board, or an evaluation of educational credentials and nursing licensure or registration as required in country of origin for the foreign-educated nurse as evidenced by:

- (i) Commission on Graduates of Foreign Nursing Schools (CGFNS) Credentials Evaluation Service Professional Report with verification of equivalent educational credentials and unrestricted licensure in country of origin, or
- (ii) Commission on Graduates of Foreign Nursing Schools (CGFNS) Certificate status or Visa Screen Certificate, accompanied by a verification of graduation from a government approved nursing education program, the translated transcript, and verification of unrestricted nursing licensure or registration as required in country of graduation;
- (D) Payment of the fee for licensure by endorsement and temporary license;
- (E) Foreign-educated applicants must provide evidence of competence in oral and written English by meeting the requirements of 485:10-9-2(d)(1)(A) unless 485:10-9-2(d) (4) applies; and
- (F) Demonstrating evidence of continued qualifications for practice through meeting the requirements of 485:10-9-2(a)(5) or (6); and
- (G) Submission of fingerprint images with the fee established by the Oklahoma State Bureau of Investigation and/or vendor for the purpose of permitting a state and national criminal history records search to be completed.
- (2) The temporary license may not be issued for a period longer than ninety (90) days.
- (3) The temporary license may be extended, but such period shall be no longer than one (1) year.
- (f) **Licensure of active duty military or the spouse of an active military individual.** Applications must be completed and filed with the Board.
 - (1) Submit with the endorsement application a copy of the United States Uniformed Services Identification and Privilege Card and a copy of the Permanent Change of Station orders for the active military individual;
 - (2) The requested Oklahoma license and/or temporary license shall be issued within thirty (30) days for their currently held valid license from another state or territory provided the license from the other state is found to be in good standing and reasonably equivalent to the requirements of this state; and
 - (3) The fee for licensure, including temporary license, of active duty military or the spouse of an active duty military individual is waived with the license expiration date extended through the first renewal cycle.

SUBCHAPTER 10. ADVANCED UNLICENSED ASSISTANT

485:10-10-9. Records

- (a) The following records shall be maintained and submitted to the Board by approved training programs:
 - (1) curriculum plan and revisions; and

- (2) faculty records that provide for verification of academic credentials, clinical practice and current licensure as a registered nurse; and
- (3) verification of program completion for graduates of the program, in a format so designated by the Board.
- (b) The approved training programs shall maintain faculty records that provide evidence of faculty meeting licensure and employment experience requirements under 485:10-10-4.

SUBCHAPTER 11. DISCIPLINARY ACTION

485:10-11-4. **Licensure or certification of individuals with criminal history**

(a) This section establishes the criteria utilized by the Board in determining the effect of criminal history on eligibility for nursing licensure or Advanced Unlicensed Assistant (AUA) certification and implements the requirements of Oklahoma Statutes Title 59 Sections 567.1. *et seq.* and 4000.1 (2019). This section applies to:

- (1) all currently licensed nurses and holders of an AUA certificate;
- (2) all individuals seeking to obtain a nursing license or AUA certificate; and
- (3) all individuals seeking an initial determination of their eligibility for nursing licensure or AUA certification.
- (b) The felonies listed below in subsection (c) disqualify an individual from retaining licensure or becoming licensed as a nurse or retaining certification or becoming certified as an AUA in Oklahoma. However, subsection (c) is not an exhaustive or exclusive list of crimes, both felonies and misdemeanors resulting in a conviction or a deferred sentence, that may result in discipline from the Board of Nursing, up to and including revocation. The felonies listed in subsection (c) disqualify an individual because they substantially relate to the practice of nursing and pose a reasonable threat to public safety for the reasons stated below.

(1) **The practice of nursing is a unique profession.** Licensees and certificate holders practice nursing autonomously in a wide variety of settings and provide care to patients who are, by virtue of their illness or injury, physically, emotionally, and/or financially vulnerable. These patients often include the elderly, children, those with mental or cognitive disorders, sedated or anesthetized patients, and/or disabled or immobilized individuals. Individuals who have engaged in criminal conduct place patients, healthcare employers and employees, and the public at risk of harm.

(2) **Crimes involving fraud and/or theft.** Licensees and certificate holders often have unfettered access to patients' privileged information, financial information, and valuables, including but not limited to medications, money, jewelry, credit cards/checkbook, and/or sentimental items. The practice of nursing continues 24 hours per day in all healthcare settings, including those where there is often no direct supervision of the individual. Patients in these healthcare settings are particularly vulnerable to the unethical, deceitful, and illegal conduct of a licensee

or certificate holder. When an individual has engaged in criminal behavior involving fraud and/or theft, the Board is mindful that similar misconduct may be repeated in healthcare settings, thereby placing patients, healthcare employers and employees, and the public at risk. As such, crimes involving any type of fraud and/or theft are highly relevant to an individual's ability to provide safe nursing care.

(3) **Crimes involving sexual misconduct.** Licensees and certificate holders frequently provide nursing care to partially clothed or fully undressed patients, who are particularly vulnerable to exploitation. Due to the intimate nature of nursing care, professional boundaries in the practice of nursing are extremely important. When an individual has engaged in criminal behavior involving any type of sexual misconduct, the Board is mindful that similar misconduct may be repeated in healthcare settings. As such, crimes involving any type of sexual misconduct are highly relevant to an individual's ability to provide safe nursing care.

(4) **Crimes involving lying, falsification, and/or deception.** Licensees and certificate holders are required to accurately and honestly report and record information in a variety of places, such as medical records, pharmacy records, billing records, nursing notes, and plans of care, as well as to report errors in their own nursing practice. When an individual has engaged in criminal behavior involving lying, falsification, and/or deceptive conduct, the Board is mindful that similar misconduct may be repeated in healthcare settings, thereby placing patients, healthcare employers and employees, and the public at risk of harm. As such, crimes involving any type of lying, falsification and/or deception are highly relevant to an individual's ability to provide safe nursing care.

(5) **Crimes involving drugs and/or alcohol.** Licensees and certificate holders have a duty to their patients to provide safe, effective nursing care and to be able to practice safely. Individuals who have a substance use disorder may have impaired judgment and motor skills and are at risk for harming their patients and/or the public. Licensees and certificate holders have access to many medications and drugs and those with substance use disorders may misuse or steal drugs. Individuals affected by a substance use disorder may be unable to accurately assess patients, make appropriate judgments, or intervene in a timely and appropriate manner, thus putting their patients at risk. This danger is heightened when the licensee or certificate holder works in an autonomous setting where other healthcare providers are not present to intervene for the patient or the public. As such, crimes related to the use or possession of drugs or alcohol are highly relevant to an individual's fitness to practice.

(6) **Crimes involving violence and/or threatening behavior.** Licensees and certificate holders provide care to the most vulnerable of populations, including patients who often have no voice of their own and cannot advocate for themselves. Further, patients are dependent on the caregiver-patient relationship for their daily care.

When an individual has engaged in violent or threatening criminal behavior, the Board is mindful that patients may be at risk for similar behavior in a healthcare setting. As such, crimes involving violence and threatening behavior are highly relevant to an individual's fitness to practice.

(c) All crimes listed in this subsection are as described in Titles 21, 47 and 63 of the Oklahoma Statutes. In addition, the Board recognizes and gives similar treatment to similar offenses charged in other jurisdictions. Felony convictions that disqualify an individual from retaining licensure or becoming licensed as a nurse, or retaining certification or becoming certified as an AUA in Oklahoma include:

(1) Crimes involving fraud, theft, lying and/or falsification.

(A) Robbery 21 O.S. § 791 et seq.

(B) Falsely personating another to gain money or property 21 O.S. § 1532.

(C) Identity theft 21 O.S. § 1533.1.

(2) Crimes involving sexual misconduct.

(A) Human Trafficking 21 O.S. § 748.

(B) Trafficking in children 21 O.S. § 866.

(C) Incest 21 O.S. § 885.

(D) Forcible sodomy 21 O.S. § 888.

(E) Indecent exposure, indecent exhibitions, obscene material or child pornography, solicitation of minors 21 O.S. § 1021.

(F) Procure, cause the participation of a minor in any child pornography, buys, or knowingly possesses, procures, manufactures, or causes to be sold or distributed child pornography 21 O.S. §§ 1021.2 and 1024.2

(G) Commercial sale or distribution of pornography 21 O.S. § 1040.13.

(H) Soliciting/offering sex with minor 21 O.S. § 1040.13a.

(I) Offering or transporting one under 18 for sex 21 O.S. § 1087.

(J) Child Prostitution - unlawful detainment in prostitution house 21 O.S. § 1088.

(K) Lewd or indecent proposals to minor, sexual battery of minor 21 O.S. § 1123.

(L) Knowingly engaging in acts likely to spread Human Immunodeficiency Virus 21 O.S. § 1192.1.

(3) Crimes involving drugs and/or alcohol.

(A) Causing, aiding, abetting minor to commit controlled dangerous substance crimes 21 O.S. § 856.1.

(B) Drug trafficking 63 O.S. § 2-415.

(4) Crimes involving threats, violence and/or harm to another individual.

(A) Assault, battery, or assault and battery with a dangerous weapon 21 O.S. § 645.

(B) Aggravated assault and battery 21 O.S. § 646.

(C) Aggravated assault and battery on a law officer 21 O.S. § 650.

(D) Aggravated assault and battery on medical personnel with firearm or other dangerous weapon 21 O.S. § 650.5.

- (E) Murder, first or second degree 21 O.S. §§ 701.7 and 701.8.
- (F) Manslaughter, first degree 21 O.S. § 711.
- (G) Kidnapping 21 O.S. § 741.
- (H) Extortionate kidnapping 21 O.S. § 745.
- (I) Malicious intentional intimidation or harassment based on suspect classification 21 O.S. § 850.
- (J) Desertion - abandonment of child under ten 21 O.S. § 851.
- (K) Child endangerment by permitting child abuse 21 O.S. § 852.1.
- (L) Rape first or second degree 21 O.S. §§ 1111 and 1114.
- (M) Peeping Tom - personally or electronically 21 O.S. § 1171.
- (N) Stalking 21 O.S. § 1173.
- (O) Endangering or injuring a person during arson or attempt 21 O.S. § 1405.
- (P) Failure to stop after fatal accident 47 O.S. § 10-102.1.
- (Q) Mingling poison, drugs, or sharp objects with food, drink 21 O.S. § 832.
- (5) Crimes involving harm to property.
 - (A) Violation of Oklahoma Antiterrorism Act 21 O.S. §§ 1268 et seq.
 - (B) Arson, first, second or third degree 21 O.S. §§ 1401, 1402, and 1403.
 - (C) Burglary, first degree 21 O.S. § 1431.
- (d) To obtain an Initial Determination of Eligibility, the required form shall be completed and filed with the Board. The fee for an Initial Determination of Eligibility shall be \$95.00 and shall be submitted with the required form.
- (e) The Executive Director is authorized to close a file requesting initial determination of eligibility when the person seeking determination of eligibility for licensure has failed to respond to a written request from the Board for information, within sixty (60) days of the written request.

SUBCHAPTER 15. REQUIREMENTS FOR PRACTICE AS AN ADVANCED PRACTICE REGISTERED NURSE

485:10-15-4. Application

(a) **An applicant for licensure as an Advanced Practice Registered Nurse must:**

- (1) Hold a current license to practice as a Registered Nurse in Oklahoma;
- (2) Cause submission of an official transcript verifying completion of an advanced practice registered nursing education program in one of the four advanced practice registered nurse roles (CNP, CNM, CNS, and CRNA) and a specialty area recognized by the Board. The transcript must be obtained from an entity approved and recognized by the U.S. Department of Education as a primary source for providing education transcripts. Effective January 1, 2016, the applicant shall have completed an accredited

graduate level advanced practice registered nursing education program in at least one of the following population foci: family/individual across the lifespan, adult-gerontology (acute and/or primary), neonatal, pediatrics (acute and/or primary), women's health/gender related, or psychiatric/mental health;

(3) submit evidence of current national certification consistent with educational preparation and by a national certifying body recognized by the Board; and

(4) submit a completed application for licensure containing such information as the Board may prescribe and the required fee. If the application is not completed within one (1) year, a new application and new fee will be required.

(b) **Changing and adding certifications.**

(1) An Advanced Practice Registered Nurse who wishes to add an area of specialty and national certification must meet initial requirements for advanced practice licensure, as identified in 485:10-15-4(a).

(2) An Advanced Practice Registered Nurse who changes national certification and certifying body within the same specialty area must notify the Board in writing within thirty (30) days of the change and submit a copy of a current national certification recognized by the Board within the same specialty area.

(3) An Advanced Practice Registered Nurse holding more than one certification who does not renew or maintain one of the national certifications must notify the Board in writing within thirty (30) days of the change. The license for which the national certification has expired will be placed on inactive status. The Advanced Practice Registered Nurse shall not work in the specialty area upon expiration of national certification.

(c) **Endorsement.**

(1) An applicant who is licensed or recognized as an APRN in another U.S. state or territory may be issued an APRN license by endorsement if current Board requirements for licensure as an APRN are met. A Board-recognized APRN holding recognition may continue to be licensed as an APRN with his or her current certification, even if such certification is no longer included on the list of recognized APRN certifications and certifying bodies approved by the Board, PROVIDED the APRN license remains in an active status and current certification is maintained. The applicant must have met all requirements of the advanced practice certifying body to maintain full certification, including requirements for maintaining continuing competence. An applicant for APRN licensure by endorsement who holds certification on provisional or conditional status may be considered for licensure by the Board.

(2) In addition to meeting other requirements for endorsement established by the Board in these rules, the applicant for endorsement of the APRN license must demonstrate continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of a completed application in the Board office:

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- (A) Cause submission of an official transcript, from an entity approved and recognized by the U.S. Department of Education as a primary source for providing education transcripts, or certificate of completion verifying completion of an APRN nursing refresher course meeting the requirements established by the Board in policy;
 - (B) Cause submission of an official transcript, from an entity approved and recognized by the U.S. Department of Education as a primary source for providing education transcripts, verifying successful completion of at least six (6) academic semester credit hours of APRN nursing courses in the same role and population focus as was previously held by the APRN in a graduate-level APRN program, which includes classroom and clinical instruction;
 - (C) Present evidence of current licensure or recognition as an APRN in another state or territory with employment in a position that requires APRN licensure or recognition with verification of at least 520 work hours during the past two (2) years preceding receipt of the application for endorsement in the Board office;
 - (D) Submission of evidence of current national certification consistent with educational preparation and by a national certifying body recognized by the Board.
- (d) **Temporary license for endorsement applicants.** Temporary licensure may be granted under the following conditions:
- (1) Current unrestricted licensure as an RN in Oklahoma;
 - (2) Current unrestricted APRN licensure or recognition in another state or territory in the same role with no history of arrest or disciplinary action requiring further review;
 - (3) Demonstrates evidence of meeting continuing qualifications for practice through meeting the requirements of 485:10-15-4(c)(2);
 - (4) Evidence of completing an advanced practice registered nursing education program in one of the four roles and a specialty area recognized by the Board;
 - (5) Evidence of current national certification consistent with educational preparation and by a national certifying body recognized by the Board;
 - (6) Completed application for endorsement and temporary recognition and the required fees; and
 - (7) Submission of fingerprints with the fee established by the Oklahoma State Bureau of Investigation and/or vendor for the purpose of permitting a state and national criminal history records search to be completed.
 - (8) The temporary license may not be issued for a period longer than ninety (90) days.
 - (9) The temporary license may be extended, but such period shall be no longer than one (1) year for any applicant.
- (e) **Licensure of active duty military or the spouse of an active military individual.** Applications must be completed and filed with the Board.

- (1) Submit with the endorsement application a copy of the United States Uniformed Services Identification and Privilege Card and a copy of the Permanent Change of Station orders for the active military individual;
 - (2) The requested Oklahoma license and/or temporary license shall be issued within thirty (30) days for their currently held valid license from another state or territory provided the license from the other state is found to be in good standing and reasonably equivalent to the requirements of this state; and
 - (3) The fee for licensure, including temporary license, of active duty military or the spouse of an active duty military individual is waived with the license expiration date extended through the first renewal cycle.
- (f) **Certification program.** The Board shall identify and keep on file the current list of recognized APRN certifications and certifying bodies approved by the Board. A Board-recognized APRN holding recognition prior to July 1, 2012, may continue to be licensed as an APRN with his or her current certification, even if such certification is no longer included on the list of recognized APRN certifications and certifying bodies approved by the Board, PROVIDED the APRN license remains in an active status and current certification is maintained. A licensee may request that a certification program be considered by the Board for inclusion on the list. Effective July 1, 2012, the certification program shall provide documentation of compliance with the following standards:
- (1) The certification program is national in the scope of its credentialing;
 - (2) Conditions for taking the certification examination are consistent with standards of the testing community;
 - (3) Educational requirements are consistent with the requirements of the advanced practice role and specialty;
 - (4) The standard's methodologies used are acceptable to the testing community such as incumbent job analysis studies and logical job analysis studies;
 - (5) Certification programs are accredited by a national accreditation body as acceptable by the Board;
 - (6) The examination represents entry-level practice in the APRN role and specialty;
 - (7) The examination represents the knowledge, skills and abilities essential for the delivery of safe and effective advanced nursing care to patients;
 - (8) Examination items shall be reviewed for content validity and correct scoring using an established mechanism, both before use and at least every five years. When possible, items will be reviewed for cultural bias;
 - (9) The passing standard is established using acceptable psychometric methods and is re-evaluated at least every five years;
 - (10) Certification is issued based upon meeting all certification requirements and passing the examination;
 - (11) A re-take policy is in place;
 - (12) Certification maintenance program, which includes review of qualifications and continued competence, is in place;
 - (13) Mechanisms are in place for communication to boards of nursing for timely verification of an individual's

certification status, changes in the certification status, and changes in the certification program, including qualifications, test plan and scope of practice; and

(14) An evaluation process is in place to provide quality assurance in the certification program.

SUBCHAPTER 16. REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY FOR ADVANCED PRACTICE REGISTERED NURSES

485:10-16-6. Renewal

The application for renewal of prescriptive authority shall:

(1) be concurrent with the two-year RN licensure renewal and renewal of advanced practice registered nurse licensure;

(2) include:

(A) a completed application containing such information as the Board may prescribe and required fee;

(B) documentation approved by the Board verifying a minimum of fifteen (15) contact hours, or one academic credit hour of education, or the equivalent, in pharmacotherapeutics, clinical application and use of pharmacological agents in the prevention of illness, and in the restoration and maintenance of health. ~~At least one hour of the fifteen (15) required hours shall be specific to proper prescribing of opioids, risks of opioids, and/or recognizing addiction and diversion.~~—All of the required hours shall be obtained in a program beyond basic registered nurse preparation, approved by the Board, within the two-year period immediately preceding the effective date of application for renewal of prescriptive authority, which is applicable to the scope of practice and specialty certification. This documentation requirement does not apply to individuals renewing within twenty-four (24) months of initial prescriptive authority approval.

(i) The following categories identify how this requirement may be met. No more than the identified percentage for each category may apply towards the contact hour/academic hour or the equivalent requirements for renewal of prescriptive authority;

(ii) Maximum number of units acceptable in continuing education categories:

(I) Category A: up to 100% of requirement (1 credit hour)

(II) Category B: up to 100% of requirement (15 contact hours)

(III) Category C: up to 100% of requirement (15 contact hours)

(IV) Category D: up to 20% of requirement (3 contact hours)

(V) Category E: up to 20% of requirement (3 contact hours)

(C) documentation approved by the Board verifying two (2) hours of education in pain management

or two (2) hours of education in opioid use or addiction, unless the Advanced Practice Registered Nurse has demonstrated to the satisfaction of the Board that the Advanced Practice Registered Nurse does not currently hold a valid federal Drug Enforcement Administration registration number.

(D) A written statement signed by the physician supervising prescriptive authority that includes a method of assuring availability of the supervising physician through direct contact, telecommunications or other appropriate electronic means for consultation, assistance with medical emergencies, or patient referral. Applicants for renewal who have submitted a written statement signed by the physician supervising prescriptive authority prior to renewal but within ninety (90) days of the expiration date are not required to submit another written statement for renewal.

485:10-16-7. Reinstatement/Inactive Status

(a) Reinstatement.

(1) If an Advanced Practice Registered Nurse fails to renew prescriptive authority prior to the expiration date of that authority, the Advanced Practice Registered Nurse's prescriptive authority shall expire and the Advanced Practice Registered Nurse shall cease prescribing.

(2) The Advanced Practice Registered Nurse may reinstate the prescriptive authority recognition by submitting:

(A) a completed application containing such information as the Board may prescribe and required fee. If the application is not completed within one (1) year, a new application and new fee will be required;

(B) A written statement signed by the Oklahoma-licensed physician supervising prescriptive authority that includes a method of assuring availability of the supervising physician through direct contact, telecommunications or other appropriate electronic means for consultation, assistance with medical emergencies, or patient referral; and

(C) present evidence of:

(i) having met requirements for renewal of prescriptive authority as listed in 485:10-16-6(2)(B)(C); or

(ii) licensure or recognition as an APRN in the same role with prescriptive authority in another state with employment in a position that requires APRN prescriptive authority licensure or recognition with verification of at least 520 work hours during the past two (2) years preceding receipt of the application for reinstatement in the Board office.

(b) Inactive Status.

(1) An Advanced Practice Registered Nurse may submit a written request to place prescriptive authority on inactive status.

(2) The date of inactive status will be the date of approval by the Board. The Board may delegate approval of the licensee's request to be placed on inactive status to Board staff.

(3) The Advanced Practice Registered Nurse may return to active status the prescriptive authority recognition by submitting:

(A) a completed application containing such information as the Board may prescribe and required fee. If the application is not completed within one (1) year, a new application and new fee will be required;

(B) A written statement signed by the Oklahoma-licensed physician supervising prescriptive authority that includes a method of assuring availability of the supervising physician through direct contact, telecommunications or other appropriate electronic means for consultation, assistance with medical emergencies, or patient referral; and

(C) present evidence of:

(i) having met requirements for renewal of prescriptive authority as listed in 485:10-16-6(2)(B); or

(ii) licensure or recognition as an APRN in the same role with prescriptive authority in another state with employment in a position that requires APRN prescriptive authority licensure or recognition with verification of at least 520 work hours during the past two (2) years preceding receipt of the application for return to active status in the Board office.

[OAR Docket #20-498; filed 6-29-20]

TITLE 527. STATE BOARD OF EXAMINERS OF PERFUSIONISTS CHAPTER 1. ADMINISTRATION AND DESCRIPTION OF ORGANIZATION

[OAR Docket #20-634]

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PERMANENT final adoption

RULES:

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n/a

GIST/ANALYSIS:

The State Board of Examiners for Perfusionists is amending OAC 527:1-1-2 to update the process for electing officers of the Board and to provide a process for filling officer vacancies. Secondly and finally, the amendments designate whom shall preside at meetings of the Board in the event that the Chair or Vice Chair are absent.

CONTACT PERSON:

Barbara J. Smith, Executive Secretary, Oklahoma State Board of Medical Licensure and Supervision, 101 NE 51st Street, Oklahoma City, Oklahoma 73105, (405) 962-1422, bsmith@okmedicalboard.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

527:1-1-2. Description of organization

(a) The Board is created by the Oklahoma Legislature, 59 O.S. 1996 Supp. §2053. The Board has the authority and duty to regulate and administer the practice of perfusion in this state.
(b) The Board consists of nine (9) members who are qualified and appointed in accordance with the provisions of 59 O.S. 1996 Supp. §2053 and §2054.

(c) Officers of the Board, Terms of office, and Vacancy. The officers of the Board shall be, in order of seniority, the Chair, Vice Chair, and Executive Secretary. Effective January 1, 2021, the officers of the Board shall serve one three-year term, with the exception of the Chair who shall only serve as Chair for one (1) year, and shall be elected at the first meeting after January 1 of the same year by a majority vote of the members attending the meeting; the Vice Chair shall automatically assume the position of Chair at the end of the one year term and a new Vice chair shall be elected by majority vote of the members in attendance at the meeting. Each succeeding year, the Vice-Chair shall become the Chair, the Executive Secretary shall elevate to be the Vice-Chair, and a new Executive Secretary shall be elected by the Board. Should any officer be unable to serve due to death, incapacity, or resignation, the next most senior officer, except in the case of a vacancy in the office of Executive Secretary, shall assume the vacant office and fulfill the unexpired year. He or she shall subsequently succeed himself or herself in the same office for a full year as if he or she had been elevated as set forth above. In the case of a vacancy in the office of Executive Secretary, the Board shall elect a new Executive Secretary at its next meeting to serve the unexpired portion of the year and will be subject to a retention vote at the first meeting of the year after January 1.

(d) Absence of Chair and Vice Chair. When the Chair is absent, the Vice Chair shall act in his or her absence. If the Vice Chair is also absent, the most senior member of the Board shall act as the chair.

[OAR Docket #20-634; filed 7-17-20]

**TITLE 535. OKLAHOMA STATE BOARD OF
PHARMACY
CHAPTER 10. PHARMACISTS; AND
INTERNS, PRECEPTORS AND TRAINING
AREAS**

[OAR Docket #20-501]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. Pharmaceutical Care
535:10-9-15. Naloxone [AMENDED]

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.9, 353.11, 353.16A, 353.18, 353.20, 353.22, 353.24 - 353.26, 364, Title 59 O.S. Sec. 6002 and Title 63 O.S. Section 2-312.25.

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

December 4, 2019

COMMENT PERIOD:

January 2, 2020 through February 20, 2020

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June 25, 2020

EFFECTIVE:

September 11, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The revision in 535:10-9-15 (a) is to correct the citation from Title 63 OS 2-312.25 to Title 63 Section 2-312.

CONTACT PERSON:

Dr. Marty Hendrick, Executive Director, Oklahoma State Board of Pharmacy, 2920 N Lincoln Boulevard Suite A, Oklahoma City, OK 73105-4212, Phone number 405 521-3815

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 9. PHARMACEUTICAL CARE

535:10-9-15. Naloxone

- (a) The purpose of this subsection is to implement Title 63 O.S. ~~2-312.2~~ ~~2-312.25~~ provisions for pharmacists.
- (b) Definitions. [RESERVED]
- (c) A Pharmacist may prescribe and dispense Naloxone without a protocol or prescription to any person at risk of experiencing an opioid-related drug overdose, family or friend of an

at-risk person, or first responder. Naloxone may only be dispensed by, or under the supervision of, a licensed pharmacist.

[OAR Docket #20-501; filed 6-30-20]

**TITLE 535. OKLAHOMA STATE BOARD OF
PHARMACY
CHAPTER 15. PHARMACIES**

[OAR Docket #20-502]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Pharmacies
535:15-3-2. Pharmacy responsibilities [AMENDED]
535:15-3-9. Non-resident pharmacies [AMENDED]
535:15-3-11. Prescription drugs [AMENDED]
535:15-3-21. Prescription fill, refill and partial fill records and reports [AMENDED]
535:15-3-22. Pharmacy refrigerator and freezer temperature logs [NEW]
Subchapter 5. Hospital Pharmacies
535:15-5-2. Definitions [AMENDED]
535:15-5-7.4. Pharmacy technician tasks [AMENDED]
Subchapter 6. Hospital Drug Room
535:15-6-5. Drug room and PIC responsibilities and duties [AMENDED]
Subchapter 13. Pharmacy Supportive Personnel
535:15-13-6. Duties [AMENDED]
535:15-13-7. Prohibited duties [AMENDED]
Subchapter 18. Customized Adherence Medication Package (CAMP)
535:15-18-4. Labeling [AMENDED]

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.11 - 353.20.1, 353.22, 353.24 - 353.26 - 354, and 367.8.

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The revision in 535:15-3-2 (h) removes the word "plumbing".

535:15-3-9 (c) (3) adds 'no pharmacist may serve as pharmacist in charge in more than one pharmacy at a time' for non-resident pharmacies so it is the same as for in-state pharmacies. The revision in 535:15-3-9 (g) adds a reference to Title 59 OS 353.20.2. The revision in 535:15-3-9 (i) adds pharmacy refrigerator and freezer temperature requirements.

The revision in 535:15-3-11 (c) adds the words "shipping to a reverse distributor for" to "destruction or by being returned to the supplier" to clarify the rule. The revision 535:15-3-11 (d) adds a reference to 59 OS 353.20.2, since pharmacist need to understand this complex statute before dispensing as it allows. 535:15-3-11 new (e) describes the formulary required under 59 OS Section 353.20.2.

Three cite revisions in 535:15-3-21 (d) (1) (C), 535:15-3-21 (d) (2) (A) and 535:15-3-21 (d) (3) correct to CFR 1306.22.

New 535:15-3-22 pharmacy refrigerator and freezer temperature requirements.

The revision in 535:15-5-2 definitions removes the definition of "Certified pharmacy technician", as it no longer exists in the rules.

The revision in 535:15-5-7.4 (a) (10) removes (A), (B), and (C) describing functions and limitations to what a pharmacy technician may perform in a hospital pharmacy. These requirements were replaced in 535:15-10-52 (d).

The revision in 535:15-6-5 (a) (7) inserts a new (B) which states 'No more than 5 visits in any one month count toward the 52 visit total for the year', the old (B) is moved to (C), the old (C) is moved to (D) and the old (D) is moved to (E).

The revision in 535:15-13-6 (b) removes (7) as these are replaced in 535:15-10-52 (d). The revision in 535:15-13-6 (b) renumbers (8) to (7), (9) to (8), and (10) to (9).

The revision in 535:15-13-7 (a) removes (5) as these are replaced in 535:15-10 compounded rules. The revision in 535:15-13-7 (a) (6) - (a) (8) are renumbered 535:15-13-7 (a) (5) - 535:15-13-7 (a) (7).

The revision in 535:15-18-4 removes (c) to improve clarity of the rule.

CONTACT PERSON:

Dr. Marty Hendrick, Executive Director, Oklahoma State Board of Pharmacy, 2920 N Lincoln Boulevard Suite A, Oklahoma City, OK 73105-4212, Phone number 405 521-3815

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 3. PHARMACIES

535:15-3-2. Pharmacy responsibilities

(a) **Pharmacy staffing responsibility.** Each pharmacy shall employ an adequate number of pharmacists to perform the practice of pharmacy as defined by the Oklahoma Pharmacy Act with reasonable safety.

(b) **PIC.** Each pharmacy, in order to obtain and maintain a pharmacy license, must have a licensed pharmacist as the PIC.

(1) A PIC is designated by his signature on the original pharmacy application or by the appropriate notification to the Board as required in 535:15-3-10 (a), and is responsible for all aspects of the operation related to the practice of pharmacy. These responsibilities include, but are not limited to the:

- (A) supervision of all employees as they relate to the practice of pharmacy;
- (B) establishment of policies and procedures for safekeeping of pharmaceuticals that satisfy Board requirements, including security provisions when the pharmacy is closed;
- (C) proper record keeping system for the purchase, sale, delivery, possession, storage, and safekeeping of drugs;
- (D) proper display of all licenses;
- (E) annual controlled drug inventory; and,
- (F) maintenance of prescription files;

(2) Failure of the pharmacy to have a PIC who fulfills these responsibilities is a violation of this code by both the pharmacy and PIC.

(3) No pharmacist may serve as a PIC in more than one pharmacy at a time. This requirement shall not apply to charitable pharmacies or hospital drug rooms.

(4) The PIC shall be present and practicing at the pharmacy for which he holds the PIC position no less than 20 hours per week during the pharmacy's ordinary course of business. In the event the pharmacy's normal hours of business are less than 40 hours per week the PIC shall be present and practicing at least 50 percent of the normal business hours.

(5) A PIC shall work sufficient hours in the pharmacy to exercise control and meet the responsibilities of the PIC.

(c) **PIC's and pharmacy's responsibilities.** The following describe responsibilities of the pharmacy and PIC.

(1) Where the actual identity of the filler of a prescription is not determinable, the PIC and the pharmacy where the prescription was filled will be the subject of any charges filed by the Board.

(2) The pharmacy and the PIC are responsible to establish and maintain effective controls against prescription errors or misfills.

(3) The pharmacy and/or PIC shall notify the Board immediately by certified mail of the separation of employment of any pharmacist, pharmacy intern, or pharmacy technician for any suspected or confirmed drug or pharmacy related violation. If the PIC is terminated for such reason, the owner or other person in charge of the pharmacy shall notify the Board by certified mail.

(4) The pharmacy, pharmacist, and/or PIC shall establish and maintain effective controls against the diversion of prescription drugs into other than legitimate medical, scientific, or industrial channels as provided by federal, state or local laws or rules.

(5) The pharmacy, pharmacist and PIC are responsible for supervision of all employees as they relate to the practice of pharmacy.

(d) **Responsibility for automated pharmacy systems.** This subsection describes the responsibilities of the pharmacy and the PIC for automated pharmacy systems.

(1) Prior written notice must be provided to the Board of the installation or removal of automated pharmacy systems. Such notice must include, but is not limited to the:

- (A) name and address of the pharmacy,
- (B) name of PIC,
- (C) name of the manufacturer & model of system.

(2) The system being implemented should conform to Board automated pharmacy system guidelines.

(3) The pharmacy shall monitor the automated pharmacy system with a quality assurance program.

(4) The pharmacy, pharmacist, and/or PIC shall establish and maintain effective controls against the diversion of prescription drugs into other than legitimate medical, scientific, or industrial channels as provided by federal, state or local laws or rules.

(5) The pharmacy, pharmacist and PIC are responsible for supervision of all employees as they relate to the practice of pharmacy regarding automation.

(e) **Responsibilities for personnel identification.** The PIC and the pharmacy are responsible to assure that the public is able to distinguish pharmacy technicians, auxiliary support personnel, and/or interns from any pharmacist in the pharmacy.

- (1) All pharmacy technicians, auxiliary support personnel, and/or interns must wear a designation tag and be distinctly identifiable from a practicing pharmacist.
- (2) Designation tags must be clear, readable and lettered with "Rx Tech", "Tech", "Clerk", or "Intern".
- (3) All pharmacy interns, technicians or clerks must identify themselves as such on any phone calls initiated or received while performing pharmacy functions.

(f) **Written drug diversion detection and prevention.** The pharmacy, pharmacist, and/or PIC shall implement and follow a written drug diversion detection policy. The policy shall be available for Board review.

(g) **Inspections.** Pharmacies are subject to inspection. The Board and/or its authorized representatives may conduct on-site periodic routine inspections and investigations during reasonable business hours.

(h) **Remodel.** The pharmacy and the PIC are responsible to notify the Board in writing in advance of any remodel in the pharmacy that would result in a change in square footage; ~~plumbing~~, or additional storage areas. Such pharmacy shall be subject to inspection by the Board and shall be required to pay an inspection fee.

(i) **Closing of a Pharmacy.** The pharmacy and the PIC are responsible to notify the Board in writing within ten (10) days of the closing of a pharmacy. The notification shall include, but not be limited to:

- (1) Date of closing,
- (2) Copy of final CDS inventory,
- (3) Disposition of pharmacy records,
- (4) Disposition of prescription drugs, and
- (5) Return of pharmacy license.

(j) **Notification of Theft.** The pharmacy and the PIC shall report any theft or significant loss of any drugs to the Board within one day of discovery. The pharmacy and the PIC must complete and submit a DEA 106 form for any theft or significant loss of controlled substances to DEA within the required time. A copy shall be sent to the Board within fourteen (14) days of the filing of the DEA Form 106.

535:15-3-9. Non-resident pharmacies

(a) **Definitions.** "Non-resident pharmacy" means a pharmacy, not located in Oklahoma, which transacts or does business in Oklahoma by soliciting, receiving, dispensing, and/or delivering prescription medications and devices to Oklahoma residents.

(b) **Licensing requirements.** A non-resident pharmacy shall:

- (1) make application and receive an annual non-resident pharmacy license at a fee set by the Board;
- (2) maintain in good standing a pharmacy license in its resident state;
- (3) comply with the Oklahoma Secretary of State requirements for conducting business in this state.

(4) submit on initial licensure and on renewals a written report of an inspection conducted within the previous twenty-four (24) months by the non-resident's state or by any organization approved by the Board;

(5) be in a commercial location and not a personal dwelling or residence;

(6) submit on initial licensure the name and license number of an Oklahoma licensed pharmacist in charge (PIC) who is responsible for the non-resident's pharmacy compliance with Oklahoma laws. The name of the Oklahoma licensed PIC shall be reported to the Board, in writing, with each renewal and/or within 10 days of any change of such PIC.

(7) the pharmacy registrant may request, in writing, that the Board allow additional time for a new pharmacist-in-charge to get Oklahoma licensed in emergency or urgent situations. If the Board determines circumstances warrant they may grant up to a 90 day extension

(c) **Laws and regulations.** Oklahoma pharmacy laws and regulations shall apply to the practice of pharmacy for the Oklahoma portion of the nonresident pharmacy's practice or operation.

(1) The pharmacist manager (also called pharmacist-in-charge (PIC)) and all other pharmacists performing pharmacist-only functions in Oklahoma licensed non-resident pharmacies must be currently licensed in the state in which they are practicing. The PIC must also be licensed by the Board.

(2) The pharmacist manager (PIC) and/or pharmacy owner(s), or partners, or corporate officer(s) shall be responsible for compliance with Oklahoma laws and regulations pertaining to the provisions of receiving, dispensing, and/or delivering of prescriptions or prescription medications and devices to Oklahoma residents.

(3) No pharmacist may serve as a PIC in more than one pharmacy at a time.

(d) **Inspections.** Non-resident pharmacies are subject to inspection and investigation. ~~(4)~~ The Board may conduct on-site periodic routine inspections and investigations during reasonable business hours.

(e) **Records.** Prescription records documenting prescriptions delivered and distributed to Oklahoma residents shall be identifiable, readily retrievable and available for Board review.

(1) Records must be maintained for not less than five years.

(2) Patient records shall comply with 535:15-3-14.

(3) Schedule II, III, IV, and V prescription records. These records shall be sent to the Oklahoma Prescription Drug Monitoring program as set out in Title 63 of the Oklahoma Statutes.

(f) **Counseling services.** Non-resident pharmacies shall provide accessible toll-free telephone counseling by a licensed pharmacist for patient drug inquiries during regular working hours. The counseling provided shall comply with the pharmaceutical care requirements listed in OAC 535:10-9.

(g) **Prescription integrity.** A pharmacy or registrant shall not increase the quantity of a prescription without the authorization of the prescriber. Unless specified otherwise by

the prescriber, a pharmacist may exercise his professional judgement to dispense up to a ninety (90) day supply for maintenance non-controlled dangerous drugs, if sufficient quantity has been authorized by the prescriber on the original prescription, including any refills. Increasing controlled dangerous drugs or any medications that require reporting to the controlled substance database are prohibited. See 59 OS 353.20.2

(h) **Written drug diversion detection and prevention.** The pharmacy and the pharmacy manager shall implement and follow a written drug diversion detection and prevention policy and procedure. This policy and procedure shall be available for Board review.

(i) **Pharmacy refrigerator and freezer temperature logs.**

(1) All refrigerators and freezers used to store medications shall have a sensor or thermometer capable of reading internal temperatures.

(2) The internal temperatures maintained in the refrigerators and freezers shall be appropriate for the products stored.

(3) Temperatures in refrigerators and freezers shall be logged twice daily (AM and PM) on days the pharmacy is open for business or shall have continuous temperature monitoring.

(A) Pharmacy name, date, time, temperature and staff person taking reading shall be logged at a minimum for paper logs.

(B) Temperature logs shall be maintained on paper or electronically for two years and be available for inspection.

(4) If there is a temperature reading that falls outside of appropriate ranges, a notation must be made on the temperature log detailing the corrective measures which were taken.

(5) It is the PIC's responsibility to review the temperature readings to ensure compliance with appropriate storage temperatures.

535:15-3-11. Prescription drugs

(a) **Authorization; Original and refill prescriptions.** No prescription for a "dangerous drug" (as defined in 59 O.S., Section 353.1) shall be filled or refilled without the authorization of a prescriber licensed by law to prescribe within the scope of his practice.

(b) **Refill time limit; Non-CDS prescriptions.** Prescriptions may only be refilled as authorized by the prescriber. There shall be a maximum of one year from date of original prescription that the prescription may be refilled. After that time a new prescription shall be required.

(c) **Drug expiration dating.** All outdated prescription drugs shall be removed from the active inventory area upon expiration and cannot be used to fill prescriptions. The removal from the pharmacy of these expired drugs must occur within six months of expiration either by shipping to a reverse distributor for destruction or by being returned to the supplier.

(d) **Prescription integrity.** A pharmacy or registrant shall not increase the quantity of a prescription without the authorization of the prescriber. Unless specified otherwise by the prescriber, a pharmacist may exercise his professional

judgment to dispense up to a ninety (90) day supply for a maintenance non-controlled dangerous drug, if sufficient quantity has been authorized by the prescriber on the original prescription, including any refills. Increasing controlled dangerous drugs or any medications that require reporting to the controlled substance database are prohibited. See 59 OS 353.20.2 (A) (B)

(e) **Refills for patient safety.** The following prescription medications and devices are included in an inclusionary formulary of potentially life-saving prescription and devices authorized under 59 OS 353.20.2 (C) (4) which may be refilled by a pharmacist without an authorization in accordance with the requirements in 59 OS Section 353.20.2(C):

(1) Insulin and any devices or supplies necessary for the administration of insulin;

(2) Glucometers and any devices or supplies necessary for the operation of the glucometer;

(3) Rescue inhalers and any devices utilized that are necessary for the administration of a rescue inhaler;

(4) Inhalers for chronic asthma and chronic obstructive pulmonary disease (COPD) and any devices or supplies necessary for administration;

(5) Medication for nebulizers that treat acute and chronic pulmonary conditions and any devices necessary for administration; or

(6) Ophthalmic products for topical treatment of chronic conditions.

(7) No CDS medications can be dispensed pursuant to 353.20.2 (C) (4).

(8) A form will be posted on the Board website for the Pharmacist to complete to document attempts to obtain refill authorization from the prescriber by the patient and by the pharmacist. This completed form shall be maintained in the pharmacy and be available for inspection.

535:15-3-21. Prescription fill, refill and partial fill records and reports

(a) **Dangerous drugs.**

(1) Refills may be entered on the back of each original prescription.

(2) Refill records may be kept by using an automated data processing system to maintain the refill information.

(b) **Controlled dangerous Substances (CDS) - Schedule II.** No refills are allowed on Schedule II CDS.

(c) **Controlled dangerous Substances (CDS) - Schedule III, IV and V Hard copy method.** The refills are entered on the back of the original (hard copy) prescription according to Oklahoma Bureau of Narcotics and Dangerous Drugs' rules in OAC 475:30-1-11 et seq.

(d) **CDS automated data processing method.** A pharmacy may elect to use an automated data processing system to maintain the prescription files including the original information and the refill information. **Caution:** The pharmacy must maintain complete and retrievable prescription records for five years whether logbooks, nightly reports, or a manual system are used. If the pharmacy elects the automated system certain compliance reports are required.

(1) **Nightly reports.** Nightly reports are required for Schedule II and for Schedule III, IV and V. These reports will include but are not limited to:

(A) Schedule II reports will include the information in ASAP/NABP Committee on Standardization's Computerized Compliance Reports (e.g. run date, run by, Rx #, drug name, dose form, quantity, date written, date dispensed; pharmacist, patient and prescriber names, DEA number, and patient and prescriber addresses.)

(B) Schedule III, IV and V reports will include the same information as in (A) above, except patient and prescriber addresses are not required. These reports may be mixed or be Schedule III, IV or V specific.

(C) These nightly reports shall be verified, signed and dated by the pharmacist as required. (See CFR 1306.22 (b)-(3), et seq.)

(D) These reports must be kept for five years.

(2) **Logbook or file alternate procedure.** In lieu of the nightly reports procedure for Schedule II, III, IV & V provided in 535:15-3-21, the pharmacy may choose to use the following method:

(A) The pharmacy shall maintain a bound log book, or separate file, in which each individual pharmacist involved in such refill dispensing shall sign a statement (in the manner described in CFR 1306.22 (b)) each day, attesting to the fact that the refill information entered into the computer that day has been reviewed by them and is correct as shown.

(B) Such a book or file must be maintained at the pharmacy employing such a system for a period of five years after the date of dispensing the appropriately authorized refill.

(3) **Refill reports.** Any pharmacy using an automated data processing system to track refills shall be able to print such reports as required in CFR 1306.22 (b) et seq.

(4) **Audit reports.** If an automated data processing system is used to maintain refill information, the ability to print upon request the following Controlled Dangerous Substance (CDS) audit reports is required. The following required audit reports must include the information in ASAP/NABP Committee on Standardization's Computerized Compliance Reports:

- (A) CDS Audit Report by Drug
- (B) CDS Audit Report by Prescriber
- (C) CDS Audit Report by Pharmacist
- (D) Patient Profile Report

535:15-3-22. Pharmacy refrigerator and freezer temperature logs

(a) All refrigerators and freezers used to store medications shall have a sensor or thermometer capable of reading internal temperatures.

(b) The internal temperatures maintained in the refrigerators and freezers shall be appropriate for the products stored.

(c) Temperatures in refrigerators and freezers shall be logged twice daily (AM and PM) on days the pharmacy

is open for business or shall have continuous temperature monitoring.

(1) Pharmacy name, date, time, temperature and staff person taking reading shall be logged at a minimum for paper logs.

(2) Temperature logs shall be maintained on paper or electronically for two years and be available for inspection.

(d) If there is a temperature reading that falls outside of appropriate ranges, a notation must be made on the temperature log detailing the corrective measures which were taken.

(e) It is the PIC's responsibility to review the temperature readings to ensure compliance with appropriate storage temperatures.

SUBCHAPTER 5. HOSPITAL PHARMACIES

535:15-5-2. Definitions

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

"Automated dispensing systems" means a mechanical system controlled by a computer that perform operations or activities, relative to the storage, packaging, compounding, labeling, dispensing, administration, or distribution of medications, and which collects, controls, and maintains all transaction information.

"Auxiliary supportive personnel" or **"auxiliary supportive person"** means all persons, other than pharmacists, interns and techs, who are regularly paid employees of the hospital pharmacy and who work or perform tasks in the hospital pharmacy that do not require a permit or license (e.g. clerk, typist, delivery, or data entry person, etc.).

"Certified medication order" means a filled prescription that has been reviewed and certified by a pharmacist.

~~**"Certified pharmacy technician"** means a pharmacy technician who has a current Board approved pharmacy technician certification in addition to a current Oklahoma pharmacy technician permit.~~

"Director of Pharmacy" means a pharmacist licensed to engage in the practice of pharmacy in Oklahoma who is thoroughly familiar with the specialized functions of a hospital pharmacy and directs the activities of a hospital pharmacy.

"Drug room" means a secured room where drug inventories are maintained for use in a facility licensed and regulated by the Oklahoma Health Department, and which may be inspected by the Board.

"Hospital employee" means any individual employed by a hospital whose compensation for services or labor actually performed for a hospital is reflected on the payroll records of a hospital.

"Hospital" or **"Hospital facility"** means hospital as defined in 59 O.S. Section 353 et seq.

"Hospital pharmacy" means the place or places in which drugs, chemicals, medicines, prescriptions, or poisons are stored, controlled and prepared for distribution and administration for the use and/or benefit of patients in a hospital facility.

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Hospital pharmacy shall also mean the place or places in which drugs, chemicals, medicines, prescriptions or poisons are compounded and prepared for dispensing to the members of the medical staff, hospital employees, and the members of their immediate families, patients being discharged, and for other persons in emergency situations.

"Medical staff" means a prescriber who has privileges to practice in the hospital facility.

"Medication order" means a prescription as defined in Title 59 O.S. Section 353.1.

"Pharmacist" means any person licensed to practice pharmacy by the Oklahoma Board.

"Pharmacy technician", "Tech", "Technician" or "RxTech" means a person who has been issued a permit by the Board to assist the pharmacist and performs nonjudgmental, technical, manipulative, nondiscretionary functions in the prescription department under the pharmacist's immediate supervision.

"Remote medication order processing" or "RMOP" means the processing of a medication order for a hospital facility by a pharmacist located in a remote medication order processing pharmacy site. Remote medication order processing does not include the dispensing of a drug, but may include receiving, interpreting, evaluating, clarifying and approval of medication orders. Additionally, remote medication order processing may include order entry, other data entry, performing prospective drug utilization review, interpreting clinical data, performing therapeutic interventions, and providing drug information services, and authorizing release of the medication for administration.

"Remote site" means a site located within the continental United States (US) or District of Columbia (DC) that is electronically linked to the hospital via a computer and/or other electronic communications system as defined in the operations, policies and procedures manual of a hospital pharmacy for the purposes of remote medication order processing (RMOP) of a remote medication order processing pharmacy.

"Supportive personnel" means supportive personnel as defined in 59 O.S. Section 353.1 et seq.

535:15-5-7.4. Pharmacy technician tasks

Pharmacy technicians may perform the following tasks in a licensed hospital pharmacy facility in accordance with 535:15-5-7.2:

- (1) any tasks auxiliary supportive personnel are allowed to perform;
- (2) count and/or pour medications;
- (3) affix the prescription label to the final container;
- (4) affix auxiliary labels to the container as directed by the pharmacist;
- (5) assist the pharmacist in the management of the controlled dangerous substance (CDS) inventory. The pharmacist remains responsible for completeness and accuracy;
- (6) fill "Modified unit dose distribution systems", "Automated dispensing systems" and/or "Unit dose distributions systems";

(7) prepackage and label multi-dose and unit-dose packages of medication as directed by pharmacist-established procedures for such, including selection of containers, labels and lot numbers, with provisions for the pharmacist to check the finished task prior to dispensing to the patient. (While a pharmacy technician may package and label the drug, the certification is the responsibility of the pharmacist.)

(8) perform bulk reconstitution of prefabricated non-injectable medication utilizing a pharmacist established procedure for the bulk reconstitution of prefabricated noninjectable medications.

(9) perform bulk compounding, including such items as sterile bulk solutions for small-volume injectables, sterile irrigation solutions, products prepared in relatively large volume for internal or external use by patients, and reagents or other products for other departments of the hospital facility. Such intermediate and large scale compounding may be done by a pharmacy technician through the use of a procedural manual and a system of in-process and final checks and controls developed or approved by the pharmacist and which are carefully and systematically enforced.

(10) prepare sterile compounded preparations utilizing a policy and procedure that addresses the verification of the pharmaceutical constituents, the prepared label and the final product by the pharmacist following documented training and demonstrated competency as required in OAC 535:15-10-52(d).

~~(A) Pharmacy technicians may perform functions involving the:~~

~~(i) reconstitution of single dosage units that are to be administered to a given patient as a unit; and/or~~

~~(ii) addition of one manufacturer's prepared unit (whole or in part) to another manufacturer's prepared unit if the unit is to be administered as one dose to a patient.~~

~~(B) Pharmacy technicians may add a single ingredient in preparing sterile compounded preparations.~~

~~(C) Certified pharmacy technicians as defined in 535:15-5-2 may prepare chemotherapy and add multiple ingredients when preparing sterile products only following documented demonstration of appropriate competency to the Director of Pharmacy or his designated pharmacist on an annual basis.~~

(11) record patient or medication information for later validation by the pharmacist pursuant to procedures which prevent the information from being utilized in any way until it is validated by the pharmacist. Exempt from the necessity of pharmacist validation shall be records, such as financial, inventory control, etc., which can in no way affect the safety and accuracy of medication administration to patients.

(12) select prepackaged and pre-labeled doses of medication from storage areas and place and transport to the patient area such doses in containers bearing a patient's name in a unit dose distribution system or a modified

unit dose distribution system if the pharmacist personally checks and verifies by signature or initial all patient medication before it is administered to the patient.

SUBCHAPTER 6. HOSPITAL DRUG ROOM

535:15-6-5. Drug room and PIC responsibilities and duties

(a) **Responsibilities.** Responsibilities of the hospital drug room and PIC include drug purchasing, acquisition, preparation, distribution, monitoring, security, storage and control.

(1) **Written procedures.** The hospital drug room and PIC shall establish written procedures for the safe and efficient acquisition, distribution, and utilization of all medicine products with any of the Federal legends such as "RX only" and medications administered or distributed in the hospital system. A current copy of such procedures shall be available for review by the Board.

(2) **General Responsibility.** The hospital drug room and PIC shall be responsible for the safe and efficient monitoring, distribution, control, purchasing, acquisition and accountability of all drugs including but not limited to Federal legend drug products used in diagnostic procedures, I.V. fluids, or contained in supply kits excluding blood bank products and reagents controlled by the laboratory. The other professional staff of the hospital facility shall cooperate with the pharmacist in meeting this responsibility.

(3) **Confidentiality.** The hospital drug room and PIC shall have responsibility for establishing policies for the security and integrity of any patient information, confidential and non-confidential, and must abide by all relevant State and Federal regulations applicable to the hospital system.

(4) **Adverse Drug Events Program.** The hospital drug room and PIC shall develop and maintain a program to monitor the actual and potential adverse drug events including pharmacist interventions, medication errors, and adverse drug reactions for all medications utilized in the hospital to include system wide programs if an integrated system is involved. Records indicating the tracking, review, and outcome of the Adverse Drug Events shall be kept current and available for Board inspection.

(5) **Investigational drug programs.** The PIC shall establish a policy for investigational drug use.

(6) **Review of medication orders.** The PIC shall cause medication orders to be reviewed by a 100 pharmacist in a timely manner.

(7) **Pharmacists Visits.** The hospital drug room and PIC shall cause and document a minimum of 52 routine in-house visits per year to be made to a hospital with a drug room as required by health department rule OAC 310:667-21-2(a) et seq.

(A) No more than 2 visits in any 7-day period shall be counted towards this minimum.

(B) No more than 5 visits in any one month count toward the 52 visit total for the year.

(C) Visits in any calendar month shall be no less than 2.

(D) The PIC shall submit a report outlining issues encountered and decisions made during visits. A copy of this report shall be available in the hospital drug room for inspection by the Board.

(E) A licensed hospital drug room employing a full-time pharmacist is not required to document the 52 routine in-house visits since daily work is done, interventions are documented, and audit systems are maintained.

(8) **Pharmacy and Therapeutics (P&T) Committee.** The PIC shall be a participating member in the Pharmacy and Therapeutics Committee.

(9) **Effective Controls.** The hospital drug room and PIC shall establish and maintain effective controls against the diversion of prescription drugs into other than legitimate medical, scientific, or industrial channels as provided by federal, state or local laws or rules.

(b) **Duties.** The duties of a PIC in a licensed hospital drug room, at a minimum, shall be the following:

(1) The training duties of the PIC are:

(A) Competency training regarding preparation and sterilization of sterile compounded preparations prepared by appropriate hospital staff;

(B) Competency training of personnel concerning medicine incompatibilities and providing incompatibility information; and

(C) Training personnel in confidentiality of protected health and proprietary information and regarding the compliance with all federal and state laws and regulations applicable to the hospital drug room.

(i) Such rules regarding confidentiality of patient records are described in 535:15-3-14(e), the federal HIPAA regulations; and,

(ii) Such responsibilities for confidentiality shall be as set forth in 535:10-3-1.1(6) and 535:10-3-1.2 (a) (16) and the rules of this Title.

(D) Conducting initial and continuing competency training of all drug room personnel.

(2) Repackaging drug products including unit dose.

(3) Establishing procedures for procurement of all medicines used within the hospital system subject to approval of the medical and professional staff.

(4) Participating in the development and maintenance of a formulary for use within the hospital system.

(5) Maintaining and making available a sufficient inventory of medicines including antidotes and other emergency drugs approved by the medical and professional staff, for use within the hospital facility. In addition, current references, antidote information, and telephone numbers of regional reference centers such as Poison Centers and Drug Information Centers shall be maintained and readily available throughout the hospital.

(6) Maintaining oversight of the records of all transactions of the drug room required by applicable local, state, and federal law, and necessary to maintain accurate control and accountability for all medications.

- (7) Participating in those aspects of the hospital facility's patient care evaluation programs that relate to medicine utilization and effectiveness.
- (8) Cooperating fully with teaching and/or research programs in the hospital facility, if any.
- (9) Implementing the policies and decisions of the appropriate committees of the medical and professional staff that deal with drug distribution.
- (10) Meeting all inspection and other requirements of the Oklahoma Pharmacy Act, and those rules and regulations governing the practice of pharmacy within a hospital facility.
- (11) Establishing guidelines for the safe and effective distribution of medicines intended for floor stock, and their subsequent administration.

SUBCHAPTER 13. PHARMACY SUPPORTIVE PERSONNEL

535:15-13-6. Duties

(a) The following tasks may be performed by auxiliary supportive personnel:

- (1) retrieval tasks such as retrieving prescriptions or files as necessary;
- (2) clerical tasks such as typing labels and maintaining patient profiles;
- (3) secretarial tasks such as telephoning, filing, and typing;
- (4) accounting tasks such as record keeping, maintaining accounts receivables, third party billing and posting;
- (5) inventory control tasks including monitoring, pricing, dating, invoicing, stocking pharmacy, and preparation of purchase orders; and
- (6) help maintain a clean and orderly pharmacy.

(b) The following tasks may be performed by pharmacy technicians:

- (1) count and/or pour medications;
- (2) prepackage (e.g. unit dose) and properly label medications;
- (3) affix the prescription label to the proper container;
- (4) affix auxiliary labels to the container as directed by the pharmacist;
- (5) reconstitution of medications (i.e. liquid antibiotics);
- (6) bulk compounding, including such items as non-sterile topical compounds, sterile bulk solutions for small volume injectables, sterile irrigation solutions and products prepared in relatively large volume for internal or external use. Documentation of a system of in-process and final checks and controls must be developed or approved by the certifying pharmacist and carefully and systematically enforced;
- (7) ~~functions involving reconstitution of single dose units of sterile compounded preparations that are to be administered to a given patient as a unit, and functions involving the addition of one manufacturer's prepared unit (whole or in part) to another manufacturer's prepared unit~~

~~if the unit is to be administered as one dose to a patient. The pharmacist must establish the procedures for compounding sterile preparations and certify the ingredients, label and finished preparation;~~

~~(8)~~ any duties auxiliary personnel are allowed to perform;

~~(9)~~ assist the pharmacist in the annual CDS inventory. The pharmacist remains responsible for completeness and accuracy; and,

~~(10)~~ take verbal authorizations from licensed prescriber or licensed prescriber's authorized agent (when allowed) for refill of non-controlled prescriptions with no changes to strength or directions.

535:15-13-7. Prohibited duties

These duties shall not be performed by supportive personnel:

- (1) The pharmacist must interpret the original prescription.
- (2) The pharmacist must perform the prospective drug utilization review and determine action to be taken when there is an indication of a drug interaction.
- (3) The pharmacist must receive new orally communicated prescriptions from prescribers or their agents.
- (4) The pharmacist must determine product selection if substitution is requested or approved.
- (5) ~~The pharmacist must prepare multi ingredient, non-repetitive, cytotoxic or experimental drug I.V.'s, enteral or other sterile multi ingredient medications; and the pharmacist shall be responsible for weighing, measuring and calculating ingredients for sterile compounded preparations.~~
- ~~(6)~~ The pharmacist must certify, by reviewing, the completed prescription for accuracy and completeness before the prescription is released from the prescription department. This process shall be completed before the prescription is given to the patient.
- ~~(7)~~ The pharmacist must provide patient counseling or drug information as necessary.
- ~~(8)~~ The pharmacist must take verbal authorizations from licensed prescriber or licensed prescriber's authorized agent (when allowed) for any refill of a controlled substance or any non-controlled prescription that has changes to strength or directions.

SUBCHAPTER 18. CUSTOMIZED ADHERENCE MEDICATION PACKAGE (CAMP)

535:15-18-4. Labeling

(a) Packaging must bear, at a minimum, the labeling requirements as stated in Title 59, Section 353.20.1 (B); and,

- (1) Physical description of medication (i.e. imprint, description) or be separately packaged;
- (2) Expiration date;
- (3) Lot number(s), if required;
- (4) Date and time to be given

(b) If packaging is detachable into individual units of administration time, each individual unit must bear:

- (1) The name of patient;
- (2) The name and strength of the medication(s); and
- (3) Date and time to be given.

~~(c) If packaging is detachable, (a)(4) of this section does not apply.~~

[OAR Docket #20-502; filed 6-30-20]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 10. PUBLIC EMPLOYEES RETIREMENT SYSTEM

[OAR Docket #20-588]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

590:10-1-21. Department of Public Safety Chief of Administration [NEW]

590:10-1-22. Retired members-State Department of Education [NEW]

Subchapter 3. Credited Service

590:10-3-12. Military service credit [AMENDED]

Subchapter 7. Retirement Benefits

590:10-7-5 Selecting an option [AMENDED]

Subchapter 10. Department of Corrections Death in Performance of Duty Benefits

590:10-10-8. Filing for Surviving Spouse and Surviving Child Benefits [AMENDED]

AUTHORITY:

Oklahoma Public Employees Retirement System Board of Trustees; 74 O.S. Section 909.

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Subchapter 1. General Provisions

590:10-1-21. Department of Public Safety Chief of Administration [NEW]

590:10-1-22. Retired members-State Department of Education [NEW]

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N/A

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OPERS is adding two rules and amending three rules in Chapter 10. The addition of 590:10-1-21 and 590:10-1-22 were passed as emergency rules by

the Board of Trustees in August. They are necessary to comply with Senate Bill 709 passed in the 2019 legislative session. These rules clarify that the rules and laws governing participation in OPERS-administered systems will govern the election made by the Chief of Administration of the Department of Public Safety and specific employees of the State Department of Education regarding their retirement.

The amendment to 590:10-3-12 clarifies that the only military service that can be credited to a member after retirement is free military credit. This free credit is only available to members who joined the system on or before June 30, 2000.

590:10-7-5 and 590:10-10-8 have been amended to delete the requirement for certified copies of death certificates. Certified copies are only required in two places in OPERS' administrative rules. The requirement for certified marriage licenses and certified birth certificates has also been deleted.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 1. GENERAL PROVISIONS

590:10-1-21. Department of Public Safety Chief of Administration

A person appointed to the position of Chief of Administration of the Department of Public Safety, pursuant to 47 O.S. Supp. 2018, Section 2-104, shall be eligible to participate in the OPERS Defined Benefit Plan or the OPERS Defined Contribution System, whichever is applicable under the laws and rules governing those systems. The election to participate in the Oklahoma Law Enforcement Retirement System or the OPERS-administered systems shall be made in writing within thirty (30) days from such appointment and is irrevocable.

590:10-1-22. Retired members-State Department of Education

A retired member of the Oklahoma Teachers Retirement System who becomes employed by the State Department of Education for the first time on or after November 1, 2019, shall have the option to remain a member of the Oklahoma Teachers Retirement System subject to any applicable post retirement limitations placed on retired members returning to work, or to participate in the OPERS Defined Benefit Plan or the OPERS Defined Contribution System, whichever is applicable under the laws and rules governing those systems. The election to participate in the Oklahoma Teachers Retirement System or the OPERS-administered systems shall be made in writing within thirty (30) days from the initial date of hire with the State Department of Education and is irrevocable.

SUBCHAPTER 3. CREDITED SERVICE

Permanent Final Adoptions

590:10-3-12. Military service credit

(a) Any member who joined the System on or before June 30, 2000, can receive up to five (5) years of military service credit for periods as defined in paragraph 23 of Section 902 of Title 74 of the Oklahoma Statutes. As set forth in Section 913 of Title 74 of the Oklahoma Statutes, the service credit can be prior service or participating service or a combination of the two, however, total military service credit cannot exceed five (5) years. The service must be active military service and the member must have been honorably discharged. The member must submit an application for military service credit and provide a copy of his or her DD214 form or other similar documentation clearly showing dates, types and places of service. If eligible, a retired member shall receive an increase in his or her monthly benefit as a result of the addition of the military service credit effective with the month following the receipt of the documents and approval by the System.

(b) Any active member who joined the System on or after July 1, 2000, can purchase up to five (5) years of military service credit for periods as defined in paragraph 23 of Section 902 of Title 74 of the Oklahoma Statutes. As set forth in Section 913 of Title 74 of the Oklahoma Statutes, the service credit can be prior service or participating service or a combination of the two, however, total military service credit cannot exceed five (5) years. The service must be active military service and the member must have been honorably discharged. The member must submit an application for military service credit and provide a copy of his or her DD214 form or other similar documentation clearly showing dates, types and places of service. The member must make payment in the amount determined by the Board pursuant to Section 913.5 of Title 74 of the Oklahoma Statutes and 590:10-3-8. This purchase may be amortized over sixty (60) months as provided for in 590:10-3-9.

(c) Military service credit will be credited or purchased in full months only. The initial month of military service will be accepted only if the service began on or before the 15th day of the month. The final month of military service will be accepted only if the service was completed on or after the 16th day of the month.

(d) Members who joined the System on or after July 1, 2003, can make the purchase set forth in paragraph (b) of this rule only if the member has not received credit for the same period of military service for retirement from another retirement system created pursuant to the Oklahoma Statutes. For such members, the military credit shall be granted or purchased in the retirement system from which the member retires first. In the event such a member fails to disclose a previous grant or purchase of military credit, the purchase will be voided, his or her service credit will be adjusted to remove the military service credit and only the purchase price shall be returned to the member.

(e) It is the responsibility of the member wishing to receive or purchase military service credit to complete the application provided by the System for this purpose and to provide all documentation necessary to support the application. Military service will not be credited until all required documentation is provided by the member to the System, the System has

approved the grant or purchase and any required payments are made.

(f) Retired members who are not credited with military service prior to or at the time of retirement may make application for the credit at any time. After approval by the System, the military service credit will be added to the member's record and increased retirement benefits, if any, as a result of the addition of the military service credit, shall begin with the first month following said approval. Retroactive payments will not be made under any circumstances. This subsection only applies to members whose initial membership in the System began on or before June 30, 2000.

(g) Members who served in the Armed Forces of the United States during a war or combat military operation other than World War I, World War II, the Korean War, the Vietnam War or the Gulf War as provided in Section 902 (23) of Title 74 of the Oklahoma Statutes, may be eligible to purchase or receive military service credit for the period of time that he or she actually served in an area of responsibility for a war or combat military operation which lasted for a period of at least ninety (90) days. It is the responsibility of the member to provide sufficient documentation to support his or her eligibility for this credit as requested by the System, including, but not limited to, documents showing specific service areas and times.

(h) The provisions for granting or purchasing military service credit shall be in addition to any contributions, benefits and service credit with respect to qualified military service in accordance with Section 414 (u) of the Internal Revenue Code of 1986.

SUBCHAPTER 7. RETIREMENT BENEFITS

590:10-7-5. Selecting an option

(a) The member may choose to receive the maximum benefit or receive benefits under any one of the retirement Options provided in 74 O.S. § 918.

(1) The type of retirement benefit selected by the member and/or the member's spouse, if applicable, cannot be changed under any circumstances on or after the effective date of retirement, except as provided in this Section.

(2) In the event of the death of the named joint annuitant after the member's retirement date, the member shall provide the System with a copy of the joint annuitant's death certificate as notice of said death. The member's benefit will "pop-up" to reflect the amount of benefit the member would be entitled to absent the selection of an option. The "pop-up" increase becomes effective the first day of the month following the death of the joint annuitant, provided the member has given notice of said death. If the death of the joint annuitant occurred prior to June 30, 1994, the benefit increase may become effective with the July 1994 benefit payment, provided the member has given notice of said death. Retrospective benefits will not be paid for any month prior to July 1994 and are limited to a maximum of six (6) months. The "pop-up" increase is limited to members retiring with an Option A or Option B.

(b) A member choosing Option C provided in 74 O.S. § 918 shall be subject to the following provisions:

(1) In the event of the death of the retired member within the ten-year certain period under Option C, and there are no living designated beneficiaries, the person responsible for the estate of the deceased retired member shall be given the option for the estate to receive monthly benefits for the remainder of the ten-year period, or receive the present value of the remaining benefit payments in a one-time, lump-sum distribution.

(2) In the event the retired member predeceases a designated beneficiary within the ten-year certain period, and the designated beneficiary dies after the beneficiary has begun to receive benefits, the person responsible for the estate of the beneficiary shall be given the option for the beneficiary's estate to receive monthly benefits for the remainder of the ten-year period, or receive the present value of the remaining benefit payments in a one-time, lump-sum distribution.

(3) For purposes of this subsection:

(A) "person responsible for the estate" means the personal representative, executor or administrator of the estate as determined by a court of competent jurisdiction, or in the case of a probate waiver as permitted by 74 O.S. § 916.1, the appropriate claiming heir; and

(B) "present value of the remaining benefit payments" means the lump-sum distribution shall be discounted using an interest rate equal to the actuarially assumed interest rate adopted by the Board of Trustees for investment earnings for the year in which the election is made pursuant to this subsection.

(4) The following shall be provided by the person responsible for the estate before any benefits will be paid:

(A) taxpayer identification number (TIN) for the estate, if applicable;

(B) legal documents naming the personal representative, executor or administrator of the estate, or in the case of a probate waiver, the appropriate documents as set forth in 74 O.S. § 916.1;

(C) ~~certified~~ copy of the death certificate for the member or beneficiary; and

(D) statement in writing from the person responsible for the estate selecting either the monthly or lump-sum payout method.

SUBCHAPTER 10. DEPARTMENT OF CORRECTIONS DEATH IN PERFORMANCE OF DUTY BENEFITS

590:10-10-8. Filing for Surviving Spouse and Surviving Child Benefits

(a) Claims for Surviving Spouse and/or Surviving Child benefits should be made as soon as possible following the employee's date of death. Benefits shall be payable beginning with the month following the employee's date of death, however, benefit payments will not commence until all required documentation has been furnished and a final determination

has been made by the System. Required documentation to be provided by the claimant include, but are not limited to, a completed application for benefits, a ~~certified~~ copy of the employee's death certificate, a ~~certified~~ copy of the public record of marriage and ~~certified~~ copies of birth certificates for Surviving Children.

(b) It is the responsibility of the Department of Corrections to assist the Surviving Spouse or the person with the care and custody of a Surviving Child with the completion of all necessary forms. It is also the responsibility of the Department of Corrections to provide any necessary documentation to confirm eligibility of any person for benefits under this Subchapter. Required documentation to be provided by the Department of Corrections include, but are not limited to, a completed report of death form which shall include a notarized statement from the deceased employer's supervisor describing in detail the duties being performed by the employee at the time and the circumstances under which death occurred, all workers' compensation claim information in the possession of the employer, a certified copy of the autopsy report, and any medical records in the possession of the employer.

(c) In addition to the information supplied by the claimant and the employer, the System may require a medical statement from a treating physician which includes a detailed analysis of the cause of death and the circumstances surrounding the death.

(d) Where the System feels that it is necessary or appropriate, it may, at its own expense, have the medical and other records reviewed and evaluated by an independent physician of its own choosing. The System may also use the services of law enforcement agencies or may contract for a licensed investigator for any situations that it deems necessary or appropriate.

(e) The System shall make a determination on all claims for benefits under this Subchapter within ninety (90) days following receipt of all required documentation and reviews and shall notify the employer and the claimant in writing.

[OAR Docket #20-588; filed 7-13-20]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 25. DEFERRED COMPENSATION

[OAR Docket #20-589]

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PERMANENT final adoption

RULES:

Subchapter 9. Benefits

590:25-9-1. Commencement of benefits [AMENDED]

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N/A

GIST/ANALYSIS:

590:25-9-1 is being amended to align the distribution requirements between the 457(b) and 401(a) plans in SoonerSave for active participants who have rolled money into the plans.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 9. BENEFITS

590:25-9-1. Commencement of benefits

(a) The payment of amounts deferred under the Plan will become payable:

- (1) No earlier than thirty (30) days after the Participant separates from service with the State, through termination or retirement; or
- (2) No later than April 1 of the calendar year after the year the participant attains age 70 1/2 years of age, except as provided in 590:25-9-5.
- (3) Plan-to plan transfers as described in 590:25-9-13 are not subject to the requirements for separation of service and shall be available for distribution within 45 days of acceptance of the properly completed distribution form as prescribed by OPERS.

(b) Rollover contributions as described in 590:25-9-16 are not subject to the requirements for separation of service and shall be available for distribution within 45 days of acceptance of a properly completed distribution form as prescribed by OPERS.

[OAR Docket #20-589; filed 7-13-20]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 40. DEFINED CONTRIBUTION SYSTEM

[OAR Docket #20-590]

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RULES:

Subchapter 5. Eligibility and Participation - Applicable to the 401(A) Plan and the 457(B) Plan

Part 1. Eligibility and Participation - Applicable to the 401(A) Plan And the 457(B) Plan

590:40-5-1. Participation in 401(a) plan and 457(b) plan [AMENDED]

Subchapter 9. Defined Contribution 457(b) Plan

Part 7. Benefits

590:40-9-25. Commencement of benefits [AMENDED]

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Oklahoma Public Employees Retirement System Board of Trustees; 74 O.S. Sections 909 and 935.3

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Subchapter 5. General Provisions

Part 1. Eligibility and Participation - Applicable to the 401(A) Plan And the 457(B) Plan

590:40-5-1. Participation in 401(a) plan and 457(b) Plan [AMENDED]

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OPERS is amending two rules in the Pathfinder plan. The amendment to 590:40-5-1 was passed as an emergency rule by the Board of Trustees in August. This amendment is necessary to comply with Senate Bill 709 passed in the 2019 legislative session. This rule clarifies that the rules and laws governing participation in OPERS-administered systems will govern the election made by the Chief of Administration of the Department of Public Safety and specific employees of the State Department of Education regarding their retirement.

The amendment to 590:40-9-25 aligns the 457(b) and 401(a) distribution requirements for active participants who have rolled money into the plans. OPERS already does this for the 401(a) plan.

CONTACT PERSON:

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

FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:

**SUBCHAPTER 5. ELIGIBILITY AND
PARTICIPATION - APPLICABLE TO THE 401(A)
PLAN AND THE 457(B) PLAN**

**PART 1. ELIGIBILITY AND PARTICIPATION -
APPLICABLE TO THE 401(A) PLAN AND THE
457(B) PLAN**

**590:40-5-1. Participation in 401(a) plan and 457(b)
plan**

(a) **Eligibility.** Each Employee shall become a Participant on the first day of the month following the date of employment with an Employer for the mandatory contributions as set forth in 74 O.S. §935.5 and 590:40-5-5. Participants may participate in voluntary deferrals to the 457(b) plan set forth in 74 O.S. §935.5 and 590:40-5-6 beginning the first day of the month following the entry date of employment. An Employee shall participate in the DC System if the Employee is employed in a full-time-equivalent position or any position which is less than full-time but more than a half-time position and includes employee benefits such as health insurance and leave time. The determination of whether an Employee is in an employment position which is more than a half-time position shall be made by the Employer and such determination shall be exclusively relied upon by OPERS. Members who have been declared eligible to participate in the DC System, but subsequently fall below the level of eligibility for a new member, shall continue to participate in the System.

(b) **Participation upon reemployment.** A former Participant or former Employee who satisfies the eligibility requirements in this section shall become a Participant in the DC System on the first day of the month following the date of reemployment.

(c) **Change in employment status.** In the event a Participant is no longer a member of an eligible class of Employees and becomes ineligible to participate in the DC System, the individual will participate immediately upon returning to an eligible class of Employees.

(d) **Previous participation in defined benefit plan.** Any employee first employed by an Employer prior to November 1, 2015, and was a participating member in OPERS defined benefit plan set forth in 74 O.S. §§ 901 et seq. shall not be a Participant in the DC System. Such employees shall participate in OPERS defined benefit plan set forth in 74 O.S. §§ 901 et seq. regardless of whether the individual maintained membership in the OPERS defined benefit plan. If an employee is first employed by an Employer on or after November 1, 2015, in a position in which the employee is eligible to participate in OPERS defined benefit plan, and such employee subsequently terminates service with such Employer and becomes employed

in a position which is eligible under the DC System, the employee shall no longer participate in OPERS defined benefit plan but shall participate in the DC System.

(e) **Department of Public Safety Chief of Administration.** A person appointed to the position of Chief of Administration of the Department of Public Safety, pursuant to 47 O.S. Supp. 2018, Section 2-104, shall be eligible to participate in the OPERS Defined Benefit Plan or the OPERS Defined Contribution System, whichever is applicable under the laws and rules governing those systems. The election to participate in the Oklahoma Law Enforcement Retirement System or the OPERS-administered systems shall be made in writing within thirty (30) days from such appointment and is irrevocable.

(f) **Retired Members-State Department of Education.** A retired member of the Oklahoma Teachers Retirement System who becomes employed by the State Department of Education for the first time on or after November 1, 2019, shall have the option to remain a member of the Oklahoma Teachers Retirement System subject to any applicable post retirement limitations placed on retired members returning to work, or to participate in the OPERS Defined Benefit Plan or the OPERS Defined Contribution System, whichever is applicable under the laws and rules governing those systems. The election to participate in the Oklahoma Teachers Retirement System or the OPERS-administered systems shall be made in writing within thirty (30) days from the initial date of hire with the State Department of Education and is irrevocable.

**SUBCHAPTER 9. DEFINED CONTRIBUTION
457(B) PLAN**

PART 7. BENEFITS

590:40-9-25. Commencement of benefits

The payment of amounts deferred under the Plan shall be payable:

(1) No earlier than forty-five (45) days after the Participant separates from service with the Employer, through termination or retirement; or

(2) Distribution of a Participant's account must begin no later than the required beginning date, which is the later of the April 1 following the calendar year in which the Participant attains the age of 70 $\frac{1}{2}$ years of age, except as provided in 590:40-9-28, or the April 1 of the year following the calendar year in which the Participant terminates. If a Participant fails to apply for distribution by the later of either of those dates, the Board shall begin distribution of the Participant's entire interest as required by this Section in the form provided in 590:40-7-35.

(3) The Participant's entire interest must be distributed over the Participant's life or the lives of the Participant and a designated beneficiary, or over a period not extending beyond the life expectancy of the Participant or of the Participant and the designated beneficiary.

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(4) Plan-to plan transfers as described in 590:40-9-35 are not subject to the requirements for separation of service and shall be available for distribution within 45 days of acceptance of the properly completed distribution form as prescribed by OPERS.

[OAR Docket #20-590; filed 7-13-20]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY CHAPTER 1. GENERAL RULES OF THE DEPARTMENT OF PUBLIC SAFETY

[OAR Docket #20-528]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. Inspection and copying of final orders, decisions, opinions, and open records

595:1-9-4. Fees [AMENDED]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. § 6-101 et seq.

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INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The proposed revisions to Subchapter 9 of Chapter 1 reduce the fees for the production of compact discs, digital video discs, or other similar optical storage discs from \$25.00 to \$5.00.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 9. INSPECTION AND COPYING OF FINAL ORDERS, DECISIONS, OPINIONS AND OPEN RECORDS

595:1-9-4. Fees

(a) **General.** A fee shall be assessed for each individual record, or portion thereof, and for the recovery of the reasonable, direct costs of mechanical reproduction, copies of records, materials, certification, searches, and other activities relating to records as allowed by law and in accordance with these rules.

(b) **Search fees.** If a request for records is either solely for commercial purposes or would clearly cause excessive disruption of the essential functions of the Department, a search fee may be charged to recover the direct cost of record search and copying.

(c) **Fee amounts.**

(1) A record produced on a single sheet of paper with dimensions of eight and one-half (8 1/2) by fourteen (14) inches or smaller: \$0.25 per page. [51 O.S. §24A.5(3)]

(2) Motor vehicle report: \$25.00 per report. [47 O.S. §6-117(D)]. Persons sixty-five (65) years of age or older shall not be required to pay a fee for their own Motor Vehicle Report furnished by the Department or tag agent.

(3) Certified Motor Vehicle Report: \$28.00 per report. [47 O.S. §§2-110(B) and 6-117(D)]

(4) Collision report on file with the Department: \$7.00 per report. [47 O.S. §6-117(C)]

(5) Certified collision report on file with the Department: \$10.00 per report. [47 O.S. §§2-110(B) and 6-117(C)]

(6) Certified copy of a record, other than a Motor Vehicle Report or a Collision report: \$3.00 per report. [47 O.S. §2-110(B)]

(7) Compact disc (CD), DVD or similar optical storage disc: ~~\$25.00~~ \$5.00 per disc.

(8) Search fee: The amount of the fee shall be for the cost of materials and labor directly attributable to fulfilling the request. [51 O.S. §24A.5(3)(b); Okl. Atty. Gen. Opinion 1996 OK AG 26]

(9) For any other record not specified herein, a fee may be assessed for recovery of the reasonable, direct costs of record copying or mechanical reproduction.

(10) Persons sixty-five (65) years of age or older shall not be required to pay a fee for their own Motor Vehicle Report furnished by the Department or motor license agent.

[OAR Docket #20-528; filed 7-6-20]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY CHAPTER 10. CLASS D DRIVER LICENSE AND IDENTIFICATION CARDS AND MOTOR LICENSE AGENT PROCEDURES

[OAR Docket #20-529]

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RULES:

Subchapter 1. Procedure for Obtaining and Maintaining a Driver License or Identification Card
 Part 2. Application for Initial Driver License
 595:10-1-3. Procedures for obtaining an initial driver license [AMENDED]
 Part 3. Driver License Renewal
 595:10-1-10. Procedure for obtaining a renewal driver license [AMENDED]
 Part 7. Identification Cards
 595:10-1-25. Procedure for obtaining an identification card [AMENDED]
 595:10-1-26. Procedure for obtaining a renewal identification card [AMENDED]
 595:10-1-27. Procedure for obtaining a replacement identification card [AMENDED]
 Part 9. Change of name on a driver license or identification card
 595:10-1-35. Procedure to make a change of name on a driver license or an identification card [AMENDED]
 Part 13. Motor License Agents
 595:10-1-50. Identification required [AMENDED]
 Part 19. Driver License and Identification Card Content
 595:10-1-92. Driving restriction codes [AMENDED]
 Subchapter 3. Examination
 595:10-3-9. Skills examination [AMENDED]

AUTHORITY:

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The rule amendments modify the required documentation to be used to establish an applicants identification at the time of application to the Department of Public Safety for an Oklahoma REAL ID Compliance or REAL ID Non-Compliant credential.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. PROCEDURE FOR OBTAINING AND MAINTAINING A DRIVER LICENSE OR IDENTIFICATION CARD

PART 2. APPLICATION FOR INTIAL DRIVER LICENSE

595:10-1-3. Procedures for obtaining an initial driver license

(a) **Application.** Every applicant for an initial Oklahoma driver license shall appear before a Driver License Examiner [47 O.S. §6-110]. An application for a driver license must be completed either by the applicant at the Driver License Examination Station or online, when an electronic process is made available by the Department of Public Safety (the Department), prior to the commencement of the required examination. Each applicant must sign a declaration under penalty of perjury that the information presented on the application is true and correct, and the State must retain this declaration. An applicant must sign a new declaration when presenting new source documents to the Department of Public Safety or certified motor license agent on subsequent visits. An emergency contact name, address and phone number may be included on the application, ~~which emergency contact may be changed or removed at any time by the licensee or by the emergency contact. The emergency contact information shall be for use by the Department and law enforcement officers only.~~ [See OAC 595:10-1-50(d)(4) for more information on emergency contact.] Upon submitting a completed and approved application, providing proof of identity as provided for in (b) of this Section and proof that the applicant is a United States citizen, foreign national or a legal permanent resident alien [21 O.S., § 1550.42(B)], or having valid documentary evidence of lawful presence in the United States, and meeting all statutory requirements and successfully completing every required examination [Subchapter 3. Examination of this Chapter], the applicant may, if paying with an accepted credit card, be issued a temporary driver license by the Driver License Services Division after paying the required fees or proceed to a ~~certified motor license agent~~ Certified Motor License Agent and present the ~~DL-10 approved application form~~ issued by the Driver License Examiner along with the same identification presented to the examiner, and paying the required fees, the applicant will be issued a temporary driver license. The actual license will be mailed to the customer. ~~The State must subject each person applying for a REAL ID compliant and non compliant driver license or identification card to a mandatory facial image, finger image capture, and shall maintain photographs and finger image of individuals even if no card is issued.~~ For each individual applying for an Oklahoma REAL ID Compliant or REAL ID Non-Compliant credential, the State must take and retain a photograph of the applicant's face and collect and retain the applicant's finger images, with or without the issuance of any type of Oklahoma credential. A person who has been declared to be a disabled veteran receiving compensation at the 100% rate for a permanent disability shall receive an original, renewal, or replacement driver license or identification card at no charge, upon presentation of one of the following documents:

- (1) proof of 100% status from the U.S. Department of Veterans Affairs, or

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- (2) a tax exempt card from the Oklahoma Tax Commission showing exemption from state tax based upon 100% status.

(b) Required documents for a REAL ID Compliant Driver License.

- (1) **Proof of Identity.** To establish identity, the applicant must present at least one of the following source documents:

- (A) Valid, unexpired U.S. passport.
- (B) Original or certified copy of a birth certificate filed with a State Office of Vital Statistics or equivalent agency in the individual's State of birth.
- (C) Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State, Form FS-240, DS-1350 or FS-545.
- (D) Valid, unexpired Permanent Resident Card (Form I-551) issued by the United States Department of Homeland Security (DHS) or United States Citizenship and Immigration Services (USCIS)
- (E) Unexpired employment authorization document (EAD) issued by DHS, Form I-766 or Form I-688B.
- (F) Unexpired foreign passport with a valid, unexpired U.S. visa affixed accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States.
- (G) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570.
- (H) Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS.
- (I) REAL ID driver's license or identification card issued in compliance with the standards established by this part.
- (J) Such other documents as DHS may designate by notice published in the Federal Register.

- (2) **Name Change.** If a customer wishes to establish a name other than the name that appears on a source document (for example, through marriage, adoption, court order, or other mechanism permitted by State law or regulation), the customer must provide evidence of the name change through the presentation of documents issued by a court, governmental body or other entity as determined by the Department. The Department shall maintain copies of the documentation presented and maintain a record of both the recorded name and the name on the source documents as determined by the Department. If immigration documents are presented, the customer must provide proof of the updated name change with USCIS or SAVE.

- (3) **Proof of Date of Birth.** To establish date of birth, an individual must present at least one document included in paragraph (1) of this section.

- (4) **Proof of Social Security Number (SSN).** An applicant for a REAL ID driver license must present his or her Social Security Administration account number card; or, if a Social Security Administration account card is not available, the person may present any of the following documents bearing the applicant's SSN:

- (A) A W-2 form,

- (B) A SSA-1099 form,
- (C) A non-SSA-1099 form, or
- (D) A pay stub with the applicant's name and SSN on it. ~~The State DMV~~ The Department or Motor License Agent (MLA) must verify the SSN with the Social Security Administration (SSA). In the event of a non-match with SSA, the Department shall not issue a REAL ID driver license until the information ~~verifies-is verified~~ with SSA.

- (5) **Documents demonstrating address of principal residence.** To document the address of principal residence, a person must present at least two documents of the State's choice that include the individual's name and principal residence. Acceptable documents to prove address of principal residence are:

- (A) Copy of previous year's federal or Oklahoma income tax return filing
- (B) Current and valid life insurance, or automobile liability policy or card with address.
- (C) Installment loan contract from a bank or other financial institution. ~~(Payday loan companies are not acceptable).~~, not to include documents reflecting a cash advance or signature loan.
- (D) Current Deed, mortgage, monthly mortgage statement, or a residential lease.
- (E) Current homeowners' or renters' insurance policy or statement.
- (F) Professional license issued by an Oklahoma governmental agency
- (G) Property tax bill or receipt dated within the last 12 months
- (H) Sales tax or business license
- (I) ~~Social Security Administration~~ SSA document with Oklahoma street address dated within the last 12 months
- (J) Transportation Security Administration (TSA) letter
- (K) Utility bill (from an electric, telephone (home or cell), water, sewer, cable, satellite, heating oil, or propane provider).
- (L) Valid ~~concealed weapons~~ handgun permit.
- (M) Certified copy of court order.
- (N) Oklahoma Boat Title or Registration.
- (O) Current documents issued by the US Military.
- (P) Oklahoma Motor Vehicle Title or Registration.
- (Q) ~~Pilot's Government-issued~~ Pilot license.
- (R) Public assistance benefit card and correspondence dated within the last 12 months.
- (S) W-2 wage or 1099 tax form from the previous year.
- (T) Oklahoma Voter ~~registration~~ Registration ~~card~~.
- (U) Tribal ~~Vehicle~~ vehicle ~~Title~~ titles or ~~Registration~~ registration.
- (V) Oklahoma ~~High School~~ school, ~~College~~ college, ~~University~~ university, ~~transcript~~ or ~~Technology Center~~ technology center transcript for current school year or semester.

(W) Oklahoma Agriculture ~~exemption~~Exemption ~~permit~~Permit card (farm tax permit).

(X) Correspondence from an Oklahoma State ~~Agency~~agency with current address dated within the last year. ~~(cannot be forwarded mail)~~

(6) **Evidence of lawful status in the United States.** The Department may issue a REAL ID Compliant driver license only to ~~an~~person~~applicant~~ who has presented satisfactory evidence of lawful status.

(A) If the applicant presents one of the documents listed under paragraph (b)(1), ~~(A) through (b)(1)(H)~~ the verification of the applicant's identity will also provide satisfactory evidence of lawful status.

(B) If the applicant presents one of the identity documents listed under paragraphs (b)(1) ~~(I) through (b)(1)(J)~~ of this section, or the issuing State's verification of the identity document(s) does not provide satisfactory evidence of lawful status, ~~The~~the applicant must also present a second document from documentation issued by DHS or other Federal agencies demonstrating lawful status as determined by USCIS. All documents shall be verified by the ~~Systematic Alien Verification for Entitlements (SAVE)~~SAVE.

(c) **Required identification for REAL ID Non-Compliant Driver License.** Every applicant must ~~furnish both primary documentary documentation to show~~ proof of identity [47 O.S. § 6-106(A)(3)], to include whether the applicant is a United States citizen, foreign national, or a legal permanent resident alien [21 O.S. § 1550.42(B)], ~~and secondary documentary proof of identity [47 O.S. § 6-106(A)(3)]~~ and proof of full legal name and birth date beyond any reasonable doubt when applying for an initial Oklahoma driver license [47 O.S. § 6-101(L)]. Any document furnished must be either an original document or a certified copy of an original document issued by the proper authority; notarized documents will not be accepted. Any document presented shall be unexpired unless otherwise noted in this Section. Any document whose authenticity cannot be verified, or that has been or appears to have been duplicated, traced over, mutilated, defaced, tampered with, or altered in any manner or that cannot be read by the Driver License Examiner shall not be accepted or used for identification purposes. All identification documents must be approved by the Driver License Examiner before acceptance. The Driver License Examiner may, at his or her discretion, request additional identification documentation of the applicant.

(1) **Primary ~~proof~~Proof of identification for original issuance to a United States citizen.** The following shall be presented by the applicant as ~~primary~~ proof of identification for a citizen of the United States:

(A) A certified birth certificate, as issued by the appropriate state agency from the state of birth. A certified birth certificate issued by a city or county may be accepted if it is issued on secure document paper and if the certificate either is from a state which the Department has verified authorizes the issuance of birth certificates certified by a city or county or contains a statement indicating the record is a copy of

the facts on file with the state agency responsible for maintaining and certifying vital records. The birth certificate shall include the person's name, date of birth, and sex, shall be signed and sealed, and shall include the certificate number. The following documents are not acceptable:

- (i) a hospital birth certificate or record,
- (ii) a birth registration, or
- (iii) an abstract of birth, unless the abstract is issued on secure document paper and contains the following statement "I hereby certify that this abstract of birth facts has been provided to this office by the Department of Health, Bureau of Vital Statistics, from a document officially in its custody"

(B) A United States passport,

(C) For a United States citizen who is born in another country, a certification issued by the United States Department of State,

(D) For a naturalized citizen of the United States, a Certificate of Naturalization issued by the United States Citizenship and Immigration Service. The name on the document must be the same as the name used by the applicant on the ~~driver license or identification card~~ Oklahoma REAL ID Compliant or REAL ID Non-Compliant credential, and for every person born in another country and adopted as a minor child by a United States citizen parent, a Certificate of Citizenship issued by the United States Citizenship and Immigration Service,

(E) An Oklahoma ~~driver license~~Oklahoma REAL ID Compliant or REAL ID Non-Compliant credential issued by the Department of Public Safety when legal presence has been noted in record on or after November 1, 2007,

(F) A State of Oklahoma identification card issued by the Department of Public Safety when legal presence has been noted in record on or after November 1, 2007, or

(G) If none of the forms of identification listed in this paragraph are available, any other documentation as approved by the Driver License Examiner Supervisor, Administrative Officer or Director. The Driver License Examiner shall list the approved documentation on the ~~DL-10~~application form.

(2) **Primary ~~proof~~Proof of identification for renewal or replacement issuance to a United States citizen.** The following shall be presented by the applicant as primary proof of identification for a citizen of the United States:

(A) Finger image comparison, if a ~~Department generated~~finger image ~~algorithm~~is already on file with the Department, or

(B) Any ~~primary~~proof of identification listed in (1) of this ~~subsection~~Section.

(3) **Primary ~~proof~~Proof of identification for original, renewal, or replacement issuance to a foreign national or legal permanent resident alien.** As ~~primary~~ proof of identification and proof of lawful presence in the United States for a foreign national or legal permanent

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resident alien, an applicant shall present, in person, valid documentary evidence of one of the following:

(A) A passport issued by a country other than the United States and I-94 card, when applicable. The name on the passport shall be the same as the name used by the applicant on the driver license or identification card. An I-94 card, which shall be accompanied by the applicant's passport when applicable, shall not be considered a separate identification document. The following documents or passport classifications shall be accepted for the purpose of issuing a driver license or identification card:

- (i) I-766 Employment Authorization Card,
- (ii) I-551 Resident Alien/Permanent Resident Card [see (B)],
- (iii) Temporary I-551,
- (iv) A-1,
- (v) A-2,
- (vi) A-3,
- (vii) DA,
- (viii) E-1,
- (ix) E-2,
- (x) F-1, with Form I-20,
- (xi) F-2, with Form I-20,
- (xii) G-1,
- (xiii) G-2,
- (xiv) G-3,
- (xv) G-4,
- (xvi) G-5,
- (xvii) H-1A,
- (xviii) H-2A,
- (xix) H-1B,
- (xx) H-2B,
- (xxi) H-3,
- (xxii) H-4,
- (xxiii) I,
- (xxiv) J-1, with IAP-66 or DS-2019,
- (xxv) J-2 (dependent of J-1 holder, must be accompanied by J-1 holder),
- (xxvi) K-3,
- (xxvii) K-4,
- (xxviii) L-1(a/b),
- (xxix) L-2,
- (xxx) M-1, with I-20,
- (xxxi) M-2 (dependent of M-1 holder, must be accompanied by M-1 holder),
- (xxxii) NATO-1,
- (xxxiii) NATO-2,
- (xxxiv) NATO-3,
- (xxxv) NATO-4,
- (xxxvi) NATO-5,
- (xxxvii) NATO-6,
- (xxxviii) NATO-7,
- (xxxix) O-1
- (xl) O-2
- (xli) O-3
- (xlii) P-1
- (xliii) P-2

- (xlv) P-3
- (xlv) P-4
- (xlvi) Q-1
- (xlvii) R-1
- (xlviii) R-2
- (xlix) T-1
- (l) T-2
- (li) T-3
- (lii) T-4
- (liii) TC, with I-94 or letter form I-797,
- (liv) TN-1,
- (lv) TN-2,
- (lvi) TD,
- (lvii) V-1,
- (lviii) V-2,
- (lix) V-3; or

(B) A permanent resident alien registration card issued by the United States Citizenship and Immigration Service (USCIS) which shall include the full, legal name, sex, and date of birth of the person identified on the card. The full, legal name, sex, and date of birth on the card shall be the full, legal name, sex, and date of birth used by the applicant on the driver license or identification card. A permanent resident alien registration card holder shall be allowed to renew his or her driver license or identification card at a motor license agency, provided, no changes are made to the full, legal name, sex, or date of birth. If, pursuant to 8 C.F.R., Section 264.5, a permanent resident alien registration card holder requests a name, sex, or date of birth change to his or her driver license or identification card, the changes shall be made at a driver license exam site with the applicant showing approved documentation provided by USCIS verifying the changes; or

(C) If none of the forms of identification listed in this paragraph are available, any other documentation as approved by the Driver License Examiner Supervisor, Administrative Officer or Director. The Driver License Examiner shall list the approved documentation on the DL-10 application form.

(D) A pending application for any of the above documents shall not satisfy the requirements of this rule and shall not be acceptable for issuance of an original, renewal, or replacement identification card or driver license. Provided, this provision shall not apply to the following:

- (i) A pending or approved application for asylum in the United States; or
- (ii) A pending or approved application for temporary protected status (TPS) in the United States; or
- (iii) A pending application for adjustment of status to legal permanent residence status or conditional resident status.

(4) **Secondary proof of identification.** The following ~~shall be presented by the applicant as~~ secondary ~~proofs~~ of identification accepted by the Department

until October 31, 2019 and shall contain the name of the applicant:

- (A) Any ~~primary~~ proof of identification listed in paragraphs (1), (2), or (3), ~~as applicable~~, of this subsection which is not used as the ~~primary proof of~~ identification document of the applicant,
- (B) For any person under the age of 18, an affidavit provided by the Department and signed by the parent or legal guardian,
- (C) Photo identification card that is issued by an Oklahoma:
 - (i) public, private, or parochial secondary school,
 - (ii) institution of higher education,
 - (iii) technology center school, or
 - (iv) employer,
- (D) Oklahoma gun permit,
- (E) Pilot license,
- (F) Oklahoma lifetime hunting or fishing license,
- (G) Oklahoma voter identification card,
- (H) Social Security card,
- (I) Health insurance card,
- (J) Motor vehicle registration or title,
- (K) Marriage certificate,
- (L) Separation or divorce judgment,
- (M) High school, technology center school, college, or university diploma
- (N) Professional degree, certificate, or license,
- (O) Deed or title to property in Oklahoma, including a burial plot deed,
- (P) Health, life, or home insurance policy issued to the applicant,
- (Q) Automobile insurance policy or security verification form issued to the applicant,
- (R) A valid U.S.D.O.T. health card, as required by 49 C.F.R. Part 391,
- (S) Digital photograph comparison, if a Department-generated digital photograph is already on file with the Department,
- (T) Identification documents issued by the United States Armed Services:
 - (i) Military discharge (DD-214), unless specified not to be used for identification,
 - (ii) Military identification card, or
 - (iii) Military dependent identification card,
- (U) United States Bureau of Indian Affairs identification card or a Oklahoma tribal photo identification card, approved by the Department of Public Safety (the Department shall maintain on its website a list of tribes which comply with this provision), which identifies the person and includes the following information:
 - (i) color photograph of the person,
 - (ii) full legal name of the person,
 - (iii) birth date of the person,
 - (iv) signature of the person,
 - (v) signature of person who verifies records, and

- (vi) tribal seal,
 - (V) Expired Oklahoma Driver License,
 - (W) Expired Oklahoma Identification Card,
 - (X) Oklahoma Tax Commission Agricultural Exemption Permit (tax exempt card),
 - (Y) Department of Corrections cards including:
 - (i) Department of Consolidated Record Card
 - (ii) Department of Corrections Inmate Identification Card,
 - (Z) Transportation Worker Identification Credential (TWIC card)
 - (AA) Out-of-State driver license, or
 - (BB) If none of the forms of identification listed in this paragraph are available, any other documentation as approved by the Driver License Examiner Supervisor, Administrative Officer or Director. The Driver License Examiner shall list the approved documentation on the ~~DL-10~~ application form. After November 1, 2019, the Department will not require secondary proof of identification.
- (5) **Additional identification requirements.** The Department may require additional identification documents:
- (A) when the Department is unable to determine the reliability or validity of the identification document(s) presented, or
 - (B) as provided in OAC 595:10-1-35.
 - ~~(C) All persons acting as an interpreter must be eighteen (18) years of age or older and must supply proof of legal presence in the United States and a driver license or identification card issued by any state and must sign an affidavit provided by and filled out by Department personnel.~~
- (d) **Driver license numbers.**
- (1) Driver license numbers shall be assigned by computer. Use of the applicant's ~~Social Security number~~ SSN as the driver license number is prohibited [47 O.S. § 6-106(B)]; provided, every applicant shall provide the Department with the Social Security number of the applicant [47 O.S. § 6-106(B),12], which shall be verified before a driver license shall be issued to the applicant. Verification shall be accomplished using the Social Security On-line Verification (SSOLV) system. The Department shall refer any applicant to the ~~Social Security Administration~~ SSA whenever the ~~Social Security number~~ SSN cannot be verified for the applicant.
 - (2) Any licensee may request to change his or her driver license number to any nine-digit number which is not in use or has not been previously used by making a written request to the Department. Upon approval by the Department, the licensee shall obtain a replacement driver license from a motor license agent, and the licensee shall pay the required fee for the replacement license [OAC 595:10-1-18]

PART 3. DRIVER LICENSE RENEWAL

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595:10-1-10. Procedure for obtaining a renewal driver license

(a) **General requirements.** During the month of expiration or as provided in (d) of this Section, each licensee shall present proper identification and pay the required fee to a Motor License Agent or to the Driver License Services Division of the Department of Public Safety for renewal of the driver license of the licensee. Failure to renew a driver license by the end of the month of expiration shall not relieve the person of the obligation to renew his or her driver license under the provisions required by law and this Section if the person wishes to keep his or her driver license in force.

(b) Required identification.

(1) **Renewal with valid and unexpired Real ID Non-Compliant driver license.** The valid and unexpired Class D license provided as the ~~primary~~ identification, as prescribed in OAC 595:10-1-3(c)(3), may be retained by the licensee, after the ~~motor license agent~~ Motor License Agent or Driver License Examiner has first punched a hole through the identification number of the license or cut off the bottom right corner of the card. ~~The person shall also provide secondary identification as prescribed in OAC 595:10-1-3(e)(4).~~

(2) **Renewal with ~~ana~~ Real ID Non-Compliant expired driver license.** The expired Class D driver license provided as the ~~primary~~ identification may be retained by the licensee, after the ~~motor license agent~~ Motor License Agent or Driver License Examiner has first punched a hole through the identification number of the license or cut off the bottom right corner of the card. ~~The person~~ licensee shall provide ~~primary~~ identification as prescribed in OAC 595:10-1-3(c)(3), as appropriate. Any ~~customer~~ licensee with a license expired more than one (1) year past the expiration date ~~and the original issue date was before 11/01/2007~~ must show proof of legal presence in this country unless legal presence has previously been noted in Department records. If the ~~motor license agent's~~ Motor License Agent's operator is not Birth Certificate certified or REAL ID certified the customer must go to an agent who is certified or they must see a Driver License Examiner.

(3) **Renewal without driver license.** Any person who does not have the valid and unexpired driver license shall provide identification as prescribed in OAC 595:10-1-3(b) for a Real ID Compliant or 595:10-1-3(c) for a Real ID Non-Compliant driver license.

(4) **Renewal of a Real ID Compliant Driver License.** The ~~customer~~ licensee must surrender the Real ID Compliant driver license if available [Title 47 §6-101(T)] and provide identification as required in OAC 595:10-1-3(b).

(c) **Vision examination.** Persons holding a commercial driver license shall, upon renewal, meet the vision standards established in OAC 595:10-5-7 and 49 C.F.R. § 391.41.

(d) Limitations to issuance of a renewal driver license.

(1) A renewal driver license will be issued only to an individual whose driving privilege is not under suspension, revocation, disqualification, cancellation or denial and who complies with this Section.

(2) Any ~~customer~~ licensee who requests a renewal of his or her driver license when the license has been expired in excess of three (3) years is required to appear before a Driver License Examiner, pursuant to OAC 595:10-1-2.

(e) **Early renewal of a driver license.** Any licensee may renew his or her driver license no more than one (1) year prior to the expiration date. ~~A renewal which occurs more than one (1) year prior to the expiration date shall be treated as a replacement under the provisions of OAC 595:10-1-18.~~

(f) Change of driver license number.

(1) Use of the licensee's ~~Social Security number~~ SSN as the driver license number is prohibited. At the time of renewal, any licensee whose driver license number is his or her Social Security number shall inform the Department or the ~~motor license agent~~ Motor License Agent of that fact. If the numbers are the same, a new driver license number will be assigned for the licensee by computer [47 O.S. § 6-106(B)].

(2) Any licensee may request to change his or her driver license number to any nine-digit number by making a written request to the Department. Upon approval by the Department, the licensee shall obtain a replacement driver license from a ~~motor license agent~~ Motor License Agent, and the licensee shall pay the required fee for the replacement license [see OAC 595:10-1-18 regarding replacement driver licenses].

(g) **Persons who may appear before a motor license agent.** An individual, who has previously held an Oklahoma Class D driver license that has been surrendered to another state in exchange for the other state's license, may apply directly to a ~~motor license agent~~ Motor License Agent for reactivation of the previous Oklahoma Class D license, upon establishing Oklahoma residence and following the applicable procedure for renewal. The agent shall call the Driver License Services Division and request clearance to issue the license. Any customer with a license expired more than one (1) year past the expiration date ~~and the original issue date was before 11/01/2007~~ must show proof of legal presence in this country unless legal presence has previously been noted in Department records. If the ~~motor license agent's~~ Motor License Agent's operator is not Birth Certificate certified or Real ID Certified the customer must go to an agent who is certified or they must see a Driver License Examiner. If the clearance is given by the Department, the person shall surrender the out of state license to the agent, and the agent shall issue the Oklahoma license. In no case shall the out of state driver license be retained by the person when an Oklahoma license has been issued to the person. The agent shall retain the license and submit it to the Department with the agent's report. If clearance is not given, the person shall be informed to contact the state whose action is causing the clearance to be withheld.

(h) **Persons unable to appear due to medical situation.** An individual, who is an Oklahoma resident and who is located within the state, may declare in writing to the Department that, because of a medical reason or condition, he or she is unable to appear in person to renew his or her driver license, in which case the Department shall issue by mail an identification card to the person and shall not issue a driver license. The

driver license shall be surrendered by the individual to the Department prior to issuance of the identification card. The individual shall provide identification as prescribed in OAC 595:10-1-3(b) for a Real ID Compliant or 595:10-1-3(c) for a Real ID Non-Compliant credential. A ~~non-compliant~~ REAL ID Non-Compliant driver license cannot be surrendered for a REAL ID ~~compliant~~ Compliant identification card. A REAL ID ~~compliant~~ Compliant identification card shall not be issued if there is any material change in any personally identifiable information since prior issuance and the Department of Public Safety shall take an updated photograph of the customer, no less frequently than every sixteen (16) years.

(i) **Renewing driver license - not in person.** The Department may create an alternative method where any Oklahoma Class D driver license holder may apply to the Department of Public Safety to renew his or her Class D driver license without appearing in person as provided in this Section.

(1) The Class D driver license holder shall make application online, when such process is made available, or in writing to the Department and shall submit to the Department:

- (A) copies of documentary evidence of the customer's name and date of birth as required by OAC 595:10-1-10 (~~documents sent for verification will not be returned; therefore, original documents should not be sent~~). If a material change is requested for a Real ID Non-Compliant driver license, ~~the original or~~ certified copies of the required documents must be submitted. A material change means any change to the personally identifiable information of an individual, such as their name or driver license number. If the customer wants these documents returned they are to enclose a self-addressed, stamped envelope. A material change does not include a change of address;
- (B) A Real ID Compliant license requiring a material change must be done in person;
- (C) the customer's Class D driver license number;
- (D) both the Oklahoma residence address ~~and~~ Oklahoma mailing address, or temporary mailing address with the expiration date of the temporary mailing address. If an expiration date is not provided for the temporary mailing address, the system will default to an expiration date of thirty (30) days from the issuance of the Oklahoma credential. If the address is different than the address on record at the Department, the customer must submit a change address request to the Department online at <https://www.dps.state.ok.us/addresschange/card>;
- (E) ~~the number of a nationally recognized credit card and authorization for the required fee for the renewal Class D driver license to be paid by the customer to the Department using the credit card; and~~
- (F) ~~the customer's~~ applicant's signature.

(2) Submission of the items required in (1) shall be made in ~~one of the following manners:~~

- (A) ~~online application: <https://ok.gov/dps/dlrenewal/>; or~~

(B) by first class mail: Department of Public Safety, PO Box 11415, Oklahoma City, OK 73136

(3) Method of payment shall be made :

(A) ~~online: if you are submitting your application online you may only pay by credit card.~~

(B) by mail: ~~if the customer is submitting their application by mail they must include in the form of a cashier's check or money order along with the required documents.~~ No personal checks or other forms of payment will be accepted.

(4) If the Department approves the renewal Class D driver license without appearing in person, pursuant to the requirements of this chapter, and: if the digital photograph and digital signature of the customer are available from the files of the Department, the Department shall create the renewal Class D driver license using that photo and signature.

(5) The Department may mail the renewal Class D driver license only to a customer who is temporarily residing out of state to the out of state address provided by the licensee. The licensee shall provide a pre-paid self-addressed stamped envelope.

(6) If the Department denies the renewal Class D driver license to the customer pursuant to this Section, the Department shall notify the customer in writing of the denial, the reason for the denial, return any payment submitted by the customer, and the customer shall be required to appear in person for the renewal of the Class D driver license.

(7) A renewal Class D driver license without appearing in person shall be approved for no more than three (3) consecutive renewals or replacements of such license. A fourth consecutive renewal or replacement must be done in person.

PART 7. IDENTIFICATION CARDS

595:10-1-25. Procedure for obtaining an identification card

(a) A person wishing to obtain an identification card shall appear before a Driver License Examiner, or, if the applicant has ~~been issued a computerized format (digital) driver license for at least thirty (30) days~~ a valid and unexpired Oklahoma driver license, may appear before a ~~motor~~ Motor License License agent Agent. When applying for a ~~Real~~ REAL ID Compliant ~~Identification~~ identification card, the applicant shall be required to furnish the same acceptable means of identification and other documents as when applying for a driver license (including a valid social security number) as prescribed in OAC 595:10-1-3(b). A ~~Real~~ REAL ID Compliant ~~Identification~~ identification card cannot be issued if the applicant has a ~~Real~~ REAL ID Compliant ~~Driver~~ driver license. When applying for a ~~Real~~ REAL ID Non-compliant Non-Compliant identification card the applicant must provide the same acceptable means of identification as required when applying for a ~~Real~~ REAL ID Non-compliant Non-Compliant driver license as prescribed in OAC 595:10-1-3(c). ~~Unless unless the~~ cardholder provides a valid and unexpired Oklahoma driver

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license which shall serve as ~~both primary and secondary~~ identification for the purposes of obtaining ~~an~~Real~~REAL ID~~ ~~Non-compliant~~Non-Compliant Oklahoma identification card [47 O.S. § 6-106(G)] and complete the application form unless the applicant has been previously issued an original Oklahoma driver license ~~on or after November 1, 2007.~~

(b) If appearing before a Driver License Examiner, the Examiner will complete and, if appropriate, will approve the identification card application. ~~A DL-10~~The approved application form will be processed for the applicant. The applicant shall take the ~~DL-10~~approved application form, along with the identification presented to the Driver License Examiner at application time, to a ~~motor~~Motor~~license~~License ~~agent~~Agent or the Department and pay the required fee. If applicant is under age eighteen (18) and has not been issued a computerized format (digital) driver license ~~for at least thirty (30) days,~~ may submit a notarized affidavit signed by a custodial legal parent or legal guardian in lieu of custodial legal parent or legal guardian appearing in person and signing application [47 O.S. § 6-105.3(A)].

(c) When appearing before a ~~motor~~Motor~~license~~License ~~agent~~Agent, the ~~agent~~Agent shall process the application for the applicant, collect the required fee from the applicant, and issue the temporary identification card to the applicant.

(d) An identification card may be issued as prescribed in OAC 595:10-1-10(h) and 10-1-18(g).

(e) Identification card numbers will be assigned by computer. The Use~~use~~ of the applicant's ~~Social Security number~~SSN on the identification card is prohibited [47 O.S. §§ 6-105(H) and 6-106(B)].

(f) An individual, who is an Oklahoma resident and who is located within the state, may declare in writing to the Department that, because of a medical reason or condition, he or she is unable to appear in person to renew his or her identification card, in which case the Department shall issue by mail ~~an~~Real~~REAL ID~~ ~~Non-compliant~~Non-Compliant identification card to the person. The individual shall provide ~~both primary and secondary~~ identification as prescribed in OAC 595:10-1-3(c) unless the cardholder provides a valid and unexpired Oklahoma driver license which shall serve as ~~both primary and secondary~~ identification for the purposes of renewing the Oklahoma identification card [47 O.S. § 6-106(G)].

595:10-1-26. Procedure for obtaining a renewal identification card

(a) **General requirements.** During the month of expiration or as provided in (c) of this Section, any identification card holder, who wishes to keep his or her identification card in force, may present proper identification to a ~~motor~~Motor~~license~~License ~~agent~~Agent and pay the required fee to a ~~Motor License Agent or to the Driver License Services Division of the Department of Public Safety.~~ REAL ID Non-Compliant Identification cards issued to individuals who have attained the age of 65 or older are issued for an indefinite period of time and are not subject to this Section. Failure to renew an identification card during the month of expiration shall not relieve the person of the obligation to renew the identification card under

the provisions required by law and this Section if the person wishes to keep the identification card in force.

(b) Required identification.

(1) **Renewal with expiring or expired identification card.** The expiring or expired ~~Real~~REAL ~~ID~~ ~~Non-compliant~~Non-Compliant identification card provided as the ~~primary~~proof of identification may be retained by the cardholder, after the motor license agent has first punched a hole has been punched through the identification number of the card or ~~has cut off~~ the lower right corner of the card has been cut off by either a Motor License Agent or a Driver License Examiner. ~~The person shall provide secondary identification for a Real ID Non-Compliant card as prescribed in OAC 595:10-1-3(e)(4).~~

(2) **Renewal without identification card.** Any person who does not have the expiring or expired identification card shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b) for a ~~Real~~REAL ~~ID~~ Compliant identification card or OAC 595:10-1-3(c) for a ~~Real~~REAL ~~ID~~ Non-Compliant identification card.

(c) **Early renewal of an identification card.** Any identification card holder may renew his or her identification card not more than one (1) year prior to the expiration date. ~~A renewal which occurs more than one (1) year prior to the expiration date shall be treated as a replacement under the provisions of OAC 595:10-1-27.~~

(d) **Change of identification card number.** Use of the cardholder's ~~Social Security number~~SSN as the identification card number is prohibited.

(e) **Persons who may appear before a motor license agent.** An individual who has previously held an Oklahoma identification card may apply directly to a ~~mo-~~tor~~Motor~~License ~~License~~agentAgent for renewal of the previous Oklahoma identification card, upon establishing Oklahoma residence and following the applicable procedure for renewal.

(f) **Renewing identification card - not in person.** The Department may create an alternative method where any Oklahoma Identification card holder may apply to the Department ~~of Public Safety~~ to renew his or her ~~Identification~~identification card without appearing in person as provided in this Section.

(1) The Identification card holder shall make application online, when online application is made available by the Department, or in writing to the Department and shall submit to the Department:

(A) copies of documentary evidence of the customer's name and date of birth, and

(B) the customer's Identification card number, and

(C) both the Oklahoma residence address, ~~and~~ Oklahoma mailing address, ~~with the specification as to which address is to be displayed on the identification card (display of both the residence address and mailing address, or any combination thereof, is prohibited; provided, this subsection shall not be construed to prohibit display of a residence address if it is also the mailing address); provided, if the address is different than the address on record at the Department, the customer must submit a change address request to the~~

Department online at <https://www.dps.state.ok.us/addresschange/card> temporary mailing address with the expiration date of the temporary mailing address. If an expiration date is not provided for the temporary mailing address, the system will default to an expiration date of thirty (30) days from the issuance of the renewed Oklahoma credential.

(D) ~~the application for renewal without appearing in person shall be denied by the Department, and~~
(E) ~~the number of a nationally recognized credit card and authorization for the required fee for the renewal Identification card to be paid by the applicant to the Department using the credit card; and~~
(F) ~~the customer's signature.~~

(2) Submission of the items required in (1) shall be made in one of the following manners:

(A) online application, when online application is made available by the Department: www.ok.gov/dps, or

(B) by first class mail: Department of Public Safety, PO Box 11415, Oklahoma City, OK 73136

(3) Method of payment:

(A) online: ~~if you are submitting your the application is submitted online, you may only pay~~ payment must be made by credit card.

(B) by mail: ~~if the applicant is submitting their application is submitted by mail, they payment in the form of must include a cashier's check or money order must be included along with the required documents.~~ No personal checks or other forms of payment will be accepted.

(4) If the Department approves the renewal ~~Identification~~ identification card without appearing in person, pursuant to the requirements of this chapter, and: if the digital photograph and digital signature of the applicant are available from the files of the Department, the Department shall create the renewal ~~Identification~~ identification card using that photo and signature. A ~~renewal of a REAL ID compliant~~ Compliant identification can only be renewed by mail if there are no material changes requested.

(5) The Department may mail the renewal ~~Class D driver license~~ identification card only to a customer who is temporarily residing out of state to the out of state address provided by the licensee. The licensee shall provide a pre-paid self-addressed stamped envelope.

(6) If the Department denies the renewal identification card to the applicant pursuant to this Section, the Department shall notify the applicant in writing of the denial, the reason for the denial, return any payment submitted by the customer, and the customer shall be required to appear in person for the renewal ~~Identification~~ identification card.

(7) ~~A renewal Identification card without appearing in person shall be approved only when the immediately previous renewal was in person. A renewal or replacement may be requested up to three consecutive times. A renewal or replacement may be requested up to three (3) consecutive times. The card holder must appear in person before a Driver License Examiner or Motor License Agent at the~~

time of renewal after the previous three (3) renewals by mail.

595:10-1-27. Procedure for obtaining a replacement identification card

(a) **General requirements.** Any person requiring a replacement identification card because the card was lost, stolen, or mutilated or because information on the card needs to be changed may request a ~~motor~~ Motor License ~~License agent~~ Agent or the Department to issue a replacement, upon presentation of proper identification and payment of the required fee.

(b) **Required identification to replace lost, stolen, or mutilated identification card.** Any person shall provide ~~both primary and secondary~~ identification as prescribed in OAC 595:10-1-3(b) for a ~~Real~~ REAL ID Compliant identification card and OAC 595:10-1-3(C) for a ~~Real~~ REAL ID ~~Non-compliant~~ Non-Compliant identification card.

(c) **Required identification to change information and replace an identification card.**

(1) **Name change.** Any person who requests a replacement identification card in order to make a name change must comply with the ~~primary and secondary~~ identification requirements prescribed in OAC 595:10-1-3(b) for a ~~Real~~ REAL ID Compliant identification card and OAC 595:10-1-3(C) for a ~~Real~~ REAL ID ~~Non-compliant~~ Non-Compliant identification card in order to identify the person by his or her former name and with OAC 595:10-1-35 in order to identify the person by his or her new name. The former name shall be entered into the "—Alias" field in the identification card database to provide historical information to the Department. The person requesting the name change for a ~~Real~~ REAL ID ~~Non-compliant~~ Non-Compliant card may retain the old card, if it is available, after ~~the motor license agent has first punched a hole~~ has been punched through the identification number of the card or ~~has cut the lower right corner of the card~~ has been cut by a Motor License Agent or a Driver License Examiner.

(2) **Address change.** Any person who requests a replacement identification card in order to make an address change shall provide ~~both primary and secondary~~ identification as prescribed in OAC 595:10-1-3(b) for a ~~Real~~ REAL ID Compliant identification card and OAC 595:10-1-3(C) for a ~~Real~~ REAL ID ~~Non-compliant~~ Compliant identification card. The person requesting the address change for a ~~Real~~ REAL ID ~~Non-compliant~~ Compliant identification card may retain the old card, if it is available, after ~~the motor license agent has first punched a hole~~ has been punched through the identification number of the card or ~~has cut the lower right corner of the card~~ has been cut by a Motor License Agent or Driver License Examiner. An address change shall be made only to an Oklahoma address. The customer must provide the Department of ~~Public Safety~~ approved documentation for proof of residency for a ~~Real~~ REAL ID Compliant identification card.

(3) **Physical Sex change.** The cardholder shall show an original or certified court order for name change, if

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applicable, and a notarized statement on letterhead from the physician who performed the sex change operation indicating the customer or licensee has undergone a complete physical sex change. The letter shall state the sex change is "irreversible and permanent". The cardholder shall also show proof of former legal name, if applicable. The former name shall be entered into the "Alias" field in the identification card database to provide historical information to the Department. The person requesting the information change for a ~~Real~~REAL ID Non-compliant ~~Compliant~~ identification card may retain the old card, if it is available, after the motor license agent has first punched a hole has been punched through the identification number of the card or has cut the lower right corner of the card has been cut by a Motor License Agent or Driver License Examiner.

(4) **Psychological Sex Change Due to Gender Dysphoria.** The cardholder shall show an original or certified court order or birth certificate for gender change and also for a name change, if applicable, and a notarized statement on letterhead from a mental health professional who has diagnosed this condition. The cardholder shall also show proof of former legal name, if applicable. The former name shall be entered into the "Alias" field in the identification card database to provide historical information to the Department. The person requesting the information change for a ~~Real~~REAL ID Non-compliant Compliant identification card may retain the old card, if it is available, after the motor license agent has first punched a hole has been punched through the identification number of the card or has cut the lower right corner of the card has been cut by a Motor License Agent or Driver License Examiner.

(d) **Change of identification card number.** Use of the cardholder's ~~Social Security number~~SSN as the identification card number is prohibited.

(e) **Persons who may appear before a motor license agent.** An individual who has previously held an Oklahoma identification card may apply directly to a ~~motor~~Motor License Agent for replacement of the previous Oklahoma identification card, upon establishing Oklahoma residence and following the applicable procedure for replacement.

(f) **Replacing identification card - not in person.** The Department may create an alternative method where any Oklahoma Identification card holder may apply to the Department of ~~Public Safety~~ to replace his or her ~~Identification~~identification card without appearing in person as provided in this Section.

(1) The Identification card holder shall make application online, when online application is made available by the Department or in writing to the Department and shall submit to the Department:

(A) copies of documentary evidence of the customer's name and date of birth, as required by OAC 595:10-1-10 (documents sent for verification will not be returned; therefore, original documents should not

be sent). If a material change is requested, the original or certified copies of the required documents must be submitted. A material change means any change to the personally identifiable information of an individual, such as their name, address, or driver license number. A ~~Real~~REAL ID Compliant identification card may not be issued by mail if there is a material change. ~~A material change does not include a change of address, and~~

(B) the customer's Identification card number, and
(C) both the Oklahoma residence address, ~~and~~ Oklahoma mailing address, ~~with the specification as to which address is to be displayed on the identification card (display of both the residence address and mailing address, or any combination thereof, is prohibited; provided, this subsection shall not be construed to prohibit display of a residence address if it is also the mailing address); provided, if the address is different than the address on record at the Department, the application for replacement without appearing in person shall be denied by the Department, if the address is different than the address on record at the Department, the customer must submit a change address request to the Department online at <https://www.dps.state.ok.us/addresschange/card> and temporary mailing address with the expiration date of the temporary mailing address. If an expiration date is not provided for the temporary mailing address, the system will default to an expiration date of thirty (30) days from the issuance of the renewed Oklahoma credential.~~

(D) ~~the number of a nationally recognized credit card and authorization for the required fee for the replacement Identification identification card to be paid by the customer to the Department using the credit card; and~~

(~~E~~) the customer's signature.

(2) Submission of the items required in (1) shall be made in one of the following manners:

(A) online application, when online application is made available by the Department: www.ok.gov/dps, or

(B) by first class mail: Department of Public Safety, PO Box 11415, Oklahoma City, OK 73136

(3) Method of payment:

(A) online, when online application is made available by the Department: if you the customer are is submitting you the application online, you the customer may only pay by credit card.

(B) by mail: if the customer is submitting ~~their~~the application by mail, ~~they~~the payment in the form of ~~must include~~ a cashier's check or money order must be included along with the required documents. No personal checks or other forms of payment will be accepted.

(4) If the Department approves the replacement of ~~the~~ Identification identification card without appearing in person, pursuant to the requirements of this chapter,

and: if the digital photograph and digital signature of the customer are available from the files of the Department, the Department shall create the replacement ~~Identification~~ identification card using that photo and signature,

(5) The Department may mail the temporary ~~renewal Class D driver license~~ Oklahoma identification card only to a customer who is temporarily residing out of state to the out of state address provided by the licensee. The licensee shall provide a pre-paid self-addressed stamped envelope. The ~~permanent card~~ Oklahoma identification card will be mailed to the out-of-state address provided.

(6) If the Department denies the replacement ~~Identification~~ identification card to the customer pursuant to this Section, the Department shall notify the customer in writing of the denial, the reason for the denial, return any payment submitted by the customer, and the customer shall be required to appear in person for the replacement ~~Identification~~ identification card.

(7) ~~A replacement Identification card without appearing in person shall be approved only when the immediately previous renewal was in person. A renewal or replacement may be requested up to three (3) consecutive times.~~

(g) **Person who may appear before a motor license agent.** An individual who has previously held an Oklahoma identification card may apply directly to a ~~motor license agent~~ License agent for replacement of the previous Oklahoma identification card, upon establishing Oklahoma residence and following the applicable procedure for replacement.

~~(e) **Person who may appear before a motor license agent.** An individual who has previously held an Oklahoma identification card may apply directly to a motor license agent for replacement of the previous Oklahoma identification card, upon establishing Oklahoma residence and following the applicable procedure for replacement.~~

PART 9. CHANGE OF NAME ON A DRIVER LICENSE OR IDENTIFICATION CARD

595:10-1-35. Procedure to make a change of name on a driver license or an identification card

(a) **Procedure.** Any person may request a change of name on a driver license or identification card upon providing the appropriate identification and paying the required fee to a Motor License Agent or to the Department of Public Safety.

(b) **Name changes allowed.** Name changes must result from:-

- (1) a marriage;
- (2) a court order; or
- (3) using a valid, unexpired U.S. Passport. A person requesting a legitimate name change shall submit, without exception, the certified document which indicates the name change.

(c) **Documentation required.** A person requesting a name change using a marriage certificate, common law affidavit or court order shall comply with the ~~primary and secondary~~ identification requirements in OAC 595:10-1-3(b) in order

to identify the person by his or her former name and OAC 595:10-1-18 in order to identify the person by his or her new name. The required documents for a name change shall include:

(1) Court-ordered name change, which shall be in addition to the ~~primary and secondary~~ forms of identification required by OAC 595:10-1-3(b). Only the following types of court orders may be considered when a name change is requested:

- (A) divorce decree,
- (B) adoption decree,
- (C) name change decree, or
- (D) establishment of record of birth, pursuant to 63 O.S., Section 1-315,

(2) Marriage certificate, which may serve only as the secondary form of identification required by OAC 595:10-1-3(b). For a marriage certificate issued in Oklahoma, the name change shall be to the name signed by the person on the marriage certificate, or

(3) For a common law marriage, "Affidavit of Common Law Marriage" containing the notarized signatures of the husband and wife. ~~Both primary and secondary forms of identification~~ Identification as prescribed in OAC 595:10-1-3(b) must be submitted in addition to this affidavit.

(4) REAL ID Compliant credential issued by another state, or

(5) A valid military identification card.

(d) **Form of new name.** A name change resulting from marriage, court order or divorce shall appear on the driver license or identification card exactly as stated on the Oklahoma marriage certificate, court order or divorce decree. If the marriage certificate is from a state other than Oklahoma, the names shall be in one of the following forms:

- (1) Surname of spouse], [first name] [middle name or initial],
- (2) Surname of spouse], [first name] [former surname or initial],
- (3) Surname-surname of spouse] [first name] [middle name or initial], or
- (4) Surname of spouse-surname], [first name] [middle name or initial].

(e) **Titles or ecclesiastical names.** Titles or ecclesiastical names will not be placed on a ~~driver license or an identification card~~ Oklahoma credential.

(f) **Retention of information.** The former name shall be entered into the "Alias" field in the driver license or identification card database to provide historical information to the Department.

PART 13. MOTOR LICENSE AGENTS

595:10-1-50. Identification required

(a) **General requirements.** Anyone applying for a renewal or replacement driver license or identification card must furnish documentary proof of identity, name, and birth date [47 O.S. §§ 6-114 and 6-115].

(b) **Required identification to renew driver licenses and identification cards.**

(1) **Renewal with expiring or expired driver license or identification card.** The expiring or expired driver license or identification card shall be surrendered as ~~the primary proof of identification. The person must provide secondary identification for a Real ID Non-Compliant license as prescribed in OAC 595:10-1-3(e)(4).~~

(2) **Renewal without driver license or identification card.** Any person who does not have the expiring or expired driver license or identification card shall provide ~~both primary and secondary proof of identification as prescribed in OAC 595:10-1-3(c) for a Real ID Non-Compliant card credential or primary proof of identification as prescribed in OAC 595:10-1-3(b) for a Real ID Compliant card credential.~~

(c) **Required identification to replace lost, stolen, or mutilated driver licenses and identification cards.** Any person shall provide ~~both primary and secondary~~ identification as prescribed in OAC 595:10-1-3(b).

(d) **Required identification to change information and replace driver licenses and identification cards.**

(1) **Name change.** Any person who requests a replacement driver license or identification card in order to make a name change must comply with the ~~primary and secondary~~ identification requirements prescribed in OAC 595:10-1-3(b), and with OAC 595:10-1-35. The person requesting the name change may retain the old license or card as provided in OAC 595:10-1-57-(e). ~~The motor license agents shall be authorized to change the last name only.~~

(2) **Address change.** Any person who requests a replacement driver license or identification card in order to make an address change must provide ~~both primary and secondary~~ identification as prescribed in OAC 595:10-1-3(b). Both the Oklahoma mailing address and the Oklahoma residence address shall be collected by the ~~motor license agent, and the licensee or card holder shall choose which address to be displayed on the license or card.~~ The person requesting the address change may retain the old license or card as provided in OAC 595:10-1-57-(e). An address change shall be made only to an Oklahoma address.

(3) **Endorsement or restriction change.** Any person who requests a replacement driver license in order to change endorsement or restriction information on the license shall provide ~~a DL-10 form an application~~ issued by the Department, except for the removal of Restriction G. The person requesting the information change may retain the old license as provided in OAC 595:10-1-57-(e).

(4) **Emergency contact information.** An emergency contact name, address and phone number may be included on the application, which emergency contact may be changed or removed at any time by the licensee or by the emergency contact. The emergency contact information shall be for use by the Department and law enforcement officers only.

(e) **Permissible documents.** Any document accepted shall be either the original or a certified copy of the ~~primary and secondary~~ identification as prescribed in OAC 595:10-1-3(b).

(f) **Unacceptable documents.** Any document which has been or appears to have been duplicated, traced over, mutilated, defaced, tampered with or altered in any manner or that can not be read shall not be accepted or used for identification purposes.

PART 19. DRIVER LICENSE AND IDENTIFICATION CARD CONTENT

595:10-1-92. Driving restriction codes

(a) A restriction or restrictions may be placed upon a person's driving privilege as deemed necessary by the Department [47 O.S. §6-113]. The restriction(s) will appear as a code on the person's driver license. Following are the various driving restriction codes and their meanings:

- (1) 1. Corrective lenses
- (2) 2. Left outside rearview mirror
- (3) 3. Restriction 1 or 2
- (4) 4. Automatic transmission
- (5) 5. Turn indicators, power steering, or steering knob
- (6) 6. Food, fruit, or candy within reach of driver
- (7) 7. Adequate artificial limbs
- (8) 8. Detailed restriction - Inquire Oklahoma driver license file (This restriction code is used when other restrictions are not applicable. A narrative explaining the restriction will appear on the person's driver license file.)
- (9) 9. ~~Accompanied by licensed driver age 21 or older in front seat~~ May operate a class D motor vehicle only while accompanied by a licensed driver who is at least twenty-one (21) years of age and who is actually occupying a seat beside the permittee between the hours of 5:00 a.m. and 10:00 p.m.
- (10) 0. Motorcycle only - When operating a motorcycle ~~if under the age 16, restricted to 300cc motorcycle or motor scooter between the hours of 4:30 a.m. and 9:00 p.m.~~
- (11) A. Regardless of age, when operating a motorcycle must be in view of a person who is licensed to operate a motorcycle or motor-driven cycle and who is at least 21 years old
- (12) E. When operating a commercial motor vehicle, restricted to automatic transmission
- (13) G. Inquire of Oklahoma driver license file until age 17 or older
- (14) K. CDL intrastate only
- (15) L. When operating a commercial motor vehicle, restricted to a vehicle without air brakes
- (16) M. When operating a passenger bus, restricted to Class B or C commercial motor vehicle
- (17) N. When operating a passenger bus, restricted to a Class C commercial motor vehicle
- (18) O. Restricted from operating tractor trailer vehicles
- (19) R. Ignition interlock device
- (20) V. Medical variance

- (21) W. No Passengers (P or S) or Empty/Purged Tank Vehicle (N); provided, this restriction shall be used only on a commercial learner.
- (22) Z. When operating a commercial motor vehicle with air brakes, restricted to air over hydraulic
- (23) W. No Passengers (P or S) or Empty/Purged Tank Vehicle (N); provided, this restriction shall be used only on a commercial learner.
- (24) Z. When operating a commercial motor vehicle with air brakes, restricted to air over hydraulic
- (b) The following are the restriction codes to be used and displayed on a Driver License designed in the Driver 360 program for modernization of the issuance system and the implementation of Real ID. The following are the restriction codes for the new designed license to be implemented in conjunction with REAL ID.
 - (1) 0. Motorcycle only - if under age 16, restricted to 300cc motorcycle or motor scooter between the hours of 4:30 a.m. and 9:00 p.m.
 - (2) 2. Exempt from Interlock Device in company vehicle with employer letter.
 - (3) 3. Either corrective lenses or left outside mirror.
 - (4) 4. Automatic Transmission
 - (5) 5. Turn Indicators, Power Steering, Steering Knob, (individuals who do not have the adequate use of both hands).
 - (6) 6. Food Fruit or Candy within Reach of the Driver.
 - (7) 7. Automatic Transmission or Artificial Limb.
 - (8) 8. Detailed restriction - Inquire Oklahoma driver license file (This restriction code is used when other restrictions are not applicable. A narrative explaining the restriction will appear on the person's driver license file.)
 - (9) 9. Non Commercial Learners Permit - Accompanied by licensed driver age 21 or older in front seat.
 - (10) A. Regardless of age, when operating a motorcycle must be in view of a person who is licensed to operate a motorcycle or motor-driven cycle and who is at least 21 years old
 - (11) B. Corrective Lenses.
 - (12) C. Custom Equipment
 - (13) D. Prosthetic Aid.
 - (14) E. Automatic transmission - CMV only.
 - (15) F. Left Outside Mirror
 - (16) G. Daylight Driving Only.
 - (17) H. Scope of employment only.
 - (18) K. Intrastate Driving Only - CMV
 - (19) L. No air Brake equipped CMV
 - (20) M. No Class A passenger vehicle.
 - (21) N. No Class A or B passenger vehicle.
 - (22) O. No Tractor Trailer - CMV
 - (23) P. No Passengers in CMV Bus.
 - (24) R. Ignition Interlock Device.
 - (25) S. Exempt from Seatbelt
 - (26) T. Intermediate.
 - (27) U. Speed not to exceed 45 MPH, No Interstate Driving.
 - (28) V. Medical Waiver
 - (29) X. No cargo in CMV tank vehicle.

- (30) Y. Bioptic Lenses.
- (31) Z. No full airbrake equipped CMV.

SUBCHAPTER 3. EXAMINATION

595:10-3-9. Skills examination

(a) **In general.** The skills examination shall only be administered after the applicant has successfully passed the knowledge test, or had it waived if eligible, and the vision test. Whenever a skills examination is required, the following general conditions shall apply:

- (1) The skills examination shall start at a designated location and shall include an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle. Applicants shall furnish the type of vehicle required for the Class D skills examination.
- (2) The skills examination shall not be administered in a vehicle:
 - (A) which is not insured as required by 47 O.S. §7-600 et seq.,
 - (B) which does not have a current license plate,
 - (C) which is not equipped with seatbelts, if the vehicle was originally manufactured and equipped with seatbelts, or
 - (D) which does not comply with vehicle equipment and safety standards as required by Chapters 12 and 13 of Title 47 of the Oklahoma Statutes.
- (3) An applicant determined by an examiner to be cheating on any portion of the skills examination shall:
 - (A) immediately forfeit the examination,
 - (B) be given a failing score by the examiner, and
 - (C) be disqualified from retaking the examination for one week.

(b) **Scoring of examination.** The scoring procedure will be on a cumulative deduction system based on poor driving practices. The Commissioner or the Commissioner's representative shall determine a point value for each improper driving act.

(c) **Content of examination for Class D driver license.**

- (1) The skills examination shall include, but not be limited to, the following maneuvers:
 - (A) Starting,
 - (B) Backing (excluding two-wheel and three-wheel vehicles),
 - (C) Hill parking (excluding two-wheel and three-wheel vehicles),
 - (D) Starting on hill (excluding two-wheel and three-wheel vehicles),
 - (E) Intersection movement and observance,
 - (F) Lane observance and changing,
 - (G) Left and right turns,
 - (H) Pedestrian and vehicle right-of-way,
 - (I) Proper use of automatic transmission or clutch gear (excluding two-wheel or three-wheel vehicles),
 - (J) Use of brake and accelerator,
 - (K) Traffic lights or signals, and

- (L) Parallel Parking (excluding two-wheel and three-wheel vehicles).
- (2) The skills examination will not be conducted when examination route roadways are considered by the examiner to be slick or hazardous due to inclement weather.
- (3) Criteria for a skills examination are as follows:
 - (A) Starting: To determine if the individual is familiar with the vehicle's controls and proper use, and to determine the individual's skill and ability to move the vehicle from a parking space or parking lot into the traffic lane.
 - (B) Backing: To determine the individual's ability to control vehicle while backing for a distance of approximately fifty (50) feet.
 - (C) Hill parking (stopping and starting): To determine if the individual has the ability to park a vehicle on an incline in a safe manner and leave that position in a safe manner.
 - (D) Transmission (automatic or standard): To determine if the individual has the coordination and ability necessary for reasonable control of the vehicle.
 - (E) Brakes: To determine the individual's skill and physical ability in the proper usage of the brake(s).
 - (F) Control of speed: To determine the speed the individual maintains relative to speed limits and other traffic.
 - (G) Gap selection: To determine whether the individual exercises proper judgment when entering or leaving the roadway, when turning or crossing an intersection, or when changing lanes.
 - (H) Driver alertness: To determine whether the individual observes and is aware of situations and circumstances which play an important part in safe driving.
 - (I) Right-of-way: To determine the individual's knowledge of right-of-way and the ability to react properly, and to determine whether an individual shares the road properly with other drivers and pedestrians.
 - (J) Legal stop: To determine whether the individual observes, understands, and obeys stop signs and traffic signals.
 - (K) Traffic lights or signs: To determine whether the individual sees, understands, and obeys traffic lights and other signs.
 - (L) Signals: To determine whether the individual gives the proper signal when driving away from the curb, changing lanes, or turning.
 - (M) Lane usage: To determine whether the individual has the knowledge and ability to use lanes properly.
 - (N) Observation: To determine whether the individual observes those things which are necessary for safe driving.
 - (O) Final Park: To determine the individual's ability to park the vehicle at the conclusion of the skills examination in a manner compatible with safe driving practices and statutory requirements.
- (P) Left turn items scored:
 - (i) Cuts corner on approach.
 - (ii) Cuts corner on lane entry.
 - (iii) Turns into the wrong lane (does not affect other traffic).
 - (iv) Turns from wrong lane (does not affect other traffic).
 - (v) Turns wheels while stopped, waiting to make turn.
 - (vi) Too wide on lane entry.
 - (vii) Fail to signal turn for at least 100 feet before turning.
 - (viii) Fail to approach turn in the proper lane.
- (Q) Right turn items scored:
 - (i) Too wide on approach.
 - (ii) Too wide on lane entry.
 - (iii) Turns from wrong lane (does not affect other traffic).
 - (iv) Turns into wrong lane (does not affect other traffic).
 - (v) Bumps, scrapes, or climbs curb.
 - (vii) Fail to signal turn for at least 100 feet before turning.
 - (viii) Fail to approach turn in the proper lane.
- (R) Passenger vehicles other than school buses or vehicles transporting passengers for hire are not required to stop at a railroad crossing.
- (S) Parallel parking: To determine the proficiency an individual has attained in coordinating judgment, skill, and ability to park a vehicle and drive away from a designated area, and to maneuver the vehicle in close quarters.
- (4) Disqualifications are as follows:
 - (A) **Seat belt not in use.** Applicant fails to use seat belt. The seat belt shall be properly adjusted and fastened before the vehicle enters a public roadway.
 - (B) **Moving traffic violation.** Applicant received a traffic citation for a moving violation during the skills examination.
 - (C) **Disobey sign or signal.** Applicant ignored or did not obey sign or signal.
 - (D) **Driver speeding.** Applicant's speed is more than five (5) miles per hour over the posted speed limit or the lawful speed limit for the vehicle being driven: Provided the speeding is not in a school zone during normal school hours or a construction zone with workers present. There will be no tolerance in a school zone during normal school hours and school is in session or in a construction zone with workers present.
 - (E) **Fail to stop.** Applicant rolled through stops or failed to stop.
 - (F) **Traffic laws.** Applicant ignored or did not obey traffic laws.
 - (G) **Yield to others.** Applicant did not yield to other road users (pedestrians, vehicles, etc.) Applicant did not appropriately yield the right-of-way to

pedestrians or other vehicles during driving maneuvers.

(H) **Left of center.** Applicant drives left of center (except when needed to perform a turn safely or to proceed safely on a direct course.

(I) **Avoidable crash or incident or dangerous act.**

(i) Applicant involved in an avoidable crash or collision.

(ii) Applicant's vehicle has physical contact with other vehicles, objects, pedestrians, etc.

(iii) Applicant commits any act or omission that creates a dangerous or unsafe traffic environment (near accidents, etc.).

(iv) Applicant's actions causes drivers of other vehicles or pedestrians to take evasive actions.

(v) Applicant's actions force examiner to take verbal or physical control of the vehicle.

(J) **Put vehicle over sidewalk or curb.** Applicant put vehicle over curbs or sidewalks unnecessarily.

(K) **Weighted Offenses.** Accumulation of four (4) or more of any of the following offenses, in any combination:

(i) Failure to use turn signal.

(ii) Coasting on a downgrade (gears in neutral or clutch disengaged).

(iii) Consistently goes over speed limit.

(iv) Proceed through intersection on yellow light when applicant could stop without creating a dangerous situation.

(d) **Retesting.**

(1) Applicants who fail the skills examination for a driver license or the motorcycle endorsement may be granted the opportunity to retest on the next available regular business day as scheduling permits. When an applicant fails to qualify for a Class D license after three (3) skills examination attempts, he or she will be required to obtain a restricted driver license, restricting the individual to operating a motor vehicle while accompanied by a qualified licensed driver in the front seat, before another skills examination will be administered.

(2) The Department shall conduct the skills examination for the holder of a restricted Class D driver license not more than three (3) times beginning thirty (30) days from the date of issuance of the restricted license. Should the restricted licensee fail the third examination, the licensee shall wait thirty (30) days before being given another skills examination by the Department. The fourth and subsequent examinations shall be given not more than one (1) time every thirty (30) days thereafter at the request of the restricted licensee.

(3) In computing any time period prescribed by this subsection, the day of the failed examination from which the designated period of time begins to run shall not be included. The last day of the period computed shall be included, unless it is not a working day, in which event the period runs until the end of the next working day.

(e) **Minimum waiting period for examination.** The holder of a restricted driver license will not be eligible to have a skills examination administered until after a minimum of thirty (30) days following the issuance of such license, provided the applicant is at least eighteen (18) years of age. In computing the 30-day time period prescribed by this subsection, the day on which the restricted driver license is issued shall not be included. The last day of the period computed shall be included, unless it is not a working day, in which event the period runs until the end of the next working day.

(f) **Substitute for skills examination.** A skills examination may be waived for a licensee when one of the following requirements is met:

(1) The licensee is applying for a Class D driver license, provided all established requirements for a Class D license have been satisfied, and the licensee is licensed at the time of application by one of the fifty (50) states, by the District of Columbia, by a Canadian province, or by another country; provided, the current driver examination requirements of the country must be on file with the Department and must meet or exceed the standards, specifications, and requirements of the Department as set out in this Subchapter [47 O.S. § 6-110(A)(2)] .

(2) The licensee:

(A) has enrolled in and successfully completed a course taught by an instructor certified by the Motorcycle Safety Foundation and using the Motorcycle Safety Foundation curriculum, and

(B) submits to the Department at the time of application for a motorcycle endorsement a Motorcycle RiderCourse® or an Experienced RiderCourse® completion card filled out by the certified instructor that shows the individual has passed both the knowledge and skills test authorized by the Department of Public Safety. [47 O.S. §6-101(D)].

[OAR Docket #20-529; filed 7-6-20]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY

CHAPTER 11. COMMERCIAL DRIVER LICENSES

[OAR Docket #20-530]

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PERMANENT final adoption

RULES:

Subchapter 1. Commercial Driver Licensing

Part 2. Application for Initial Driver License

595:11-1-12. Procedures for obtaining an initial commercial driver license [AMENDED]

595:11-1-13. Application by person licensed by another jurisdiction [AMENDED]

595:11-1-15. Applicability, substitutions, limitations, and additions to federal regulations adopted by reference [AMENDED]

Part 3. Commercial Driver License Renewal - In Person

595:11-1-21. Procedure for obtaining a renewal commercial driver license in person [AMENDED]

Part 5. Commercial Driver License Replacement - In Person

Permanent Final Adoptions

595:11-1-31. Procedure for obtaining a replacement driver license in person [AMENDED]
Part 7. Changes to information contained on commercial driver license
595:11-1-51. Procedure to make a change of name on a commercial driver license [AMENDED]
Subchapter 3. Examination
595:11-3-3. Application for examination [AMENDED]
595:11-3-6. Written examination [AMENDED]
595:11-3-7. ~~Pre-trip~~ Vehicle inspection examination of commercial motor vehicles [AMENDED]
595:11-3-8. Skills examination for certification [AMENDED]
595:11-3-9. Automatic failure of skills examination [AMENDED]
Subchapter 5. Commercial Driver License Third-Party Examiners
595:11-5-1. Purpose [AMENDED]
595:11-5-2. Scope and application [AMENDED]
595:11-5-3. Definitions [AMENDED]
595:11-5-4. Requirements for certification as a certified school; display of certificate; certification renewal [AMENDED]
595:11-5-5. Requirements for certification as third-party examiner, display of certificate, certification renewal [AMENDED]
595:11-5-6. Course of instruction for driver training instructors ~~apply~~ applying for certification as a third-party examiner [AMENDED]
595:11-5-7. Skills examination requirements and standards [AMENDED]
595:11-5-9. Failed examinations and reexamination [AMENDED]
595:11-5-10. Commercial driver license applicant [AMENDED]
595:11-5-11. Records to be maintained by certified schools and third-party examiners [AMENDED]
595:11-5-12. Records to be maintained at the Department [AMENDED]
595:11-5-13. Prescribed forms [AMENDED]
595:11-5-14. Official seal, Map and CDL Examiners Manual [AMENDED]
595:11-5-15. Prohibited acts; conduct [AMENDED]
595:11-5-16. Termination of contracts and agreements [AMENDED]
595:11-5-17. Withdrawal or denial of certification [AMENDED]
Subchapter 7. Truck Driver Training
595:11-7-2. Definitions [AMENDED]
595:11-7-3. School licenses and instructor permits [AMENDED]
595:11-7-4. Qualifications for instructors [AMENDED]
595:11-7-7. Inspection of school premises and commercial motor vehicles [AMENDED]
595:11-7-8. Written notice of denial, suspension, or revocation [AMENDED]
595:11-7-9. Prescribed course of study [AMENDED]
595:11-7-10. Specification for commercial motor vehicles [AMENDED]
595:11-7-11. Insurance [AMENDED]
595:11-7-12. Reports [AMENDED]
595:11-7-13. Requirements for schools and classrooms [AMENDED]
595:11-7-14. Prohibited acts; conduct [AMENDED]
595:11-7-15. Suspension or revocation of license [AMENDED]
Subchapter 9. Driver Status Notification System
595:11-9-3. Definitions [AMENDED]

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Commissioner of Public Safety; 47 O.S. § 6-101 et seq.

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The rule amendments in Subchapter 1, Parts 3, 5, and 7 modify the required documentation to be used to establish a commercial driver license applicant's identification at the time of application to the Department of Public Safety for an Oklahoma REAL ID Compliance or REAL ID Non-Compliant commercial driver license.

The rule amendments in Subchapter 1, Part 1 and Subchapter 3 are needed to meet federal regulations for Entry Level Training for commercial license applicants. Federal regulations now also require additional training for those applicants seeking a Hazardous Materials endorsement.

The rule amendments in Subchapters 5 and 7 provides for Third Party Examiners to be employed by Public or private truck driving schools. If further provides DPS to adopt curriculum and courses required for training of the third party examiners. Additionally, the Department must conduct an annual nationwide background check for each third party examiner. SB378 also provides the Department the ability to develop processes to inform schools or examiners of application denials and to create an appeal process for said denials.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. COMMERCIAL DRIVER LICENSING

PART 2. APPLICATION FOR INITIAL DRIVER LICENSE

595:11-1-12. Procedures for obtaining an initial commercial driver license

(a) **Application.** An applicant for an initial Oklahoma commercial driver license shall first appear before a ~~driver license examiner~~ Driver License Examiner [47 O.S. § 6-110]. An application for a commercial driver license shall be completed by the applicant at the ~~driver license examination station~~ Driver License Examination Station and approved by a ~~driver examiner~~ Driver License Examiner prior to the commencement of the required examination. Upon submitting a completed and approved application, providing proof of identity [OAC 595:10-1-3(b)] and proof that the applicant is a United States citizen, foreign national or a legal permanent resident alien [21 O.S. § 1550.42(B)], meeting all statutory requirements, and successfully completing every required examination [see Subchapter 3 of this Chapter relating to examinations], the applicant may then proceed to a ~~motor license agent~~ Motor License Agent or the Department of Public Safety, 3600 N. ~~M.L. Martin Luther King Ave.~~ M.L. Martin Luther King Ave., Oklahoma City, ~~OK 73111~~ OK 73111 and present to the ~~agent~~ Motor License Agent or the Department a ~~DL 10 form~~ an approved application issued by the ~~driver license examiner~~ Driver License Examiner, along with the ~~same primary and secondary~~ same primary and secondary identification (as prescribed in OAC 595:10-1-3(b) for an Oklahoma REAL ID Compliant

credential and OAC 595:10-1-3(C) for an Oklahoma Real ID Non-Compliant credential) presented to the examiner, pay the required fees, and be issued a ~~driver license~~ Oklahoma REAL ID Compliant credential or an Oklahoma REAL ID Non-Compliant credential. Upon approval of the application by the Department, the applicant shall surrender to the Department any driver license, whether issued by Oklahoma or by another jurisdiction, currently issued to the applicant.

(b) **Required identification.** At the time of application for an initial Oklahoma ~~driver license credential~~, every applicant shall provide to the ~~driver examiner~~ Driver License Examiner:

(1) ~~primary~~ proof of identification [47 O.S. § 6-106(A)(3); OAC 595:10-1-3(b) for REAL ID Compliant credential or OAC 595:10-1-3(c) for REAL ID Non-Compliant credential],

(2) ~~secondary proof of identification~~ [47 O.S. § 6-106(A)(3); OAC 595:10-1-3(b)]

(3) documentation showing whether the applicant is a United States citizen, foreign national or legal permanent resident alien [21 O.S. § 1550.42]. Proof of citizenship or lawful permanent residency shall be met only when the applicant ~~provides~~ [49 C.F.R. § 383.71]:

(A) is a United States citizen who shall provide, unless noted on the driving index on or after July 8, 2011 a:

- (i) Valid, unexpired U.S. Passport;
- (ii) Certified copy of a birth certification filed with a State Office of Vital Statistics or equivalent agency in the individual's State of birth, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands;
- (iii) Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State;
- (iv) Certificate of Naturalization issued by the U.S. Department of Homeland security (DHS); or
- (v) Certificate of Citizenship issued by DHS.

(B) is a lawful permanent resident who shall provide a valid, unexpired Permanent Resident Card—issued by USCIS or INS.

(43) proof of full legal name,

(54) date of birth, and

(65) ~~and~~ proof of Oklahoma residency: established by a utility bill or Government form bearing the name and address of the applicant. Proof of current residence must be shown for initial issuance, transfer, renewal, or upgrade, made after July 8, 2011. [47 O.S. § 6-106(B)].

(6) on or after February 7, 2022, applicants must be in compliance with the provisions of 49 CFR 380.600 - 609 Subpart F-Entry Level Driver Training Requirements and meet the curriculum requirements set forth in appendices A through E of part 380.

(7) 49 CFR 380.700-725 Subpart G- Registry of Entry-Level Driver Training Providers On and After February 7, 2022.

(c) **Documentation requirements.** Any document furnished must be either a certified or original copy and issued by the proper authority; notarized documents will not be accepted.

Any document presented shall be unexpired unless otherwise noted in OAC 595:10-1-3. Any document that has been or appears to have been duplicated, traced over, mutilated, defaced, tampered with, or altered in any manner or that cannot be read by the Driver License Examiner shall not be accepted or used for identification purposes. All identification documents must be approved by the Driver License Examiner before acceptance. The Driver License Examiner may, at his or her discretion, request additional identification documentation of the applicant.

(d) **Commercial driver license numbers.**

(1) Commercial driver license numbers shall be assigned by computer. Use of the applicant's Social Security number as the commercial driver license number is prohibited [47 O.S. § 6-106(B)].

(2) Any licensee may request to change the numeric characters of his or her commercial driver license number to any nine-digit number by making a written request to the Department. Upon approval by the Department, the licensee shall obtain a replacement commercial driver license from a ~~motor license agent~~ Motor License Agent or the Department, and the licensee shall pay the required fee for the replacement license [OAC 595:11-1-31 or OAC 595:11-1-41].

595:11-1-13. Application by person licensed by another jurisdiction

(a) Any person who holds a valid commercial driver license to operate a motor vehicle equivalent to a Class A, B or C commercial motor vehicle, as defined by 47 O.S. §§ 1-107.1 through 1-107.3, issued by another state, as defined in 47 O.S. § 1-168, may have the written or skills examination, or both, required in 47 O.S. § 6-110, waived; provided, an applicant On or after February 7, 2022, an applicant applying for a hazardous materials endorsement must complete the Hazardous Materials Endorsement Training Curriculum as defined in 49 CFR Part 380 Appendix E shall take the required examination prior to completing the required knowledge examination.

(b) Upon approval of the application by the Department, the applicant shall surrender to the Department the driver license from the other state, and the Department shall issue to the person a commercial driver license [47 O.S. § 6-101] if the applicant is otherwise eligible. If the license has been lost or stolen, the Department may accept a Lost License Affidavit in lieu of the license. (c) The Department may cancel the Oklahoma commercial driver license of the person, whereupon the person shall surrender the commercial driver license to the Department [47 O.S. § 6-201(A)] for any of the following reasons.

(1) The driving record is not available from the other jurisdiction.

(2) The driving record is not forwarded from the other jurisdiction within thirty (30) days of the application.

(3) The driving record indicates any type of withdrawal of driving privileges.

(4) Information is received by the Department that the surrendered license was inappropriately or erroneously issued to the person; provided, the Department shall first

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attempt to resolve with the person the underlying cause for the inappropriate or erroneous issuance.

(5) Any other reason that would make the person ineligible to be issued a commercial driver license

595:11-1-15. Applicability, substitutions, limitations, and additions to federal regulations adopted by reference

(a) **Applicability.** The licensing regulations found in 49 C.F.R., Parts 380, 383 and 391, as adopted in OAC 595:11-1-14 are applicable to all applicants for Class A, B, and C commercial driver licenses.

(b) **Terminology substitutions.** Unless otherwise specified, the following terminology shall apply to federal rules adopted by reference in OAC 595:11-1-14:

(1) "Department of Public Safety" shall be substituted wherever the term "Department of Transportation" or "Federal Motor Carrier Safety Administration" is used.

(2) "Commissioner of Public Safety" shall be substituted wherever the term "Federal Motor Carrier Safety Administrator" or "Regional Director" is used.

(c) **Limitations to scope of definitions.** The definitions provided in (b) of this Section are limited in application to 47 O.S. § 6-101 et seq. and the rules adopted by the Department to carry out the provisions of those statutes. These definitions do not alter, replace, or change any definitions contained in Title 47 of the Oklahoma Statutes.

(d) **Additional qualification of all classes of commercial drivers.** The following additions are made to the federal requirement in Qualifications of Drivers [49 CFR §391.11(b)(1)] that a driver be twenty-one (21) years of age or older:

(1) A driver operating solely in intrastate commerce shall be at least eighteen (18) years of age; and

(2) Any person who is not at least twenty-one (21) years old shall not be licensed for:

(A) the transportation of hazardous materials which are required to be placarded or marked in accordance with 49 CFR §177.823, or

(B) transporting fifteen (15) or more passengers; provided, this subparagraph shall not apply to school bus drivers as provided in OAC 210:30-5.

(e) **Additional qualifications for non-excepted commercial drivers.** The following additions are made to the federal requirement in Commercial Driver's License Standards; Requirements and Penalties [49 CFR §384] relating to medical examiner's certificate:

(1) A non-excepted commercial driver operating solely in intrastate commerce shall meet the same qualifications as a driver operating in interstate commerce; and, A driver that certifies that he or she operates as a non-excepted interstate driver must have a current medical examiner certificate.

(2) A Current current medical examiner's certificate, including any variance if applicable, shall be delivered to the Department of Public Safety by the driver:

(A) by mail to: Department of Public Safety, Attn: Driver License Services; P.O. Box 11415, Oklahoma City, OK 73136;

(B) by fax to: 405-419-2196

(C) by e-mail to: mec@dps.ok.gov

(D) in person to: the Department of Public Safety headquarters or any Department of Public Safety Examination Site

(3) ~~Until January 30, 2014, the~~ The Department may date stamp the medical examiner's certificate and return a copy, along with the variance if applicable, as a receipt to the driver; and the driver shall keep the copy of the medical examiner's certificate, and any variance if applicable, in his or her possession at all times when operating a commercial motor vehicle.

(4) Changes to the status of any driver from non-excepted status to excepted status or from excepted status to non-excepted status shall be made in writing to the Department by the driver, using one of the delivery methods described in paragraph (2).

PART 3. COMMERCIAL DRIVER LICENSE RENEWAL - IN PERSON

595:11-1-21. Procedure for obtaining a renewal commercial driver license in person

(a) **General requirements.** During the month of expiration or as provided in (d) of this Section, each licensee shall present proper identification and pay the required fee to a Motor License Agent or to the Department of Public Safety for renewal of the commercial driver license. Failure to renew a commercial driver license by the end of the month of expiration shall not relieve the person of the obligation to renew his or her commercial driver license under the provisions required by law and this Section if the person wishes to keep his or her commercial driver license in force.

(b) **Required identification.**

(1) **Renewal with expiring or expired commercial driver license.** The expiring or expired commercial driver license provided as ~~the primary~~ identification may be retained by the licensee, after the Department or the Motor License Agent has invalidated the ~~document~~ credential by punching ~~holes~~ a hole through the license class and license type displayed. ~~The person shall provide secondary identification as prescribed in OAC 595:10-1-3(b)(2). Applicant~~ The applicant must provide current United States citizenship, unless noted on the driving index confirming the proof of citizenship required by 49 C.F.R. § 383.71 has been met and the date it was done [49 C.F.R. § 383.73(a)(2)(vi)] or lawful permanent resident and proof of domicile in the State of Oklahoma.

(2) **Renewal without driver license.** Any person who does not have the expiring or expired commercial driver license shall provide ~~both primary and secondary identification~~ proof of identification as prescribed in OAC 595:10-1-3(b) for an Oklahoma REAL ID Compliant credential and OAC 595:10-1-3(c) for an Oklahoma REAL ID Non-Compliant credential.

(c) **Vision screening.** Persons holding a commercial driver license shall, upon renewal, meet the vision standards established in OAC 595:10-5-7 and 49 C.F.R., §391.41.

(d) **Limitations to issuance of a renewal commercial driver license.**

(1) A renewal commercial driver license shall be issued only to an individual whose driving privilege is not under suspension, revocation, disqualification, cancellation, or denial and who complies with this Chapter, state law, and federal law and regulation.

(2) Any applicant who requests a renewal of his or her commercial driver license when the license has been expired in excess of three (3) years shall be required to appear before a ~~driver license examiner~~ Driver License Examiner, pursuant to OAC 595:11-1-11 as for an original commercial driver license.

(e) **Early renewal of a commercial driver license.** Any licensee may renew his or her commercial driver license no more than one (1) year prior to the expiration date. A renewal which occurs more than one (1) year prior to the expiration date shall be treated as a replacement under the provisions of OAC 595:10-1-18.

(f) **Change of commercial driver license number.** A request by a licensee to change the commercial driver license number shall conform to the provisions of OAC 595:11-1-12(c).

PART 5. COMMERCIAL DRIVER LICENSE REPLACEMENT - IN PERSON

595:11-1-31. Procedure for obtaining a replacement driver license in person

(a) **General requirements.** Any licensee requiring a replacement commercial driver license because the license was lost, stolen, or mutilated, or because information on the license needs to be changed, shall request a replacement, upon presentation of proper identification and payment of the required fee. The ~~driver examiner~~ Driver License Examiner shall retain the driver license to be replaced if it is available.

(b) **Required identification to replace lost, stolen, or mutilated license.** Any person shall provide ~~both primary and secondary~~ identification as prescribed in OAC 595:10-1-3(b) for a REAL ID Compliant commercial driver license and OAC 595:10-1-3(c) for a REAL ID Non-Compliant commercial driver license. ~~Applicant~~ The applicant must provide current United States citizenship or lawful permanent resident and proof of domicile in the State of Oklahoma. If the credential cannot be produced because it was lost or stolen, the applicant must complete the Lost or Stolen Driver License Affidavit and submit it with his or her request.

(c) **Required identification to change information and replace a commercial driver license.**

(1) **Name change.** Any person who requests a replacement commercial driver license in order to make a name change shall comply with the ~~primary and secondary~~ identification requirements prescribed in OAC 595:10-1-3(b) for a REAL ID Compliant credential and

OAC 595:10-1-3(c) for a REAL ID Non-Compliant credential ~~in order~~ to identify the person by his or her former name and with OAC 595:10-1-35 ~~in order~~ to identify the person by his or her new name. The former name shall be entered by the ~~driver examiner~~ Driver License Examiner into the "Alias" field in the driver license database to provide historical information to the Department. The person requesting the name change may retain the old license, if it is available, after the Department has invalidated the document by punching ~~holes~~ a hole through the license class and license type displayed.

(2) **Address change.** A licensee shall request a replacement commercial driver license within ten (10) calendar days of any address change, ~~and~~

(A) shall provide the new address to the Department, and

(B) shall provide ~~both primary and secondary~~ identification as prescribed in OAC 595:10-1-3(b) for a REAL ID Compliant credential and OAC 595:10-1-3(c) for a REAL ID Non-Compliant credential.

(3) **Endorsement or restriction change.** Any person who requests a replacement commercial driver license in order to change endorsement or restriction information on the license shall provide ~~both primary and secondary~~ identification as prescribed in OAC 595:10-1-3(b) for a REAL ID Compliant credential and OAC 595:10-1-3(c) for a REAL ID Non-Compliant credential. The person requesting the information change may retain the old license, if it is available, after the Department has invalidated the ~~document credential~~ by punching holes ~~a hole~~ through the license class and license type displayed.

(4) **Sex change.** The licensee shall show an original or certified court order for name change, if applicable, and a notarized statement on letterhead from the physician who performed the sex change operation indicating the applicant or licensee has undergone a complete physical sex change. The letter shall state the sex change is "irreversible and permanent". The licensee shall also show proof of former legal name, if applicable. The new sex shall be entered by the ~~driver examiner~~ Driver License Examiner in the "Sex" field in the driver license database, and the former name shall be entered by the ~~driver examiner~~ Driver License Examiner into the "Alias" field in the driver license database to provide historical information to the Department.

(d) **Limitations to issuance of a replacement driver license.**

(1) A commercial driver licensee shall appear before a ~~driver examiner~~ Driver License Examiner to request a replacement commercial driver license in order for the ~~examiner~~ Driver License Examiner to perform the federally required ten-year driving history check.

(2) A replacement commercial driver license shall be issued only to an individual whose driving privilege is not under suspension, revocation, disqualification, cancellation, or denial and who complies with this Chapter, state laws, and federal laws and regulations.

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(3) The commercial driver license number may be changed as provided in OAC 595:11-1-12(c).

PART 7. CHANGES TO INFORMATION CONTAINED ON COMMERCIAL DRIVER LICENSE

595:11-1-51. Procedure to make a change of name on a commercial driver license

(a) **Procedure.** Any licensee may request a change of name on his or her commercial driver license upon providing the appropriate identification, as provided in OAC 595:10-1-3(b) for a REAL ID Compliant credential and OAC 595:10-1-3(c) for a Real ID Non-Compliant credential, and paying the required fee to a ~~motor license agent~~ Motor License Agent or to the Department of Public Safety.

(b) **Name changes allowed.** Name changes must result from either marriage or court action. A licensee requesting a legitimate name change shall submit, without exception, the ~~original certified copy of the~~ document which indicates the name change.

(c) **Documentation required.** A person requesting a name change shall comply with the ~~primary and secondary~~ identification requirements in OAC 595:10-1-3(b) for a REAL ID Compliant credential and OAC 595:10-1-3(c) for a REAL ID Non-Compliant credential in order to identify the person by his or her former name and OAC 595:10-1-18(c)(1) in order to identify the person by his or her new name and proof of current residence address [OAC 595:11-1-12(b) and 49 C.F.R. § 383.71]. The required documents for a name change shall include:

(1) Court-ordered name change, which shall be in addition to the ~~primary and secondary~~ forms of identification required by OAC 595:10-1-3(b). Only the following types of court orders may be considered when a name change is requested:

- (A) divorce decree,
- (B) adoption decree,
- (C) name change decree, or
- (D) establishment of record of birth, pursuant to 63 O.S. § 1-315;

(2) Marriage certificate name change, which shall be to the name of the licensee reflected on the marriage certificate, ~~may serve only as the secondary form of identification required by OAC 595:10-1-3(b). The name change shall be to the name signed by the person on the marriage certificate; or;~~

(3) ~~For a common~~ Common law marriage name change, "Affidavit of Common Law Marriage" containing the notarized signatures of the husband and wife;:

(4) A REAL ID credential issued by another state; or

(5) A valid military identification card.

(d) **Form of new name.** A name change resulting from a marriage, court order or divorce decree must appear on the driver license or identification card exactly as stated on the marriage certificate, court order or decree.

(e) **Titles or ecclesiastical names.** Titles or ecclesiastical names shall not be placed on a commercial driver license.

(f) **Retention of information.** The former name shall be entered by the ~~driver examiner~~ Driver License Examiner into the "Alias" field in the driver license database to provide historical information to the Department.

SUBCHAPTER 3. EXAMINATION

595:11-3-3. Application for examination

(a) **Information from applicant.** An applicant shall complete and submit an application for a commercial driver license at a ~~driver license examination station~~ Driver License Examination Station prior to the commencement of the required examination. When determined by the ~~driver examiner~~ Driver License Examiner, from information received from the applicant, that the applicant may be afflicted with any physical or mental ailment as set out in 47 O.S. § 6-119, the examination shall be discontinued until the applicant has met all of the requirements set out in the OAC 595:10-5, Medical Aspects. In addition, an applicant for a commercial driver license who does not certify that he or she is exempt from Subpart E of the Federal Motor Carrier Safety Regulations shall meet the requirements prescribed under 49 CFR § 391.41.

(b) **Required identification.** Each applicant shall furnish documentary proof to establish his or her identity, legal name and birth date as required in OAC ~~595:10-1-3(b)~~ 595:11-1-12(b). ~~Notwithstanding the requirements of OAC 595:11-1-12(b), an applicant for an a Hazardous Materials ("H") endorsement who possesses either an I-766 or I-688 card issued by United States Citizenship and Immigration Service (USCIS) shall not be granted an the "H" endorsement pursuant to 49 CFR § 383.71.~~

(c) **Medical reports.** An applicant may be required to submit medical reports regarding any physical or mental condition which might affect driving ability as set forth in 47 O.S. § 6-119 and Department of Public Safety rules regarding Medical Aspects [see OAC 595:10-5].

(d) **License application void.** Approved commercial driver license applications (Class A, B, or C) shall be valid for only twenty-four (24) hours from the time of approval. If the license has not been obtained by the applicant within the allowed time, the approved application shall be void, and the applicant shall appear before a ~~driver license examiner~~ Driver License Examiner and, after determination by the Examiner that all criteria and test scores are still valid, the Examiner may revalidate the application.

(e) **Training Requirements.** On or after February 7, 2022, applicants must be in compliance with the provisions of 49 CFR 380.600 subpart F-Entry Level Driver Training Requirements and meet the curriculum requirements set forth in appendices A through E of part 380.

(f) **Hazardous Materials Endorsement.** On or after February 7, 2022, the applicant must complete the Hazardous Materials Endorsement Training Curriculum. CFR 49 part 380 Appendix E- Hazardous Materials Endorsement Training Curriculum prior to completing required knowledge examination.

595:11-3-6. Written examination

(a) **General.** A written examination shall be administered by a ~~driver examiner~~ Driver License Examiner to each applicant for a commercial driver license to determine the applicant's ability to read and understand highway signs and the applicant's knowledge of the traffic laws of this state; provided, the written examination may be waived as provided in OAC 595:11-1-13(a). The written examination, if not waived, and the vision screening shall be successfully passed by the applicant before the skills test is administered. The written examination includes, when applicable, any separate endorsement/restriction examinations as described in this Section. An applicant determined by an examiner to be cheating on any portion of an examination shall:

- (1) immediately forfeit the examination,
- (2) be given a failing score by the examiner, and
- (3) be disqualified from retaking the examination for one week.

(b) **Examination content.**

(1) **Written examination.** The written examination administered for a commercial driver license shall consist of a minimum of fifty (50) multiple-choice questions. In addition, the combination vehicle test administered for a Class A commercial driver license shall consist of a minimum of twenty (20) multiple-choice questions. The minimum passing score for each written examination shall be eighty percent (80%).

(2) **Endorsement or restriction examination.** The minimum number of multiple-choice questions and the minimum passing score for each endorsement or restriction examination shall be as follows:

- (A) P passenger endorsement - 20 questions - 80% score
- (B) H hazardous material endorsement - 30 questions - 80% score
- (C) N tank vehicle endorsement - 20 questions - 80% score
- (D) M motorcycle endorsement - 20 questions - 75% score
- (E) S school bus endorsement - 20 questions - 80% score
- (F) T double or triple trailers endorsement - 20 questions - 80% score
- (G) Airbrakes - 25 questions - 80% score. Failure to pass at least 80% of the 25 questions regarding air brakes will result in a restriction code "L" (Vehicle Without Air Brakes) being placed on the applicant's license upon issuance. The applicant shall be prohibited from taking the skill examination in a vehicle with air brakes.

(c) **Alternate method of examination.** The Department may provide an alternate method for the written examination for an applicant who ~~cannot read~~ has difficulty reading or has a language barrier.

(d) **Retesting.** An applicant failing the written examination may be granted the opportunity to retest on the next regular business day.

(e) **Discretionary examination.** Any examination, as deemed necessary by the Department, may be administered by the Department as required for the establishment and authorization of a special endorsement or to permit the operation of commercial motor vehicles.

(f) **Hazardous Materials Endorsement.** On or after February 7, 2022, the applicant must complete the Hazardous Materials Endorsement Training Curriculum. CFR 49 part 380 Appendix E- Hazardous Materials Endorsement Training Curriculum prior to completing required knowledge examination.

(g) **Commercial learner permit.** Any person eighteen (18) years of age or older may apply for a Class A, B, or C commercial learner permit (CLP), as provided in 47 O.S. §6-101(F), solely for the purpose of behind-the-wheel training in a commercial motor vehicle while accompanied by a licensed driver who is twenty-one (21) years of age or older and who holds a valid commercial driver license, including any and all required endorsements, for the class and type of commercial motor vehicle being driven. The CLP ~~must be is only~~ valid for no more than 180 days from the date of issuance. The State may renew the CLP for ~~none~~ (1) additional 180 daysday period without requiring the CLP holder to take the general and endorsement knowledge test. However, any previously passed skills tests are only valid for the ~~lengthduration of the~~ that permit period. Skills tests cannot be carried over to another CLP period. The issuance of a CLP is a pre-condition to the issuance of a CDL. The issuance of a CLP is also a pre-condition to the upgrade of a CDL if the upgrade requires a skills test. The CLP holder is not eligible to take the CDL skills in the first 14 days (excluding the day of issuance) after initial issuance of the CLP.

(1) The commercial learner permit shall be issued as provided for 47 O.S. §6-101(F)(2). Any person may reapply for another commercial learner permit by complying with all requirements for the class of commercial learner permit desired.

(2) The Department shall not place a ~~hazardous materials~~ Hazardous Materials (H) endorsement on a commercial learner permit.

(3) A "No Passengers" restriction (restriction code "P") shall be placed on any commercial learner permit issued with a "P" or "S" endorsement. The permit holder shall not operate a commercial motor vehicle which carries any passengers [49 C.F.R. §383.25].

(4) An "Empty/Purge Tank" restriction (restriction code "X") shall be placed on any commercial learner permit issued with an "N" endorsement. The tank vehicle shall be empty and shall be purged if the tank vehicle contained hazardous materials, and the permit holder shall not operate a commercial motor vehicle with a tank vehicle which is not empty or which has not been purged if the tank vehicle contained hazardous materials. A current and valid purge certificate shall be carried in the vehicle at all times when operated by a driver with a ~~permit-CLP~~ [49 C.F.R. §383.25].

595:11-3-7. ~~Pre-trip Vehicle inspection examination of commercial motor vehicles~~

(a) **Condition of vehicle.** It is the responsibility of the applicant to furnish for the skills examination a commercial motor vehicle in good working order which meets all state laws and federal requirements regarding operability and equipment.

(b) **In general.** An applicant for a commercial driver license shall pass a vehicle pre-trip inspection examination at the designated inspection location. The pre-trip inspection test:

(1) shall be performed in a vehicle representative of the vehicle class for the type of commercial driver license for which the applicant is applying,

(2) shall not be performed using a vehicle transporting hazardous materials or a vehicle which is required to be placarded for hazardous materials under the rules of the Department of Public Safety or federal law or regulation,

(3) shall not be performed using a vehicle which requires an oversize permit under state law or Department of Public Safety rules,

(4) shall not be performed using a vehicle that was not designed and constructed by the manufacturer with a seating capacity for one or more persons in addition to the driver, and

(5) shall not be performed with the assistance of notes or prompting other than the memory aid provided by the Department. An applicant determined by an examiner to be cheating on any portion of an examination shall:

(A) immediately forfeit the examination,

(B) be given a failing score by the examiner, and

(C) be disqualified from retaking the examination for one week.

(6) shall not be filmed or recorded, unless by the Department of Public Safety.

(c) **Physical pre-trip inspection examination.** The physical pre-trip inspection examination administered for a commercial driver license shall consist of the content and methods provided in the most recent release of the 2005 American Association of Motor Vehicle Administrators CDL test model. The content is available to the public as provided for in OAC 595:11-3-2.

(d) **Scoring procedure.** The scoring procedure for the vehicle pre-trip inspection examination shall be based on the applicant's ability to identify and fully explain what is being inspected for each item required to be inspected. Applicants must successfully identify and explain at least 70% of the inspection items, which will be based upon the type and axle configuration of the vehicle.

(1) For air brake vehicles, the following actions will constitute an automatic failure:

(A) an air brakes leakage test while the engine is running,

(B) failure to turn the ignition key to the "on" or "accessory" position for air brake bleed down test, or

(C) failure to release the parking brake for air leakage and bleed down test.

(2) For hydraulic vehicles, failure to complete a hydraulic brake check correctly will constitute an automatic failure.

(3) If the applicant fails to complete the brake check correctly, the applicant will be deemed to have failed the pre-trip inspection examination.

(e) **Failure to complete the pre-trip inspection examination within the allotted time.** The applicant will be allowed forty (40) minutes to complete the pre-trip inspection examination. Upon completion of the pre-trip inspection examination or the expiration of the allotted forty (40) minutes, the examiner will score the pre-trip inspection examination. If the applicant does not achieve a passing score of inspection items, the applicant will be deemed to have failed the pre-trip inspection examination.

595:11-3-8. Skills examination

(a) **In general.** The skills examination shall be administered only after the applicant has successfully passed the written examination, or had it waived if eligible under OAC 595:11-1-13(a), and the vision screening. Whenever a skills examination is required, the following general conditions shall apply:

(1) The skills examination shall start at a designated location and shall include an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the operation of a commercial motor vehicle. ~~You~~ The applicant must take the skills test in the type of vehicle for which ~~you~~ he or she ~~wish~~ requests to be licensed. It is the responsibility of the applicant to furnish for the skills examination a commercial motor vehicle in good working order which meets all state laws and federal requirements regarding operability and equipment. A vehicle not equipped with air brakes shall be required to have driving restriction code "L" (Vehicle Without Air Brakes) placed on the license of the applicant, upon approval ~~off~~ for the issuance of the commercial driver license.

(2) The skills examination shall not be administered in a commercial motor vehicle which:

(A) is transporting hazardous materials or which is required to be placarded for hazardous materials,

(B) requires an oversize permit under the laws of this state or the rules of the Department of Public Safety,

(C) was not designed and constructed by the manufacturer with a seating capacity for one or more persons in addition to the driver,

(D) is not insured as required by 47 O.S. §7-600 et seq.,

(E) does not have a current license plate; unless the vehicle has an unexpired dealer tag or a dated notarized bill of sale not more than five (5) days old.

(F) is saddle mounted,

(G) is a wrecker vehicle towing another vehicle, ~~or~~

(H) is not equipped with seatbelts, if the vehicle was originally manufactured and equipped with seatbelts;

(I) any vehicle that has components marked or labeled cannot be used for the CDL skills test, or

(J) any vehicle hauling livestock.

(3) The applicant has been issued ~~and held a commercial learner permit~~ CLP for a minimum of fourteen (14) days. The date of issuance shall not be included.

(4) On or after February 7, 2022, applicants must be in compliance with the provisions of 49 CFR 380.600 subpart F-Entry Level Driver Training Requirements and meet the curriculum requirements set forth in appendices A through E of part 380.

(b) **Scoring of Basic Control Skills (BCS) examination.** ~~The scoring procedure will be on a cumulative deduction system based on poor or improper driving practices. The Basic Control Skills scoring procedure shall consist of the content and methods provided in the most recent release of the 2005 American Association of Motor Vehicle Administrators CDL test model. The content is available to the public as provide for in OAC 595:11-3-2. The Commissioner or the Commissioner's representative shall determine a point value for each act of poor or improper driving.~~ The applicant will be allowed ten (10) minutes per Basic Control Skills (BCS) maneuver to complete the maneuver. In the event the applicant is not able to complete the maneuver in the time allowed, the skills examination will be deemed an automatic failure.

(c) **Content of examination for commercial driver license.** The skills examination shall be conducted in conformance with 49 C.F.R., Section 383.

(d) **Retesting.**

(1) An applicant who fails the skills examination for a commercial driver license may be granted the opportunity to retest the following business day.

(2) The Department shall conduct the skills examination ~~not more than three (3) times, each time at least one (1) business day apart or as instructed by the examiner, beginning no sooner than fourteen (14) days (excluding the day of issuance) from the date of issuance of the commercial learner permit. Should the licensee fail the third examination, the licensee shall wait at least thirty (30) days before being given another skills examination by the Department. The fourth and subsequent examinations shall be given at the request of the licensee but not more than one (1) examination shall be given every thirty (30) days.~~

(3) In computing any time period prescribed by this subsection, the day of the failed examination from which the designated period of time begins to run shall not be included. The last day of the period computed shall be included, unless it is not a working day, in which event the period runs until the end of the next working day.

(e) **Substitute for skills examination.** A skills examination may be waived by the Department for an applicant when one of the following requirements is met:

(1) The applicant is the holder of a valid commercial driver license from one of the fifty (50) states, the District of Columbia, or a Canadian province.

(2) The applicant is an active member of any branch of the military, Military Reserves or National Guard on active duty, including personnel on full-time or part-time National Guard training, National Guard Military Technicians (civilians who are required to wear a military

uniform), and active duty personnel of the U.S. Coast Guard; provided, the person for the two (2) years immediately preceding application for a commercial driver license [49 C.F.R. Parts 383 and 391];

(A) can show, with proper documentation, that he or she has operated a representative class commercial motor vehicle,

(B) certifies that he or she has not been licensed by more than one jurisdiction at the same time,

(C) certifies that he or she has not had any suspension, revocation, cancellation, denial, or disqualification of driving privileges in the two (2) years immediately preceding the application,

(D) has not been convicted of any major disqualifying offense, as defined in 47 O.S., §6-205.2,

(E) has not been convicted more than once of a serious traffic offense, as defined in 47 O.S. §6-205.2, regardless of the type or class of vehicle the offense occurred in, and

(F) certifies that he or she has not been involved in any collision in which he or she was recorded as being at fault.

595:11-3-9. Automatic failure of skills examination

An occurrence of any of the following will result in the automatic failure of the skills examination by the applicant:

(1) **Seat belt not in use.** Applicant failed to use the seat belt. The seat belt shall be properly adjusted and fastened before the vehicle enters a public roadway.

(2) **Moving traffic violation.** Applicant received a traffic citation for a moving violation during the skills examination.

(3) **Disobey sign or signal.** Applicant ignored or did not obey sign or signal.

(4) **Speed.** Applicant sped more than five (5) miles per hour over the posted speed limit or the lawful speed limit for the vehicle being driven. Provided the speeding is not in a school zone during normal school hours or a construction zone with workers present. There will be no tolerance in a school zone during normal school hours and school is in session or in a construction zone with workers present.

(5) **Fail to stop.** Applicant rolled through stops or failed to stop.

(6) **Fail to yield.** Applicant did not yield to other road users (pedestrians, vehicles, etc.). Applicant did not appropriately yield the right-of-way to pedestrians or other vehicles during driving maneuvers.

(7) **Left of center.** Applicant drove left of center (except when needed to perform a turn safely, or any other lawful reason).

(8) **School bus endorsement.** ~~The applicant~~ Commit commits any of the following in the procedures for pickup or discharge of students established by the State Department of Education ("SDE"):

(A) Fail to activate amber warning lights before stop

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- (B) Fail to set park brake and/or fail to shift to neutral
- (C) Use hand outside the bus to direct students
- (D) Fail to make final check of crossover mirrors before the bus is set in motion
- (9) **School bus endorsement, or passenger endorsement or hazardous materials endorsement.** The applicant ~~Commit~~ commits any of the following:
 - (A) Fail to stop vehicle at most fifty (50) feet and no less than fifteen (15) feet from first rail of railroad tracks.
 - (B) Shift gears while crossing railroad track.
 - (C) Vehicle in motion with door open or unnecessarily impeding traffic.
- (10) **Avoidable crash or incident; dangerous act.** The applicant ~~Commit~~ commits any of the following:
 - (A) ~~Applicant was being~~ involved in an avoidable crash or accident.
 - (B) ~~causing the Applicant's~~ applicant's vehicle ~~had to have~~ physical contact with other vehicles, objects, pedestrians, etc.
 - (C) ~~Applicant commits~~ any act or omission that creates a dangerous or unsafe traffic environment (near accidents, etc.).
 - (D) ~~Causing Drivers~~ drivers of other vehicles or pedestrians ~~were forced~~ to take evasive actions.
 - (E) ~~Applicant's actions force~~ forcing an examiner to take verbal or physical control of the vehicle.
- (11) **Put vehicle over sidewalk or curb.** Driver ~~put~~ drives the vehicle over curb or sidewalk unnecessarily.
- (12) **Improper backing.** Driver opens door while vehicle is in motion ~~and~~ or leans out of cab during backing maneuver.
- (13) **Weighted offenses.** Accumulation of four (4) or more of any of the following ~~offense~~ offenses in any combination:
 - (A) Failure to use turn signal
 - (B) Failure to turn on headlamps (if required)
 - (C) Coasting on a downgrade (gears in neutral or clutch disengaged)
 - (D) Consistently exceed speed limit
 - (E) Proceed through intersection on yellow light when applicant could have stopped without creating a dangerous situation.
- (14) **Violation of time limit for Pre-trip inspection examination.** Applicant does not complete full pre-trip inspection examination within forty (40) minutes (See OAC 595:11-3-7(e)).
- (15) **Violation of time limit for Basic Control Skills ("BCS").** Applicant does not complete each BCS maneuver within ten (10) minutes.

SUBCHAPTER 5. COMMERCIAL DRIVER LICENSE THIRD-PARTY EXAMINERS

595:11-5-1. Purpose

This Subchapter establishes requirements, procedures, and standards for the certification of public and technology center schools, any public or private commercial truck driving school that has or maintains a program instructing students for a commercial license in the State of Oklahoma, and of commercial motor vehicle driver training instructors to administer skills examinations on the premises of the schools to qualified applicants for a commercial driver license.

595:11-5-2. Scope and application

The provisions of this Subchapter shall apply only to schools and persons described under the following agreements:

- (1) Memorandum of Understanding entered into on July 1, 2006, by and between the Department of Public Safety and the State Board of Education.
- (2) Memorandum of Understanding entered into on January 1, 2007, by and between the Department of Public Safety and the Oklahoma Department of Career and Technology Education.
- (3) State of Oklahoma law stating upon application and approval of the Commissioner of the Department of Public Safety, any public or private commercial truck driving school that has or maintains a program instructing students for a Class A, B, or C license in the State of Oklahoma shall be authorized to hire or employ third-party examiners, approved by the Department of the Class A, B, or C skills portion of the Oklahoma driving examination. All third party examiners must successfully have completed the courses and training as outlined in 595:11-5-6.

595:11-5-3. Definitions

In addition to terms defined in 47 O.S. § 1-101, et seq., the following words or terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise. Use of the singular term includes the plural, and use of the plural term includes the singular.

"Business day" means Monday through Friday 8:00 a.m. to 4:45 p.m., excluding state and federal holidays.

"Certified school" means a school district or technology center school or any public or private commercial truck driving school that has or maintains a program instructing students for a commercial driver license in the State of Oklahoma that is approved and licensed by the Department of Public Safety to provide, on the premises of the school, the driving skills examinations for Oklahoma commercial driver licenses.

"Commercial driver license" means an Oklahoma Class A, B, or C commercial driver license, as defined in 47 O.S. § 6-101.

"Commercial truck driving school" means any public or private entity that offers a program of instruction for a Class A, B, or C license in the State of Oklahoma that has been approved and certified by the Department of Public Safety.

"Commercial motor vehicle" means a Class A, B, or C commercial motor vehicle, as defined in 47 O.S. §§ 1-107.1, 1-107.2 or 1-107.3, used for training students.

"Department" means the Department of Public Safety.

"Driver training instructor" means an employee of a certified school who has been approved by the State Board of Education to teach school bus driver training courses, or has been approved by Oklahoma Board of Career and Technology Education to teach truck driver training courses, or who has the appropriate approval to teach both courses, or an employee of any commercial truck driving school that has been approved by the Department to be a Third-Party Examiner.

"Examination" means the skills portion (one (1) test with three (3) segments to include the pre-trip, basic controls skills (BCS), and road test) of the examination for a commercial driver license which shall test the ability of the applicant to operate a commercial motor vehicle and shall be administered on the premises of a certified school by a third-party examiner employed by that school. "Examination" shall also mean:

- (A) an examination to upgrade the current commercial driver license of a driver license applicant, or
- (B) an examination to remove restriction ~~code codes, "L" from the current commercial driver license of a driver license applicant.~~

"Federal Motor Carrier Safety Administration" means the United States Department of Transportation Office of Motor Carrier Safety, 300 N. Meridian, Suite 106 North, Oklahoma City, Oklahoma 73107, (405) 605-6047.

"School district" means a school district, as defined in 70 O.S. § 1-108, which has at least one secondary school, as defined in 70 O.S. §1-106, which offers a school bus driver training course approved by the State Board of Education.

"Technology center school" means a technology center school within a technology center school district, established pursuant to Section 9B of Article X of the Oklahoma Constitution, and operated in accordance with the rules of the Oklahoma Board of Career and Technology Education which offers a school bus driver training course approved by the State Board of Education or a truck driver training course approved by the State Board of Education.

"Third-party examiner" means a driver training instructor employed by a certified school who has been approved by the Department of Public Safety to administer, on the premises of the certified school employing the instructor, the examination, as defined in this Section, for a commercial driver license. A third-party examiner is not and shall not be construed or purported, either explicitly or by implication, to be an employee of the Department of Public Safety.

"Third-Party Examiner program" means the program at the Department that issues Third-Party Examiner certifications.

595:11-5-4. Requirements for certification as a certified school; display of certificate; certification renewal

(a) **Requirements and application for certification.** A school district, technology center school, or a commercial truck driving school may apply for certification as a certified school. The applying school shall meet the following requirements:

- (1) Be actively enrolling students and teaching a formal course of instruction for school bus drivers training as

approved by the State Board of Education, or truck driver training as approved by the Oklahoma Board of Career and Technology Education, or a commercial truck driving school.

(2) Obtain and possess written approval to make application for and be, if approved, a certified school from:

- (A) the State Board of Education, if the school is a school district, or
- (B) the Oklahoma Board of Career and Technology Education, if the school is a technology center.
- (C) the Department of Public Safety, if the school is a commercial truck driving school that has been in operation for at least two (2) years.

(3) Submit an application to the Department on a form prescribed by the Department [OAC 595:11-5-13].

(4) Have its on-site examination route or routes examined and approved by the Department of Public Safety CDL Coordinator or his or her designee ~~an employee of the Department.~~ A route:

- (A) shall start and end on the premises or property of the certified school, unless otherwise approved by the Department,
- (B) shall meet all state and federal requirements,
- (C) shall not be altered or changed in any manner without first being examined and approved by the Department,
- (D) shall not be replaced by an alternate route unless the alternate route is first examined and approved by the Department. If, during the course of the examination, it is determined that any of the approved routes could not be followed, the third-party examiner shall notify the Department in writing immediately after completing the test ~~the same day the test is administered~~ as to the reason for the change in route,
- (E) shall not be used to conduct training or practicing for the examination, and
- (F) shall be configured to be at least seventy-five percent (75%) different from any route used for training or practicing.

(5) Agree to:

- (A) meet minimum examination standards required by the Department and by the Federal Motor Carrier Safety Regulations [49 C.F.R. Part 383];
- (B) allow access to school facilities by the Department and by the Federal Motor Carrier Safety Administration for the purpose of monitoring examinations and examining records;
- (C) comply with the Oklahoma Open Records Act [51 O.S., § 24a.1, et seq.] with regard to records kept pursuant to this Subchapter;
- (D) maintain security of examination documents and related material as deemed necessary by the Department;
- (E) ensure all examinations are administered by a third-party examiner;
- (F) ensure third-party examiners administer the examination only to driver license applicants who:

- (i) have successfully completed a formal course of instruction, ~~as submitted to and approved by the Department,~~ at the institution where the third-party examiner is employed and certified, ~~and/or~~
- (ii) successfully completed a course of instruction at a school district or technology center school in the surrounding counties of the certified school, and
- (~~iii~~) have a commercial learner permit and driver license issued by Oklahoma. The commercial learner permit must be issued at least fourteen (14) days prior to testing and the date of issuance shall not be included;
- (G) ensure no person acts as a third-party examiner without current certification from the Department;
- (H) provide immediate written notification to the Department of any impropriety or misconduct of any third-party examiner employed by the school;
- (I) acknowledge that the Department reserves the right to take prompt and appropriate remedial action against the certification of any school or of any third-party examiner in the event that the school or the third-party examiner fails to comply with:
 - (i) any state law, Department rule, or federal regulation regarding the examination of an applicant for a commercial driver license, or
 - (ii) any terms of the appropriate memorandum of understanding or of a subsequent contract or agreement entered into pursuant to the memorandum of understanding, any terms of the contract or agreement entered into with the Department of Public Safety;
- (J) maintain records of all third-party examiners employed by the school and copies of all documents relating to examinations administered for a period of not less than three (3) years; provided, if a school discontinues doing business, the school shall send to the Department a roster of all students who were administered examinations by the school during the immediately preceding three (3) years;
- (K) immediately notify the Department by telephone, followed by written notification within five (5) days, of the termination of employment of any third-party examiner. The official seal of the Department, the CDL examiner's manual, the score sheet pads and/or testing tablet, and the certificate and identification card issued by the Department to the third-party examiner shall be returned to the Department with the written notification;
- (L) immediately notify the CDL Coordinator ~~within the Commercial Driver License Program Administration~~ of the Department, electronically, by telephone, or first-class mail of every fraudulent application made to obtain a commercial driver license; and
- (M) acknowledge that the Department reserves the right to randomly reexamine applicants tested by

third-party examiners for purposes of quality assurance.

- (b) **Certification.** Upon acceptance and approval by the Department of the application for certification from a school district, ~~or technology center school, or any public or private commercial truck driving school,~~ or upon acceptance and approval by the Department of the application for renewal of certification from a certified school, and upon completion to the satisfaction of the Department by the school of all other requirements for certification, the Department shall provide the certified school with a certificate evidencing approval by the Department as a certified school. The certificate shall be posted at the examination location at the certified school and in full view of the public. The certificate shall be valid for four (4) years.

- (c) **Renewal of certification.** A certified school may apply for renewal of certification as a certified school. The school shall meet the following requirements:

- (1) Have evidence on file with the Department of a satisfactory on-site inspection conducted by an employee of the Department prior to renewal.
- (2) Employ at least one third-party examiner.
- (3) Submit an application for renewal on a form prescribed by the Department no later than December 1 of the year of expiration [OAC 595:11-5-13].

595:11-5-5. Requirements for certification as a third-party examiner, display of certificate, certification renewal

- (a) **Requirements and application for certification.** A driver training instructor [see OAC 595:11-7-4 for instructor qualifications] may apply for certification as a third-party examiner. The applicant shall meet the following requirements:

- (1) Meet all the requirements for a Driver License Examiner of the Department [47 O.S., § 2-106(c) and (d)].
- (2) Complete an application provided by the Department [see OAC 595:11-5-13] and submit a nationwide criminal background check [FMCSR, 49 CFR 384.228(g)] certified within the immediately preceding thirty (30) days and, if the applicant has not lived in Oklahoma for the immediately preceding five (5) years, a criminal background check from the agency responsible for keeping criminal history in the state or states of previous residence.
- (3) Be employed by a certified school.
- (4) Have and maintain throughout the time period to be covered by the certification:
 - (A) a valid Oklahoma commercial driver license for the class or classes of vehicle, including any endorsement or endorsements, for which the instructor desires to administer examinations; provided, the applicant shall not be required to have a hazardous materials endorsement (endorsement H),
 - (B) in order to administer school bus examinations, a valid School Bus Workshop Instructor Certificate issued by the State Board of Education with three (3) years of instructor experience, and
 - (C) in order to administer truck examinations, a valid certificate issued by the Oklahoma Board of

Career and Technology Education or the Department showing the applicant has met the current requirements with three (3) years of instructor experience.

(5) Successfully complete a course of instruction prescribed by the Department [see 595:11-5-6].

(6) ~~Meet the same vision standards as for Driver License Examiners of the Department [see OAC 595:10-5-7 and 49 C.F.R., §391.41 regarding vision standards].~~

~~(7) Have full use of both upper and lower extremities.~~

~~(8) Agree to submit examination reports to the Department by electronic means immediately upon completion of each examination.~~

~~(8) Be required to meet at DPS Headquarters with the CDL Coordinator or designee to discuss the program requirements and expectations.~~

~~(9) Submit required initial fee of One Thousand Dollars (\$1000.00). If an applicant for the Third-Party Examiner program is employed by a public school, technology center or state entity, the fee may be waived by the Department.~~

(b) **Ineligibility based upon driving record or criminal record.** A driver training instructor shall be deemed to be ineligible for certification as a third-party examiner upon evidence of a record of any of the following convictions:

(1) Two (2) or more convictions for a moving traffic offense within the twelve (12) months immediately preceding the application, or

(2) Any alcohol- or drug-related conviction requiring the Department to revoke, suspend, or disqualify the instructor's driving privilege within the five (5) years immediately preceding the application.

(3) Any conviction for any offense which required or will require the Department to take any type of action against the instructor within the three (3) years immediately preceding the application, including, but not limited to:

(A) a warning letter, or

(B) a revocation, suspension, cancellation, denial or disqualification of the instructor's driving privileges.

(4) Any misdemeanor conviction, except for a misdemeanor conviction for a traffic offense, within the five (5) years immediately preceding the application.

(5) Any felony conviction within the last ten (10) years in this state or any state or other state or country or any conviction involving fraudulent activities in this state or any other state or country.

(c) **Certification.** Upon acceptance and approval by the Department of the application for certification from a driver training instructor, or upon acceptance and approval by the Department of the application for renewal of certification from a third-party examiner, and upon completion to the satisfaction of the Department by the instructor or third-party examiner of all other requirements for certification, the Department shall provide the third-party examiner with:

(1) a certificate evidencing approval by the Department as a third-party examiner, which shall be posted at the examination location at the certified school and in full

view of the public. The certification will be valid for four (4) years.

(2) an identification card to be carried by the third-party examiner whenever the examiner is administering an examination.

(3) an official seal to be used by the third-party examiner to be used as provided in 595:11-5-14.

(4) If the initial application for approval is denied, a school or applicant may re-apply no more than two (2) times per calendar year.

(5) Any applicant denied certification under this subsection may request an administrative hearing pursuant to OAC 595:1-3-1 through 595:1-3-20.

(d) **Renewal of certification.**

(1) A certified third-party examiner shall be eligible for renewal of certification if the examiner:

(A) submits an application for certification renewal upon a form provided by the Department no later than December 1 of ~~each year~~ the expiration year of the certification [see 595:11-5-13],

(B) submits a nationwide criminal background check certified within the immediately preceding thirty (30) days,

(C) submits a current copy of the State Department of Education instructor certificate, or a valid certificate issued by the Oklahoma Board of Career and Technology Education confirming instructor certification or a valid certificate issued by the Department confirming instructor certification.

(D) is currently employed by a certified school,

(E) currently meets the requirements and standards of the Department as prescribed by this Subchapter,

(F) administered ten (10) or more full examinations within the twelve (12) months immediately preceding the application for renewal of certification, and

(G) submits required renewal fee of Five Hundred Dollars (\$500.00). If applicant for the Third-Party Examiner program is employed by a public school, technology center or state entity, the fee may be waived by the Department.

(2) Any driver training instructor who was previously certified as a third-party examiner and whose previous certification has been expired for not more than one (1) year may make application for renewal of certification as provided in paragraph (1) of this section.

(3) ~~Any third-party examiner~~ Third-Party Examiner who does not qualify for renewal of certification may apply, after a period of at least one (1) year from the date the examiner was notified he or she was not qualified for renewal of certification, for certification as a third-party examiner and shall meet all requirements as for an initial application for certification as a third-party examiner.

(4) Upon any Third-Party Examiner's second failure to meet the requirement to conduct ten (10) or more full examinations within the twelve (12) months immediately preceding the application for renewal of certification, the Third-Party Examiner shall be removed from the Third-

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Party Examiner Program. The Third-Party Examiner must wait a minimum of one (1) year before reapplying to the Third-Party Examiner Program.

595:11-5-6. Course of instruction for driver training instructors ~~apply~~ applying for certification as a third-party examiner

(a) A driver training instructor who desires to apply for certification as a ~~third-party examiner~~ Third-Party Examiner shall enroll in and successfully complete a course of instruction as determined by the Department before the instructor will be considered for approval and certification as a ~~third-party examiner~~ Third-Party Examiner.

(b) The Department shall, from time to time, conduct a course of instruction for driver training instructors applying for certification as a ~~third-party examiner~~ Third-Party Examiner. The Department shall determine the standards and requirements for the curriculum and successful completion of the course of instruction. The curriculum shall include, but not be limited to, the following subjects:

- (1) Examination standards and scoring.
- (2) Forms and reports.
- (3) Oklahoma statutes.
- (4) Department rules.
- (5) Federal regulations.
- (6) Hands-on pre-tripping [see 595:11-3-8 relating to pre-trip ~~inspections~~ inspection examination].
- (7) Behind-the-wheel driving.
- (8) Records and recordkeeping.

(c) The dates and locations of courses of instruction shall be determined by the Department.

595:11-5-7. Skills examination requirements and standards

(a) **Eligibility.** To be eligible for a skills examination, a commercial driver license applicant shall successfully complete, prior to the examination, a formal prescribed commercial motor vehicle course of instruction as referred to in OAC 595:11-7-9, as submitted to and approved by the Department, by the institution where the examination will be administered, or

- (1) The applicant shall provide proof of training from another school district that is recognized by the State Department of Education.
- (2) The applicant provides proof of training from a technology center school that is recognized by the Oklahoma Board of Career and Technology Education.
- (3) The applicant provides proof of training from any public or private commercial truck driving school that has or maintains a program instructing students for a Class A, B, or C license in the State of Oklahoma that is certified by the Department.

(b) **Application.** Before an examination may be given to an applicant by a ~~third-party examiner~~ Third-Party Examiner, the applicant must ~~completely fill out and~~ submit to the ~~examiner~~ Third-Party Examiner ~~an~~ a completed Oklahoma

commercial driver license application (DPS Form DL-18-CT) [OAC 595:11-5-13(e)].

(c) **Physical Qualifications.** Prior to any examination, the Third-Party Examiner will view the medical questions on the commercial driver license application to ensure the applicant meets~~an applicant shall be provided with a copy of the physical qualifications for commercial motor vehicle drivers from the Federal Motor Carrier Safety Regulations and the Third-Party Examiner is not administering an examination to any commercial driver license student with any physical disability.~~ [49 C.F.R. §391.41].

(d) **Standards.** Current minimum standards for the examination of ~~an~~ applicant for a commercial driver license, as set forth in state statutes, Department rules, and federal regulations, shall be provided by the Department to all certified schools and third-party examiners.

(e) **School bus skills examination requirements.** The school bus skills examination for a commercial driver license administered by a third-party examiner shall:

- (1) include all specified school bus maneuvers as required by the Department, and
- (2) meet or exceed all requirements of the Department and of the Federal Motor Carrier Safety Act [49 C.F.R. §391] for the class or classes of vehicle for which the applicant desires to be licensed.

(f) **Truck skills examination requirements.** The truck skills examination for a commercial driver license administered by a third-party examiner shall:

- (1) include all specified maneuvers as required by the Department [OAC 595:11-3-9] and the Federal Motor Carrier Safety Act [49 C.F.R. § 383].
- (2) meet or exceed all requirements of the Department and of the Federal Motor Carrier Safety Act [49 C.F.R. § 383].

(g) **Notice of Examination.** A notice of the examination schedule shall be submitted electronically through CSTIMS to the CDL Coordinator or his or her designee, during normal business hours, no later than ~~three (3)~~ five (5) business days prior to the initial examination and two (2) business days prior to a retest that will be administered by a third-party examiner. A third-party examiner shall not administer the skills test to any applicant he or she has instructed in the classroom and/or in behind the wheel training.

(h) **Location of examination.** All examinations shall be administered on the route approved for the certified school employing the third-party examiner.

(i) **Limitation on number of examinations.** Not more than six (6) examinations, or 18 slots per day, shall be administered by a ~~third-party examiner~~ Third-Party Examiner without prior written consent of the CDL Program Administration, or designee.

(j) **Examination reports.** Reports of examination activity by third-party examiners shall be submitted electronically through CSTIMS and any failed examinations shall be sent via email to the Department immediately upon the completion of each examination to the CDL Coordinator or ~~his or her~~ his or her designee.

(k) **Examination fees.** A Third-Party School may charge a fee of no more than Twenty-Five Dollars (\$25.00) for each CDL skills test administered, whether the student passes or fails the exam. A receipt from the Third-Party School must be placed in the student's file, signed by both the student and Third-Party Examiner.

595:11-5-9. Failed examinations and reexamination

(a) If the commercial driver license applicant fails an examination administered by a third-party examiner, the third-party examiner may administer the examination to the applicant up to two (2) additional times. The third party examiner shall wait the required amount of time before reexamining the applicant. If the applicant fails any section of the examination three (3) times, the third party examiner shall refer the applicant to the Department for any further examination.

(b) The third-party examiner shall:

(1) record each failed examination on the commercial driver license application form DL-18-CT [OAC 595:11-5-13(e)];

(2) report each failed examination within the same day of the examination, each failed exam must be reported to the Department:

(A) during the Department's normal business hours:

- (i) by emailing the CDL Coordinator or his or her designee immediately upon completion of each exam, and
- (ii) electronically through CSTIMS immediately upon completion of each exam.

(B) after the Department's normal business hours:

- (i) by emailing the CDL Coordinator or his or her designee immediately upon completion of each exam, and
- (ii) electronically through CSTIMS immediately upon completion of each exam.

(3) not administer a re-examination or another examination to the same student that has failed any part of the examination for a minimum of two business days until two business days after the failed test, unless the student has failed the examination three (3) times. The Third party examiner will refer the student to the Department of Public Safety for the fourth examination.

(4) not administer a re-examination in a different vehicle that is not an exact representative vehicle to include but not limited to brakes, transmission, or class without re-examining any previously passed segments of the skills test.

595:11-5-10. Commercial driver license applicant

(a) Any commercial driver license applicant who requests an examination from a third-party examiner shall:

(1) have enrolled in and successfully completed the school bus driver course or truck driver course, as approved by the Department, at the certified school employing the third party examiner, and

(2) take the skills examination on a route approved by the Department for the certified school employing the third-party examiner.

(b) Any commercial driver license applicant who does not pass the skills examination administered by a third-party examiner, Third-Party Examiner

(4) shall wait the required amount of time [see 595:11-3-7 and 595:11-3-9 see OAC 595:11-5-7 and OAC 595:11-5-9] before being reexamined, and

(2) shall be given no more than two (2) subsequent examinations by the third party examiner at the certified school, at the discretion of the third party examiner. Further examination of the driver license applicant shall be conducted by the Department.

(c) Any commercial driver license applicant who needs an emergency certificate as a bus driver shall be examined only by the Department.

(4) Enrollment in or successful completion of a school bus driver course or a truck driver course, or successful passage of a skills examination administered by a third-party examiner shall not grant to the commercial driver license applicant the privilege to operate any commercial class vehicle.

595:11-5-11. Records to be maintained by certified schools and third-party examiners

(a) **Certified schools.** A certified school shall be responsible for maintaining all records pertaining to:

- (1) the certification of the school,
- (2) third-party examiners currently employed by the school,
- (3) the certification of each third-party examiner,
- (4) Currently certified third-party examiners, and previously certified third-party examiners, employed by the school for the immediately preceding three (3) years,
- (5) examination certificates and pre-trip formsscore sheets for each examination administered,
- (6) Form DL-18-CT,
- (7) class rosters for classes conducted or certificate of completion for online training and completion letter for SDE instructor for five (5) hours behind-the-wheel training,
- (8) commercial learner permits and base license,
- (9) commercial driver license application in which an examination was administered by a third-party examiner employed by the school,
- (9) all correspondence between the school and the Department, and
- (10) examinations and the scores of those examinations, and receipts of all money collected when applicants are charged for an administered test.

(11) records of previously certified third party examiners.

(b) **Third-party examiner.** A third-party examiner shall be responsible for assisting the school in the maintenance of records described in (a).

(c) **Length of time records are to be kept.** All records shall be kept for a period of three (3) years and shall be open for audit and inspection by the Department, the State Board

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of Education, the Oklahoma Board of Career and Technology Education, and the Federal Motor Carrier Safety Administration. An employee of any of the aforementioned entities shall not be required to give prior notice before appearing to examine the records of a certified school or a ~~third-party examiner~~ Third-Party Examiner.

595:11-5-12. Records to be maintained at the Department

(a) **School records.** The following records shall be maintained by the Department ~~at its headquarters~~ for each certified school, for each previously certified school, and for each school district, and technology center school, and any commercial truck driving school which submitted an application for certification, whether the application was approved or denied by the Department within the last three (3) years:

- (1) The original application and all subsequent renewal applications, including investigative reports.
- (2) Evidence of approval or denial of the application by the Department.
- (3) Current third-party examiners employed by ~~the~~ a certified school.
- (4) Former third-party examiners employed by ~~the~~ a certified school within the last three (3) years.
- (5) ~~Annual quality inspection~~ co-score and audit reports.
- (6) Complaints received.
- (7) Commendations received.
- (8) Evidence of violation of any standard, requirement, state statute, Department rule, or federal law or regulation relating to skills examinations.
- (9) Correspondence.
- (10) ~~Expired certifications.~~
- ~~(11) Canceled, suspended or revoked certifications.~~
- ~~(12) Audits.~~

(b) **Third-party examiner and driver training instructor records.** The following records shall be maintained by the Department ~~at its headquarters~~ for each third-party examiner and for each driver training instructor who submitted an application for certification as a third-party examiner, whether the application was approved or denied certification by the Department:

- (1) The original application and all subsequent renewal applications, including investigative reports.
- (2) Evidence of approval or denial of the application by the Department.
- (3) The name of the certified school employing the examiner or instructor.
- (4) The name of any certified school which employed the examiner within the last three (3) years.
- (5) ~~Annual quality inspection~~ co-score and audit reports.
- (6) Complaints received.
- (7) Commendations received.
- (8) Evidence of violation of any standard, requirement, state statute, Department rule, or federal law or regulation relating to driver license examination.
- (9) Correspondence.

- (10) Expired certifications.
- (11) Canceled, suspended or revoked certifications.
- (12) ~~Individual files of audits.~~
- ~~(13) Student Rosters.~~
- ~~(14) Examination Activity~~ Monthly Reports.

(c) In addition to the records specified in paragraphs (a) and (b) of this Section, the Department shall make available to the public upon request a list of all current third-party examiners and certified schools.

595:11-5-13. Prescribed forms

(a) **Certified school application.** A school district, ~~or technology center school, or any commercial truck driving school~~ shall request an application from the Department to apply for certification an original or renewal of a certification as a certified school. ~~A certified school shall request an application form from the Department to apply for renewal of certification as a certified school.~~ The application shall require the applying school to provide the following information:

- (1) Date of application.
- (2) Whether the application is an original or renewal application.
- (3) Name of the Oklahoma school.
- (4) Name and number of the school district or commercial truck driving school.
- (5) Complete physical address and mailing address.
- (6) County name and number.
- (7) Name of administrator or superintendent.
- (8) Telephone number of administrator or superintendent of the school district or commercial truck driving school.
- (9) Name of transportation director of the school district or administrator/operator of the commercial truck driving school.
- (10) Name of each third-party examiner employed by the certified school, if the application is for renewal of certification.
- (11) Statement of agreement to comply with rules of the Department and with the provisions of the appropriate memorandum of understanding and any subsequent contracts and memorandums.
- (12) Any other information the Department deems necessary to process the application.
- (13) Signature of the administrator or superintendent.

(b) **Third-party examiner application.** A driver training instructor shall request an application form from the Department to apply for an original or renewal of a certification as a third-party examiner. ~~A third-party examiner shall request an application form from the Department to apply for renewal of certification as a third party examiner.~~ The application shall require the applicant to provide the following personal information:

- (1) Date of application.
- (2) Whether the application is an original or renewal application.
- (3) Full name of the applicant.
- (4) Complete ~~home~~ Oklahoma residential and mailing address and mailing address of the applicant.

- (5) Telephone numbers (residence and business) of the applicant.
 - (6) Name of the employing school.
 - (7) Name and number of the school district in which the employing school is located.
 - (8) Date of birth of the applicant.
 - (9) Social security number of the applicant.
 - (10) Oklahoma commercial driver license number of the applicant.
 - (11) Any other information the Department deems necessary to process the application.
 - (12) Signature of the applicant.
- (c) **Certified school certificate.** The certificate for a certified school shall include, but not limited to, the following information:
- (1) Official name and seal of the Department.
 - (2) Official name of the school.
 - (3) School district name and number or technology center or commercial truck driving school name.
 - (4) City (when applicable) and county where the school is located.
 - (5) Type of certification.
 - (6) Date of certification.
 - (7) Expiration date of certification.
 - (8) A unique certification number.
 - (9) Name and signature of the Commissioner of Public Safety.
- (d) **Third-party examiner certificate.** The certificate for a third-party examiner shall include, but not limited to, the following information:
- (1) Official name and seal of the Department.
 - (2) Full name of the third-party examiner.
 - (3) Name, school district name and number or technology center or commercial truck driving school name, city (when applicable), county, and certification number of the certified school employing the third-party examiner.
 - (4) Type of certification.
 - (5) Date of certification.
 - (6) Expiration date of certification.
 - (7) A unique certification number.
 - (8) Name and signature of the Commissioner of Public Safety.
- (e) **Oklahoma commercial driver license application.** ~~Oklahoma commercial driver license application forms (DPS Form DL-18-CT) shall be provided to each certified school. Each portion of the application shall be completed by the appropriate person, as indicated on the application, using black ink only. The commercial driver license applicant shall complete the applicant's portion of the application form and submit the form to the third party examiner. The third party examinerThird-Party Examiner shall document on the commercial driver license application form;~~
- (1) the specific identifying information related to the commercial motor vehicle used in the skills examination, including:
 - (i) the license plate number,
 - (ii) the gross vehicle weight rating (GVWR), the license plate number, as well as

- ~~any other specific identifier pertinent to the commercial motor vehicle used in the skills examination.~~
- (2) ~~the third party examiner shall also document on the form the results of the each skills examination, administered to the applicant, whether passed or failed, administered to the applicant~~
- (3) the required endorsements and restrictions applicable to the commercial driver license.
- (4) The class of commercial motor vehicle applicable to the commercial driver license.
- (5) If the applicant successfully passes the skills examination administered by the Third-Party Examiner, the verification and approval of all information on the application shall be documented by the Third-Party Examiner with a:
 - (i) signature,
 - (ii) school seal, and
 - (iii) examiner stamp verifying all the information on the application, and approving the application, if the applicant successfully passes the skills examination administered for the class of commercial motor vehicle and any endorsements.
- (f) **Approval.** Upon approval by the ~~third party examinerThird-Party Examiner~~ and completion of all information required of the ~~examiner, the examiner~~ shall return the application form to the applicant.
- (g) **Procedures after approval.** The applicant shall surrender the approved application to a Driver License Examiner of the Department to complete any required licensing procedures, including, but not limited to, the administration of written examinations.
- (h) **Where to obtain forms.** ~~All Necessary~~ forms are provided by the Department and can be obtained by a certified school or a ~~third party examinerThird-Party Examiner~~ by written or electronic request to: Department of Public Safety, Driver License Services, P.O. Box 11415, Oklahoma City, Ok 73136-1415.

595:11-5-14. Official seal, Map and CDL Examiners Manual

- (a) The Department will provide its official seal to each ~~third party examinerThird-Party Examiner~~. The certified school shall provide its official seal to each ~~third party examinerThird-Party Examiner~~ it employs. The ~~seals~~ seal shall be imprinted upon each approved Oklahoma Commercial Driver License Application (DPS Form DL-18-CT) signed by the ~~third party examinerThird-Party Examiner~~ as a part of the ~~examiner'sExaminer's~~ verification of each skills examination administered to the applicant whose name appears on the application form.
- (b) If the ~~third party examinerThird-Party Examiner~~ does not renew certification as a ~~third party examinerThird-Party Examiner~~, or leaves the employment of or is terminated from employment by the certified school, the official seal of the Department, map, score sheets and/or testing tablet, and CDL Examiners Manual shall be surrendered by the examiner to the school. The school shall ensure the official seal of the Department, map, CDL Examiners Manual, and score sheets

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and/or testing tablet ~~is~~are surrendered to it by the ~~third party examiner~~Third-Party Examiner. The school shall immediately notify the Department by telephone of the status of the ~~third party examiner~~Third-Party Examiner along with written notification of the status of the ~~examiner~~Examiner.

(c) All documentation required by the Department, including, but not limited to, the official seal, score sheets and/or testing tablet, map and examiners manual, shall be locked up in a secure area on the school premises.

595:11-5-15. Prohibited acts; conduct

(a) **Certified schools - prohibited acts.** A certified school shall not:

(1) permit to be used any form of alcoholic beverage or drugs in, on or about the school premises, including the examination route, or in any commercial motor vehicle being used for the purpose of training or administering a skills examination,

(2) require or permit the administration of an examination to any commercial driver license applicant with any physical ~~handicap~~disability. The ~~third party examiner~~Third-Party Examiner shall direct these individuals to a Department Driver License Examiner.

(3) require or permit the administration of an examination to any person who has not enrolled in and successfully completed a course at the certified school employing the Third-Party Examiner, another school district that is recognized by the State Department of Education, another technology center school that is recognized by the Oklahoma Board of Career and Technology Education, as or any commercial truck driving school submitted to and approved by the Department. The ~~third party examiner~~Third-Party Examiner shall not administer the skills test to applicants he or she has instructed in the classroom and/or in behind the wheel training.

(4) require or permit any person other than a ~~third party examiner~~Third-Party Examiner employed by the school to administer any examination,

(5) require or permit the administration of an examination in a vehicle required to be placarded for hazardous materials or any other vehicle referred to in OAC 595:11-3-8, or

(6) commit or omit any act which constitutes a violation of any of the rules of this Subchapter or the laws of this state or federal regulations governing ~~third party examiner~~Third-Party Examiner certification.

(7) Failure to comply with Third-Party Examiner Program requirements, the Third Party Examiner Agreement, applicable federal or state statutes and regulations may result in the suspension or revocation of the school, the designated responsible person, the Third-Party Examiner Program and/or the Third-Party Examiner's testing privileges.

(8) Penalties for non-compliance violations with this program are defined and applied as follows:

(A) **Administrative Non-Compliance.** Failure to meet requirements for reporting, notifications, record keeping, or similar acts that do not compromise test integrity or public safety.

(i) First violation of Administrative Non-Compliance will result in a warning letter sent to the school.

(ii) The second and subsequent violations of Administrative Non-Compliance will result in a thirty (30) day suspension of testing authority issued by the Department.

(B) **Discrepancy in Test Procedure (substandard testing).** The following will result in the termination of the testing authority and permanent removal from the program:

(i) failure to properly administer a required portion of an otherwise complete test procedure, such as omission of a required maneuver, or

(ii) failure to include all required parts of a test procedure, such as omission of the vehicle inspection, or

(iii) failure to use an approved test route, or

(iv) use of an unsafe vehicle, or

(v) any other action determined to significantly compromise the integrity of the test process or public safety will result the termination of the testing authority and permanent removal from the program.

(C) **Fraud.** The following fraudulent activity will result in the termination of testing authority:

(i) profiting from the issuance of a license to a person that has not passed a complete skills test,

(ii) falsification of records or information,

(iii) refusal to allow access to all documents, papers, letters and material subject to the provisions of the Third-Party Tester Program, or

(iv) commits an act that, in the opinion of the Department, compromises the integrity of the Program.

(b) **Third party examiner Third-Party Examiner - prohibited acts.** A ~~third party examiner~~Third-Party Examiner shall not:

(1) not use or permit to be used any form of alcoholic beverage or drugs in, on or about the school premises, including the examination route, or in any commercial motor vehicle being used for purpose of training or administering a skills examination,

(2) not administer an examination to any commercial driver license applicant with any physical handicap,

(3) not administer an examination to any person who has not enrolled in and successfully completed a course at the certified school employing the ~~third party examiner~~Third-Party Examiner, another school district that is recognized by the State Department of Education, another technology center school that is recognized by the Oklahoma Board of Career and Technology Education, or any commercial truck driving school as submitted to and approved by the Department,

(4) not administer an examination to any person who has not been issued and/or does not possess a commercial learner permit (issued at least fourteen (14) days, excluding the date of issuance, prior to the date of the

examination) for the class of vehicle and proper endorsements and restrictions in which the examination is to be given,

(5) not administer an examination in a vehicle required to be placarded for hazardous materials or any other vehicle referred to in OAC 595:11-3-8.

(6) not administer an examination to any person related by consanguinity (by blood relation) or affinity (by marriage) within the third degree, or to any person who is not enrolled in or has enrolled in and completed a course of study, as defined in OAC 595:11-7-2 ~~from the school which employs the examiner.~~

(7) not accept any present, meals, goods or services, trades, or favor from an applicant or any other person who has or may have an interest in the outcome of an examination, or accept any employment which represents a conflict of interest to the examination process.

(8) not use the ~~third-party examiner~~ Third-Party Examiner position for any personal advantage, ~~or~~

(9) not commit or omit any act which constitutes a violation of any of the rules of this Subchapter or the laws of this state or federal regulations governing ~~third-party examiner certification~~ Third-Party Examiner certification. The Department reserves the right to take prompt and appropriate remedial action against a Third-Party Examiner that fails to comply with State or Federal laws, rules, and or regulations for the CDL testing program, or any other terms of the Third-Party Examiner contract.

(10) not administer the skills test to applicants he or she has instructed in the classroom ~~and/or~~ in behind the wheel training.

(11) not administer an examination to any student that is not enrolled in or has completed a course of study as defined in OAC 595:11-7-2 ~~from the third-party examiner's employing school.~~

(12) not take part in, or conceal others taking part in, any fraudulent activity that may threaten the certification of Oklahoma's CDL Program. This shall result in a revocation of the Third-Party Examiner certification and may result in criminal charges.

(13) not falsify any required records, applications, or forms. This shall result in a revocation of the Third-Party Examiner certification. Such falsification may also result in criminal prosecution.

(14) not allow anyone in or around the vehicle other than students being tested, the Third-Party Examiner, Federal and/or Department auditors or inspectors while the skills test is being conducted.

(15) not assist a student in a manner that provides an unfair advantage in passing the skills test such as giving hints or stopping the vehicle before it hits a boundary during the basic control skills.

(16) not permit a translator or other intermediary to interpret any portion of the CDL Skills Test. Additionally, federal regulations prohibit any Third-Party Examiner from conversing with a student in any language other than English.

(17) start the CDL test on time, in accordance with the Notification of Scheduled Test. The Department must be notified via email immediately if a test is canceled.

(18) complete all three segments of the CDL Skills Test in the following order: vehicle inspection, basic control skills test, and road test.

(c) ~~Third-party examiner~~ **Third-Party Examiner - conduct.** A third-party examiner ~~Third-Party Examiner~~ shall:

(1) Recognize that his or her position is of the highest public trust and that, on the wisdom of his or her decision, the lives of many people may depend,

(2) Impartially administer all official duties without regard to race, gender, creed, position, or influence, ~~according~~ affording no applicant more favorable treatment than any other,

(3) Conduct each examination in a manner which reflects:

(A) its importance to society,

(B) its seriousness to the individual, and

(C) the unquestioned competence of the examiner,

(4) Exercise only the legal authority as has been duly vested in the position of a ~~third-party examiner~~ Third-Party Examiner, and

(5) Fully appreciate and fulfill the responsibilities of his or her certification in order to strengthen public confidence in the training and examination of commercial driver license applicants.

(6) Know that taking part in, or concealing others taking part in, any fraudulent activity that may threaten the certification of Oklahoma's CDL Program shall constitute immediate release and automatic ban from the Third-Party Examiner Program and may result in criminal charges.

(d) **Administrative Hearings.** Any licensee that has his or her certification revoked, denied, suspended or cancelled under this section may request an administrative hearing pursuant to OAC 595:1-3-1 through 595:1-3-20.

595:11-5-16. Termination of contracts and agreements

Contracts and agreements entered into by the State Board of Education, by the Oklahoma Board of Career and Technology Education, or by the Department or an individual certified school and the Department, may be terminated by either party, by giving written notice to the other party, stating cause or reason for termination, as provided by the applicable memorandum of understanding.

595:11-5-17. Withdrawal or denial of certification

(a) ~~The Department may:~~ The Department reserves the right to take prompt and appropriate remedial action against a Third-Party Examiner that fails to comply with State or Federal standards for the CDL testing program, or with any other terms of the Third-Party Examiner contract.

(b) ~~cancel, suspend, revoke, or refuse to renew the certification of a certified school or third-party examiner for failure to comply with any provisions of state law, federal regulation, or Department rule.~~ The Department reserves the right to take prompt and remedial action against a Third-Party Examiner

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that falsifies any required records, applications, or forms. Such falsification may also result in criminal prosecution.

(c2) The Department reserves the right to take prompt and appropriate remedial action against a Third-Party Examiner that fails to comply with Third-Party Examiner Program requirements, the Third-Party Examiner Agreement, applicable Federal or State statutes and regulations may result in the suspension or revocation of deny certification to a school district, or technology center, or any commercial truck driving school, designated responsible person and/or the Third-Party Examiner's testing privileges, applying for certification as a certified school for failure to meet the requirements prescribed by this Subchapter.

(d3) The Department may deny certification to any school district, technology center, or any commercial truck driving school or driver training instructor applying for certification as a third party examiner Third-Party Examiner or for failure to meet the requirements prescribed by this Subchapter.

(e) Should the Department deny a certification or license to any school or Third-Party Examiner, the Department shall notify the school or Third-Party Examiner in writing within forty-five (45) days from the denial.

(fb) Where it is determined that a minor disqualification exists which may readily be rectified by the school or third party examiner Third-Party Examiner within twenty-four (24) hours, the Department may informally notify the party by mail or telephone of the minor disqualification or violation, with a request for compliance within a specified period of time. If the party fails to rectify the minor disqualification or violation, the Department may proceed to deny, suspend, revoke or cancel certification.

(ge) The Department may deny or cancel certification of any applicant, certified school, or third party examiner Third-Party Examiner for not more than five (5) years when it is determined and good cause appears that the applicant, school, or examiner demonstrated willful disregard of the rules established in this Subchapter or committed other negligent acts.

(hd) Should the Department be required to re-test applicants as a result of fraudulent or negligent testing practices; the contractor party to the agreement with the Department shall be required, if not bonded, to reimburse the Department at the base rate of pay for a current Department of Public Safety Commercial Driver License Examiner, including any travel, and other accrued expenses.

(i) Any licensee that has his or her certification revoked, denied, suspended or cancelled under this section may request an administrative hearing pursuant to OAC 595:1-3-1 through 595:1-3-20.

SUBCHAPTER 7. TRUCK DRIVER TRAINING

595:11-7-2. Definitions

In addition to terms defined in 47 O.S., §1-101 et seq., the following words or terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise. Use of the singular term includes the plural, and use of the plural term includes the singular.

"Business day" means Monday through Friday 8:00 a.m. to 4:45 p.m., excluding state and federal holidays.

"Credential" means endorsements, major and/or minor teaching areas, licenses, as well as professional, standard, provisional, temporary, and emergency certificates.

"Commercial motor vehicle" means a vehicle used for training students in Class A, B, or C commercial motor vehicles as defined in 47 O.S. §1-107.1, 1-107.2 1-107.3.

"Course of study" means a course of study in truck driver training, including highway signs, signals, markings and design, rules of the road, state laws, local ordinances, basic driving maneuvers, and safe operation of commercial motor vehicles on streets and highways; including 49 CFR 380.600 - 609 Subpart F-Entry Level Driver Training Requirements set forth in appendices A through E of part 380.

"Endorsements" means credentials placed on valid licenses or certificates, or both, to indicate that the holder is eligible to teach specific subjects. An endorsement qualifies the holder to teach a full day in the subject of the endorsement.

"Instructor" means a qualified commercial truck driver training instructor who is certified by the Department to instruct students desiring to apply for a commercial license, at an approved commercial truck driver training school.

"School" means a business enterprise conducted as a commercial truck driver training school by an individual, association, partnership, or corporation for the purpose of education and training of students desiring to apply for a commercial driver license; including the requirements set forth in 49 CFR 380.700-725 Subpart G- Registry of Entry-Level Driver Training Providers.

595:11-7-3. School licenses and instructor permits

In general. A school license shall be required for ~~any school, school who that offer-offers any form of instruction, whether it is to~~ entry-level truck driver ~~trainees~~ training to students who do not possess a valid commercial driver license or any form of refresher training. An instructor permit shall be required for instructors who teach truck driver training.

(1) **Schools - original application.** Applications must be submitted at least ninety (90) days in advance of opening a school to allow the Department to conduct a pre-audit and ensure suitable location.

(A) All applications for an original school license shall be made on a form provided by the Department. The term of each original school license shall be for a period of one (1) year.

(B) Each application for an original school license shall be accompanied by:

(i) a fee of Twenty-five Dollars (\$25.00), which shall be paid to the Department by money order, cashier's check, or business ~~personal~~ check. No other forms of payment will be accepted.

(ii) a schedule of fees and charges,

(iii) a certificate of insurance from a company licensed to conduct business in this State certifying proper commercial insurance coverage to include the vehicle inventory.

- (iv) the make, model and vehicle identification number of each commercial motor vehicle used for training purposes, if truck and/or trailer are leased, a copy of the lease agreement and
- (v) a sample copy of each type of contract or agreement which the school may enter into with students-
- (C) No license fee shall be refunded in the event the license is rejected, suspended or revoked by the ~~Commissioner~~ Department of Public Safety.
- (D) All applications shall be approved by the Department before a school shall be permitted to open for business.
- (E) Every operator of a school shall be required to have an instructor permit.
- (F) Application for a school license may be obtained:
 - (i) upon request by mail from the Department of Public Safety, Driver License Services, P.O. Box 11415, Oklahoma City, Oklahoma 73136-0415, or
 - (ii) on the Department's website at www.ok.gov/dps, or
 - (iii) contacting the CDL Coordinator by phone at 405-425-2300.
- (G) All schools shall meet the requirements of OAC 595:11-7-13.
- (H) The individual school may apply no more than two (2) times each calendar year.
- (2) **Schools - renewal application.**
 - (A) All applications for a renewal school license shall be made on a form provided by the Department of Public Safety. The term of each renewal school license shall be for a period of one (1) year.
 - (B) Each application for a renewal school license shall be accompanied by:
 - (i) a fee of Twenty-five Dollars (\$25.00), which shall be paid to the Department by money order, cashier's check, or business/~~personal~~ check, no other forms of payment will be accepted.
 - (ii) a schedule of fees and charges, if any changes have been made since the last license issuance,
 - (iii) a certificate of insurance from a company licensed to conduct business in this State certifying proper commercial insurance coverage (must include appendix of listed vehicles insured for training) to include the vehicle inventory,
 - (iv) the make, model and vehicle identification number of each commercial motor vehicle used for training purposes, and
 - (v) a sample copy of each type of contract or agreement which the school may enter into with students.
 - (C) All application forms for renewal school licenses shall be mailed by the Department to each school no later than October 1 every year. Each school desiring to renew shall submit an application to the Department no later than November 15 of each

year. If application for renewal is not received by the required date and the Department is unable to process and approve the application by December 31, the commercial school shall cease operation on January 1 of the following year and shall not resume operation until the application for renewal is processed and approved by the Department.

(3) **Instructors - original applications.**

(A) All applications for an original instructor permit shall be made on a form provided by the Department. The term of an original instructor permit shall be for a period of no more than one (1) year. An instructor shall make application for each school location where he or she will be instructing. An instructor permit for a particular school shall become invalid upon termination of employment with that school. If an instructor accepts employment with another school or schools, an instructor permit shall not be transferable, and the instructor shall apply for an original license for each school where he or she is employed.

(B) Each application for an original instructor permit shall be accompanied by:

- (i) documentation required by OAC 595:11-7-4, and
- (ii) a fee of Five Dollars (\$5.00), which shall be paid to the Department by money order, cashier's check, or business/~~personal~~ check. ~~If the instructor is licensed at multiple schools with the same owner, only one (1) fee of Five Dollars (\$5.00) shall be paid. If the instructor is licensed at multiple schools with different owners, a fee of Five Dollars (\$5.00) shall be paid for each school with a different owner. No other forms of payment will be accepted.~~
- (iii) the requirement to meet at DPS Headquarters with the CDL Coordinator and/or his or her designee to discuss the program requirements and expectations.

(C) An application to be certified a CDL Instructor may be submitted no more than two (2) times per calendar year.

(4) **Instructors - renewal applications.**

(A) All applications for a renewal instructor permit shall be made on a form provided by the Department. The term of each renewal instructor permit shall be for a period of one (1) year. An instructor shall make application for each school location where he or she will be instructing. An instructor permit for a particular school shall become invalid upon termination of employment with that school. If an instructor accepts employment with another school or schools, an instructor permit shall not be transferable, and the instructor shall apply for an original license for each school where he or she is a new employee.

(B) Each application for a renewal instructor permit shall be accompanied by:

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(i) documentation required by OAC 595:11-7-4, and

(ii) a fee of Five Dollars (\$5.00), which shall be paid to the Department by money order, cashier's check, or business/personal check. ~~If the instructor is licensed at multiple schools with the same owner, only one fee of Five Dollars (\$5.00) shall be paid. If the instructor is licensed at multiple schools with different owners, a fee of Five Dollars (\$5.00) shall be paid for each school with a different owner. No other forms of payment will be accepted.~~

(C) Any instructor who allows his or her instructor permit to lapse or expire without renewal shall reapply as if for an original instructor permit.

595:11-7-4. Qualifications for instructors

An instructor employed by a school shall submit to the Department of Public Safety, upon application, proof of the following:

- (1) current employment by a Department-certified school which that offers a prescribed course of study;
- (2) possessing a valid Oklahoma commercial driver license, with proper class and endorsements commensurate with type or types of vehicles and endorsements which are the subject of instruction;
- (3) being at least twenty-one (21) years of age;
- (4) having never been convicted of a felony as evidenced by a nationwide criminal background check certified within the immediately preceding thirty (30) days;
- (5) if applicable, having driving privileges reinstated for at least twelve (12) months, if driving privileges were suspended, canceled, revoked, denied, or disqualified for a driving-related conviction or for Department action related to driving under the influence or driving while impaired. If driving privileges are suspended, canceled, revoked, denied, or disqualified only for a non-driving-related conviction or reason, the applicant shall be eligible immediately upon reinstatement of driving privileges;
- (6) having not been convicted of misdemeanor possession or use of alcohol or drugs within the past twelve (12) months;
- (7) having not more than five (5) point violations on the driving record;
- (8) having no administrative action pending at the Department pursuant to 47 O.S. §§753, 754, or 754.1;
- (9) having a high school diploma, ~~or~~ a general education diploma, or a college degree; and
- (10) having three (3) years verifiable driving experience, to include the proper endorsements, in the type of vehicle or vehicles used by the school for instructional purposes. The verifiable driving experience must be within ten (10) years of the application date; and must be verifiable through HireRight or the equivalent electronic background unless self-employed. If the driving experience is from self-employment, three (3) years of tax returns

with the company information must be provided to the Department.

(11) current medical examiner's certificate.

595:11-7-7. Inspection of school premises and commercial motor vehicles

A school shall allow the Department, the Federal Motor Carrier Safety Administration, or their representatives, to conduct examinations, inspections and audits of premises, records, and commercial motor vehicles without prior notice.

595:11-7-8. Written notice of denial, suspension, or revocation

(a) Any applicant who is denied an instructor permit or whose permit is suspended by the Department of Public Safety shall receive written notice of reason for denial, suspension, or revocation and be given an opportunity for hearing pursuant to OAC 595:1-3-3. In accordance with the rules of this Subchapter, an instructor's permit shall be suspended or revoked upon failure to remain in compliance with driving record requirements or for other good cause as determined by the Department.

(b) A certified school and/or instructor shall not take part in, or be aware of any others taking part in, any fraudulent activity that may threaten the certification of Oklahoma's CDL Program. This shall constitute immediate release and automatic ban from the commercial truck school program and may result in criminal charges.

595:11-7-9. Prescribed course of study

(a) A prescribed course of study commercial truck driver training shall be designed to develop knowledge of those provisions of the Title 47 of the Oklahoma Statutes, other laws of this state, and federal laws and regulations relating to the operation of commercial motor vehicles; acceptance of personal responsibility in traffic; appreciation of the causes, seriousness, and consequences of traffic collisions; and to develop the knowledge, attitudes, habits, and skills necessary for the safe operation of motor vehicles. In addition, each course of study shall meet the minimum training requirements, as found in 49 CFR, Part 380:

(1) Commercial truck driver curriculum for entry-level instruction for novice truck drivers, including but not limited to:

(A) Section 1 - Basic Operations

- (i) Unit 1.1 - Orientation
- (ii) Unit 1.2 - Control systems
- (iii) Unit 1.3 - Vehicle inspection
- (iv) Unit 1.4 - Basic control
- (v) Unit 1.5 - Shifting
- (vi) Unit 1.6 - Backing
- (vii) Unit 1.7 - Coupling and uncoupling
- (viii) Unit 1.8 - Proficiency development

(B) Section 2 - Safe Operating Practices

- (i) Unit 2.1 - Visual search
- (ii) Unit 2.2 - Communication
- (iii) Unit 2.3- Speed management

- (iv) Unit 2.4- Space management
- (v) Unit 2.5- Night operations
- (vi) Unit 2.6- Extreme driving conditions
- (vii) Unit 2.7- Proficiency development
- (C) Section 3 - Advanced Operating Procedures
 - (i) Unit 3.1-Hazard perception
 - (ii) Unit 3.2-Emergency maneuvers
 - (iii) Unit 3.3-Skid control and recovery
 - (iv) Unit 3.4-Special situations
- (D) Section 4 - Vehicle Maintenance
 - (i) Unit 4.1 - Vehicle systems
 - (ii) Unit 4.2 - Preventative maintenance and servicing
 - (iii) Unit 4.3 - Diagnosing malfunctions
- (E) Section 5 - Non-Driving Activities
 - (i) Unit 5.1 - Handling cargo
 - (ii) Unit 5.2 - Hours of service
 - (iii) Unit 5.3 - Crash procedures
 - (iv) Unit 5.4 - Trip planning
 - (v) Unit 5.5 - Miscellaneous topics
- (2) Commercial truck driver curriculum for refresher and recertification classroom instruction for experienced truck drivers that currently hold a commercial driver license, including but not limited to:
 - (A) Introduction
 - (B) Defensive driving tactics
 - (C) Uniform Vehicle Code (Title 47 of the Oklahoma Statutes)
 - (D) Federal Motor Carrier Safety Regulations as prescribed by the United States Department of Transportation Federal Highway Administration, 49 C.F.R., Parts 383 and 390 through 399
 - (E) Techniques of first aid (Instructor must have valid First Aid Instructor's Card)
 - (F) Driver attitude
 - (G) Fire prevention and fire fighting
 - (H) Map reading and routing
 - (I) Credentials, including:
 - (i) Cab cards
 - (ii) Port of entry
 - (iii) Size and weights permits
 - (iv) Elective of cargo handling
 - (J) Training in preparation for the written examination, pre-trip inspection and examination, and air brake examination, and skills examinations.
- (b) On or after February 7, 2022, commercial driver license holders must be in compliance with the provisions of 49 CFR 380.600 subpart F-Entry Level Driver Training Requirements and meet the curriculum requirements set forth in appendices A through E of part 380(f) , prior to completing the required knowledge examination.
- (c) On or after February 7, 2022, commercial driver license holders must complete the Hazardous Materials Endorsement Training Curriculum, CFR 49 part 380 Appendix E-Hazardous Materials Endorsement Training Curriculum prior to completing the required knowledge examination.

595:11-7-10. Specification for commercial motor vehicles

- (a) Commercial motor vehicles used in training shall meet the minimum safety standards in the most recent edition of the "North American Standard Out-of-service Criteria," as published annually by the Commercial Vehicle Safety Alliance. Vehicles found in violation of ~~the~~ these standards shall not be used for training or leased to an applicant for use in the commercial driver license skills examination.
- (b) All students and instructors shall comply with the Oklahoma Mandatory Seat Belt Use Act, 47 O.S. §§ 12-416 through 12-420, whenever the vehicle is in operation.
- (c) Signs shall be placed on each commercial vehicle used in training shall be marked on each side and on the rear of the vehicle with a sign using with letters no less than two (2) inches in height, as follows: bearing the words: "TRUCK DRIVER TRAINING" or "COMMERCIAL DRIVER TRAINING" and "STUDENT DRIVER".
 - ~~(1) Each truck tractor and trailer shall be marked on each side and on the rear with the a sign bearing the words: "TRUCK DRIVER TRAINING".~~
 - ~~(2) Each trailer shall bear a sign plainly visible from the rear bearing the words: "NOT FOR HIRE".~~
 - ~~(3) Each vehicle used for instruction of truck driver training shall be marked on each side and on the rear with the words "STUDENT DRIVER".~~
 - ~~(4) Any additional signs and markings shall not be placed on on the vehicle without prior approval by the Department of Public Safety.~~
- ~~(d) Each commercial vehicle used in training shall bear a sign plainly visible from the rear bearing the words: "NOT FOR HIRE".~~
 - ~~(1) Each truck-tractor and trailer shall be marked on each side and on the rear with a sign bearing the words: "TRUCK DRIVER TRAINING" or "COMMERCIAL DRIVER TRAINING" and "STUDENT DRIVER."~~
 - ~~(2) Each trailer shall bear a sign plainly visible from the rear bearing the words: "NOT FOR HIRE".~~
 - ~~(3) Any additional signs and markings shall not be placed on the vehicle without prior approval by the Department of Public Safety.~~
- ~~(de) All commercial vehicles, truck-tractors and trailers shall be used only for the purpose of driver training and no school shall accept payment in any way for services rendered from use of the vehicle; provided, the school may lease the truck-tractor or trailer, or both, for the sole purpose of use of the vehicle leased to allow the leasee to take the skills examination as part of the application process for a commercial driver license.~~
- ~~(f) All vehicles must have the vehicle registration, security verification form, and current cab card if registered with apportioned tag. If truck tractor and/or trailers are leased for purposes of training, a lease agreement must be available at the time of inspection.~~
- ~~(g) All commercial vehicles must be inspected and approved by the Department prior to use of any kind or in any form of training. An inspection shall be requested through the CDL Coordinator, or designee, by mail (Department of Public Safety, Driver License Services, P.O. Box 11415, Oklahoma~~

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City, OK 73136), phone (405-425-2300), or email the Department once the vehicle has the vehicle added to the school's inventory and reflected on the school's insurance. Once it has been added to the inventory at the school's location, it cannot be moved to another school location without prior approval from the Department. The Department may require insurance documentation reflecting the commercial vehicle has been added to the new location's inventory.

595:11-7-11. Insurance

- (a) A school shall be insured, by an insurance company licensed to do business in this state, with a commercial liability insurance policy for each commercial motor vehicle used to conduct behind-the-wheel instruction. The minimum amount of insurance shall consist, for any one collision, of at least Fifty Thousand Dollars (\$50,000.00) for bodily injury to or death of one person; One Hundred Thousand Dollars (\$100,000.00) for bodily injury to or death of two or more persons; and Fifty Thousand Dollars (\$50,000.00) for damage to property. The above coverage shall be carried on each vehicle used by the school for driver training purposes.
- (b) Each school shall send a copy of the certificate of insurance, including a schedule of covered vehicles, when applying for the school's original or renewal license. If insurance coverage expires between school renewal certification periods, the school shall send a ~~current~~ copy of the renewal certificate of insurance to the Department.
- (c) In the event the insurance coverage is canceled, a copy of the written notice of cancellation shall be forwarded immediately to the Department by registered or certified mail. Behind-the-wheel instruction shall be immediately suspended until proper verification of insurance coverage is provided to the Department of Public Safety.

595:11-7-12. Reports

- (a) Schools shall provide to the Department of Public Safety on forms provided by the Department, the following:
- (1) Prior to beginning ~~behind-the-wheel~~ instruction on the first day of class, an enrollment roster with a current list of all students enrolled in the school, including for each student the complete legal name, date of birth, phone number and ~~restricted~~ commercial driver license number or commercial learners permit number.
 - (2) Immediately upon a student dropping the course, the school shall submit the student drop form that includes a list of students who drop the course.
 - (3) Upon course completion, the school shall submit a completion roster with a list of students that completed the course.
 - (4) A skills test schedule with a list of students for testing is to be submitted, during business hours, five (5) business days prior to an original test date and two days prior to a re-test date.
 - (5) Other reports as may be requested ~~from time to time~~ by the Department.
- (b) A copy of the completed forms prescribed in (a) of this Section, along with any correspondence with the Department,

shall be kept on file in the office of the school for a minimum of three (3) years.

595:11-7-13. Requirements for schools and classrooms

- (a) **Location and classroom facility of schools.** The school shall:
- (1) have at least one (1) permanent classroom. Each classroom shall be used exclusively for classroom instruction during the time of instruction. A classroom shall not be located in:
 - (A) a residence or residential facility or complex,
 - (B) a motor vehicle, or converted motor vehicle,
 - (C) a hotel or motel, or
 - (D) any other facility which has a bar, lounge, or other business which sells alcohol for public consumption on the premises;
 - (2) display its current and valid school license in the licensee's principal place of business at all times when classes are in session. The license or a copy of the license shall also be made available for inspection to students or prospective students;
 - (3) comply with local municipal ordinances regarding lighting, heating, ventilation, and restroom facilities; and
 - (4) have adequate room for equipment including but not limited to: ~~such as~~ chalkboard, dry-erase board or SMART board, projector, television, tables and chairs for the number of students enrolled in the class being taught,
 - (5) an on location basic control skills pad that is adequate in size to allow for proper training.
 - (6) The application shall not be approved if the school is located or driving instruction is conducted within one (1) mile, using the most direct driving route, of the Department of Public Safety or any district office thereof.
- (b) **Advertising.**
- (1) No school shall use or conduct any business under any name other than its fully licensed name.
 - (2) A sign reading "This school is licensed by the Department of Public Safety, State of Oklahoma" or similar language may be displayed on the school premises.
 - (3) The school may place language such as "This school is licensed by the Department of Public Safety, State of Oklahoma" in any advertisements and publications of the school. However, a school may not use advertisement or publicity that states or implies that the school is specifically or uniquely recognized, recommended, or endorsed, or directly supervised by the Department of Public Safety.
 - (4) No fraudulent or deceptive statements, promotions, or fee incentives shall be used on any sign or in advertisement, whether written or oral.
 - (5) No school shall advertise, by any means, or otherwise state or imply that a commercial driver license or permit is guaranteed or assured to any student or individual who will take or complete any instruction offered by the school.
- (c) **Agreements and schedule of fees.**
- (1) A sample copy of each type of contract or agreement which the school may enter into with students shall

be submitted to the Department with the application for an original or renewal license.

(2) Prior to enrollment or payment of fees, each prospective student shall be provided the following information, in writing:

- (A) the type of instruction offered, whether classroom or behind-the-wheel, or both;
- (B) the length of the course of study and the length of each lesson;
- (C) the cost of the course of study, or the cost per lesson, as applicable to the fee structure of the school;
- (D) the cost to lease a commercial motor vehicle from the school for the purpose of taking the skills examination;
- (E) the terms of payment and disclosure of any interest charged;
- (F) a statement indicating the specific date and time when instruction is to start.

(3) The complete schedule of fees shall be posted in easy view of students and prospective students.

(4) If any school fails to comply with the provisions of this Subchapter, the school shall refund, on a prorated basis, all monies collected from the student.

(d) **Records to be maintained.**

(1) Each school shall maintain a permanently bound book with pages consecutively numbered or a computer spreadsheet, setting forth the name of the school; the name of each student; the contract or agreement number for each student; the type and date of instruction given, whether classroom or behind-the-wheel, for each student. If written, all entries shall be made in ink. This record shall be on a daily time sheet form approved by the Department and initialed by each student for verification after that day's instruction.

(2) All student instruction records for classroom and behind-the-wheel instruction and a duplicate copy of each contract or agreement entered into between the school and the student (the original shall be given to the student) shall be kept on file in the office of each school for a period of three (3) years after the student has concluded instruction at or with the school. Each school shall furnish the student, if requested, an exact copy of his or her instruction record when all of the contracted courses are completed or the student otherwise ceases taking instruction at or with the school. If a school discontinues doing business, the school shall send to the Department a roster of all students who attended the school during the immediately preceding three (3) years, with each student identified as to whether the student successfully completed or did not successfully complete the course of study.

(3) The student instruction record shall contain a copy of a receipt for any monies paid to the school by the student. The receipt shall contain:

- (A) The name of the school.
- (B) The name of the student.
- (C) The date of payment.
- (D) The amount of payment.

(E) The signature of the person receiving the payment.

(4) The student instruction record maintained by the school shall be available at all times for inspection and/or copying by an authorized representative of the Department of Public Safety.

(5) A copy of the student's completion certificate, in a preprinted format prescribed by the Department, shall be provided and issued by the school to each student upon the successful completion of course work (both classroom and behind-the-wheel). The certificate shall contain, at a minimum, the following:

- (A) Name of the school;
- (B) Full legal name of student;
- (C) Number of total hours of instruction (optional)
- (D) Date of completion;
- (E) Signature of administrator (a stamped signature is acceptable).

(6) Medical examiner's certificate.

(7) Copy of the student's valid driver license and commercial learner permit.

(8) Copy of proof of Oklahoma residency: utility bill or Government form bearing the legal name and physical address of the student.

(9) All lease agreements entered into between the school and an individual shall be kept on file in the office of each school for a period of three (3) years after the individual has completed the use of the agreement. Each school shall furnish the individual, if requested, an exact copy of his or her lease agreement. If a school discontinues doing business, the school shall send to the Department all lease agreements with the school during the immediately preceding three (3) years.

595:11-7-14. Prohibited acts; conduct

(a) No school owner, agent, instructor or employee shall:

- (1) instruct on or near the skills examination route used by the Department of Public Safety;
- (2) distribute or use, for any purpose, any test or examination designed or used by the Department;
- (3) use, or permit to be used, any form of alcoholic beverage or drugs in, on or about the premises of the school or a commercial motor vehicle being used for truck driver training;
- (4) engage in any conduct involving moral turpitude; or
- (5) commit or omit any act which constitutes a violation of any of the rules of this Subchapter or the laws of this state governing driver training.
- (6) instruct, or train, in any way prior to being licensed by the Department.
- (7) use any commercial vehicle for any part of training prior to being inspected by the Department.
- (8) move or remove any equipment on the inventory list without receiving written approval from the Department first.

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- (9) not take part in, or be aware of any others taking part in, any fraudulent activity that may threaten the certification of Oklahoma's CDL Program. This shall constitute immediate release and automatic ban from the commercial truck school program and may result in criminal charges.
- (b) Instructors shall at all times be cognizant of their primary obligation to render impartial, efficient, and effective service to the public in the discharge of their duties and to always regard their position as a public trust.

595:11-7-15. Suspension or revocation of license

- (a) ~~The Commissioner~~Department of Public Safety may cancel, suspend, revoke, or deny a school license or an instructor permit, as prescribed in 47 O.S. § 806.
- (b) Where it is determined that a minor disqualification or violation exists which may be ~~readily~~ rectified by the school or instructor within twenty-four (24) hours, or by an applicant for a school license or instructor permit the Department of Public Safety may informally notify the party by mail or electronically of the minor disqualification or violation, with a request for compliance within a specified period of time. If the party fails to rectify the minor disqualification or violation, the Department may proceed to deny, suspend, revoke or cancel the school license.
- (c) Any school and/or instructor that takes part in, or conceals others taking part in, any fraudulent activity that may threaten the certification of Oklahoma's CDL Program will be immediately released and automatically banned from the commercial truck school program and may result in criminal charges.
- (d) Failure to comply with Truck Driving School requirements, Oklahoma Administrative Code, and any applicable Federal or State statutes and regulations may result in the suspension or revocation of the Truck Driving School and/or training privileges.
- (e) Penalties for non-compliance violations with this program are defined and applied as follows:

- (1) Administrative Non-Compliance. Failure to meet requirements for reporting, notifications, record keeping, or similar acts that do not compromise test integrity or public safety.

- (A) First violation of Administrative Non-Compliance will result in a warning letter sent to the school.
- (B) A second or subsequent Administrative Non-Compliance violation will result in a thirty (30) day suspension of testing authority will be issued by the Department.

- (2) Discrepancy in Test Procedure (substandard testing). The following will result in the termination of the testing authority and permanent removal from the program:

- (A) failure to properly administer a required portion of an otherwise complete test procedure, such as omission of a required maneuver, or
- (B) failure to include all required parts of a test procedure, such as omission of the vehicle inspection, or
- (C) failure to use an approved test route, or

- (D) use of an unsafe vehicle, or
- (E) any other action determined to significantly compromise the integrity of the test process or public safety will result the termination of the testing authority and permanent removal from the program.

- (3) **Fraud.** The following fraudulent activity will result in the termination of testing authority:

- (A) profiting from the issuance of a license to a person that has not passed a complete skills test,
- (B) falsification of records or information,
- (C) refusal to allow access to all documents, papers, letters and material subject to the provisions of the Third-Party Tester Program, or
- (D) commits an act that, in the opinion of the Department, compromises the integrity of the Program.

- (f) Any licensee that has his or her certification revoked, denied, suspended or cancelled under this section may request an administrative hearing pursuant to OAC 595:1-3-1 through OAC 595:1-3-20.

SUBCHAPTER 9. DRIVER STATUS NOTIFICATION SYSTEM

595:11-9-3. Definitions

In addition to terms defined in 47 O.S., § 1-101 et seq., the following words or terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise. Use of the singular term includes the plural, and use of the plural term includes the singular.

"**Department**" means the Department of Public Safety.

"**Employer**" means an individual, organization, company or other entity employing or engaging drivers, including independent contract drivers, to operate motor vehicles, as defined in 47 OS, §§ 1-107.1, 1-107.2, 1-107.3, and 1-107.4 during the course of employment.

"**Driver**" means a driver licensee working for an employer as an operator of a motor vehicle, or driver licensee who has applied to an employer, as evidenced by a signed application for work on file with the employer, to work as an operator of a motor vehicle.

"**Driver Status Notification System**" means the web-based system developed by the Department *whereby an employer of a driver may be automatically notified, pursuant to a fee schedule established by the Department, should the driving record of a driver reflect a traffic conviction in any court or an administrative action by the Department which alters the status of the driving privileges of the person* [47 O.S., § 6-117(E)].

"**Enrolled**", "**enrolling**" or "**enrollment**" means participation of a driver, as requested by the employer of the driver, in the Driver Status Notification System of the Department.

"**Subscribe**", "**subscribing**" or "**subscription**" means participation by an employer in the Driver Status Notification System of the Department.

[OAR Docket #20-530; filed 7-6-20]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 25. WRECKERS AND TOWING SERVICES**

[OAR Docket #20-531]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
595:25-1-2. Definitions [AMENDED]
Subchapter 3. Wrecker License
595:25-3-1. General Requirements [AMENDED]
595:25-3-4. Trade name [AMENDED]
Subchapter 5. All Wrecker Operators
595:25-5-1. Physical requirements for storage facility [AMENDED]
595:25-5-9. Inspections [AMENDED]
Subchapter 7. Class AA Operators
595:25-7-2. Release and holding of vehicle [AMENDED]
Subchapter 9. Oklahoma Highway Patrol Rotation Log - Additional Requirements
595:25-9-2. Operator requirements [AMENDED]
595:25-9-3. Rotation calls for truck wreckers (Class AA-TL) [AMENDED]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. § 952.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 24, 2020

COMMENT PERIOD:

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ADOPTION:

March 24, 2020

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March 25, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 11, 2020

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The rule amendments updates definitions and the list of individuals who are not eligible to obtain a wrecker services license from the Department of Public Safety. The rules further remove the authority of DPS to approve any trade name submitted by a wrecker service company. The rules establish what large truck operators should be capable of and what is expected at the scene of a blockage of one or more lanes of traffic.

CONTACT PERSON:

Kimberly Dammen, 405-425-2241, or Kimberly.dammen@dps.ok.gov, or by mail at Department of Public Safety, P.O. Box 11415, Oklahoma City, OK 73136.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

595:25-1-2. Definitions

Any reference to "this Act" means 47 O.S. § 951 et seq. unless otherwise specified. The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Call**" means each request for service of an operator resulting in an operator being able to receive compensation for these services.

"**Commissioners Designee**" means ~~The~~ the authorized individual such as a director or administrative officer of the division.

"**Class AA wrecker operator**" or "**AA truck wrecker operator**" means any wrecker operator who also meets all the requirements of 47 O.S. § 952(D) for towing for law enforcement agencies. Class AA may also be used for private property towing and consent towing. Class AA must have the ability to tow, recover and haul.

"**Class AA Wrecker Support Vehicle**" or "**Support Vehicle**" means a general class wrecker capable of assisting and supporting the towing and recovery at the scene of an incident.

"**Commission**" means the Oklahoma Corporation Commission.

"**Commissioner**" means the Commissioner of Public Safety, as defined by 47 O.S. § 1-109 and as described in 47 O.S. § 2-102.

"**Department**" means the Department of Public Safety.

"**DPS number**" means a permanent number assigned to a wrecker operator, by the Department which is personal and unique to the wrecker service.

"**GVWR**" means gross vehicle weight rating.

"**IM categories**" means the severity of the incident.

(A) Minor incident is any incident which can be mitigated within thirty (30) minutes or less with limited traffic interference;

(B) Intermediate incident is any incident in which mitigation is thirty (30) to sixty (60) minutes in length and one or more vehicle lanes of travel are affected; and

(C) Major incident is any incident in which mitigation is greater than sixty (60) minutes in length and one or more lanes of travel are affected and the potential for special equipment may be needed and utilized for IM.

"**Incident Management (IM)**" means any on or off road-way incident in which traffic flow is significantly reduced, delayed or stopped as a result of vehicle collisions, cargo/content spills, visibility/weather conditions, or any other hazards associated with severe reductions of vehicular speed and movement within a traffic lane or lanes.

"**Inspection Officer**" means ~~the individual~~ individual who has been trained and certified by the Department to inspect wrecker vehicles and wrecker facilities.

"**Junk vehicle**" means a vehicle which is ten (10) years old or older and worth less than three hundred dollars (\$300.00) [42 O.S. §91].

"**Law enforcement tow**" means a tow of a vehicle made by an operator when a law enforcement officer compels a vehicle be towed or makes a request for a tow using a law

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enforcement rotation log and to which the rates and fees as prescribed by the Corporation Commission shall apply.

"Nonconsensual tow" means the transportation of a vehicle without the consent or knowledge of the vehicle's owner, possessor, agent, insurer, lien holder, or any other person in possession of or in charge of any vehicle and includes the transportation or towing of the vehicle under lawful circumstances or necessity for the public interest including removing from the roadway for public safety or public convenience, or accidents, by any law enforcement officer or property agent or removal from public or private property as a result of abandonment or unauthorized parking by the property owner, agent, possessor, or other legal entity for the property owner. [47 O.S. § 951(10)]

"Officer" means any peace officer.

"Operator" means any person or legal entity owning or operating a licensed wrecker vehicle or a licensed wrecker or towing service and any employee thereof.

"Owner request tow" means a tow of a vehicle made by an operator at the request of the owner, or authorized agent of the owner and which is not compelled or required by a law enforcement officer.

"Principal Place of business" or **"Business location"** means a permanent structure, not mounted on wheels, occupied by the wrecker operator at the physical address of the wrecker service, as shown on the wrecker license, with a publicly listed telephone number phone service and functioning utilities including but not limited to electricity and water, where normal business is transacted and all wrecker records are maintained. Effective January 1, 2005, the place of business shall be located in Oklahoma. The principal business full address, including county, must be verified by documentation, such as company letterhead, business card, tax documents, or other official business documents. The facility must be capable and large enough to conduct business, storage of records and all transactions of business. Any additional location or locations within twenty-five (25) miles of the principal place of business will be considered an extension location and will not be made to meet the requirements of the primary/principal business office but shall meet all storage requirements. All business transactions including, but not limited to, invoicing, ticketing, receipting, releasing, and collecting payment, will be conducted at the location in which the vehicle is stored.

"Private Property Tow" means a tow of a vehicle which is made from private property by an operator at the request of the owner, legal possessor, or authorized agent in control of the real property, which shall be towed under the provisions of 47 O.S. § 954A and to which the rates and fees as prescribed by the Corporation Commissioner shall apply.

"Rotation log" means a list for each Highway Patrol Troop of the Department of current Class AA wrecker operators, meeting the qualifications of Class AA truck wrecker services, whose place of business are within the geographical boundaries of the Troop and who have requested and been approved by the Department to be on the list. This list governs the alternation among approved Class AA-TL truck wrecker operators only.

"Tow/Towing" means the use of a wrecker vehicle to lift, pull, move, haul or otherwise transport any other vehicle by means of: (a) attaching the vehicle to and pulling the vehicle with the wrecker vehicle, or (b) loading the vehicle onto and transporting the vehicle upon the wrecker vehicle". [47 O.S. § 951(3)]

"Traffic tie-up" means any situation in which any officer deems it necessary to control the orderly flow of traffic.

"Truck wreckers" means every motor vehicle properly designed and equipped according to Department of Public Safety specifications with wrecker body and winch or lifting apparatus suitably designed to safely move, pull or tow wrecked, damaged or disabled trucks, truck-tractors, road tractors, trailers, semi-trailers, buses and/or other vehicles and conveyances that use the highways of the state of Oklahoma. The designation as a truck wrecker shall be used for Class AA-TL wrecker vehicles only.

"Truck wrecker rotation log" means a list for each Highway Patrol Troop of the Department of current Class AA wrecker operators, meeting the qualifications of Class AA truck wrecker services, whose places of business are within the geographical boundaries of the Troop and who have requested and been approved by the Department to be on the list. This list governs the alternation among approved Class AA-TL truck wrecker operators only.

"Wrecker dolly" means a wheeled device which is used to support one end of a motor vehicle for towing.

"Wrecker license" means the wrecker license as provided by 47 O.S. § 951, et seq.

"Wrecker operator" means any operator who is licensed under this chapter and the laws of this state and who meets all requirements of the rules of this Chapter, pertaining to wrecker vehicles as defined in this Chapter.

"Wrecker or towing service", "wrecker service", or "towing service" means engaging in the business of or performing the act of towing or offering to tow any vehicle, except: (a) where the operator owns the towed vehicle and displays on both sides of the wrecker vehicle in plainly visible letters not less than two (2) inches in height the words "NOT FOR HIRE", (b) where the service is performed by a transporter as defined in [47 O.S.] section 1-181 of this title, (c) where service is performed in conjunction with the transportation of household goods and property, (d) where the wrecker vehicle is owned or operated by the United States government, the State of Oklahoma, or any department or political subdivision thereof, or (e) where the service is performed by an out-of-state wrecker service at the request of the vehicle owner or operator, and the vehicle is being towed: (1) in either direction across the border between Oklahoma and a neighboring state, or (2) through Oklahoma in transit to another state; provided, the out-of-state wrecker service shall comply with all other requirements regarding interstate commerce as set forth in law. [47 O.S. § 951(6)]

"Wrecker" or "wrecker vehicle", as defined by 47 O.S. § 951, et. seq., means any vehicle, other than a transport as defined in 47 O.S. §1-181, equipped with a winch, cable or other device designed to lift, pull or move a disabled vehicle

incapable of self-propulsion. (Does not include a vehicle with a push bumper only.)

(A) Class AA - Any wrecker vehicle not less than nine thousand pounds (9,000 lbs.) GVWR and meeting minimum requirements as established for Class AA wreckers in this Chapter.

(B) Class AA-TM - Any wrecker vehicle not less than twenty-four thousand pounds (24,000 lbs.) GVWR and meeting minimum requirements as established for Class AA-TM Wreckers in this Chapter.

(C) Class AA-TL - Any wrecker vehicle not less than forty-four thousand pounds (44,000 lbs.) GVWR and meeting minimum requirements as established for Class AA-TL Wreckers in this Chapter.

(D) Class G (General) - All other wrecker vehicles as defined by 47 O.S. § 951, et. seq., provided a Class ~~GGeneral~~ wrecker shall also be considered a wrecker support vehicle for the purposes of 47 O.S. § 12-218.1. If a Class G wrecker service provides storage, it must meet the same facilities, storage, and insurance as a Class AA wrecker service. If the Class G wrecker service does not provide storage, it will not be required to meet the facilities, storage and insurance requirements as a Class AA wrecker service. Class G wreckers services must meet the Class G vehicle requirements and must have a verified primary business location.

SUBCHAPTER 3. WRECKER LICENSE

595:25-3-1. General requirements

The following are the requirements for obtaining an original or renewal of a wrecker license:

(1) **License required.** No operator as defined by law, regardless of storage location, shall operate a wrecker vehicle upon any public street, road or highway of this state for the offering to tow vehicles or the actual towing of vehicles without first obtaining from the Department a license as provided in this Chapter. Any wrecker vehicle being operated on any public street, road, highway or turnpike in violation of Oklahoma law or these rules may be removed from service by Oklahoma law enforcement officers.

(2) **Display and use.** An operator's wrecker service license shall be personal to the holder thereof and a wrecker vehicle license shall be unique to the vehicle. Each license shall be issued only to a person, a corporation or some definite legal entity. The licenses are non-transferable and any change in ownership, whether of a wrecker service or wrecker vehicle, shall cancel the applicable license. The wrecker service license shall be conspicuously displayed at the primary place of business. The license shall be valid only at the place of business as shown on the license. Additional or satellite places of business shall not be permitted or approved on the same license but shall require a separate application and license.

(3) **Reason for application.** No showing of public convenience or necessity need to be made in support of an application for a wrecker or towing license.

(4) **Issuance.** No license for operation of a wrecker or towing service shall be issued until:

(A) The wrecker operator has a minimum of one towing/wrecker vehicle,

(B) Certificates of insurance as prescribed by the Department are on file with the Department,

(C) Each wrecker vehicle has been inspected by an officer of the Department to verify that equipment requirements of this Chapter have been met, and

(D) Each wrecker operator and driver of a wrecker/towing vehicle has successfully completed a minimum of 16 hours of Department approved course of training or have a minimum of 2 years of experience on the following:

(i) Traffic incident management

(ii) Wrecker vehicle recovery controls

(iii) Connecting or loading vehicle onto wrecker

(iv) Tie down and secure vehicle to wrecker

(v) Wrecker operation safety

(vi) Annually complete 4 hours of continuing education approved by the department

(5) **Carry license.** A copy of the wrecker vehicle license issued by the Department shall be carried at all times in the wrecker vehicle for which the license was issued.

(6) **Return license to Department.** Any wrecker operator that disposes of or deletes any wrecker vehicle from operation shall return the license and window decal issued for that particular vehicle and window decal to the Department of Public Safety. When an unlicensed wrecker vehicle is observed with decals identifying it as a licensed wrecker vehicle, law enforcement personnel may remove the decals and seize the cab card license and return both to the Department. Any operator that cancels its last remaining wrecker vehicle from operation will have thirty (30) days to have another wrecker vehicle inspected, approved, and licensed or the wrecker license issued to that operator will be cancelled.

(7) **Additional wreckers.** Any wrecker operator that adds a wrecker vehicle shall:

(A) Register the wrecker vehicle with the Oklahoma Tax Commission, in the name of the operator or the name of the wrecker service, and properly display a current license plate. A leased wrecker vehicle shall show the owner information and the name of the lessee on the vehicle registration.

(B) Notify the Department of the make, model, GVW and serial number of the vehicle.

(C) Send notification to the Department from the insurance carrier of the wrecker operator that the vehicle has been added to present insurance coverage.

(D) Have the vehicle inspected and approved by an employee of the Department.

(E) A wrecker license plate, or a proportional license plate, must be purchased and affixed to the

wrecker vehicle after the vehicle has been inspected and approved and before the vehicle can be used by the operator to tow vehicles.

(8) **License number and business name.**

(A) The DPS number issued to the operator by the Department for the operation of a wrecker or towing service, along with the name of the wrecker service, shall be clearly visible at all times and shall be conspicuously displayed and vertically centered on each side of every tow vehicle used by the operator in the wrecker or towing service. All wrecker services will display AA or G designation at the end of the DPS number. Example: DPS 12345W AA or DPS 12345WG.

(B) On wrecker vehicles in use the DPS number and business name shall be at least three inches (3") in height. The font shall not be a font which is highly decorative or difficult to read. The lettering shall be in a color that will contrast with the color of the tow vehicle in order to be readily noticed and legible.

(C) The signage required by this paragraph shall be permanent in nature and shall not contain any misleading or false information. The wrecker vehicle shall not have more than one wrecker service name on the vehicle.

(D) Magnetic signs are not approved; provided, if requested of and approved by the Commissioner's designee, a magnetic sign may be used for a period of thirty (30) days in an emergency situation.

(9) **Service of notice.** Any notice required by law or by the rules of the Department served upon any holder of a wrecker or towing license shall be served personally or mailed to the last known address of such a person as reflected by the records on file with the Department. It is the duty of every holder of a certificate or license to notify the Department of Public Safety, Wrecker Services Division, in writing as to any change in the address of such person or of the place of business.

(10) **License prohibited.**

(A) No person under eighteen (18) years of age shall be licensed or employed as a wrecker operator.

(B) No person shall be licensed as a wrecker/towing service operator or employee who has been convicted of:

(i) a felony offense constitution a violent crime as defined in 57 O.S. § 571, larceny, theft, Felony convictions expunged through deferred sentencing will not be considered as convictions of untruthfulness; or

(ii) any provision of Title 21 O.S. § 1029 while providing wrecker services; or

(C) No person shall be licensed as a wrecker/towing service or be employed by a wrecker/towing service until ~~five (5) years after~~ completion of the sentence for the conviction, including probation or supervised release. ~~In cases of deferred judgment and sentence, the prohibition shall extend to five~~

~~(5) years after the end of the deferred judgment and sentence.~~

(D) Any person who is required to register as a sex offender, as required by 57 O.S. § 582, shall be prohibited from owning or working for a wrecker service for the period of time the person is or is required to be registered.

(E) Nothing in this section prohibits the Commissioner of Public Safety or his or her designee from approving, denying, suspending, cancelling, or not renewing a wrecker license if it is determined to be in the best interest of public safety.

(11) **One Class AA license per place of business.** Wrecker operators shall be issued no more than one Class AA wrecker license for any one place of business.

(12) **One Class AA wrecker service on Oklahoma Highway Patrol 's rotation log in same rotation area.**

An operator shall be permitted to rotate no more than one Class AA wrecker service in the same Highway Patrol rotation area on the Highway Patrol 's rotation log. For purposes of this paragraph, "Class A wrecker service" shall include those services with a Class AA-TL wrecker vehicle.

(13) **Business telephone number.** Each wrecker service shall have a telephone number published that is accessible to the public twenty-four hours a day. The operator shall provide in writing to the Department notice of any permanent business telephone number change prior to the new telephone number being placed in service.

(14) **Business sign.** Each AA Wrecker Service and each G Wrecker Service with storage shall have a business sign at the business location. The sign shall be at least 2 feet by 4 feet with letters at least 3 inches in height with contrasting background and shall display, at a minimum, the name of the wrecker service as shown on the license and a telephone number accessible to the public twenty-four (24) hours a day.

(15) **Wrecker drivers.** Wrecker services shall notify the Wrecker Services Division within ten (10) days of hiring or termination of employment of any wrecker driver.

595:25-3-4. Trade name

(a) Each operator shall use a unique trade name, approved by the Department, which shall be printed and appear on the license and shall be clearly distinguishable from the trade name of any other operator. ~~Provided, however, the Department shall approve any trade name which has been accepted and currently registered with Oklahoma 's Secretary of State.~~

(b) Upon written request by the operator, the Department may change the trade name of a wrecker or towing service if there is no change in ownership. The identifying number shall be retained and no license fee shall be assessed.

(c) Any change in ownership due to sale, merger, dissolution, or any other reason, except as provided in subsection (d), shall reserve the wrecker service trade name for a period of sixty (60) days, during which time the successor or owner shall apply for a wrecker license using the same trade name or another trade name. However, the successor may not operate

as a licensed wrecker service until the application has been accepted and approved by the Department.

(d) When the owner of a sole-proprietorship wrecker service dies, the wrecker license shall be considered cancelled by the Department effective upon the date of the death of the owner. Upon the death of the wrecker service owner, the wrecker service shall be immediately removed from Oklahoma Highway Patrol rotation. The heirs shall apply for a reinstatement of the wrecker service license using the same name and the same Department-assigned number; provided, the application shall be treated by the Department as a new application, and all procedures and fees shall apply.

SUBCHAPTER 5. ALL WRECKER OPERATORS

595:25-5-1. Physical requirements for storage facility

(a) **General Requirements.** All wrecker operators, who, in conjunction with or as part of a licensed wrecker operation, store, park or maintain possession of a towed vehicle, shall store such vehicle in a storage facility which shall meet the minimum physical requirements prescribed in this Section. No vehicle shall be stored in any facility or area which has not been inspected and approved by the Department except in case of exceptional circumstances such as natural disasters or at the direction of law enforcement officers at the scene of an incident.

- (1) An operator shall not store vehicles:
 - (A) At their home,
 - (B) In another operator's storage lot; or
 - (C) Any other location unknown to the Department.
- (2) The entrance to the storage facility shall be separate from any other business entity.
- (3) A vehicle accepted for storage may not be altered without consent of the vehicle owner or their authorized representative.
- (4) No stored vehicle may be used for personal or business use without the prior written consent of the vehicle's owner.

(b) **Outdoor Storage Facilities.**

- (1) Every primary outdoor storage facility:
 - (A) Shall be designed to be minimum of 5000 square feet for small truck and minimum of 15000 square feet for large truck in size. A previously licensed proprietor, partnership or corporation business will be allowed to renew the DPS license for their location unless they are changing locations of business.
 - (B) Shall be surrounded completely by a fence. Construction material for fences shall be of wood, metal, chain link or masonry and be at least six feet (6') in height built solid, firmly and securely to provide the best protection for restricted access. Live-stock paneling (welded wire) shall not be used unless the wire diameter is equal to or larger than 8 gauge (0.160 diameter) with horizontal panels no larger than 4" x 4". T-post construction shall not be approved. Outdoor storage facilities, effective July 1, 2014,

shall meet new standards or if facilities previous of date, upon a failed inspection, if found the fence did not meet previous standards, new standards will be imposed.

(C) Shall have at least one (1) gate of the same quality of material and height of the fence and must be locked if not attended.

(D) The storage lot area:

- (i) Shall be maintained, including but not limited to removal of tall weeds, overgrown vegetation and debris;
- (ii) The lot surface shall be an all-weather surface such as concrete, asphalt, blacktop, gravel, or any materials equivalent;
- (iii) And cover the complete area of the storage lot that enables the safe and effective movement of stored vehicles upon all portions of the storage lot.

(2) If the construction requirements in paragraph (1) of this subsection are in violation of municipal zoning ordinances or other laws, regulations, or ordinances, the operator may file with the Department a petition for exemption and a proposed security plan in lieu of the requirements, which the Department may approve. The operator shall attach a copy of such zoning ordinance or other laws, regulations, or ordinances with the petition.

(c) **Facility Location and Number.**

(1) A minimum of one (1) primary storage facility shall be located within a two (2) mile radius of the place of business address as reflected on the wrecker license and, effective January 1, 2005, shall be located within Oklahoma. Secondary storage facilities may be located outside the two (2) mile radius.

(2) Each vehicle stored must be initially stored and held at the primary storage facility. After thirty (30) days from date of initial storage, vehicles may be moved to a secondary storage facility. The provisions of this paragraph shall not apply to junk vehicles.

(d) **Alternate Primary Storage Facility.** In lieu of or in addition to the primary storage facility described in this Section, a wrecker operator that tows a vehicle pursuant to a contract with a municipality or county may store such vehicle in a facility meeting the requirements set forth in such contract; provided, that:

- (1) A copy of the proposed contract is furnished to the Department, along with documentation that requirements specified in this Section will be or have been met.
- (2) Only vehicles towed at the request of the municipality shall be stored in such facilities unless such facility meets all the requirements of this Section.
- (3) The wrecker operator shall have assumed reasonable responsibility with respect to the owner of such towed vehicle for any damages or loss of contents occurring during such time as the towed vehicle is stored in the facility.
- (4) If the storage facility is not owned by the operator, the owner of such storage facility shall also assume joint responsibility for damages or loss of contents to the vehicle secured during such time as the vehicle is stored at such facility.

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- (5) Such storage facility must meet or exceed the requirements of this Section.
- (6) If such storage facility is not operated by the operator, the operator shall have made arrangements with the owner of such storage facility to enable the owner of the vehicle to make full payment for towing and storage costs at the storage facility location and thereby obtain full release of the vehicle.
- (7) A wrecker operator may not store any vehicle in a facility which has not been inspected and approved by the Department.
- (e) **Indoor storage facility.** An operator may also provide an indoor storage facility as either a primary or secondary storage facility. Due to a special situation such as, but not limited to, a pending fatal collision, asset forfeiture or criminal investigation, law enforcement may select without regard to rotation, an operator nearest to the incident with appropriate indoor storage. The facility must meet the requirements of the Oklahoma Highway Patrol and the operator must comply with any special instructions. An indoor storage facility shall be a permanent structure that meets the following minimum physical requirements.
- (1) A solid roof,
 - (2) A solid hard-surface floor,
 - (3) Solid walls which fully enclose all sides, i.e. reach from corner to corner on each side and from the floor to the roof on all sides so there is no public access. The walls may be penetrated by windows and doors which must be fully operable so as to make the facility fully enclosed when the windows and doors are closed, and
 - (4) Must be a minimum of 500 square feet in size.
- (f) **Each Wrecker Service is a Separate Entity.** Each wrecker service shall be licensed as a separate legal entity. Any wrecker service with storage shall maintain a primary storage facility that is physically separated from any other entity's storage facility as determined by the Department, so that the responsibility and accountability of the operator relating to compliance with these rules is maintained.
- (g) **Shared Storage Prohibited.** Shared use of any outdoor or indoor storage facility by two (2) or more wrecker services is not permitted, except as may be determined by the Commissioner.
- (h) **Leased or rented building, office or storage.** Wrecker operators intending to lease or rent any building, office or storage facilities shall file such plan of lease or rent with the Department for approval. Such plan shall be signed and approved by the owner of the property or representative of the owner and be of at least one year in duration and include specific terms therein delineating the responsibility of the operator relating to compliance with the rules of this Chapter and assurance that accountability is maintained.
- (i) **Accessibility.** Any primary storage facility used to store vehicles at the request of law enforcement shall be accessible to the public by way of an all-weather road. This provision shall not apply to primary storage facilities which have been approved prior to July 14, 2003.

595:25-5-9. Inspections

- (a) **Availability of Records.** The wrecker operator, manager, or their representative must make available to the inspection officer all records, notices and other documents required by these rules. Due to possible noncompliance or complaint, the inspection of the facility or tow trucks may be required. May include an inspection of any and all tow trucks and inspection of records, tow authorizations, thirty (30) day reports and facilities. Upon completion of the inspection, the operator, manager, or representative shall be given a contact report that will provide the results of the inspection. A date and Time will be provided to make corrective action and a follow up inspection will be performed to assure compliance.
- (b) **Initial Inspection.** Will include inspection of all tow trucks and any or all storage facilities. Any tow truck meeting FMCSA requirements of single or combination weight limits of 26,001 GVWR, shall provide a copy of the DOT inspection, per 49 C.F.R. § 396.17, before the Department of Public Safety inspection can be performed. This will apply to the initial inspection or if the truck requires a re-inspection.

SUBCHAPTER 7. CLASS AA OPERATORS

595:25-7-2. Release and holding of vehicle

- (a) **Release.** The Class AA wrecker operator shall at all times have a capable person available to release impounded or stored vehicle within ~~thirty (30) minutes~~ one (1) hour. As per 47 O.S. § 955, any vehicle impounded by law enforcement shall not be released to the owner until that owner provides proof of valid insurance or an affidavit of nonuse on the roadway. In the event an insurer or a representative of the insurer who has accepted liability for the vehicle requests the release, no proof of valid insurance or affidavit of nonuse on the roadway shall be required.
- (b) **Exceptions to release of impounded or stored vehicles.**
- (1) Officers may have a legitimate need and reason to preserve the secured status of an impounded or stored vehicle, including but not limited to:
 - (A) Failure to pay taxes due the State;
 - (B) Forfeiture proceedings under the Controlled Dangerous Substances Act [63 O.S., § 2-506];
 - (C) Evidentiary proceedings.
 - (D) Failure to provide proof of insurance
 - (E) The vehicle has been used in the commission of a felony offense. [47 O.S., § 955(A)(6)]
 - (2) In the event an officer determines a need exists to preserve the secured status of an impounded or stored vehicle, the officer may direct the operator to place a hold thereon, which the operator shall honor, subject to the following procedures.
 - (3) If the hold is because taxes due the State have not been paid, the operator shall not release the vehicle until the owner, or another person as described in OAC 595:25-5-3(13), has furnished proof from the Oklahoma Tax Commission or a motor license agent to the operator that the vehicle has been duly registered and the license

fee has been paid before the vehicle may be released to the owner. Inquiry regarding this law may be made to the Oklahoma Tax Commission.

(4) If the stated reason for the hold is a forfeiture proceeding under the Uniform Controlled Dangerous Substance Act, the operator may not release the vehicle unless authorization is received either from the District Attorney's Office of the county from which the vehicle was impounded or from the impounding officer.

(A) If, after the expiration of seventy-two (72) hours from the time of impoundment (excluding Saturday, Sunday and legal holidays), the operator has not received either the court case number under which a forfeiture proceeding has been accepted and filed or a release of the hold from the impounding officer, the operator shall contact the law enforcement agency storing the vehicle, between 7:00 a.m. and 12:00 noon following such seventy-two (72) hours period, advising the ranking supervisor on duty or dispatcher of the following information:

- (i) That the vehicle is being held for the filing of forfeiture proceedings;
- (ii) That no court case number of forfeiture proceedings has been received;
- (iii) Description of vehicle, including tag and vehicle identification number;
- (iv) Vehicle owner, if known;
- (v) County from which the vehicle was impounded;
- (vi) Name of impounding officer;
- (vii) Name and telephone number of operator submitting the above information.

(B) The supervisor may direct the impounding officer to verify the decision of the District Attorney and to notify the operator:

- (i) Of the forfeiture proceedings style and case number; or
- (ii) That the hold is canceled because the District Attorney has declined forfeiture proceedings and therefore, the vehicle may then be released in accordance with (a) and (b) of this Section.

(C) Any vehicle seized or stored for forfeiture proceedings under the Uniform Controlled Dangerous Substance Act is considered to be in the custody of the District Attorney of the county where the property was seized [63 O.S., § 2-506 (K)] and therefore the operator may contact that office regarding any matter relating to such vehicle, in addition to the foregoing procedure.

(5) If the hold is for evidentiary proceedings or for any stated reason other than taxes or forfeiture described above, or if the officer fails to state a reason, then the hold shall expire forty-eight (48) hours from the time of impoundment (if not released earlier by the officer), and the operator shall not honor the hold beyond the forty-eight (48) hour period without express direction of the law enforcement agency storing said vehicle. The vehicle may

then be released in accordance with the provisions of this Chapter.

(c) **Court orders regarding impounded or stored vehicles.** If any rule provided, herein conflicts with a court order served upon the operator relating to impoundments, release, storage or other matter relating to the wrecker service, the court order shall take precedence.

(d) **Release to another wrecker service.** When a wrecker service is to lawfully obtain a vehicle from another wrecker service which originally towed the vehicle, the original wrecker service shall:

- (1) allow the other wrecker service to enter its premises and remove the vehicle, or
- (2) if the original wrecker service does not allow the other licensed wrecker services or registered owner or agent on its premises to make the tow, the original wrecker service shall properly tow the vehicle to a mutually agreeable site in order to transfer the vehicle to the requesting wrecker service.

SUBCHAPTER 9. OKLAHOMA HIGHWAY PATROL ROTATION LOG - ADDITIONAL REQUIREMENTS

595:25-9-2. Operator requirements

Operators on the Rotation Log shall comply with the following:

- (1) When more than one (1) vehicle is towed on one (1) call, each tow shall be counted as another call to that operator.
- (2) When an operator receives a request for services from the Oklahoma Highway Patrol and no services are rendered ~~for which the operator is able to receive compensation~~, the operator shall not lose position on the Rotation Log.
- (3) If an operator has received a request for services, but does not respond to the scene within a reasonable length of time, including but not limited to such factors as distance from the scene, weather, and nature of the collision or traffic tie-up, the Oklahoma Highway Patrol may request the services of the next operator on the Rotation Log. Under these circumstances, the operator who receives the first request shall lose position on the Rotation Log.
- (4) When an emergency condition exists, the Oklahoma Highway Patrol reserves the right to request the services of any appropriately equipped and licensed wrecker service best able to handle the emergency and can reach the scene in the shortest time, regardless of the operator's position on the Rotation Log. Said call shall count as a call on the Rotation Log.
- (5) Only one (1) wrecker service shall be approved for Highway Patrol rotation at any one place of business and/or storage facility, unless otherwise approved by the Commissioner.
- (6) Wrecker services shall respond to Highway Patrol requests only in a wrecker vehicle licensed to the

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requested wrecker service, unless otherwise approved by the Commissioner.

(7) Every wrecker service on the Highway Patrol Rotation Log shall maintain twenty-four (24) hour service.

(8) A wrecker service called from the Highway Patrol Rotation Log shall not accept a request for services unless the operator has a vehicle immediately available to perform the requested service.

(9) Each operator shall require each driver responding to a request to maintain the appropriate driver license for the type vehicle being operated.

(10) Each operator shall require each driver to obey in good faith the rules of the road.

(11) Each operator shall prohibit any known thief or felon from loitering, visiting, or otherwise being on the premises of the place of business or any storage facility of the wrecker service.

(12) Every operator shall accept each Oklahoma Highway Patrol call unless there exists a valid reason for refusal. Upon acceptance of a call an operator shall advise dispatch of their current location and estimated time of arrival.

(13) Each operator shall provide service for a minimum of seventy-five (75%) percent of the requests made by the Highway Patrol to be computed on a quarterly basis. Failure to meet this standard for any reason shall be grounds for removal from the Oklahoma Highway Patrol Rotation Log.

(14) Any Class AA wrecker operator who uses an answering service as a means of dispatch and who fails to properly respond in a timely manner, as determined by the Commissioner's designee of the Wrecker Services Division, to a rotation call request may have the Class AA license revoked for failure to properly respond to rotation call requests. The operator shall not be licensed as a Class AA wrecker service while utilizing the same answering service as a means of dispatch.

(15) Persons responding to calls must be able to speak and understand the English language.

(16) A wrecker operator shall respond to law enforcement agencies' wrecker service requests with a wrecker vehicle and operator capable of efficiently uprighting an overturned vehicle, pulling or winching a vehicle back onto the roadway, lifting a vehicle off a victim, or assisting with opening a vehicle to extricate a victim. In addition, the wrecker vehicle shall be equipped to remove a disabled vehicle without inflicting further damage to the disabled vehicle.

(17) If two or more vehicles are involved in a collision and two or more wrecker services are called the following shall apply:

(A) The first wrecker service arriving at the scene will tow the vehicle causing the greatest traffic hazard, which shall be determined by the investigating officer.

(B) If a requested wrecker service is first on scene, said wrecker service will assist in removing the vehicle causing the traffic hazard from roadway, then will proceed to pick up the vehicle it has been requested to tow.

(18) Any wrecker service having a wrecker vehicle with major or critical mechanical failure or failing to meet equipment requirements, which does not have another wrecker vehicle of the same classification approved for rotation, shall become temporarily unavailable for rotation until the wrecker vehicle has been approved to return to service or a new wrecker vehicle of the same classification has been inspected, if necessary, and approved by the Department.

(19) A wrecker service shall become temporarily unavailable for rotation if there is no approved Certificate of Insurance (WA) filing on file with the Department for the wrecker service or wrecker vehicles approved for rotation.

(20) Any wrecker service with a wrecker vehicle displaying an expired tag, which does not have another wrecker vehicle of the same classification approved for rotation, shall become temporarily unavailable for rotation until the wrecker license plate has been renewed and is properly displayed on the wrecker vehicle.

595:25-9-3. Rotation calls for truck wreckers (Class AA-TL)

(a) Rules governing the rotation calls for Class AA-TL truck wrecker operators shall be the same as the rules governing the rotation calls for all other Class AA wrecker operators, except that in the case of truck wreckers the involved Trooper and/or the dispatcher shall have and be free to exercise his or her discretion as provided for in this section. If, in the judgment of any involved trooper and/or dispatcher, a Class AA-TL truck wrecker operator within a service area is needed because of an emergency situation, such wrecker service may be called without regard to position on the truck wrecker log except in relation to other operators also meeting the additional Class AA qualities in the service area.

(b) The large trucks and operators shall be capable and expected

(1) to clear a lane of traffic within one (1) hour upon arrival on the scene unless an extreme circumstance exist, using Traffic Incident Management (TIM) standards for the safety of the public and responders.

(2) have recovery and remediation resources immediately available to assist in clearing the scene as safely and as quickly as possible; and

(3) shall coordinate and participate in the recovery, towing and cleanup. Participation does not include only traffic management.

[OAR Docket #20-531; filed 7-6-20]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 30. SIZE AND WEIGHTS PERMITS**

[OAR Docket #20-532]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Size and Weight Permit Load

595:30-3-2. A permit is a legal document; permit types [AMENDED]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. § 6-101 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 11, 2020

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The rule amendments provides the Commissioner of Public Safety the authority to issue a special permit for overheight trailers that This rule change is required to allow the Department to issue a special permit for overheight trailers traveling limited distances. This amendment will aid a business that has two separate facilities to transport materials and/or products from one location to the next. These special permits benefit both the state and businesses.

CONTACT PERSON:

Kimberly Dammen, 405-425-2241, or Kimberly.dammen@dps.ok.gov, or by mail at Department of Public Safety, P.O. Box 11415, Oklahoma City, OK 73136.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 3. SIZE AND WEIGHT PERMIT LOAD

595:30-3-2. A permit is a legal document; permit types

(a) **Permit defined.** A permit is a legal document authorizing the permittee to move a vehicle or load, which is oversize, overweight, or both, upon the roads and highways of this state when the route constitutes the safest practical routing. The

document shall be carried in paper form and in the drivers possession (Electronic copies will not be acceptable) and consist of:

- (1) the information furnished by the applicant contained in the permit,
- (2) the conditions and restrictions stated in the permit, and
- (3) the applicable provisions of this Chapter, OAC 730:30-9, Oklahoma law, or any combination of provisions.

(b) **Annual permits.** Annual permits, as authorized by 47 O.S. §14-101 et seq. and by OAC 730:30-9, shall be on a form and in a manner prescribed by the Commissioner of Public Safety. Annual permits shall comport to 23 U.S.C. §127 for interstate applications, to other state statutes relating to size and weight of vehicles and combinations of vehicles, and to OAC 730:30-9 for all roads and highways of this state. Annual permits shall be for a duration of one calendar year from the date of issuance. Annual permits for the movement of vehicles, loads, or both which exceed the size or weight provisions, or both, of 47 O.S. §14-101 et seq., but do not exceed the provisions of OAC 730:30-9 or state statutes relating to maximum allowable permit limits, shall be applied for and issued, using the procedures established in this Chapter, through the Size and Weight Permit Division of the Department of Public Safety. Annual permits shall not be restricted to nondivisible vehicles or loads and shall be specific to the towing vehicle of any vehicle operating as a combination of vehicles.

- (1) Fees for annual permits shall be in accordance with the fee schedule contained in 47 O.S. §14-101 et seq.
- (2) Annual permits shall be subject to suspension, revocation or cancellation by the Commissioner of Public Safety or an authorized representative upon due process, as outlined in this Subchapter.

(c) **Single trip permits.** Single trip permits, as authorized in OAC 730:30-9-6(2), shall be on a form and in a manner prescribed by the Commissioner of Public Safety. Single trip permits shall be applied for and issued, using the procedures established in this Chapter, through the Size and Weight Permit Division of the Department of Public Safety. All single trip permits shall comport to OAC 730:30-9 and related state statutes and shall be for a duration of up to, but not to exceed, five (5) consecutive calendar days. Single trip permits shall be issued for nondivisible vehicles or loads, as defined in 23 C.F.R. § 658, which exceed the provision of state statutes but do not exceed the provisions of OAC 730:30-9 or state statutes relating to maximum allowable permit limits. All or any permits may be revoked by any duly qualified law enforcement officer of the Department of Public Safety after having observed any violation of any of the provisions of the permit. The revocation shall be final and no further movement of the vehicle or load shall be authorized until the vehicle or load is authorized by a proper permit.

(d) **Multi-trip oversize permits.** A multi-trip oversize permit may be issued for a specific motor vehicle, which can be identified by a vehicle identification number or serial number, for movement as set forth in 730:30-9-9(a)(1) and (j).

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(e) **Annual envelope vehicle permit.** An annual envelope vehicle permit shall be issued by the Department in conformity with 730:30-9-16. In addition to the requirements of 730:30-9-16:

- (1) An annual envelope permit shall not be used in conjunction with any other permit.
- (2) An annual envelope permit shall be void if used for the movement of houses or modular or manufactured homes.
- (3) An annual envelope permit shall be void if laminated.
- (4) Reasonable access to and from terminals for fuel, food, repairs and rest shall not exceed five (5) statute miles from the roadways authorized by the Oklahoma Department of Transportation.
- (5) A vehicle being moved under an envelope permit shall not be moved on turnpikes except on non-interstate turnpikes. Non-interstate turnpikes are:
 - (A) Indian Nation
 - (B) Cimarron
 - (C) Cherokee
 - (D) Chickasaw
 - (E) Creek
 - (F) Muskogee
 - (G) Kilpatrick

(6) The operator of a vehicle in excess of 9 feet and 6 inches in width which is moving under an envelope permit shall use a valid PikePass to travel on any turnpike listed in paragraph (5) and shall travel only in a PikePass lane when in the area of any tollbooth or turnpike entrance or exit.

(f) **Special overheight trailer permit for limited travel.** A Special Overheight Trailer Permit for Limited Travel (SOTPLT), in accordance with 47 O.S. § 14-103(B)(1), shall be issued in a manner and on a form prescribed by the Commissioner of Public Safety.

- (1) An SOTPLT shall be for a duration as determined by the Commissioner of Public Safety, but under no circumstance shall the permit exceed one (1) calendar year.
 - (A) The fee for a single trip SOTPLT shall be Forty Dollars (\$40.00) and shall be nonrefundable.
 - (B) The fee for a thirty (30) day SOTPLT shall be Five Hundred Dollars (\$500.00) and shall be nonrefundable.
 - (C) The fee for a one (1) year SOTPLT shall be Two Thousand Dollars (\$2000.00) and shall be nonrefundable.
- (2) An SOTPLT shall not be restricted to nondivisible loads and shall be specific to the trailer being permitted.
- (3) In addition to these requirements:
 - (A) An SOTPLT shall not be used in conjunction with any other permit.
 - (B) A trailer being moved under an SOTPLT shall not access nor be moved on any part of the National System of Interstates and Defense Highways or four-lane divided Federal Aid Primary System Highways, state highways or turnpikes.

(4) An SOTPLT shall comply with 595:30-3-18(b)(3), unless otherwise waived by the Commissioner of Public Safety.

(5) An SOTPLT applicant shall submit a detailed application to the Commissioner of Public Safety containing:

(A) Physical features of the route, including but not limited to:

- (i) applicable speed limits,
- (ii) specifications and description of any bridges,
- (iii) infrastructure,
- (iv) public or private utility overhead wire lines,
- (v) traffic control devices,
- (vi) road signage, and
- (vii) any potential for pedestrian traffic.

(B) The duration of time the SOTPLT permit is needed.

(C) Trailer information including, but not limited to, VIN, tag number, height and specifications of the trailer.

(D) A certification from the permittee stating the permittee has contacted the effected City Street Department and/or County Commissioner and referenced any possible restrictions or obstacles within their jurisdiction that may impact the permittee's ability to travel.

~~(f) **Prima facie evidence.** Undertaking the movement of the vehicles and loads specified in the permit is deemed prima facie evidence of an unequivocal allegation that the permit is accepted by the permittee. Acceptance of the permit by the permittee will be deemed prima facie evidence of an unequivocal allegation by the permittee that:~~

- ~~(1) Permittee is in compliance with all operational requirements;~~
- ~~(2) All dimension and weight limitations specified in the permit will not be exceeded;~~
- ~~(3) All operation, registration, and license requirements have been met;~~
- ~~(4) All financial responsibility obligations and other legal requirements have been met. The permittee assumes all responsibility for injury to any person or for damage to public or private property, including the permittee's own, or to the load being transported, caused directly or indirectly by the transportation of vehicles and loads authorized under the permit.~~

(g) **Multiple trailer or semitrailer permits.** To obtain a permit for multiple trailers or semitrailors pursuant to 47 O.S. 14-116 (F) an affidavit must:

- (1) be submitted to the Department of Public Safety Size and Weight Permits Division containing:
 - (A) license plate number of each trailer or semitrailer;
 - (B) vehicle identification number of each trailer or semitrailer;
 - (C) US DOT Number of power unit pulling a trailer or semitrailer;
 - (D) Make and Model of trailer or semitrailer; and

(h) Any violation of any part of this section shall result in the permit being voided.

(i) **Prima facie evidence.** Undertaking the movement of the vehicles and loads specified in the permit is deemed prima facie evidence of an unequivocal allegation that the permit is accepted by the permittee. Acceptance of the permit by the permittee will be deemed prima facie evidence of an unequivocal allegation by the permittee that:

- (1) Permittee is in compliance with all operational requirements;
- (2) All dimension and weight limitations specified in the permit will not be exceeded;
- (3) All operation, registration, and license requirements have been met;
- (4) All financial responsibility obligations and other legal requirements have been met. The permittee assumes all responsibility for injury to any person or for damage to public or private property, including the permittee's own, or to the load being transported, caused directly or indirectly by the transportation of vehicles and loads authorized under the permit.

[OAR Docket #20-532; filed 7-6-20]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY

CHAPTER 40. DRIVER TRAINING AND IMPROVEMENT

[OAR Docket #20-533]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. Driver Education ~~Instruction~~ **Instruction**
- 595:40-1-13. Reports [AMENDED]
- Subchapter 7. Impaired Driver Accountability Program [NEW]
- 595:40-7-1. Impaired Driver Accountability Program - Purpose [NEW]
- 595:40-7-2. Definitions [NEW]
- 595:40-7-3. Request for participation - Departmental review - IDAP agreement [NEW]
- 595:40-7-4 . Program enrollment - calculation of time - IDAP agreement [NEW]
- 595:40-7-5 . Ignition interlock device monitoring - interlock violations - program extensions - informal hearings [NEW]
- 595:40-7-6. Graduation from IDAP - requirements - presentation of certificate [NEW]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. § 6-212.5.

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GIST/ANALYSIS:

The rule amendments in Subchapter 1 provides a commercial motorcycle school to submit to the Department of Public Safety, a class roster prior to the course commencing and a separate roster upon completion of the course.

The rule amendments in Subchapter 7 provides the purpose, definitions, and aspects of the Impaired Driver Accountability Program (IDAP).

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. DRIVER EDUCATION ~~INSTRUCTION~~ **INSTRUCTION**

595:40-1-13. Reports

(a) The Comprehensive Health/Driver and Traffic Safety Education section of the State Department of Education will furnish all forms for the required reports for public schools. These reports are addressed in the rules of the State Department of Education. For private, parochial, Commercial, and other non-public schools, the Driver License Services Division of the Department of Public Safety, ~~Driver Examining Division,~~ will shall provide the following report forms which must be completed and filed with the Department of Public Safety:

- (1) A current list of all students enrolled in Driver Education shall be maintained in a file (paper or electronic) at the offices of the Commercial Driver Education school and submitted to the Department of Public Safety prior to beginning behind the wheel instruction. These files shall list the complete legal name, and date of birth of those students who will be or are currently receiving instruction.
- (2) While conducting instruction of the students one of the following must be in the vehicle:

- (A) readable copy of the roster (paper or electronic), or
- (B) a daily paper or electronic copy of the student roster and/or schedule, which includes a list of students being instructed on a given day, or
- (C) students receiving instruction must carry the original or a copy of the school contract.

(3) At the discretion of the Commissioner of Public Safety, an affidavit may be required from the principal of the school, or one of equivalent authority verifying that the curriculum offered the Driver Education student meets the requirements of these rules.

(4) Other reports that may be requested by the Department of Public Safety.

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(b) Driver Education schools must furnish the Department of Public Safety, Driver License Examining Services Division, with a copy of an official collision report on any driver education vehicle which is involved in an collision while used for training purposes. This is in addition to the collision report required by law.

(c) A commercial motorcycle school shall, prior to the first day of class, submit to the Department of Public Safety a list of all students enrolled in the motorcycle course. Upon completion of the motorcycle course, the commercial motorcycle school shall submit to the Department of Public Safety a roster containing the full legal name, date of birth, driver's license number, test scores, and the Motorcycle Safety Foundation (MSF) card number for each student who has successfully completed the motorcycle course. This roster shall be stored in paper form or electronically at the office of the commercial motorcycle school.

SUBCHAPTER 7. IMPAIRED DRIVER ACCOUNTABILITY PROGRAM

595:40-7-1. Impaired Driver Accountability Program - Purpose

The Impaired Driver Accountability Program (IDAP) is created for the purpose of enhancing public safety and to assist impaired driving offenders in mitigating the personal and financial costs of the offense of impaired driving through the administration of a monitored ignition interlock program implementing compliance based removal of the ignition interlock device.

595:40-7-2. Definitions

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

"IDAP phase 1" means the period of time in IDAP in which the participant is subject to remedial measures other than program extension as a result of ignition interlock violations or program violations.

(A) Six (6) month IDAP: the first 120 days after enrollment.

(B) Twelve (12) month IDAP: the first 245 days after enrollment.

(C) Thirty-six (36) month IDAP: the first 365 days after enrollment.

"IDAP phase 2" means the period of time in IDAP in which the participant is subject to program extension as a result of ignition interlock violations or program violations.

(A) Six (6) month IDAP: the last 60 days of the original program length, and any extensions imposed by these rules.

(B) Twelve (12) month IDAP: the last 120 days of the original program length, and any extensions imposed by these rules.

(C) Thirty-six (36) month IDAP: the last 365 days of the original program length, and any extension imposed by these rules.

"One (1) year" means 365 days.

"Six (6) months" means 180 days.

"Three (3) years" means 1,095 days.

"Verified ignition interlock violation" means a record received by the Department from the Board of Tests for Alcohol and Drug Influence indicating the review and verification of an ignition interlock violation in accordance with the rules of the Board. These include:

(A) Three (3) penalty fails, at startup, within a fifteen (15) minute time frame;

(B) Three (3) retest violations constitute a reportable violation. Each retest violation thereafter constitutes a reportable violation.

"Verified program violation" means a record received by the Department from the Board of Tests for Alcohol and Drug Influence indicating the review and verification of an ignition interlock program violation. These include:

(A) A circumvention

(B) Removal of the device except:

(i) Upon receipt of documentation from the Installation Authority or Monitor authorizing said removal

(ii) The vehicle is being repaired. The program participant must inform the licensed service center at least every eight (8) days as to the anticipated date of completion of repairs, or

(iii) The vehicle is being replaced. In the event the vehicle is being replaced by another vehicle, the removal and reinstallation of the device in the subsequent vehicle must be accomplished within eight (8) days of the removal

(C) Tampering

(D) Missed service appointment

595:40-7-3. Request for participation - Departmental review - IDAP agreement

(a) Requests for participation in IDAP must be received within thirty (30) days of the notice of revocation, given pursuant to 47 O.S. §2-116, as reflected by the records of the Department. Upon receipt of the request for participation, the Department shall enter a temporary stay until the expiration of 45 days from the date of the notice of revocation to the participant. Exceptions to the thirty (30) day requirement may be approved by the Director of the Driver Compliance Division or General Counsel.

(b) The customer cannot enroll in IDAP if a District Court appeal is pending on behalf of the customer for the same incident referenced in the customer's request for IDAP participation.

(c) Requests for participation in IDAP will be reviewed immediately if presented in person to a Hearing Officer.

(d) Requests for participation in IDAP mailed to the Department will be reviewed within three (3) business days of receipt and approved, denied, or returned for more information.

(e) Review of the Request for Participation will include, at a minimum:

- (1) Examination of the driving record for the purpose of determining program length;
- (2) Confirmation of the License class. Only customers who were class D license holders at the time of the impaired driving arrest may participate in IDAP.
- (3) Confirmation that alcohol was a factor in the associated impaired driving arrest.
- (4) Confirmation that the offense does not involve the operation of a commercial motor vehicle.

(f) Upon approval of the Request to Participate in IDAP the participant will execute an IDAP Agreement with the Department outlining the respective roles and responsibilities of the participant and the Department.

(g) For IDAP request received by U.S. Mail, the post mark date shall be considered the date received.

595:40-7-4. Program enrollment - calculation of time - IDAP agreement

(a) The participant must enroll in IDAP within forty-five (45) days of the day of notice of revocation as reflected by the records of the Department. Exceptions to the forty-five (45) day requirement may be approved by the Director of the Driver Compliance Division.

(b) Enrolling in IDAP consists of:

- (1) Payment of the IDAP fee of \$200.00 to the Department;
- (2) Presentation of an Ignition Interlock Installation Verification Form;
- (3) Execution of an IDAP Agreement by the Participant;
- (4) Acknowledgement of receipt and review of the "IDAP Participant's Guide";
- (5) Obtaining a Restricted Driver License with an Ignition Interlock Restriction.

(c) Whatever the Participant's required program length, as calculated by the Department:

- (1) The day enrollment in IDAP is complete counts as the Participant's first day of the program.
- (2) All program restrictions, including the ignition interlock requirement, continue through the last day of the program as calculated by the Department. The participant is responsible for ensuring completion of IDAP before removing the ignition interlock device.

(d) The IDAP Agreement will be signed by the Participant and shall include the following information:

- (1) Participant's full name;
- (2) Participant's correct address. In the event Participant's address on record is not correct, it will be updated;
- (3) Participant's preferred phone number;
- (4) Participant's email address (if applicable);
- (5) The date upon which the IDAP Agreement was signed;
- (6) A list of Ignition Interlock Violations as defined by the Board of Tests for Alcohol and Drug Influence;
- (7) An explanation of the consequences of violations of the Ignition Interlock Program.

595:40-7-5.

Ignition interlock device monitoring - interlock violations - program extensions - informal hearings

(a) The participant is responsible for ensuring the ignition interlock is monitored on a regular basis in accordance with the rules of the Board of Tests for Alcohol and Drug Influence.

(b) Upon receipt of a report of a verified program violation during any phase of IDAP the participant must appear before the Department to provide proof the program violation has been remedied.

(c) Upon receipt of a report of a verified ignition interlock violation, or verified program violation, during Phase 2 of IDAP, the Department will extend the participant's program length in accordance with 47 O.S. §212.3, and issue notice of the extension to the participant.

(d) In Phase 1 or Phase 2 of IDAP, when the Department receives a report of a verified program violation, or a verified ignition interlock violation, the following remedial measures may be imposed:

- (1) Retraining with the manufacturer, at the expense of the participant, if applicable;
- (2) Installation of an ignition interlock device with a camera;
- (3) Restrictions on the days and times of the participant's driving;
- (4) Referral to re-assessment; and
- (5) Removal from IDAP which will result in a driver license revocation.

(e) The participant may appear before a hearing officer within fifteen (15) days of receipt of the notice of any violation to contest the violation. The hearing officer may sustain or set aside the violation. The participant's failure to contest a violation within the time allowed will waive any future right to contest the violation.

(f) The Department will not credit any time toward the participant's required program length for any period in which an ignition interlock is not installed as reflected by an approved Installation Verification Form, whether or not an ignition interlock violation has been reported.

(g) In the event the Department receives documentation from a Court of record that requires a mandatory revocation, the Department will toll the participant's IDAP until completion of the mandatory revocation except if the mandatory revocation is a result of the conviction of the offense that led to the participation in IDAP.

595:40-7-6.

Graduation from IDAP - requirements - presentation of certificate

Graduation from IDAP occurs when the participant presents to the Department:

- (1) Completion form from the Board of Tests for Alcohol and Drug Influence verifying no ignition interlock violations have occurred in Phase 2 of IDAP;
- (2) Certificate of completion of requirements of the drug and alcohol assessment required by Oklahoma statutes;

(3) The Department will verify that it has not received any additional officer's affidavits and notices of revocation related to the participant.

(4) The Department will update the Driver Index of the participant to reflect the completion of the IDAP program and issue a completion certificate to the participant.

[OAR Docket #20-533; filed 7-6-20]

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

[OAR Docket #20-691]

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RULES:

Subchapter 3. Education and Examination Requirements

605:10-3-2 [AMENDED]

605:10-3-7 [AMENDED]

Subchapter 5. Instructor and Entity Requirements and Standards

605:10-5-1 [AMENDED]

605:10-5-2 [AMENDED]

Subchapter 7. Licensing Procedures and Options

605:10-7-2 [AMENDED]

605:10-7-9 through 605:10-7-10 [AMENDED]

605:10-7-11 [NEW]

Subchapter 9. Broker's Operational Procedures

605:10-9-3.2 [AMENDED]

605:10-9-5 [AMENDED]

Subchapter 11. Associate's Licensing Procedures

605:10-11-2 through 605:10-11-3 [AMENDED]

AUTHORITY:

Oklahoma Real Estate Commission; 59 O.S., § 858-208

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The amendments to Subchapter 3 remove superseded requirements for good moral character, remove submission of a photograph with applications, modify post-license continued education requirements, and add a one-time application-processing fee. These rule interprets 59 O.S. §§ 858-302, 858-303, 858-303A, and 858-307.1.

The amendments to Subchapter 5 reduce the fees for entities seeking approval of a continuing education course, increase the fee for instructor applications, and clarify language related to guest instructors. These rule interprets 59 O.S. §§ 858-304 and 858-307.2.

The amendments to Subchapter 7 increase license fees, clarify requirements for certain brokers seeking reinstatement or activation of a license, and incorporate all current licensure options for active duty military and military spouse applicants. These rule interprets 59 O.S. §§ 858-306, 858-307.1, 385-307.2 and 59 O.S. § 4100 *et seq.*

The new Section 605:10-7-11 codifies and incorporates newly implemented laws requiring state agencies to keep a transparent list of felony crimes that disqualify an applicant upon conviction and provides applicants with the means to request an initial determination from the agency as well as an appeals process. This rule interprets 59 O.S. § 858-301.1.

The amendments to Subchapters 9 and 11 modify the fee for changing information that requires issuance of a new license and provides that team members must hold an active license and that sales associates must only register one entity for the purpose of receiving compensation. These rule interprets 59 O.S. §§ 858-305 and 858-307-1.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2020:

SUBCHAPTER 3. EDUCATION AND EXAMINATION REQUIREMENTS

605:10-3-2. Application for license

(a) Requirements for completing application.

(1) Any person seeking a real estate license shall make application for such license on a form provided by the Commission. The form shall contain, but not be limited to, the following:

(A) Legal name to include first, middle and last name.

(B) Routine biographical information.

(C) License history in Oklahoma and other states.

(D) Criminal and/or civil charges or convictions, including bankruptcy and judgments.

(E) Compliance with Title 59 O.S. 858.301.1 regarding felony convictions.

~~(F) Recent photograph.~~

~~(G) Birth date.~~

~~(H) Evidence of successful completion of course requirement as specified in the "Code".~~

~~(I) If applicable, evidence of transaction experience as specified in the "Code."~~

~~(J) If applicable, evidence of successful completion of the Broker in Charge course.~~

~~(K) A sworn statement as to accuracy of the application information.~~

~~(L) Documentation required for compliance necessary to verify citizenship, qualified alien status, and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.~~

~~(M) Social security number, pursuant to Title 56, Oklahoma Statutes, Section 240.21A.~~

(NM) Submit to a national criminal history record check, as defined by Section 150.9 of Title 74 of the Oklahoma Statutes. A fee amount, not to exceed sixty dollars (\$60.00), shall be sent to the Commission to begin the process of the national criminal history check.

(i) A completed national criminal history record check, completed for the Commission, shall be valid for six (6) months from the date of issuance from the issuing authority.

(ii) In the event an applicant is not physically able to submit to finger printing, other applicant identifiers shall be utilized, i.e., name, birth date and social security number.

(2) An applicant indicating a bankruptcy or judgment, criminal and/or civil charges or convictions on the application, must submit with the application official documents to the Commission which pertain to the disposition of the matter. If official documents are unable to be obtained, a detailed letter explaining the matter(s) must be attached to the application.

(b) **Applicant shall appear for examination.** Each applicant shall appear for an examination as soon as possible subsequent to the filing of an approved application or the signing of a form as required in 605:10-3-3. Each applicant shall allow a photograph to be taken of them at the time they take their real estate examination.

~~(c) **Applicant must be of good moral character.** The application submitted by an individual seeking a license must indicate that the applicant possesses a reputation for honesty, truthfulness, trustworthiness, good moral character, and that he or she bears a good reputation for fair dealing.~~

~~(d) **Determining good moral character.** In determining whether or not an applicant meets the definition of good moral character, the Commission will consider, but not be limited to, the following:~~

~~(1) Whether the probation period given in a conviction or deferred sentence has been completed and fully satisfied to include fines, court costs, etc.~~

~~(2) Whether the restitution ordered by a court in a criminal conviction or civil judgement has been fully satisfied.~~

~~(3) Whether a bankruptcy that is real estate related has been discharged.~~

~~(4) Whether an applicant has been denied licensure or a license has been suspended or revoked by this or any other state or jurisdiction to practice or conduct any regulated profession, business or vocation because of any conduct or practices which would have warranted a like result under the Oklahoma "Code".~~

~~(5) Whether an applicant has been guilty of conduct or practices in this state or elsewhere which would have been grounds for revocation or suspension under the current Oklahoma "Code" had the applicant been licensed.~~

~~(e) **Subsequent good conduct.** If, because of lapse of time and subsequent good conduct and reputation or other reason deemed sufficient, it shall appear to the Commission that the interest of the public will not likely be in danger by the granting~~

~~of such license, the Commission may approve the applicant as relates to good moral character.~~

(c) **Application Fee.** A one-time application processing fee of Thirty Five Dollars (\$35.00) shall accompany all applications for original licensure.

605:10-3-7. Provisional sales associate post-license education requirement

(a) **Purpose.** The purpose of the provisional sales associate post-license education requirement is to provide an educational program through which real estate provisional sales associate licensees can become more competent, knowledgeable and perfect their ability to engage in real estate activities for which they are licensed. Such activities involve facts and concepts which licensees must be knowledgeable in order to safely and confidently conduct real estate negotiations and transactions in the public's best interest.

(b) **Goals.** The goals of the provisional sales associate post-license education requirements are:

(1) To provide newly licensed individuals with the opportunity to obtain current information and knowledge to enable them to conduct real estate negotiations and transactions in a legal and professional manner in order to better protect public interest.

(2) To assure that licensees are provided with relevant information pertaining to practices which directly relate to real estate business.

(3) To assure that the provisional sales associate is provided with information regarding new and/or changing laws and regulations which affect the real estate business.

(4) To assure that the consumers' interest is protected from unknowledgeable licensees.

(c) **Objectives.** The objectives of post-license education are to:

(1) Assist newly licensed individuals by having available a practical educational program wherein the information attained can be put into practice.

(2) To help licensees expand and enhance their knowledge and expertise so as to continually be effective, competent, and ethical as they practice real estate.

(3) To encourage licensees to gain additional education for specialization in particular areas of real estate.

(d) **Subject content.** On and after July 1, 1993, a provisional sales associate shall be required to successfully complete prior to the first license expiration date, forty-five (45) clock hours of post-license education or its equivalent as determined by the Commission. Such course of study shall be referred to as the Provisional Post-license Course of Real Estate, Part II of II and shall encompass the following areas of study:

- (1) Real Estate Marketplace
- (2) Marketing Real Estate
- (3) Personal Marketing
- (4) The Qualifying Process
- (5) Prospecting and Negotiating
- (6) Financing Real Estate, Investments and Exchanges
- (7) Financial Documents
- (8) Duty to Account

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- (9) Title Search
 - (10) Risk Management
 - (11) At least three (3) clock hours of Broker Relationships with Parties to a Transaction
 - (12) Property Management
 - (13) At least three (3) clock hours of Laws and Regulations Affecting Real Estate Practice, including Code and Rules
 - (14) Disciplinary Action
 - (15) At least three (3) clock hours of Contracts and Forms
 - (16) At least three (3) clock hours of Professional Conduct and Ethics
 - (17) At least three (3) clock hours of Fair Housing.
- (e) **Equivalent course content.** The Commission may approve and/or accept any offering or combination of offerings which consists of forty-five (45) clock hours or more or its equivalent as determined by the Commission provided by an entity which meets the purposes, goals and objectives of the provisional sales associate post-license education requirement.
- (f) **Offerings.**
- (1) The Commission may accept the following offerings as proof of meeting the post-license education requirement:
 - (A) Any offering which is approved and presented by those entities enumerated in Title 59, O.S., subsection B, of 858-307.2 of the "Code."
 - (B) Any offering in real estate, or directly related area, approved and/or accepted by the real estate regulatory agency in another state; provided such offering is not excluded elsewhere in this Chapter.
 - (C) Any offering in real estate, or directly related area, not accepted in paragraphs (A) or (B) of this subsection, which can be determined by the Commission to be in compliance with the intent of the rules of this Chapter.
 - (2) The Commission has the authority to disapprove any offering which fails to meet the purposes, goals and objectives of this Section.
- (g) **Licensee responsible for notification to Commission.** Each provisional sales associate shall be responsible to furnish evidence to the Commission of having successfully completed a Commission approved forty-five (45) clock hour post-license education course or its equivalent as determined by the Commission. Upon successful completion of the post-license education requirement, evidence must be submitted on or before license expiration and on a form approved by the Commission.
- (h) **Failure to complete post-license education requirement prior to license expiration.** A provisional sales associate who fails to complete the post-license education requirement prior to the first expiration date of the provisional sales associate license, shall not be entitled to renew such license within six (6) months from the date of issuance, shall be placed on inactive status until evidence of successful completion is submitted to the Commission. A provisional sales associate who fails to complete the post-license education requirement prior to the first expiration date of the provisional

sales associate license, shall not be entitled to renew such license.

(i) **Evidence of completion.** As evidence of having completed the education requirement, each provisional sales associate shall present one or more of the following as required by the Commission:

- (1) A certificate, and/or documents, statements and forms, as may reasonably be required by the Commission, or
- (2) A certified transcript; however, if such offering is taken as an accredited C.E.U. (Continuing Education Unit) a certificate may be accepted in lieu of the transcript.

(j) **Attendance and successful completion required for in-class credit.** To complete any in-class offering, a person must physically be present during all of the offering time and successfully complete all course requirements and an examination.

(k) **Successful completion of materials and examination required for distance education credit.** To complete a distance education offering, a person must successfully complete all course requirements to include all modules and an examination.

(l) **Course limitations.** The following course limitations shall apply:

- (1) A provisional sales associate shall only be given credit for courses specifically approved by the Commission.
- (2) Educational courses taken for disciplinary reasons do not count towards the normal post-license education requirement.

(m) **Extension of time for completion of post-license course for provisional sales associate that has received orders for active military service.** A provisional sales associate that has received orders for active military service may request an extension of time to complete the post-license education requirement if the request is received in writing prior to the expiration of the license. The request must be accompanied by a copy of the military orders for active military service. The extension of time shall be one (1) year from the date of return from active military service. In conformance with §858-309, a licensee on active military service shall request an inactive status prior to each term for which the license is to be issued. If an extension is approved, a provisional sales associate shall be allowed to renew their license by requesting an inactive status in writing prior to each term for which the license is to be issued.

SUBCHAPTER 5. INSTRUCTOR AND ENTITY REQUIREMENTS AND STANDARDS

605:10-5-1. Approval of pre-license course

(a) **Course approval.** Any person or entity seeking to conduct an approved course of study shall make application and submit documents, statements and forms as may reasonably be required by the Commission. The request shall include the following:

- (1) Completed course application.

- (2) Application fee of One Hundred Twenty-five Dollars (\$125.00) for each course.
- (3) An approved course syllabus encompassing the contents enumerated in 605:10-3-1 and divided by instructional periods, the name, author and publisher of the primary textbook, or a statement stating the entity will use OREC syllabus and other items as may be required by the Commission.
- (b) **Course offering requirements.**
- (1) An entity not conducting an applicable approved course within any thirty-six (36) month period shall automatically be removed from approved status. In such event, the person and/or entity must re-apply as an original applicant.
- (2) If a course of study is to be conducted in the name of a corporation, the application shall include the names and addresses of all directors and officers.
- (3) An approved entity shall immediately report any changes in information in regards to the application previously filed with the Commission.
- (c) **Denied applications.** No portion of the fees enumerated in this section are refundable. If an instructor, entity or course application is not approved, the applicant may appeal the decision by filing a written request for a hearing before the Commission. The hearing procedure shall be that as outlined in 605:10-1-3 titled "Appeal of administrative decisions; procedures."
- (d) **Advertising course offerings.** No person or entity sponsoring or conducting a course of study shall advertise the course as approved prior to the course receiving approval from the Commission. Further, no person or entity sponsoring or conducting a course of study shall advertise that it is endorsed, recommended or accredited by the Commission although such person or entity may indicate that a course of study has been approved by the Commission.
- (e) **Instructor application and approval requirements.** An individual determined by the Commission to possess one or more of the following qualifications may, upon receipt of an application and evidence of education and/or experience, be considered for approval as an approved instructor. Each application for approval must be accompanied by a Twenty-Five Dollar (\$25.00) application fee and documentation required for compliance necessary to verify citizenship, qualified alien status, and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. In order to qualify, an individual must possess proof of one of the following:
- (1) A bachelor's degree with a major in real estate from an accredited college or university.
- (2) A bachelor's degree from an accredited college or university, and at least two (2) years of applicable active experience within the previous ten (10) years as a real estate broker or sales associate.
- (3) A real estate broker or sales associate licensed in Oklahoma with a minimum of five (5) years applicable active experience within the previous ten (10) years as a real estate broker or sales associate and proof of high school education or its GED equivalent.
- (4) An individual determined by the Commission to possess a combination of education and/or applicable active broker or sales associate experience in real estate or real estate related fields which constitutes an equivalent of one or more of the qualifications in paragraphs (1), (2), or (3) of this subsection.
- (f) **Course content examination.** Final approval will be considered after the instructor applicant has paid the appropriate examination fee and successfully completed an applicable examination with a passing score of 80% or more. If an instructor applicant has successfully taken an applicable license examination with a passing score of 80% or more within thirty (30) days of filing an instructor application, the passing score may be utilized to meet the applicable examination requirement in this section.
- (g) **Instructor renewal requirements.**
- (1) In order to maintain approved status an instructor must comply with the following:
- (A) Attend a Commission directed Instructor Renewal Course every twenty-four (24) months or successfully complete nationally recognized teacher modules consisting of at least 3 clock hours of credit as approved by the Commission.
- (B) Complete one of the following:
- (i) Furnish evidence that the instructor has taught a Commission approved pre-license course, or any other real estate related course(s) the Commission determines to be equivalent, within a required thirty-six (36) month period;
- (ii) Successfully pass the applicable sales or broker examination with a score of 80% or more; or
- (iii) Furnish evidence to the Commission that the instructor has audited an in-class pre-license course, in its entirety, that must be validated by the school instructor or director.
- (2) Any instructor not meeting the requirements of this subsection will be required to re-apply as an original instructor applicant.
- (h) **Guest instructors.** Guest instructors may be utilized ~~for in-class instruction~~ provided an approved instructor is also present during presentations. Total guest instruction and lectures shall not consume more than thirty percent (30%) of the total course time.
- (i) **Instructor and entity requirements.**
- (1) **Instructor must be present.** An approved instructor must be present in the same room during all in-class course instruction for students to receive credit toward course completion.
- (2) **Retention of records.** An instructor/entity shall maintain enrollment records and roll sheets which include number of hours completed by each student for seven (7) years.
- (3) **Course completion certificate.** Each individual successfully completing a course of study approved by the Commission shall be furnished a certificate prescribed or approved by the Commission certifying completion. The Commission shall accept from a college or university a

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certified transcript or a course completion certificate as prescribed by the Commission.

(4) **Commission authorized to audit and inspect records.** A duly authorized designee of the Commission may audit any offering and/or inspect the records of the entity at any time during its presentation or during reasonable office hours or the entity may be required to provide the records to the Commission.

(5) **Clock hours and breaks.** Not more than one clock hour may be registered within any one sixty (60) minute period and no more than ten (10) minutes of each hour shall be utilized for breaks.

(6) **Class size limited.** Instructor ratio to students shall not exceed sixty (60).

(j) **Facility requirements.** The offering entity shall ensure that all classroom facilities have adequate lighting, seating space and technology to meet the needs of the student. The classroom area shall be free of distractions and noise.

(k) **Disciplinary action.** An approved course of study, director, and/or instructor may be withdrawn or disciplined as outlined in Title 59, O.S., Section 858-208, paragraph 6 either on a complaint filed by an interested person or the Commission's own motion, for the following reasons, but only after a hearing before the Commission and/or a Hearing Examiner appointed by the Commission:

(1) In the event the real estate license of a director is suspended or revoked, the course of study shall automatically be revoked.

(2) In the event the real estate license of an instructor is suspended or revoked.

(3) Failure to comply with any portion of the Code or the rules of this Chapter.

(4) Failure of an approved entity to maintain a 50% or better pass/fail ratio on the Commission examinations.

(5) Falsification of records and/or application(s) filed with the Commission.

(6) False and/or misleading advertisement.

(7) Any other improper conduct or activity of the director, instructor, or entity as may be determined by the Commission to be unacceptable.

605:10-5-2. Approval of a continuing education course

(a) **Approval and expiration of application.** An entity seeking to conduct an approved continuing education course shall make application for the approval or renewal of each course. Such approval or renewal shall expire at the end of the thirty-sixth (36) month including the month of issuance.

(b) **Application form.** Entities seeking approval of a course ~~or group of courses totaling thirty six (36) hours or less~~ shall submit an application on a form prescribed by the Commission along with a nonrefundable fee of ~~seventy dollars (\$70.00)~~ Twenty Five Dollars (\$25.00) per course. ~~Each application is limited to thirty six (36) hours and shall be submitted on a separate application and accompanied by a non refundable fee of seventy dollars (\$70.00). Such application shall be made on a form prescribed by the Commission.~~ Each

application shall include, but is not limited to, the following information:

(1) The name(s), address(es), and telephone number(s) of the sponsoring entity, the owner(s), and the coordinator/director responsible for the quality of the course.

(2) The title(s) of the course or courses.

(3) The number of hours in each course.

(4) A copy of each course's curriculum, including comprehensive course objectives, a detailed outline of the course subject matter and instructor(s) for each course.

(5) The method the entity will use to evaluate the course offering.

(6) The procedure the entity will use to monitor attendance.

(7) A personal resume indicating name(s) and qualifications of the instructor(s).

(8) Any other relevant information useful in determining that the entity is presenting a course which will meet the definition, purposes, goals and objectives adopted by the Commission.

(9) A statement attesting to the fact that in accepting approval as a continuing education entity, the entity will protect and promote the purposes, goals and objectives of continuing education as stated in the License Code and Rules.

(c) **Commission course approval notice.** The Commission shall within sixty (60) days after receipt of an application inform the entity as to whether the course has been approved, denied, or whether additional information is needed to determine the acceptability of the course.

(d) **Course renewal requirements.** Upon expiration of the time period, as stated in sub-paragraph (a) of this rule, an application for renewal of any course ~~or group of courses~~ by an entity shall also be accompanied by a non-refundable application fee of ~~Seventy Dollars (\$70.00)~~ Twenty Five Dollars (\$25.00) per course for a thirty-six (36) month period. Renewal applications shall be subject to the same requirements as original applications; however, the renewal application shall be submitted prior to expiration of the course(s).

(e) **Change of information notice requirement.** Whenever there is any change in a course, the entity shall notify the Commission prior to the effective date of the change. Such change shall not be considered approved until written notice is received from the Commission.

(f) **Advertising of course offering.** An entity advertising a course as being approved for continuing education credit shall state in such advertisement, "Approved by the Commission for (correct number) hours of continuing education credit." No entity sponsoring or conducting a course of study shall advertise the course as approved prior to the course receiving approval from the Commission. Further, no entity sponsoring or conducting a course of study shall advertise that it is endorsed, recommended or accredited by the Commission.

(g) **Course requirements and limitations.**

(1) A course will not be approved by the Commission if its duration is less than one (1) clock hour or its equivalent as determined by the Commission.

(2) To meet the statutory requirement, a clock hour shall equal sixty (60) minutes, with no more than ten minutes of each hour utilized for breaks.

(3) An entity conducting an approved continuing education course shall, within seven (7) days of the completion thereof, successfully submit to the Commission the list of name(s), license number(s) and other personal identifiers of those licensees who have successfully completed the course. The information shall be submitted to the Commission by way of electronic format as required by the Commission, along with other information which may reasonably be required.

(4) Each licensee successfully completing a course shall be furnished a completion certificate, prescribed or approved by the Commission.

(5) Each course shall be presented in a facility necessary to safely and properly present the course.

(6) An approved instructor must be present in the same room during all in-class course instruction for students to receive credit toward course completion. If an instructor is presenting a Commission approved in-class course offering which is delivered to the licensees by way of electronic means to receiving sites other than where the instructor is presenting, the Commission may require that each receiving entity site have an in-class person monitoring the class in lieu of a Commission approved instructor.

(h) **Recruitment disallowed.**

(1) A coordinator/director or instructor shall not allow the classroom to be used by anyone to advertise and/or recruit new affiliates for any firm. The coordinator/director shall cause the following statement to be posted in the classroom in such a manner as will be readable by all participants: "No recruiting for employment opportunities for any real estate brokerage firm is allowed in this class. Any recruiting on behalf of, or permitted by, the Instructor should be promptly reported to the Oklahoma Real Estate Commission."

(2) An instructor shall not wear any identification relating to a specific name or identity of a real estate firm, a group of companies or franchises while in the class or on the premises.

(i) **Instructor application and approval requirements:**

An individual may, upon receipt of an application and evidence of education and/or experience, be considered for approval as an instructor for a three (3) year period including the month of approval. Each application ~~for approval and subsequent renewal~~ must be accompanied by a ~~Ten Dollar (\$10.00) non-refundable~~ Fifty Dollar (\$50.00) application fee. In order to qualify, an individual must possess proof of one of the following:

- (1) Possession of a bachelor's degree in a related field.
- (2) Possession of a valid teaching credential or certificate from Oklahoma or another jurisdiction authorizing the holder to instruct in an applicable field of instruction.
- (3) Five (5) years full-time experience out of the previous ten (10) years in a profession, trade, or technical occupation in the applicable field of instruction.

(4) An individual determined by the Commission to possess a combination of education and/or experience, in a field related to that in which the person is to instruct, which constitute an equivalent to one or more of the qualifications in (1), (2) or (3) of this subsection.

(j) **Denied application; appeal.** If the Commission is of the opinion that a proposed continuing education offering does not qualify under the Code and/or Rules of the Commission, the Commission shall refuse to approve the offering and shall give notice of that fact to the party applying for approval within fifteen (15) days after its decision. Upon written request from the denied party, filed within thirty (30) days after receipt of the notice of denial, the Commission shall set the matter for hearing to be conducted within sixty (60) days after receipt of the request. The hearing procedure shall be that as outlined in 605:10-1-3, titled "Appeal of administrative decisions; procedures."

(k) **Disciplinary action.** The Commission may withdraw or discipline as outlined in Title 59, O.S., Section 858-208, paragraph 6 the approval of a coordinator/director, instructor, offering or entity either on a complaint filed by an interested person or on the Commission's own motion, for any of the following reasons, but only after a hearing before the Commission and/or a Hearing Examiner appointed by the Commission:

- (1) In the event the real estate license of an instructor and/or coordinator/director is revoked or suspended.
- (2) Failure to submit all documents, statements and forms as may be reasonably required by the Commission.
- (3) Falsification of records and/or applications filed with the Commission.
- (4) False and/or misleading advertising.
- (5) Failure to revise an offering so as to reflect and present current real estate practices, knowledge, and laws.
- (6) Failure to maintain proper classroom order and decorum.
- (7) Any conduct which gives the coordinator/director, instructor or entity presenting the offering an unfair advantage over other brokers and/or real estate companies.
- (8) Failure to comply with any portion of the Code or rules of this Chapter.
- (9) Any other improper conduct or activity of the director, instructor, or entity the Commission determines to be unacceptable.

(l) **Retention of records.** An instructor/entity shall maintain enrollment records and roll sheets which include number of hours completed by each student for seven (7) years.

(m) **Commission authorized to audit.** A duly authorized designee of the Commission may audit any offering and/or inspect the records of the entity at any time during its presentation or during reasonable office hours or the entity may be required to provide the records to the Commission.

(n) **Licensee/Instructor course credit.**

- (1) A licensee who is the instructor of an approved offering for continuing education shall be credited with one (1) hour for each hour of actual instruction performed.
- (2) An instructor may not receive continuing education credit for instructing an offering more than one time during a license term.

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- (3) Records of such instruction shall be reported and maintained in the same manner as prescribed for participants elsewhere in the rules of this Chapter.
- (o) **Guest instructors.** Guest instructors may be utilized ~~for in-class instruction~~ provided an approved instructor is also present during presentations. Total guest instruction and lectures shall not consume more than thirty percent (30%) of the total course time.

SUBCHAPTER 7. LICENSING PROCEDURES AND OPTIONS

605:10-7-2. License terms and fees; renewals; reinstatements

(a) **License term and fees.** Each original license issued under the Code shall be issued to expire at the end of the thirty-sixth (36) month including the month of issuance. Each original provisional sales associate license issued under the Code shall be issued to expire at the end of the twelfth (12th) month including the month of issuance. Fees are non-refundable and are as follows:

- (1) For an original broker license and each subsequent license renewal, to include corporations, associations or partnerships, the fee shall be ~~Two Hundred and Ten Dollars (\$210.00)~~Two Hundred and Eighty Dollars (\$280.00).
- (2) For an inactive original broker license and each subsequent inactive license renewal, with the exception of corporations, associations or partnerships, the fee shall be ~~One Hundred and Twenty five Dollars (\$125.00)~~One Hundred and Sixty Dollars (\$160.00). In order to activate a license that was renewed inactive in the same license term, the licensee shall pay ~~One Hundred and Thirty Dollars (\$130.00)~~One Hundred and Sixty Five Dollars (\$165.00). Thereafter, any future request to activate in the same license term shall be in accordance with Rule 605:10-7-4.
- (3) For an original broker associate license and each subsequent license renewal, the fee shall be ~~One Hundred and Eighty Dollars (\$180.00)~~Two Hundred and Forty Five Dollars (\$245.00).
- (4) For an inactive original broker associate license and each subsequent inactive license renewal, the fee shall be ~~One Hundred and Ten Dollars (\$110.00)~~One Hundred and Fifty Dollars (\$150.00). In order to activate a license that was renewed inactive in the same license term, the licensee shall pay ~~One Hundred and Fifteen Dollars (\$115.00)~~One Hundred and Fifty Five Dollars (\$155.00). Thereafter, any future request to activate in the same license term shall be in accordance with Rule 605:10-7-4.
- (5) For an active original sales associate license and each subsequent active license renewal the fee shall be ~~One Hundred and Fifty Dollars (\$150.00)~~Two Hundred Dollars (\$200.00).
- (6) For an inactive original sales associate license and each subsequent inactive license renewal the fee shall be ~~Ninety five Dollars (\$95.00)~~One Hundred and

Twenty Five Dollars (\$125.00). In order to activate a sales associate license that was renewed inactive in the same license term, the licensee shall pay ~~One Hundred Dollars (\$100.00)~~One Hundred and Thirty Five Dollars (\$135.00). Thereafter, any future request to activate in the same license term shall be in accordance with Rule 605:10-7-4.

(7) For an original provisional sales associate license that is non-renewable the fee shall be ~~Seventy Dollars (\$70.00)~~Ninety Five Dollars (\$95.00).

(8) For an original branch office license and each subsequent license renewal the fee shall be ~~One Hundred and Twenty five Dollars (\$125.00)~~One Hundred and Seventy Dollars (\$170.00).

(9) For each duplicate license or pocket card, where the original is lost or destroyed, and a written request is made, a fee of Seven Dollars and fifty cents (\$7.50) shall be charged.

(10) The Fifteen Dollar (\$15.00) Education and Recovery Fund fee, shall be added and payable with the license fee for an original license and for each subsequent license renewal. Exceptions to this rule are: 1) a provisional sales associate license fee shall be Five Dollars (\$5.00) for their twelve (12) month license term; and, 2) a branch office shall not pay the fee.

(b) **Terms cannot be altered.** Terms shall not be altered except for purposes of general reassignment of terms which might be necessitated for the purpose of maintaining an equitable staggered license term system.

(c) **Expiration date.** The actual expiration date of a license shall be midnight of the last day of the month of the designated license term. A person who allows their license to expire shall be considered an applicant and subject to a national criminal history record check, as defined by Section 150.9 of Title 74 of the Oklahoma Statutes.

(d) **Late penalty.** All renewals shall be filed on or before midnight of the tenth day of the month in which said license is due to expire, except in the event that date falls on a Saturday, Sunday or holiday; in such case, the next Commission working day shall be considered the due date for all renewals except electronic online renewal wherein this exception would not apply. Any such renewal application filed after such date shall be subject to a late penalty fee of Ten Dollars (\$10.00).

(e) **Actual filing of license renewal.** A license shall lapse and terminate if a renewal application and required fees have not been filed with the Commission by midnight of the date on which the license is due to expire, except in the event that date falls on a Saturday, Sunday or holiday; in such a case, the next Commission working day shall be considered the due date. A renewal application and required fees are considered filed with the Commission on the date of the United States postal service postmark or the date personal delivery is made to the Commission office.

(f) **Reinstatement of license.** Any licensee whose license term has expired shall be considered for reinstatement of same such license upon payment of an amount equal to the current examination fee in addition to the license and late penalty

fee(s) for each delinquent license period(s). The following documents and fees must be submitted:

- (1) **Lapsed less than one year.** In the case of a license lapsed less than one year:
 - (A) License and late penalty fee.
 - (B) Reinstatement fee.
 - (C) National criminal history check.
 - (D) Documents as required by the Commission.
- (2) **Lapsed more than one year but less than three years.** In the case of a license lapsed more than one year but less than three years:
 - (A) License and late penalty fee.
 - (B) Reinstatement fee.
 - (C) National criminal history check.
 - (D) A completed reinstatement application.
 - (E) Successful completion of the appropriate licensing examination.
 - (F) A statement that the applicant has read a current License Code and Rules booklet.
 - (G) Documents as required by the Commission.
- (3) **Lapsed more than three years.** If an application is submitted more than three (3) years subsequent to the most recent year of licensure, the applicant shall be regarded as an original applicant.
- (g) **Reinstatement of a provisional sales associate license wherein post-license education was completed prior to license expiration date.** An applicant who successfully completed the post-license education requirement before their first license expiration date and failed to renew their license on or before such date shall be eligible to reinstate the license as a sales associate according to 605:10-7-2 (f), (1) through (3).
- (h) **Reinstatement of a provisional sales associate license wherein post-license education was not completed prior to license expiration date.** An applicant who has not successfully completed the post-license education requirement prior to the first license expiration date shall not be eligible to reinstate such license and shall apply and qualify as an original applicant.
- (i) **Reinstatement of revoked license.** An applicant may not apply for re-license or reinstatement of license for a minimum of three (3) years from the effective date of license revocation, except for an applicant whose license was automatically revoked pursuant to Sections 858-402 or 858-604 of Title 59, Oklahoma Statutes. Upon the passage of the three (3) year period, the applicant shall be required to comply with the requirements of an original applicant.
- (j) **Reinstatement of an automatically revoked license.** An applicant who has had their license automatically revoked, pursuant to Section 858-402 or 858-604 of Title 59 of the Oklahoma Statutes, shall be required to comply with the requirements of (f) of this section. In addition, reinstatement will not be granted until all outstanding amounts due the Commission have been paid in full.
- (k) **Reinstatement of a surrendered or cancelled license.** A surrendered or cancelled license applicant may be reinstated provided the applicant has received approval for re-issuance from the Commission. The following forms and fees must be submitted:

- (1) **Reinstatement with term of license still current.** A surrendered or cancelled license applicant whose license term is still current:
 - (A) Applicable reinstatement fee equal to the current examination fee.
 - (B) Re-issuance fee equal to the transfer of license fee.
 - (C) Documents as required by the Commission.
 - (D) Criminal history background check.
- (2) **Reinstatement with term of license expired.** A surrendered or cancelled license applicant whose license term has expired shall be required to comply with the requirements of (f) of this section.
- (3) **Reinstatement of provisional sales associate with term of license expired.** A surrendered or cancelled provisional sales associate whose license term has expired shall be required to comply with the following:
 - (A) If a provisional sales associate completed the post-license requirement on or before the first license expiration date, the applicant shall be eligible to reinstate the license according to 605:10-7-2 (f), (1) through (2).
 - (B) If a provisional sales associate did not complete the post-license requirement on or before the first license expiration date, the applicant shall be required to apply and qualify as an original applicant.
- (l) **Continuing education requirement.** Each licensee with the exception of those as listed in Title 59, O.S., Section 858-307.2 (D) seeking renewal of a license must submit evidence that they have completed the continuing education requirements enumerated in Section 858-307.2 of Title 59. An applicant seeking active reinstatement of a lapsed license must submit evidence that all continuing education requirements have been completed for each term in which an active license is requested.
- (m) **License fees prorated.** If a real estate sales associate qualifies for a license as a real estate broker associate or broker, or if a real estate broker associate qualifies for a license as a real estate broker, the unused license fee shall be credited to the new license fee. The unused license fee credit shall commence with the first full month following the month in which the broker license is to be issued.
- (n) **License expires after effective date of national criminal history check.**
 - (1) Any licensee who allows their license to expire shall be required to submit to a national criminal history check; however, such individual shall be allowed to proceed with reinstatement of such license pending receipt by the Commission of a completed fingerprint card, application Part A, and fee as stated elsewhere in these rules for the background search. If the Commission does not receive a completed Part A of the application and completed fingerprint card and fee within thirty (30) days from the date of request by the Commission, the license will be placed inactive and a hold placed on the license until receipt by the Commission of the aforementioned items. Thereafter, upon receipt by the Commission, the license may be reactivated so long as appropriate reactivation

forms and fees, as stated elsewhere in these rules, have been received by the Commission. However, if the fingerprint card is rejected for the purposes of a national criminal history check, the Commission will provide written notice to the licensee and the licensee must submit a new and unique fingerprint card to the Commission within thirty (30) days of receipt of such notice or the license will be placed on inactive status.

(2) A provisional sales associate who completes the Provisional Post-License Course prior to their first license expiration date but fails to timely renew the license shall be eligible to apply under the requirement under the preceding paragraph. However, after a period of three (3) years from the date of the license expiration such applicant shall no longer be eligible to apply under this section.

(o) **Issuance of license from provisional sales associate to sales associate.** A provisional sales associate is required to furnish to the Commission evidence of successful completion of the Provisional Post- license Course of Real Estate, Part II of II education requirement as set forth in Section 858-302 of Title 59, of the Oklahoma Statutes. Upon successful completion of the Provisional Post-license Course of Real Estate, Part II of II education requirement, the provisional sales associate must submit the appropriate document(s) to the Commission prior to the provisional sales associate's license expiration date for issuance of a renewable sales associate license. The Commission shall not issue the provisional sales associate a renewable sales associate license until the end of the provisional sales associate's license term and until the provisional sales associate has submitted evidence of successful completion of the forty-five (45) clock hour post-license course requirement and submitted all required form(s) and fee(s) as required by the Commission.

(p) **Active sales associate to inactive broker associate, or sales associate and/or broker associate to inactive broker license - no remaining credit to be given.** In the event an active sales associate, within six (6) months of obtaining their original license, reinstatement or license renewal qualifies for an inactive broker associate license, the Commission shall not credit the difference in license fees. In the event an active sales associate or broker associate within six (6) months of obtaining their original license, reinstatement or license renewal qualifies for an inactive broker license, the Commission shall not credit the difference in the license fees.

(q) **Licensee on active duty as a member of the Armed Forces of the United States.**

(1) In accordance with Title 59, O.S., Section 4100.6 of the Post-Military Service Occupation, Education and Credentialing Act while a license holder is on active duty the license may be renewed without payment of the license and education and recovery fund fee and meeting the continuing education requirement. Such waiver shall be requested in writing to the Commission prior to license expiration along with evidence of the order for active duty. The license issued pursuant to this rule may be continued as long as the licensee is a member of the Armed Forces of the United States on active duty and for a period of at least one (1) year after discharge from active duty. Upon

discharge from active duty and a request for license activation, the licensee shall submit to the Commission evidence of successful completion of the continuing education requirement for the current license renewal term.

(2) If a licensee on active duty does not request such a waiver in writing and the license expires, the applicant may, by written request provide the Commission documentation as required in subparagraph (1) of this subsection; however, no later than one (1) year after discharge from active duty.

(3) In the event a license expires during the events as noted herein, the Commission shall waive the criminal history background check and license examination.

(4) **Member of the National Guard or reserve component of the armed forces.** In accordance with Title 72, Chapter 1, Section 48.2 Extension and Renewal of Professional Licenses, any licensee whose license expires while on active duty as a member of the National Guard or reserve component of the armed forces shall be extended until no later than one (1) year after the member is discharged from active duty status. Upon the Commission receiving a copy of the official orders calling the member or reservist to active duty and official orders discharging the member or reservist from active duty all licensee fee and continuing education shall be waived for this time period as well as the criminal history background check and license examination.

(r) **Reinstatement for corporation, association or partnership.**

(1) A corporation, association or partnership that has lapsed for less than three (3) years that wishes to reinstate must submit:

(A) License and late penalty fees.

(B) Reinstatement forms and documents as required by the Commission.

(C) If the corporation or association has been lapsed for more than sixty (60) days, a current "Certification of Good Standing."

(2) Any corporation, association or partnership that has lapsed for more than three (3) years must submit an original application to be considered for licensure.

(s) **Reinstatement for branch offices.**

(1) A branch office that is lapsed for less than three (3) years that wishes to reinstate must submit:

(A) License fee and late penalty fees.

(B) Reinstatement forms and documents as required by the Commission

(2) Any branch office that has lapsed for more than three (3) years must submit an original application as a new branch office.

(t) **Specific license fees waived for low-income individuals.** In accordance with Title 59, Section 4003, any applicant who can present satisfactory evidence of being a low-income individual shall receive a one-time one-year waiver of the licensure fees as outlined in 605:10-7-2 (a.) Such waiver shall be prorated for a multi-year license so that the applicant shall only receive a waiver for one year of the applicable license fees. For the purposes of this section, "low-income individual"

means an individual who is enrolled in a state or federal public assistance program, or whose household adjusted gross income is below 140% of the federal poverty line or a higher threshold to be set by the executive branch department that oversees business regulation. Satisfactory evidence that the applicant is a low-income individual must be made upon forms provided by the Commission and must be presented upon application for original licensure.

605:10-7-9. Nonresident licensing

(a) **Nonresident licensed in another jurisdiction.** A nonresident applicant may apply to the Commission for a license to operate as a nonresident by submitting all appropriate documents as required by the Commission and furnish evidence that the applicant possesses a current active license in the applicant's resident jurisdiction or another jurisdiction in which the applicant has qualified for a license. No license shall be issued to any nonresident applicant at a higher level than the highest license of any current active license in the applicant's resident jurisdiction or another jurisdiction in which the applicant has qualified for a license. All nonresidents shall be required to complete the appropriate examination as required by the Commission. No inactive license experience may be credited to qualify under this section. The Commission may issue a nonresident license if such nonresident has qualified and maintains a license in another jurisdiction and meets the following qualifications:

(1) A nonresident applicant who has been actively licensed as a sales associate or broker respectively for a minimum of two (2) years out of the previous five (5) years.

(A) A nonresident applicant that applies under this paragraph must complete and submit the following:

- (i) Appropriate application(s).
- (ii) License certification(s) from the jurisdiction in which the applicant has held and/or currently holds a license.
- (iii) Criminal history background application, fingerprint card and fee.
- (iv) Examination fee and successful completion of the state portion of the examination.
- (v) Consent for service of jurisdiction form.
- (vi) Proof of completion of at least one (1) continuing education clock hour in each of the following Oklahoma-specific subjects: Broker Relationships Act, Contracts and Forms, and Code and Rule Updates.

(B) Upon the Commission granting approval to the nonresident applicant for licensure in this jurisdiction, the applicant must complete and submit the following:

- (i) appropriate license application form(s) along with license and education and recovery fund fees.

(2) A nonresident applicant who has been actively licensed less than two (2) years as a sales associate or broker respectively out of the previous five (5) years must successfully complete the appropriate examination.

(A) A nonresident applicant applying under this paragraph must complete and submit the following:

- (i) Appropriate application(s).
- (ii) License certification(s) from jurisdiction(s) in which the applicant has held and/or currently holds a license.
- (iii) Criminal history background application, fingerprint card and fee.
- (iv) Examination fee and successful completion of the entire appropriate examination.
- (v) Consent for service of jurisdiction form.
- (vi) Proof of completion of at least one (1) continuing education clock hour in each of the following Oklahoma-specific subjects: Broker Relationships Act, Contracts and Forms, and Code and Rule Updates.

(B) Upon the Commission granting approval to the nonresident applicant for licensure in this jurisdiction, the applicant must complete and submit the following:

- (i) Appropriate license application form(s) along with license and education and recovery fund fees.

(b) **Nonresident agreement.** The Commission may enter into a nonresident agreement with another jurisdiction and thereby qualify actively licensed nonresident applicants for licensing in this jurisdiction provided the Commission determines that the educational and experience requirements of the other jurisdiction are equivalent or equal to this jurisdiction; however, the applicant shall be required to comply with paragraph (a)(1)(A) and (B) of this section.

(c) **Nonresident applicant that is inactive in another jurisdiction.** A nonresident applicant who holds an inactive license in another jurisdiction and is unable to meet the requirement under paragraph (a) of this section may apply to the Commission for a license to operate as a nonresident provisional sales associate or broker by submitting all appropriate documents and successfully completing all requirements as required by the Commission.

(1) The nonresident applicant must complete and submit the following:

- (A) Appropriate application(s).
- (B) Criminal history background application, fingerprint card and fee.
- (C) Qualify as an original applicant by submitting proof of appropriate required education.
- (D) Examination fee and successful completion of the entire appropriate examination.
- (E) License certification(s) from the jurisdiction(s) in which the applicant holds or has held a license.
- (F) Consent for service of jurisdiction form.
- (G) Proof of completion of at least one (1) continuing education clock hour in each of the following Oklahoma-specific subjects: Broker Relationships Act, Contracts and Forms, and Code and Rule Updates.

(2) Upon the Commission granting approval to the nonresident applicant for licensure in this jurisdiction, the applicant must complete and submit appropriate license

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application form(s) along with license and education and recovery fund fees.

(d) **Consent for service of jurisdiction.** Prior to the issuance of a license to a nonresident, such nonresident shall file with the Commission a designation in writing that appoints the Secretary-Treasurer of the Commission to act as the licensed agent, upon whom all judicial and other process or legal notices directed to such nonresident licensee may be served. Service upon the agent so designated shall be equivalent to personal service upon the licensee. Copies of such appointment, certified by the Secretary-Treasurer of the Commission, shall be deemed sufficient evidence thereof and shall be admitted into evidence with the same force and effect as the original thereof. In such written designation, the licensee shall agree and stipulate that any notice or instrument which is served upon such agent shall be of the same legal force and validity as if served upon the licensee, and that the authority shall continue in force so long as any liability remains outstanding in this state. Upon receipt of any such process or notice the Secretary-Treasurer shall forthwith mail a copy of the same, by certified mail, to the last known business address of the licensee.

(e) **License history and application requirements.** Prior to the approval of the application, the nonresident must file with the Commission a certification of licensure from the real estate licensing jurisdiction of the licensee's resident jurisdiction and/or other jurisdictions in which the applicant has held or currently holds a license. The applicant shall pay the Commission the same examination fee and license fee as provided in the "Rules" for the obtaining of a resident sales associate or broker license in this jurisdiction. The certification of licensure shall be valid for sixty (60) days from date of issuance.

(f) **Approved application valid for ninety (90) days.** An approved application shall be valid for ninety (90) days.

(g) **Stipulations.** Nonresident licenses granted under the provisions of this section shall remain in force, only as long as such nonresident remains licensed in good standing in this jurisdiction or any other jurisdiction in which the nonresident is or has been licensed.

(h) **Co-brokerage arrangements.** A broker of this jurisdiction may participate in a cooperative brokerage arrangement with a broker of another jurisdiction provided that each broker conducts real estate activities only in the jurisdiction in which they are licensed.

(i) **Request for license transfer.** In the event a nonresident Oklahoma licensee desires to transfer the license and obtain a resident Oklahoma license or desires to transfer the license to another jurisdiction, the nonresident licensee shall be required to meet all applicable requirements and pay the appropriate change of address fee and submit all appropriate documents as required by the Commission. In the event a resident Oklahoma licensee desires to transfer the license and obtain a nonresident Oklahoma license, the licensee shall be required to pay the appropriate change of address fee and complete and submit all appropriate documents as required by the Commission.

(j) **Continuing education.** If a nonresident licensee completes the continuing education requirement of another jurisdiction for license renewal, the Commission will require proof of completion of at least one (1) continuing education

clock hour in each of the following Oklahoma-specific subjects for license renewal: Broker Relationships Act, Contracts and Forms, and Code and Rule Updates. If a nonresident licensee is exempt from meeting a continuing education requirement in another jurisdiction then the licensee must meet the Oklahoma continuing education requirement as follow:

(1) Each licensee shall have completed of said twenty-one (21) clock hours of continuing education six (6) clock hours of required subject matter as directed by the Commission

(2) The required subject matter, or its equivalent, as determined by the Commission, shall consist of all following subjects each license term: Professional Conduct, Broker Relationships Act, Fair Housing, Contracts and Forms, Code and Rules Updates and Current Issues. The remaining fifteen (15) clock hours may consist of elective subject matter as approved by the Commission

(3) Any licensee may complete the Broker in Charge course as approved by the Commission consisting of fifteen (15) clock hours in lieu of the required subject matter.

(4) Any Broker who holds or has held a license type of Broker Manager (BM), Proprietor Broker (BP), or Branch Broker (BB) during any portion of their current license term shall be required to successfully complete the Broker in Charge course as approved by the Commission consisting of fifteen (15) clock hours, or its equivalent, as approved by the Commission. In addition, to complete the continuing education requirement of twenty-one (21) clock hours such broker shall complete at least two (2) of the six (6) required subject matter, equal to at least six (6) clock hours, as referenced in paragraph (2) of this subsection.

(5) Any broker that lapsed or renewed inactive in their previous license term or current license term who applies for reinstatement or activation and held in their previous or current license term the license type of Broker Manager (BM), Proprietor Broker (BP), or Branch Broker (BB) must complete the Broker in Charge course and two (2) of the six (6) required subject matter totaling six (6) hours prior to their license being reinstated active or reactivating.

(k) Any broker applying for reinstatement or activation as a Broker Manager, Proprietor Broker, or Branch Broker must:

(1) provide documentation verifying ten real estate transactions within the past five (5) years or the equivalent as determined by the Commission; and

(2) successfully complete the Broker in Charge course as approved by the Commission consisting of fifteen (15) clock hours in lieu of the required subject matter.

(l) For the purposes of this subsection (k), transaction shall be defined in Title 59 O.S. Section 858-351 and shall be demonstrated on forms developed by the Commission.

605:10-7-10. Resident applicants currently or previously licensed in other jurisdictions

(a) **Requirements.** In order to qualify under previously licensed procedures, an applicant must complete and submit all appropriate documents as required by the Commission and furnish evidence that the applicant possesses or has possessed

a license in good standing in another jurisdiction. Applications approved for resident applicants currently or previously licensed in other jurisdictions shall be valid for ninety (90) days. The Commission may issue the applicant a license if such previously licensed applicant meets all of the requirements of either paragraphs (1), (2), (3) or (4) of this subsection:

(1) If a nonresident agreement exists between Oklahoma and the jurisdiction in which the applicant qualified for a license, the Commission shall qualify the licensed applicant through the nonresident agreement. In order to qualify under this paragraph an individual must furnish evidence that the license from the former jurisdiction has not been inactive more than six (6) months prior to application to this jurisdiction.

(A) An applicant applying under this paragraph must complete and submit the following:

- (i) Appropriate application(s).
- (ii) License certification(s) from the jurisdiction(s) in which the applicant has held or currently holds a license.
- (iii) Criminal history background application, fingerprint card and fee.
- (iv) Examination fee and successful completion of the state portion of the examination.
- (vi) Proof of completion of at least one (1) continuing education clock hour in each of the following Oklahoma-specific subjects: Broker Relationships Act, Contracts and Forms, and Code and Rule Updates.

(B) Upon the Commission granting approval to the applicant for licensure in this jurisdiction, the applicant must complete and submit the appropriate license application form(s) along with license and education and recovery fund fees.

(C) An applicant qualifying under this paragraph will be issued either a sales associate, broker associate or broker license.

(2) If a nonresident agreement does not exist, the applicant shall be required to furnish evidence of two (2) years of active experience respectively as a sales associate or broker out of the previous five (5) years. In order to qualify under this paragraph an individual must furnish evidence that the license from the former jurisdiction has not been inactive more than six (6) months prior to application to this jurisdiction.

(A) An applicant applying under this paragraph must complete and submit the following:

- (i) Appropriate application(s).
- (ii) License certification(s) from the jurisdiction(s) in which the applicant has held or currently holds a license.
- (iii) Criminal history background application, fingerprint card and fee.
- (iv) Examination fee and successful completion of the state portion of the examination.
- (v) Proof of completion of at least one (1) continuing education clock hour in each of the following Oklahoma-specific subjects: Broker

Relationships Act, Contracts and Forms, and Code and Rule Updates.

(B) Upon the Commission granting approval to the applicant for licensure in this jurisdiction, the applicant must complete and submit the appropriate license application form(s) along with license and education and recovery fund fees.

(C) An applicant qualifying under this paragraph will be issued either a sales associate, broker associate or broker license.

(3) An applicant who does not possess the required two (2) years active experience out of the previous five (5) years respectively as a sales associate or broker, or an applicant who does not meet all of the requirements of either paragraphs (1) or (2) of this subsection, shall be required to apply as an original applicant.

(A) An applicant applying under this paragraph must complete and submit the following:

- (i) Qualify as an original applicant by submitting appropriate required education and application.
- (ii) License certification(s) from the jurisdiction(s) in which the applicant has held or currently holds a license.
- (iii) Criminal history background application, fingerprint card and fee.
- (iv) Examination fee and successful completion of the entire appropriate examination.
- (v) Proof of completion of at least one (1) continuing education clock hour in each of the following Oklahoma-specific subjects: Broker Relationships Act, Contracts and Forms, and Code and Rule Updates.

(B) Upon the Commission granting approval to the applicant for licensure in this jurisdiction, the applicant must complete and submit the appropriate license application form(s) along with license and education and recovery fund fees.

(C) An applicant qualifying under this paragraph will be issued either a provisional sales associate, broker associate or broker license.

(4) In accordance with Title 59, O.S., Section 4100.4 of the Post-Military Service Occupation, Education and Credentialing Act, the Commission shall, upon satisfactory evidence of equivalent education, training and experience by an applicant for licensure, accept the education, training and experience completed by the applicant as a member of the Armed Forces or Reserves of the United States, National Guard of any jurisdiction, the Military Reserves of any jurisdiction, or the Naval Militias of any jurisdiction, and apply it in the manner most favorable toward satisfying the applicant's qualifications for examination and license issuance.

(A) An applicant applying under this paragraph must complete and submit the following:

- (i) Appropriate application(s).
- (ii) Satisfactory evidence of education, training and experience obtained by the applicant as a

member of the military Armed Forces or Reserves of the United States.

(iii) License certification(s) from the jurisdiction(s) in which the applicant has held or currently holds a license.

(iv) Criminal history background application, fingerprint card and fee.

(iv) Examination fee and successful completion of the entire appropriate examination.

(B) Upon the Commission granting approval to the applicant for licensure in this jurisdiction, the applicant must complete and submit the appropriate license application form(s) along with license and education and recovery fund fees.

(C) An applicant qualifying under this paragraph will be issued either a provisional sales associate, broker associate or broker license.

(b) **May be required to meet additional requirements.** If, in the opinion of the Commission, there is question as to the competence of the previously licensed applicant, the individual may be required to meet additional educational courses and/or successfully complete the Oklahoma examination.

~~(e) Military spouse applicant — 120-day temporary permit. In accordance with Title 59, O.S., Section 4100.5 the Commission shall expedite the issuance of a 120-day permit to an applicant:~~

~~(1) Who is actively licensed in real estate in another jurisdiction;~~

~~(2) Whose spouse is an active duty member of the Armed Forces or Reserves of the United States;~~

~~(3) Whose spouse is subject to military transfer to this state; and~~

~~(4) Who left employment in another state to accompany their spouse to this state.~~

~~(c) Active duty military and military spouse applicants may utilize licensure methods provided for in 59 O.S. § 4100 et seq. as appropriate.~~

~~(d) Expedite licensure means to issue the applicant a temporary permit to perform licensed activities for a period of 120 days to allow the person to successfully complete all application requirements as required by the Commission and any specific requirements in this state that were not required in the jurisdiction in which the person was licensed, i.e., criminal history background check and successful passage of the Oklahoma portion of the examination. An extension of the 120 days may be granted up to an additional 60 days if written justification is submitted by the applicant to the commission and the delay of license issuance was not the fault of the applicant.~~

605:10-7-11. Applicant criminal history

(a) This section establishes the criteria utilized by the Commission in determining the effect of criminal history on applicant eligibility for real estate licensure and certification. This section applies to:

(1) All individuals seeking to obtain a real estate license;

(2) All individuals seeking an initial determination of their eligibility to obtain a real estate license.

(b) The Commission shall maintain a list of felony crimes that disqualify an applicant from obtaining a real estate license within ten (10) years of completion of the criminal sentence, including parole and probation. The felony crimes included on the list substantially relate to the practice of real estate and pose a reasonable threat to public safety for the reasons stated below:

(1) Real Estate Licensees have unique access to residential homes and commercial buildings.

(2) Real Estate Licensees have daily contact with the public and individuals in the occupation.

(3) Real Estate Licensees play a vital role in assisting the public with substantial long-term financial obligations.

(c) The Commission's list of disqualifying felony crimes is available on the Commission's website or upon request by contacting the Commission office.

(d) Individuals may request an initial determination from the Commission regarding whether the individual's criminal history disqualifies that individual from obtaining a real estate license. Such request must be in writing and directed to the Oklahoma Real Estate Commission. The individual must submit a copy of their criminal history and any related documents and court records that specify the criminal history of the individual. A ninety-five dollar (\$95.00) fee shall accompany any request for initial determination. The fee shall be collected by the Commission prior to the determination.

(e) Individuals may appeal the Commission's initial determination of disqualification by submitting a request in writing of the circumstances the individual would like the Commission to consider. The Commission may discuss the individual appeals at any scheduled meeting of the Commission. The individual may be allowed to address the Commission during public comment by signing in at the beginning of the meeting at which the appeal may be on the agenda.

SUBCHAPTER 9. BROKER'S OPERATIONAL PROCEDURES

605:10-9-3.2. Team registration and fees

(a) The broker shall register each team within the brokerage with the Commission on a form prescribed by the Commission. The fee for each team name registration shall be \$100.00.

(b) Each team name must be approved by the broker and must be unique and not registered to another real estate team within the State of Oklahoma, and must not be identical to any association, corporation or partnership licensed as a real estate entity by the Commission.

(c) The broker shall not allow any team name identical to an associate's corporation or association formed for the purpose of receiving compensation.

(d) Each team name must be registered to the Commission prior to the performance of any licensable activities by the team.

(e) It shall be prohibited for a broker to register any team name that is not being used by a team within their brokerage.

(f) The broker shall maintain and keep current a list of teams and their respective members, in writing, within the brokerage.

Copies of this list shall be made available immediately to the Commission upon request.

(g) The broker shall notify the Commission, in writing, of all deleted or unused team names.

(h) Team members must maintain an active Oklahoma real estate license.

605:10-9-5. Broker change of address or office telephone number

(a) **Change of business address or office telephone number.** Any change of business address or office telephone number of a broker must be filed in the Commission office within ten (10) days of such change. Filed shall mean the date of the United States Postal Service postmark or the date personal delivery is made to the Commission office. The broker shall return his or her certificate to the Commission along with those of all licensees in his or her association with a request for a change of address. Upon any request for a change of address there shall be paid a fee to the Commission of ~~Twenty-five Dollars (\$25.00)~~ Forty Dollars (\$40.00) for each license to be changed. No fee shall be charged for adding or deleting an office telephone number.

(b) **Group change of address.** Under certain circumstances as determined by the Commission, the Commission may place a cap of Seven Hundred Fifty Dollars (\$750.00) on group transactions requesting licenses to be issued. To qualify, such request must be received complete and require no further correspondence and/or documents except for the issuance of the licenses.

(c) **Change of home address.** A broker is required to notify the Commission of his or her current home address. Such change shall be filed in the Commission office within ten (10) days of such change. No fee is required to change the licensee's record; however, a fee of ~~Twenty-five Dollars (\$25.00)~~ Forty Dollars (\$40.00) will be charged if the change requires a new license to be issued.

SUBCHAPTER 11. ASSOCIATE'S LICENSING PROCEDURES

605:10-11-2. Associate licenses

(a) **License issuance and change request.** Each associate license shall be issued to the associate's broker, who shall retain custody of such license. Upon an associate leaving the association of the broker, the associate's license shall be returned to the Commission, together with a release executed by the broker. Any change of association from one firm to another or relocation from one office to another within a firm by an associate must be filed in the Commission office within ten (10) days. The associate's new broker shall be required to file a consent agreement to sponsor said associate on a form provided by the Commission. An associate requesting an association or office change shall be required to pay a fee of ~~Twenty-five Dollars (\$25.00)~~ Forty Dollars (\$40.00).

(b) **Broker refusal to release associate.** In the event a broker refuses for any reason to release an associate, the associate

shall notify the broker by certified mail of the disassociation and furnish the Commission a sworn statement that the notification has been sent to the broker. Upon receipt by the Commission of the aforementioned statement, the Commission shall release the licensee.

(c) **Group change requests.** Under certain circumstances as determined by the Commission, the Commission may place a cap of Seven Hundred Fifty Dollars (\$750.00) on group transactions requesting licenses to be reissued. To qualify, the request must be received complete and require no further correspondence and/or documents except for the issuance of the licenses.

(d) **Associates transfer.** When an affiliated associate leaves a broker for whom the associate is acting, the broker shall immediately cause the license of that associate to be forwarded to the Commission along with a release of association form. The broker shall make every attempt to notify the associate of the disassociation.

(e) **Active associate may continually act.** An active associate transferring from one broker to a new broker may continually act if the change is done in a timely manner and in compliance with the ten (10) day notification requirement and other applicable rules of this Chapter.

(f) **Compensation due a disassociated associate.** A previous broker may pay compensation due a disassociated associate directly to the associate and not be required to make such payment through the associate's new broker. However, any agreements between the associate and prior broker requiring further activities to be performed in connection with the compensation to be received, can only be performed with consent and acknowledgement of the new broker.

(g) **Change of home address.** An associate is required to notify the Commission office of his or her current home address. The change shall be filed in the Commission office within ten (10) days of the change. No fee is required to change the licensee's records; however a fee of ~~Twenty-five Dollars (\$25.00)~~ Forty Dollars (\$40.00) will be charged if the change requires a new license to be issued.

605:10-11-3. Associate's corporation or association formed for the purpose of receiving compensation

Within the meaning of subsection 14 of Section 858-312 of the "Code" payment of a commission by a broker to an associate's corporation or association does not constitute a payment of a fee (commission) to an unlicensed person provided the corporation or association, the associate and the broker, abide by the following requirements:

- (1) The associate's corporation or association shall not perform any act requiring a real estate license and shall not hold itself out as engaged in such activity.
- (2) The associate must have an active individual real estate license.
- (3) The broker of the associate must provide the Commission a written statement approving of the associate's corporation or association.

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- (4) The associate must be the majority stockholder and president of the corporation or majority member of the association.
- (5) Ownership of an associate's corporation or association is limited to spouses and blood relatives.
- (6) The associate's corporation or association shall not advertise nor receive referral fees or commissions except from the associate's broker.
- (7) The broker and associate must complete and sign a Commission approved form that includes the following:
 - (A) A statement that the associate is the majority stockholder and president of the corporation or majority member of the association.
 - (B) Names and relation of all officers/members and/or stockholders.
 - (C) Verification that the association or corporation is in good standing with the Oklahoma Secretary of State.
- (8) An associate may only register one corporation or association for the purpose of receiving compensation.

[OAR Docket #20-691; filed 7-24-20]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #20-430]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 7. Rules of Operation

610:1-7-14. Organization of agenda [AMENDED]

AUTHORITY:

Oklahoma Constitution Article XIII-A §§ 1-4; 70 O.S. §§ 3206, 3228 and 3228.1; 70 O.S. §§ 2401 through 2407; 70 O.S. §3206 (i); Oklahoma State Regents for Higher Education.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 6, 2019

COMMENT PERIOD:

January 3, 2020 through February 3, 2020

PUBLIC HEARING:

None

ADOPTION:

February 27, 2020

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 4, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 11, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

State Regents' Administrative Rules, among other things, outline the procedures for creation of meeting agendas for each State Regents meeting. Section (e) of Rule 610:1-7-14 addresses the "Reports" section of the meeting

agenda, which contains items of a general reporting nature. Current State Regents' policy requires that State Regents "accept" the reports listed under the "Reports" section of the agenda unless their consideration is essential to the understanding of subsequent action items. According to Section (e) of Rule 610:1-7-14, the "Reports" section shall include items such as, matters for study and consideration with action to be taken at some future meeting, routine periodic program/activity reports, special informational reports to the State Regents, published reports, and communications.

Furthermore, Section (f) of Rule 610:1-7-14 provides the Chairman with the authority to receive oral presentations on all reports prior to their acceptance or the authority to forego oral reports should additional clarification not be needed for the items listed in the "Reports" section of the agenda.

Upon discussion with the State Regents regarding terminology and legal definitions of the terms "accept" and "acceptance," the Regents decided that their actions under Sections (e) and (f) are more accurately defined and described as an acknowledgement of receipt. Therefore, in order to avoid confusion and mischaracterization of their actions, it is recommended that State Regents' Rule be revised as follows to more accurately reflect the action taken by the State Regents with regard to reports.

CONTACT PERSON:

David B. Harting, Associate General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9289.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 7. RULES OF OPERATION

610:1-7-14. Organization of agenda

(a) The agenda for a State Regents' meeting will contain items of business categorized under the following topics:

- (1) Academic Affairs
- (2) Fiscal Affairs
- (3) Executive
- (4) Consent Docket
- (5) Reports

(b) The order in which the items of business are listed may vary although academic items are normally considered first.

(c) Items requiring State Regents' action will generally be scheduled at the first of the agenda.

(d) Items of a routine nature that require State Regents' action and that are consistent with State Regents' policies and previous action will be placed on a Consent Docket. These items normally will be handled with one vote and little, if any, discussion.

(e) Items of a reporting nature requiring only general ~~acceptance~~acknowledgement of receipt by the State Regents will generally be listed under "Reports" and scheduled at the end of the agenda for one general ~~acceptance~~acknowledgement action by the Regents unless, for instance, their consideration is essential to the understanding of subsequent action items. The "Reports" section shall include such items as:

- (1) matters for study and consideration with action to be taken at some future meeting,
- (2) routine periodic program/activity reports,
- (3) special informational reports to the State Regents,
- (4) published reports, and
- (5) communications.

(f) The Chairman may elect to receive oral presentations on all or selected reports prior to their general ~~acceptance~~acknowledgement of receipt or may elect to proceed with ~~acceptance~~acknowledgement of receipt and forego oral reports should additional clarification not be needed.

[OAR Docket #20-430; filed 6-26-20]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS

[OAR Docket #20-431]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Academic Scholars Program

610:25-1-3. General principles for operation of program [AMENDED]

610:25-1-4. Eligibility Requirements and Term of Scholarship Award [AMENDED]

AUTHORITY:

Oklahoma State Regents for Higher Education; 70 O.S. §2401 et seq.; 70 O.S. §3206 (i).

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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None

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SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 1. Academic Scholars Program

610:25-1-3. General principles for operation of program [AMENDED]

610:25-1-4. Eligibility Requirements and Term of Scholarship Award [AMENDED]

Gubernatorial approval:

December 9, 2019

Register publication:

37 Ok Reg 417

Docket number:

19 - 946

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The program provides participants a scholarship for up to four years of study at accredited institutions of higher education in Oklahoma. The proposed rule revisions address two issues. The first is adding a third minimum eligibility criterion option for Institutional Nominees that provides a stronger predictor of college success, addresses a disadvantage for high schools that do not calculate class rank and provides more flexibility for institutions to select qualified applicants while maintaining high academic standards. The second is allowing consideration of ACT scores based on a recent change in ACT's testing and scoring policy. On October 8, 2019, ACT announced a change in the administration of the ACT test that will calculate a "superscore" if a student takes the test more than once. ACT plans to implement this change in

September 2020. The new ACT policy will also allow students to retest in one or more of the individual test sections without having to retake the entire test.

CONTACT PERSON:

David B. Harting, Associate General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9289.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. ACADEMIC SCHOLARS PROGRAM

610:25-1-3. General principles for operation of program

(a) Recipients of award must attend a regionally or State Regents accredited public, independent or proprietary higher education institution in Oklahoma.

(b) The program is designed to adhere to the State Regents' Policy on Social Justice by encouraging all potential applicants to the Oklahoma State Regents' Academic Scholars Program to enter national scholarship competition.

(c) Concurrently enrolled high school students are not eligible for this program.

(d) Only ACT test scores reported ~~on an official test report issued~~ by ACT prior to college entry, excluding concurrently enrolled students and students enrolled for the summer term following high school graduation, will be considered for admission to the program. Scores from ACT residual tests will not be considered. SAT test scores will be considered in a manner comparable to ACT test scores. Qualifying test scores obtained after college enrollment are invalid for applying to the program. Until August 31, 2020, partial Partial scores from more than one examination will not be considered. Beginning September 1, 2020, all test scores reported by ACT, including "superscores" as defined by ACT, will be considered.

(e) A student must enter the program the fall semester immediately after his/her class graduates from high school, except for students admitted under the State Regents' Opportunity Admission Category. The Chancellor may approve exceptions to this requirement for extraordinary circumstances.

(f) Disability Provision. Provisions contained in this section are consistent with 70 O.S. 1991, Section 2403, as amended, and federal legislation affecting disabled persons. If a person identifies himself or herself as a student with a disability and requests consideration for a scholarship under the Academic Scholars Program by means other than standard testing procedures, the State Regents shall permit the student to be examined under the special testing arrangements provided by either ACT or The College Board provided that he or she meets the qualifications specified by ACT and SAT respectively to be examined. Performance percentile requirements for participation in the Academic Scholars Program remain the same as for other students. Students taking such tests and receiving Academic Scholarship awards will be expected to meet the

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same retention standards as other students. Special provisions may be considered in determining full-time enrollment for students falling in this category.

610:25-1-4. Eligibility Requirements and Term of Scholarship Award

(a) There are five avenues by which to qualify for the Academic Scholars Program. Each is defined below:

(1) An Individual Applicant Qualified Student, which shall mean a student who is a resident of the State of Oklahoma whose ACT test score or whose Scholastic Aptitude Test score falls within the 99.5 to 100.0 percentile levels as administered in the State of Oklahoma and whose grade-point average and/or class rank is exceptional, as determined by the State Regents,

(2) A Presidential Scholar, which shall mean a student selected by the Commission on Presidential Scholars pursuant to the Presidential Scholars Program administered by the United States Department of Education,

(3) A National Merit Scholar, which shall mean a student designated as a National Merit Scholar by the National Merit Scholarship Corporation,

(4) A National Merit Finalist, which shall mean a student designated as a National Merit Finalist by the National Merit Scholarship Corporation.

(5) An Institutional Nominee, which shall mean a student nominated by an institution in The Oklahoma State System of Higher Education whose ACT test score or whose Scholastic Aptitude Test score falls within the 95.0 to 99.49 percentile levels, or who shows exceptional academic achievement as evidenced by factors including but not limited to grade point average, class rank, national awards, scholastic achievements, honors, and who shows exceptional promise based on documentation that may include but not be limited to teacher recommendations, extracurricular activities, and evidence of overcoming economic and social obstacles as determined by the State Regents. The State Regents shall ensure that standards of high academic ability are documented. Scholarship awards to institutional nominees become effective when appropriate documentation is verified by the State Regents.

(A) Effective with the Fall ~~2006~~2020 semester, Institutional Nominees are required to meet at least one of the ~~two~~three minimum criteria outlined below to be considered eligible for application as an Institutional Nominee:

(i) Research universities:

(I) ACT: 32 or SAT equivalent

(II) GPA 3.9 and either Top 2% Class Rank or rank of first or second in their graduating class

(III) GPA 3.9 and 30 ACT or SAT equivalent

(ii) Regional universities:

(I) ACT: 30 or SAT equivalent

(II) GPA 3.8 and either Top 4% Class Rank or rank of first or second in their graduating class

(III) GPA 3.8 and 28 ACT or SAT equivalent

(iii) Two-year colleges:

(I) ACT: 29 or SAT equivalent

(II) GPA 3.7 and either Top 5% Class Rank or rank of first or second in their graduating class

(III) GPA 3.7 and 26 ACT or SAT equivalent

(B) ~~Students graduating from high schools that do not provide class rank and home educated~~Home-educated students shall be considered for eligibility as an Institutional nominee based on their ACT or SAT test scores.

(C) Students are eligible for consideration as an Institutional Nominee no later than the fall semester immediately following the graduation of their high school class. The Chancellor may approve exceptions to this requirement for extraordinary circumstances.

(D) Institutional Nominees may be Oklahoma residents or nonresidents.

(E) Students receiving the scholarship as an Institutional Nominee of a two-year college are eligible for transfer to a four-year public or private Oklahoma institution after completion of an associate's degree or the accumulation of at least 48 credit hours. In addition, the Institutional Nominee of a two-year college must attend the nominating institution for the first year.

(F) Students receiving the scholarship as an Institutional Nominee of a four-year university are eligible for transfer to another Oklahoma institution after one year of attendance at the nominating institution.

(G) For any year that the State Regents provide less than full funding of the total cost of all awards for nonresident students participating in the program, nonresident students may transfer the scholarship to another institution only upon approval of the institution to which they intend to transfer.

(H) Students who fail to enroll the first semester upon nomination forfeit their scholarship eligibility.

(I) Institutions may not replace students who forfeit their scholarship or are removed from the program due to failure to meet continuing eligibility requirements with another nominee.

(b) Students receiving the scholarship are eligible for eight semesters of scholarship at Oklahoma colleges and universities. Additional semesters of award, up to ten semesters, are available upon approval by the President or appropriate academic officer of the institution and the Chancellor. Additional semesters are intended only for extraordinary circumstances or for undergraduate academic programs that cannot be completed within eight semesters.

[OAR Docket #20-431; filed 6-26-20]

**TITLE 612. STATE DEPARTMENT OF
REHABILITATION SERVICES
CHAPTER 1. ADMINISTRATIVE
OPERATIONS**

[OAR Docket #20-596]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Administrative Components of the Department
612:1-3-2. The Director of Rehabilitation Services [AMENDED]
612:1-3-2.1. The Chief of Staff of Rehabilitation Services [AMENDED]
612:1-3-10. Final signature authority [AMENDED].
Subchapter 5. Program Divisions within the Department
612:1-5-1. Overview of the department [AMENDED]
612:1-5-3. Division of ~~Visual~~ Services for the Blind and Visually Impaired (DVS) (DSBVI) [AMENDED]
612:1-5-4. Disability Determination ~~Division~~ Services (DDV) (DDS) [AMENDED]
Subchapter 15. Department Manual, Rules, and Declaratory Rulings
612:1-15-1. Purpose and distribution of the manual [AMENDED]
612:1-15-5. Definitions [NEW]
612:1-15-6. Revision of administrative rules and internal policy [NEW]
Subchapter 18. Process Improvement [NEW]
Part 1. General Provisions [NEW]
612:1-18-1. Purpose [NEW]
Part 3. Program Standards [NEW]
612:1-18-10. Program Standards [NEW]
Part 5. Case Review [NEW]
612:1-18-20. Case Review [NEW]

AUTHORITY:

Commission for Rehabilitation Services; 74 O.S. § 166.1 et seq.; 74 O.S. § 166.2

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND
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N/A

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

Revisions to Chapter 1 consist of division name change of Visual Services (VS) to Services for the Blind and Visually Impaired (SBVI). New subchapter created to relocate the Process Improvement rules from Chapter 3, Management Services Division. Revised outdated citations.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

**SUBCHAPTER 3. ADMINISTRATIVE
COMPONENTS OF THE DEPARTMENT**

612:1-3-2. The Director of Rehabilitation Services

(a) The Director of Rehabilitation Services, as the chief administrative and executive officer of the Department of Rehabilitation Services (DRS), is charged with the responsibility for day-to-day direction of the activities necessary for DRS to attain its mission as established by Title 74, Section 166.1 et seq. of Oklahoma State Statute. The work of the Director is overseen by the Commission for Rehabilitation Services.

(b) The Director directly supervises the Chief of Staff, the Chief Fiscal Officer, the Chief Operations Officer, the Communications Director, the ~~External Relations Officer~~ Legislative Liaison, Division Administrators for Vocational Rehabilitation, Visual Services for the Blind and Visually Impaired, Disability Determination Services, Process Improvement, the Superintendents of the School for the Blind and School for the Deaf, and the Project Coordinators.

(c) The Director's duties include:

- (1) assuring that all of DRS is working toward its mission and the goals established by the Commission through aggressive implementation of the planning and budgeting system;
- (2) serving as staff to the Commission for Rehabilitation Services, providing necessary input for decision-making and assuring that actions approved by the Commission are carried out;
- (3) serving as ex officio member to the Rehabilitation Council, and to the Independent Living Council;
- (4) developing and maintaining cooperative relationships with lawmakers and other officials, both federal and state, to assure the fulfillment of DRS's mission;
- (5) maximizing all available resources for the delivery of services to the clients DRS is charged to serve;
- (6) serving as the chief spokesperson for DRS and as an advocate for the clients it serves;
- (7) assuring the coordination of services with other state agencies; and,
- (8) selecting staff capable of carrying out the DRS mission for the areas immediately under the Director's supervision, establishing job descriptions and specifications for each of those positions, delegating authority to complete duties assigned and overseeing the accomplishment of those assigned responsibilities.

612:1-3-2.1. The Chief of Staff of Rehabilitation Services

(a) The Chief of Staff of Rehabilitation Services assists the Director of the Department in fulfilling the chief administrative and executive responsibilities for day-to-day direction of the activities necessary for DRS to attain its mission as established by Title 74, Section 166.1 et seq. of Oklahoma State Statute. The work of the Chief of Staff is overseen by the Director of the Department of Rehabilitation Services. In the Director's absence, the work of the Chief of Staff is overseen by the Commission for Rehabilitation Services.

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(b) To the extent deemed necessary and prudent by the Director, or in the Director's absence, the Chief of Staff supervises the ~~Division Administrators for Vocational Rehabilitation Services, Visual Services, Disability Determination Services, and the Superintendents of the School for the Blind and the School for the Deaf.~~ To the extent deemed necessary and prudent by the Director, or in the Director's absence, the Chief of Staff also supervises the Communications Director and External Relations Officer, the Chief Operations Officer and the Chief Fiscal Officer ~~Chief Fiscal Officer, the Chief Operations Officer, the Communications Director, the Legislative Liaison, Division Administrators for Vocational Rehabilitation, Services for the Blind and Visually Impaired, Disability Determination Services, Process Improvement, the Superintendents of the School for the Blind and School for the Deaf, and the Project Coordinators.~~

(c) The Chief of Staff duties include:

- (1) assuring that all of DRS is working toward its mission and the goals established by the Commission and the Director through aggressive implementation of the planning and budgeting system;
- (2) serving as staff to the Commission for Rehabilitation Services at the direction of, or in the absence of, the Director, providing necessary input for decision-making and assuring that actions approved by the Commission are carried out;
- (3) developing and maintaining cooperative relationships with lawmakers and other officials, both federal and state, to assure the fulfillment of DRS's mission;
- (4) maximizing all available resources for the delivery of services to the clients DRS is charged to serve;
- (5) serving as a spokesperson for DRS and as an advocate for the clients it serves;
- (6) assuring the coordination of services with other state agencies; and,
- (7) carrying out such other duties and assignments the Director, or in the Director's absence, the Commission deems necessary and prudent to attain the mission of DRS; delegating authority to complete duties assigned, and overseeing the accomplishment of those assigned responsibilities.

612:1-3-10. Final signature authority

The Department of Rehabilitation Services recognizes the importance of efficient processing of resource and operations approval requests. At the same time, the Department must assure sufficient oversight of resource allocation in order to fulfill its obligations as a steward of public funds. The Department has therefore established a signature authority listing to delineate final approval levels for resource and operations approval requests. With regard to signature authority on contracts, all expenditures must be consistent with DRS's budget categories as approved by the Commission. Delegation of final signature authority is limited to the next lower administrative level unless approved in writing by the Director. The administrator is to notify the appropriate administrative programs of delegations. Administrators have authority to approve actions within their areas of responsibility at all administrative levels

below their own. The requests listed in (1) through ~~(9)~~(8) of this Subsection must continue to be reviewed and approved by the appropriate staff before presentation to the individual with final signature authority. There are additional resource and operations approvals unique to each administrative area that are stated in the policies established for that administrative area.

(1) **Director's signature.** The Director has final signature authority for items listed in (A) through (E) of this Paragraph.

- (A) Sole source contracts.
- (B) Initial contracts for \$250,000 or more.
- (C) Notices of personnel action (may be delegated).
- (D) Leave without pay requests for 90 days or more.
- (E) Other actions as required by executive order, statute, etc.

(2) **Chief of Staff.** The Chief of Staff has final signature authority for items listed in (A) through ~~(E)~~(D) of this Paragraph.

- (A) Initial contracts between \$100,000 and \$250,000 on a case by case basis and upon written authority of the Director.
- (B) Initial contracts or interagency agreements which obligate the entire Department or more than one division.
- (C) New brochures, forms, publications (electronic or printed), and videos produced for more than one division.
- (D) Policy Transmittals by the Administrator for Policy Development and Programs Standards Process Improvement.

(3) **Division Administrator.** Division Administrators have final signature authority for items listed in (A) through (K) of this Paragraph.

- (A) Initial contracts for less than \$100,000.
- (B) New or revised interagency agreements involving the division.
- (C) Administrative purchases costing \$10,000 or more (may be delegated). Computer purchases must be co-signed by the Administrator for Information Services.
- (D) Requests for employee in-state travel (may be delegated).
- (E) Requests for out-of-state employee travel.
- (F) Final decisions for employee grievance resolution, other than discrimination complaints, and for adverse action after review by Human Resources.
- (G) Leave without pay requests for less than 90 days.
- (H) Brochures, forms, publications (electronic or printed), and videos produced for the division.
- (I) Requests for internships or practicums for respective division.
- (J) Memos for general distribution to the division.
- (K) Grant proposals.

(4) **Chief Operations Officer.** Chief Operations Officer has final signature authority for items listed in (A) through (E) of this Paragraph.

- (A) Office supply orders.
- (B) Reorder of existing printed materials.
- (C) Administrative purchase requisitions under area of responsibility up to \$100,000. Computer purchases must be co-signed by the Administrator for Information Services.
- (D) Administrative memos under area of responsibility.
- (E) Requests for employee in-state travel.

(5) **Field Coordinators and Program Managers in DVR and ~~DVS~~—DSBVI.** The Field Coordinators or Program Managers in Vocational Rehabilitation Services and ~~Visual Services Divisions~~ Services for the Blind and Visually Impaired have final signature authority for administrative purchases up to \$10,000. Computer purchases must be co-signed by the Administrator for Information Services. Program Managers have final signature authority for items listed in (A) through (B) of this Paragraph.

- (A) Office supply requisitions other than those available on the electronic ordering system.
- (B) Reorder of existing printed materials Program Managers have final signature authority for items listed in (A) through (B) of this Paragraph.

(6) **Superintendents at OSB and OSD.** Superintendents have final signature authority for items listed in (A) through (J) of this Paragraph for the respective school.

- (A) Initial contracts for less than \$100,000.
- (B) Interagency agreements involving only the school.
- (C) All administrative and educational purchases. Computer purchases must be co-signed by the Administrator for Information Services.
- (D) Requests for all employee travel.
- (E) Final decisions for adverse action after review by Human Resources.
- (F) Final decisions for grievance resolutions, other than discrimination complaints.
- (G) Leave without pay requests for less than 90 days.
- (H) Requests for internships or practicums.
- (I) Brochures, forms, publications (electronic or printed), and videos produced for the school.
- (J) Grant proposals.

(7) **Supervisors at OSB and OSD.** Supervisors at OSB and OSD have final signature authority for items in (A) through (B) of this Paragraph for the respective school.

- (A) Office supply orders.
- (B) Reorder of existing printed materials.

(8) **Program Managers, Disability Determination ~~Division Services~~.** Program Managers at the Disability Determination ~~Division Services~~ have final signature authority for the following items in (A) through (B) of this Paragraph.

- (A) The Program Manager responsible for budgets, contracts, and purchases approves administrative purchases under \$10,000. Computer purchases must be co-signed by the Administrator for Information Services.
- (B) Reorder of existing printed materials.

SUBCHAPTER 5. PROGRAM DIVISIONS WITHIN THE DEPARTMENT

612:1-5-1. Overview of the department

The purpose of this Subchapter is to provide an overview of the program divisions within the Department of Rehabilitation Services. Program divisions are established for the following areas: Vocational Rehabilitation Services, ~~Visual Services for the Blind and Visually Impaired~~, Disability Determination Services, Management Services, The Oklahoma School for the Blind and the Oklahoma School for the Deaf. Each of the Divisions has one or more components.

612:1-5-3. Division of ~~Visual Services for the Blind and Visually Impaired~~(DVS)(DSBVI)

The Division of ~~Visual Services for the Blind and Visually Impaired~~ provides diagnostic, counseling and guidance, physical restoration, training, and other services to individuals whose major disability is blindness, or—severe visual impairment, a progressive sight threatening disease, or functional limitation resulting from sight loss. All departmental managers and ~~Visual Services for the Blind and Visually Impaired~~ Field Coordinators report directly to the Division Administrator or designee. Rehabilitation teachers for the blind provide in-home training, counseling and instruction in daily-living skills to blind and visually impaired individuals. DRS has field staff assigned to meet the needs in every county of the state, although staff may not be officed in each county. Local office staff report to ~~VSSBVI~~ Program Managers, who report to the Field Coordinators. The Oklahoma Library for the Blind and Physically Handicapped provides books and magazines in special media to blind and print-limited Oklahomans. The Division of ~~Visual Services for the Blind and Visually Impaired~~ administers the Randolph-Sheppard Business Enterprise Program in Oklahoma, securing suitable locations for vending facilities; designing and installing equipment; recruiting, training, placing and supervising operators for the facilities.

612:1-5-4. Disability Determination ~~Division Services~~(DDD)(DDS)

The Disability Determination ~~Division Services~~ is responsible for adjudicating applications for Social Security Disability Insurance benefits and Supplemental Security Income payments for all Oklahoma applicants under these programs. This Division is not involved in treatment, diagnosis, or the provision of therapeutic services. Applications for Social Security Disability Insurance benefits are taken in the Social Security District offices throughout the State of Oklahoma and

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forwarded to this Division for the determination process under federal guidelines

SUBCHAPTER 15. DEPARTMENT MANUAL, RULES, AND DECLARATORY RULINGS

612:1-15-1. Purpose and distribution of the manual

The manual of the Department of Rehabilitation Services represents: the official statement regarding the function and organization of the Department; the policies established by the Oklahoma Commission for Rehabilitation Services to implement the Federal and State laws relating to the Department; and the procedures adopted by administrative action which are to be uniformly followed throughout the Department, both in relation to the Department's programs and in regard to the staff members' relationship with the Department as an employer. It serves as an authority and guide to staff members administering the various programs. The administrative rules in this Chapter are promulgated under the authority of the Commission for Rehabilitation Services as established in 74 O.S., Section 166.1 et seq and the Administrative Procedures Act, 75 O.S., Sections 250 et seq.

612:1-15-5. Definitions

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

"Amendment" means a revision to an existing Section of internal policy or administrative rules which adds, modifies, or deletes characters, words, phrases, sentences, or punctuation.

"APA" means the Administrative Procedures Act, 75 O.S., Sections 250 et seq.

"Code" means the Oklahoma Administrative Code, which is the official compilation of codified rules authorized by 75 O.S., Section 256.

"Codified" means accepted for inclusion in the Oklahoma Administrative Code.

"Emergency rule" means a temporary rule promulgated because the agency documents that the rule is needed to respond to an imminent peril to the preservation of the public health, safety, welfare, or other compelling extraordinary circumstances.

"Internal policy" means a Department statement that implements, interprets, or prescribes procedure or practice requirements for the internal operations of the Department that is approved by the Oklahoma Commission for Rehabilitation Services. Internal policy is included in the Internal Policy Manual and codified under the title "DRS:".

"OAC" means the Oklahoma Administrative Code authorized by 75 O.S., Section 256.

"OAR" means the Office of Administrative Rules within the Office of the Secretary of State. The OAR has primary responsibility for implementing the provisions of Article I of the Administrative Procedures Act.

"Proposed internal policy" means a provision of internal policy that is ready for submittal to the Oklahoma Commission for Rehabilitation Services.

"Permanent rule" means a rule which has been reviewed and approved by the Governor and the Legislature prior to promulgation and implementation of the rule.

"Proposed rule" means an emergency or permanent rule prior to final adoption in accordance with the APA.

"Register" means the publication maintained by the OAR which contains actions concerning and contents of rules and executive orders, and known as the Oklahoma Register.

"Rule" means an administrative rule governing the operation of DRS and codified under Title 612 of the Oklahoma Administrative Code. A rule is a statement of law of general applicability to the operation of DRS and to entities and individuals of the public with whom DRS interacts.

"Rulemaking action" means any procedure, except executive orders and local project funding contract announcements, which must be published in the Register or Code under the APA, including:

- (A) Notice of rulemaking intent.
- (B) Notice of canceled hearing or comment period.
- (C) Notice of continued hearing or comment period.
- (D) Final adoption of a new permanent rule or of a permanent amendment to or revocation of an existing rule.
- (E) Promulgation of a new emergency rule or of an emergency amendment to or emergency revocation of an existing permanent rule.
- (F) Submission of a permanent rule for gubernatorial and legislative review.
- (G) Approval of a permanent rule by the Governor.
- (H) Disapproval of a permanent rule by the Governor.
- (I) Disapproval of a rule by the Legislature.
- (J) Withdrawal of a rule from the rulemaking process.
- (K) Notice of error in published document.

"Rulemaking entity" means the board or commission, in this case the Oklahoma Commission for Rehabilitation Services, authorized to adopt and promulgate rules as defined in 75 O.S., Section 250.3(2).

612:1-15-6. Revision of administrative rules and internal policy

(a) Purpose of Administrative Rules and Internal Policy. Agency rules and internal policy communicate the expected standards for staff conduct and provide the necessary direction for carrying out the agency's mission. The intent of rules and internal policy is to provide a common basis for decision making so that individuals can expect equitable treatment when dealing with the agency. DRS rules and internal policy are public documents, maintained as part of the DRS Internal Policy Manual by the DRS Policy Administration and Development Section the Oklahoma Administrative Code by the Office of Administrative Rules, in the Secretary of State's Office, so that

the public will have the opportunity to know the mission of our program and how this agency intends to carry out that mission.

(b) DRS Staff Responsibility. DRS staff are expected to be thoroughly familiar with agency rules and internal policies pertaining to their conduct and program.

(1) Supervisors and managers are responsible for ensuring that staff under their supervision are familiar with all rules and internal policies and updates, and that their staff receive training on rules, internal policies and updates.

(2) Staff are expected to use professional judgment in conducting the agency's business. The rules and internal policies of this agency are to inform and guide the professional judgment and conduct of staff. When a staff person needs guidance in making a decision, the first step is to consult agency rules and internal policy.

(c) Policy Administration and Development Section Responsibility. The Policy Administration and Development Section is charged with assuring that the Department complies with the Administrative Procedures Act. This responsibility includes:

(1) Ensuring that all emergency and permanent rules are promulgated in accordance with the APA.

(2) That the public receives proper notice of the Department's intent to adopt, amend, or revoke rules so that opportunity is provided for public and consumer input during the rulemaking process.

(3) Management of the promulgation process for the Department in an efficient and effective manner that complies with the APA.

(4) The Project Coordinator of the Policy Administration and Development Section or designee, shall serve as the Department's liaison to the Office of Administrative Rules in the Office of the Secretary of State. The administrator will also designate a staff member to act in the capacity of back-up liaison.

(5) The Project Coordinator of the Policy Administration and Development Section or designee, shall also serve as the attestation officer, as delegated by the Oklahoma Commission for Rehabilitation Services, for purposes of 75 O.S., Section 254. The administrator will also designate a staff member to act in the capacity of back-up attestation officer.

(d) Drafting of New or Revised Rules. In compliance with the Administrative Procedures Act, new rules may be developed or an existing rule revised utilizing the following procedures:

(1) Each Division Administrator, Unit Administrator, and School Superintendent is responsible for ensuring that Departmental rules for his or her program conform to the requirements of applicable statutes and regulations, and are effective in achieving their program's mission.

(2) When a program administrator, or the Director, decides there is a need to draft a new rule, or to amend an existing rule,

(A) The program administrator will initiate drafting content through whatever method deemed most effective by the administrator. Policy Administration

and Development staff are available to provide guidance if requested.

(B) The program administrator will provide to Policy Administration and Development staff the completed draft content, the reasons for changing the rule and any budgetary impact these changes may incur.

(C) Policy Administration and Development staff will format the draft content in accordance with APA standards. Once drafted, Policy Section staff will consult with the program administrator concerning any needed revisions and produce a revised draft.

(D) Revised draft rules will be distributed to Executive Team members for further review and response. Comments and suggestions for revision will be provided to the program administrator. The program administrator shall consider the comments and suggestions for inclusion and may revise the content again if appropriate.

(E) The program administrator will provide the latest draft version to the Policy Administration and Development Section. Policy Administration and Development staff will provide this draft version to agency staff for comment.

(F) Agency staff shall be notified via e-mail that a draft rule is available for comment. The notification will include:

(i) Identification and summary of the draft rule;

(ii) General instructions on where the draft rule can be accessed;

(iii) How to submit comments, and the due date for submission of comments, and;

(iv) Where to direct questions about the draft rule.

(G) Policy Administration and Development staff will collect and collate agency staff comments and develop a summary. The collated comments and the summary will be provided to the originating program administrator for consideration.

(H) The program administrator will decide on what rule changes to make in response to the submitted comments, if any. The program administrator will also draft responses to the comments, which will at a minimum explain any instance in which staff recommendations were not adopted and will send the response to the Policy Administration and Development so it can be forwarded to the respective commentator.

(I) Policy Administration and Development staff will work with the program administrator to finalize draft rule. This step will include a final check by the program administrator for consistency with existing rules, regulations, and applicable statutes. The program administrator may consult with legal counsel. Policy Administration and Development staff will obtain authorization from the appropriate program administrator to proceed with promulgation of the draft rules.

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- (J) When the draft rule pages are submitted to the Policy Administration and Development section for promulgation, the draft rule is then referred to as a proposed rule.
- (e) **Adoption of New or Revised Rule.** Proposed rules must be approved by the DRS Commission prior to submission for promulgation. Proposed rules for the Business Enterprise Program must also be approved by the Rehabilitation Services Administration prior to submission for promulgation.
- (1) Policy Administration and Development staff will submit the proposed rule and/or notice, including executive summary and resolution, to the Director for review and to the Commission support staff by the established deadline for inclusion in the Commission meeting packet.
- (2) The originating administrator, with the assistance of the Policy Administration and Development Project Coordinator or designee, will be responsible for the presentation of proposed rules at the Commission meeting. Once proposed rules are presented to the Commission for approval their content will not be changed unless so ordered by the Commission.
- (3) Upon adoption of the proposed rule by the Commission, Policy Administration and Development staff will manage the promulgation process.
- (f) **New or Revised Internal Policy.** New internal policies may be developed or an existing internal policy revised utilizing the following procedures:
- (1) Program administrators may submit proposed internal policy additions or revisions to the division administrator, superintendent or director. A draft of the proposed internal policy will be reviewed by legal counsel for consistency with existing law.
- (2) Once approved by the director and legal counsel, the proposed internal policy with a proposed "DRS: " citation will be submitted to the Policy Administration and Development Project Coordinator or designee who will be responsible for the presentation to the Commission. Proposed internal policies may be submitted for review and discussion only or for immediate adoption at the director's discretion.
- (3) Once adopted by the Commission, the internal policy will be published in the Internal Policy Manual by the Policy Administration and Development Section.
- (g) **Effective Dates of Internal Policy and Rule Revisions.** The effective dates of internal policy and rule revisions will be determined as follows:
- (1) The effective date will be noted in the section history of the adopted internal policy or rule. Internal policies or rules can only be applied prospectively from their effective date.
- (2) Internal policies become effective immediately upon adoption by the Commission.
- (3) Permanent rules become effective ten days after they are published in the Oklahoma Register pursuant to the APA. DRS permanent rules will usually be published following the legislative session. If a later date is specified in statute, or in the rules, the later date will become the effective date.

- (4) Emergency rules become effective immediately or at a stated date after certification by the Governor. The Governor has forty-five calendar days from the date rules are submitted to review them.
- (5) Policy Section staff will notify the appropriate Division Administrator, Superintendent, and the Director of approvals.
- (h) **Permanent Rules; Modification Limitations.** Once the Governor and Legislature have approved the rules, they may only be modified or revoked through the rulemaking process. The APA states that any agency shall not by internal policy, memorandum, or other action not otherwise authorized by the APA:
- (1) amend, interpret, implement or repeal a statute or a rule;
- (2) expand upon or limit a statute or rule; and;
- (3) except as authorized by the Constitution of the United States, the Oklahoma Constitution or a statute, expand or limit a right guaranteed by the Constitution of the United States, the Oklahoma Constitution, a statute, or a rule.
- (i) **Petition Requesting Promulgation.** Per the APA, any interested person or group may petition the Department requesting the promulgation, amendment, or repeal of a rule.
- (1) The petition must be submitted in writing to the Director of the Department of Rehabilitation Services at the Department's state office. A request to amend or repeal a rule will include a copy of the rule in question.
- (2) The Department shall act upon such a request within a reasonable time period; however, if the Department does not initiate rulemaking proceedings within 30 calendar days of receiving the request, the petition will be considered to have been denied.

SUBCHAPTER 18. PROCESS IMPROVEMENT

PART 1. GENERAL PROVISIONS

612:1-18-1. Purpose

The purpose of this Chapter is to set forth the policies and procedures governing the operations of the Process Improvement Unit and its subsections, Program Standards and Case Review of the Department of Rehabilitation Services.

PART 3. PROGRAM STANDARDS

612:1-18-10. Program Standards

(a) **Purpose of Program Standards.** The purpose of the Program Standards Section is to inform agency strategic decision-making and support agency programs through the use of research, statistical analysis, program evaluation and process improvement methodologies aimed at improving programmatic outcomes.

(b) **Responsibilities of Program Standards.** Program Standards staff are charged with supporting agency programs by:

- (1) Conducting studies and surveys of agency staff, clients and the public to determine opinions and needs regarding agency programs;
- (2) Analyzing statistical data collected either by the agency or obtained from recognized external data sources regarding client demographics, behavior, participation, needs and outcomes to inform program administrators and agency leadership;
- (3) Applying program evaluation methodologies to agency programs, either formative or summative, focused on process/implementation fidelity, outcomes/performance measures, or cost effectiveness/efficiency;
- (4) Through the use of Lean and Six Sigma methodologies, facilitating work groups to analyze and streamline business processes, identify and correct areas of programmatic concern, and improve effectiveness and efficiency of programmatic flow;
- (5) Verifying, cleaning and reporting data to the Rehabilitation Services Administration as required by federal regulation;
- (6) Participating, as required, in external auditing procedures by state or federal entities;
- (7) Monitoring programmatic outcomes for report to program and agency leadership.

(c) **Federal Data Reporting.** Federal regulation requires the reporting of data to RSA on a periodic basis.

- (1) Data will be cleaned, verified, and if necessary, corrected prior to submission.
- (2) Federal reports will be submitted prior to or on the deadline date specified by RSA.
- (3) The Administrator of Process Improvement, or designee, shall serve as the data submission liaison with RSA. The administrator shall designate a backup staff member from Program Standards to fulfill federal reporting standards in the absence of the primary liaison.

(d) **Confidentiality.** All activities of the Program Standards Section will be conducted in a manner to ensure the confidentiality of participants.

PART 5. CASE REVIEW

612:1-18-20. Case Review

(a) **Purpose.** The purpose of the Case Review Section is to conduct evaluations on programmatic case documentation to ensure compliance with federal regulation and to enhance agency effectiveness.

(b) **Case Review Responsibilities.** Case Review staff are charged with the following responsibilities:

- (1) Conducting reviews on a random sample of closed cases to determine if case documentation indicates consumers are being served according to standards established by the Rehabilitation Act and agency policy. Staff will use the instrument currently approved by the Director

or designee and will report their findings to appropriate staff on a regular schedule.

(2) Upon request and as other duties allow, conducting reviews of active cases or other specialized reviews and will report their findings to appropriate staff within agreed-upon deadlines.

(3) Participating in compliance reviews conducted by RSA as assigned. RSA staff will be responsible for reporting the results of such reviews unless otherwise directed by the Administrator for Process Improvement.

(4) Acting as subject matter experts in the area of case review, compliance and best practices, including providing training as requested.

(c) **Confidentiality.** All activities of the Case Review Section will be conducted in a manner to ensure the confidentiality

[OAR Docket #20-596; filed 7-13-20]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 3. MANAGEMENT SERVICES DIVISION

[OAR Docket #20-597]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Process Improvement [REVOKED]
Part 1. General Provisions [REVOKED]
612:3-5-2. Definitions [REVOKED]
Part 3. Policy [REVOKED]
612:3-5-12. Policy [REVOKED]
Part 5. Program Standards [REVOKED]
612:3-5-29. Program Standards [REVOKED]
Part 7. Case Review [REVOKED]
612:3-5-35. Case Review [REVOKED]

AUTHORITY:

Commission for Rehabilitation Services; 74 O.S.166.1 et seq; 70 O.S. 1724, 1733 and 1734.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 27, 2019

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March 16, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 11, 2020

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

Subchapter 5 is being revoked and relocated to Chapter 1 Administrative Operations, Subchapter 18 Process Improvement.

Permanent Final Adoptions

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 5. PROCESS IMPROVEMENT

PART 1. GENERAL PROVISIONS

612:3-5-2. Definitions [REVOKED]

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

"APA" means the Administrative Procedures Act, 75 O.S., Sections 250 et seq.

"Amendment" means a revision to an existing Section of policy which adds, modifies, or deletes characters, words, phrases, sentences, or punctuation.

"Code" means the Oklahoma Administrative Code, which is the official compilation of codified rules authorized by 75 O.S., Section 256.

"Codified" means accepted for inclusion in the Oklahoma Administrative Code.

"Emergency rule" means a temporary rule promulgated because the agency documents that the rule is needed to respond to an imminent peril to the preservation of the public health, safety, welfare, or other compelling extraordinary circumstances.

"OAC" means the Oklahoma Administrative Code authorized by 75 O.S., Section 256.

"OAR" means the Office of Administrative Rules within the Office of the Secretary of State. The OAR has primary responsibility for implementing the provisions of Article I of the Administrative Procedures Act.

"Proposed policy" means a Department statement that implements, interprets, or prescribes procedure or practice requirements of the Department that is ready for submittal to the Oklahoma Commission for Rehabilitation Services.

"Permanent rule" means a rule which has been reviewed and approved by the Governor and the Legislature prior to promulgation and implementation of the rule.

"Proposed rule" means an emergency or permanent rule prior to final adoption in accordance with the APA.

"Register" means the publication maintained by the OAR which contains actions concerning and contents of rules and executive orders, and known as the Oklahoma Register.

"Rule" means any agency statement or group of related statements of general applicability and future effect that implements, interprets, or prescribes law or policy, or describes the

procedure or practice requirements of the agency. The term includes the amendment or revocation of an effective rule. The term does not include:

(A) the issuance, renewal, denial, suspension or revocation or other sanction of an individual specific license;

(B) the approval, disapproval or prescription of rates;

(C) statements and memoranda concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(D) declaratory rulings issued pursuant to 75 O.S., Section 306; or

(E) orders resulting from individual proceedings.

"Rulemaking action" means any procedure, except executive orders and local project funding contract announcements, which must be published in the Register or Code under the APA, including:

(A) Notice of rulemaking intent.

(B) Notice of canceled hearing or comment period.

(C) Notice of continued hearing or comment period.

(D) Final adoption of a new permanent rule or of a permanent amendment to or revocation of an existing rule.

(E) Promulgation of a new emergency rule or of an emergency amendment to or emergency revocation of an existing permanent rule.

(F) Submission of a permanent rule for gubernatorial and legislative review.

(G) Approval of a permanent rule by the Governor.

(H) Disapproval of a permanent rule by the Governor.

(I) Disapproval of a rule by the Legislature.

(J) Withdrawal of a rule from the rulemaking process.

(K) Notice of error in published document.

"Rulemaking entity" means the board or commission, in this case the Oklahoma Commission for Rehabilitation Services, authorized to adopt and promulgate rules as defined in 75 O.S., Section 250.3(2).

PART 3. POLICY [REVOKED]

612:3-5-12. Policy [REVOKED]

(a) **Purpose of Policy.** Agency policy communicates the expected standards for staff conduct and provides the necessary direction for carrying out the agency's mission. The intent of policy is to provide a common basis for decision making so that individuals can expect equitable treatment when dealing with the agency. Our policy is a public document, maintained as part of the Oklahoma Administrative Code by the Office of Administrative Rules, in the Secretary of State's Office, so that the public will have the opportunity to know the mission of our program and how this agency intends to carry out that mission.

(b) **DRS Staff Responsibility.** DRS staff are expected to be thoroughly familiar with agency policies pertaining to their conduct and program:

- (1) Supervisors and managers are responsible for ensuring that staff under their supervision are familiar with all policy and updates, and that their staff receive training on policy and updates.
- (2) Staff are expected to use professional judgment in conducting the agency's business. The policies of this agency are to inform and guide the professional judgment and conduct of staff. When a staff person needs guidance in making a decision, the first step is to consult agency policy.

(c) **Process Improvement Policy Section Responsibility.** The Policy Section is charged with assuring that the Department complies with the Administrative Procedures Act. This responsibility includes:

- (1) Ensuring that all Department statements of general applicability and future effect that implement, interpret, or prescribe law or policy, or describe the procedures or practice requirements of the Department are promulgated in accordance with the APA.
- (2) That the public receives proper notice of the Department's intent to adopt, amend, or revoke rules so that opportunity is provided for public and consumer input during the rulemaking process.
- (3) Management of the promulgation process for the Department in an efficient and effective manner that complies with the APA.
- (4) The Administrator of the Process Improvement Unit, or designee, shall serve as the Department's liaison to the Office of Administrative Rules in the Office of the Secretary of State. The administrator will also designate a staff member to act in the capacity of back up liaison.
- (5) The Administrator of the Process Improvement Unit, or designee, shall also serve as the attestation officer, as delegated by the Oklahoma Commission for Rehabilitation Services, for purposes of 75 O.S., Section 254. The administrator will also designate a staff member to act in the capacity of back up attestation officer.

(d) **Drafting of New or Revised Policy.** In compliance with the Administrative Procedures Act, new policy may be developed or an existing policy revised utilizing the following procedures:

- (1) Each Division Administrator, Unit Administrator, and School Superintendent is responsible for ensuring that Departmental policies for his or her program conform to the requirements of applicable statutes and regulations, and are effective in achieving their program's mission.
- (2) When a program administrator, or the Director, decides there is a need to draft new policy, or to amend existing policy,

(A) The program administrator will initiate drafting content through whatever method deemed most effective by the administrator. Policy Section staff are available to provide guidance if requested.

(B) The program administrator will provide to Policy Section staff the completed draft content, the reasons for changing the policy and any budgetary impact these changes may incur.

(C) Policy Section staff will format the draft content in accordance with APA standards. Once drafted, Policy Section staff will consult with the program administrator concerning any needed revisions and produce a revised draft.

(D) Revised draft policy will be distributed to Executive Team members for further review and response. Comments and suggestions for revision will be provided to the program administrator. The program administrator shall consider the comments and suggestions for inclusion and may revise the content again if appropriate.

(E) The program administrator will provide the latest draft version to the Policy Section. Policy Section staff will provide this draft version to agency staff for comment.

(F) Agency staff shall be notified via e-mail that draft policy is available for comment. The notification will include:

- (i) Identification and summary of the draft policy;
- (ii) General instructions on where the draft policy can be accessed;
- (iii) How to submit comments, and the due date for submission of comments, and;
- (iv) Where to direct questions about the draft policy.

(G) Policy Section staff will collect and collate agency staff comments and develop a summary. The collated comments and the summary will be provided to the originating program administrator for consideration.

(H) The program administrator will decide on what policy changes to make in response to the submitted comments, if any. The program administrator will also draft responses to the comments, which will at a minimum explain any instance in which staff recommendations were not adopted and will send the response to the Policy Section so it can be forwarded to the respective commentator.

(I) Policy Section staff will work with the program administrator to finalize draft policy. This step will include a final check by the program administrator for consistency with existing policies, regulations, and applicable statutes. Policy Development staff will obtain authorization from the appropriate program administrator to proceed with promulgation of the draft policy.

(J) When the draft policy pages are submitted to the Policy Section for promulgation, the draft policy is then referred to as proposed policy.

(e) **Adoption of New or Revised Policy.** Proposed policy must be approved by the DRS Commission prior to submission for promulgation.

- (1) Policy Section staff will submit the proposed policy and/or notice, including executive summary and resolution, to the Director for review and to the Commission support staff by the established deadline for inclusion in the Commission meeting packet.
 - (2) The originating administrator, with the assistance of the Administrator of Process Improvement, will be responsible for the presentation of proposed policy at the Commission meeting. Once proposed policies are presented to the Commission for approval their content will not be changed unless so ordered by the Commission.
 - (3) Upon adoption of the proposed policy by the Commission, Policy Section staff will manage the promulgation process.
- (f) **Effective Dates of Policy Revisions.** The effective dates of policy revisions will be determined by the policy type.
- (1) The effective date will be noted on each page of the adopted policy. Whether internal management policies or administrative code, policies can only be applied prospectively from their effective date.
 - (2) Internal management policies that do not fall under the APA become effective immediately upon adoption by the Commission.
 - (3) Permanent rules become effective ten days after they are published in the Oklahoma Register pursuant to the APA. DRS permanent rules will usually be published following the legislative session. If a later date is specified in statute, or in the rules, the later date will become the effective date.
 - (4) Emergency rules become effective immediately or at a stated date after certification by the Governor. The Governor has forty five calendar days from the date rules are submitted to review them.
 - (5) Policy Section staff will notify the appropriate Division Administrator, Superintendent, and the Director of approvals.
- (g) **Permanent Rules; Modification Limitations.** Once the Governor and Legislature have approved the rules, they may only be modified or revoked through the rulemaking process. The APA states that any agency shall not by internal policy, memorandum, or other action not otherwise authorized by the APA:
- (1) amend, interpret, implement or repeal a statute or a rule;
 - (2) expand upon or limit a statute or rule; and;
 - (3) except as authorized by the Constitution of the United States, the Oklahoma Constitution or a statute, expand or limit a right guaranteed by the Constitution of the United States, the Oklahoma Constitution, a statute, or a rule.
- (h) **Petition Requesting Promulgation.** Per the APA, any interested person or group may petition the Department requesting the promulgation, amendment, or repeal of a rule.
- (1) The petition must be submitted in writing to the Director of the Department of Rehabilitation Services at the Department's state office. A request to amend or repeal a rule will include a copy of the rule in question.

- (2) The Department shall act upon such a request within a reasonable time period; however, if the Department does not initiate rulemaking proceedings within 30 calendar days of receiving the request, the petition will be considered to have been denied.

PART 5. PROGRAM STANDARDS [REVOKED]

612:3-5-29. Program Standards [REVOKED]

- (a) **Purpose of Program Standards.** The purpose of the Program Standards Section is to inform agency strategic decision making and support agency programs through the use of research, statistical analysis, program evaluation and process improvement methodologies aimed at improving programmatic outcomes.
- (b) **Responsibilities of Program Standards.** Program Standards staff are charged with supporting agency programs by:
- (1) Conducting studies and surveys of agency staff, clients and the public to determine opinions and needs regarding agency programs;
 - (2) Analyzing statistical data collected either by the agency or obtained from recognized external data sources regarding client demographics, behavior, participation, needs and outcomes to inform program administrators and agency leadership;
 - (3) Applying program evaluation methodologies to agency programs, either formative or summative, focused on process/implementation fidelity, outcomes/performance measures, or cost effectiveness/efficiency;
 - (4) Through the use of Lean and Six Sigma methodologies, facilitating work groups to analyze and streamline business processes, identify and correct areas of programmatic concern, and improve effectiveness and efficiency of programmatic flow;
 - (5) Verifying, cleaning and reporting data to the Rehabilitation Services Administration as required by federal regulation;
 - (6) Participating, as required, in external auditing procedures by state or federal entities;
 - (7) Monitoring programmatic outcomes for report to program and agency leadership.
- (c) **Federal Data Reporting.** Federal regulation requires the reporting of data to RSA on a periodic basis.
- (1) Data will be cleaned, verified, and if necessary, corrected prior to submission.
 - (2) Federal reports will be submitted prior to or on the deadline date specified by RSA.
 - (3) The Administrator of Process Improvement, or designee, shall serve as the data submission liaison with RSA. The administrator shall designate a backup staff member from Program Standards to fulfill federal reporting standards in the absence of the primary liaison.
- (d) **Confidentiality.** All activities of the Program Standards Section will be conducted in a manner to ensure the confidentiality of participants.

PART 7. CASE REVIEW [REVOKED]

612:3-5-35. Case Review [REVOKED]

(a) ~~**Purpose.** The purpose of the Case Review Section is to conduct evaluations on programmatic case documentation to ensure compliance with federal regulation and to enhance agency effectiveness.~~

(b) ~~**Case Review Responsibilities.** Case Review staff are charged with the following responsibilities:~~

(1) ~~Conducting reviews on a random sample of closed cases to determine if case documentation indicates consumers are being served according to standards established by the Rehabilitation Act and agency policy. Staff will use the instrument currently approved by the Director or designee and will report their findings to appropriate staff on a regular schedule.~~

(2) ~~Upon request and as other duties allow, conducting reviews of active cases or other specialized reviews and will report their findings to appropriate staff within agreed upon deadlines.~~

(3) ~~Participating in compliance reviews conducted by RSA as assigned. RSA staff will be responsible for reporting the results of such reviews unless otherwise directed by the Administrator for Process Improvement.~~

(4) ~~Acting as subject matter experts in the area of case review, compliance and best practices, including providing training as requested.~~

(c) ~~**Confidentiality.** All activities of the Case Review Section will be conducted in a manner to ensure the confidentiality of clients and staff.~~

[OAR Docket #20-597; filed 7-13-20]

**TITLE 612. STATE DEPARTMENT OF
REHABILITATION SERVICES
CHAPTER 10. VOCATIONAL
REHABILITATION AND VISUAL SERVICES
FOR THE BLIND AND VISUALLY IMPAIRED**

[OAR Docket #20-598]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

612:10-1-1. Purpose [AMENDED]

612:10-1-2. Definitions [AMENDED]

612:10-1-3. Basic philosophy of rehabilitation programs [AMENDED]

612:10-1-3.1. Procedural exceptions [AMENDED]

612:10-1-3.2. Pilot projects [AMENDED]

612:10-1-5. Confidentiality [AMENDED]

612:10-1-6. Due Process [AMENDED]

612:10-1-7. Purchase of services and goods for individuals with disabilities [AMENDED]

Subchapter 3. Client Participation in Cost of Services

612:10-3-2. Consideration of comparable services and benefits [AMENDED]

612:10-3-3. Client participation in services cost and financial status determination [AMENDED]

612:10-3-4. Services exempt from client participation in service costs [AMENDED]

Subchapter 7. Vocational Rehabilitation and ~~Visual~~ Visual Services for the Blind and Visually Impaired

Part 1. Scope of Vocational Rehabilitation and ~~Visual~~ Visual Services for the Blind and Visually Impaired

612:10-7-1. Overview of Vocational Rehabilitation and ~~Visual~~ Visual Services for the Blind and Visually Impaired [AMENDED]

612:10-7-2. Field staff responsibilities [AMENDED]

612:10-7-2.5. Work Experience [NEW]

612:10-7-3. Client responsibilities [AMENDED]

Part 3. Case Processing Requirements

612:10-7-21.1. Processing incoming referrals [AMENDED]

612:10-7-21.2. Information and referral system [AMENDED]

612:10-7-24.1. Basic eligibility requirements for vocational rehabilitation services [AMENDED]

612:10-7-24.2. Assessment for determining eligibility [AMENDED]

612:10-7-25.1. Order of selection [AMENDED]

612:10-7-31. Transfer of cases [AMENDED]

Part 5. Case Status and Classification System

612:10-7-50. Eligibility Status [AMENDED]

612:10-7-51. Individualized Plan for Employment [AMENDED]

612:10-7-55. Job Ready [AMENDED]

Part 9. Actions Requiring Review and Approval

612:10-7-87. Actions requiring supervisor's approval [AMENDED]

Part 11. Physical and Mental Restoration Services

612:10-7-98. General guidelines for physical and mental restoration services [AMENDED]

Part 13. Supportive Services

612:10-7-130. Maintenance [AMENDED]

Part 15. Training

612:10-7-142. General guidelines for training services [AMENDED]

612:10-7-149. College and university training [AMENDED]

612:10-7-150. Continued eligibility for college or university training [AMENDED]

612:10-7-152. Payment of tuition and fees at colleges and universities [AMENDED]

612:10-7-158. Training for individuals in custody of the Department of Corrections [AMENDED]

612:10-7-161. Public and private vocational schools [AMENDED]

612:10-7-162. Textbooks, supplies, training tools and equipment [AMENDED]

Part 17. Supportive Employment Services

612:10-7-183. Ongoing support services [AMENDED]

612:10-7-184. Extended services [AMENDED]

Part 19. Special Services for Individuals who are Blind, Deaf, or have other ~~Severe~~ Significant Disabilities

612:10-7-199. Reader/recording services [AMENDED]

612:10-7-201. Rehabilitation teaching services [AMENDED]

612:10-7-205. Services to persons who are deaf-blind [AMENDED]

612:10-7-206. Assistive technology services for individuals with visual impairments [AMENDED]

Part 21. Purchase of Equipment, Occupational Licenses and Certifications

612:10-7-216. Tools, occupational equipment, initial stocks and supplies [AMENDED]

612:10-7-220. Vehicle modification services [AMENDED].

612:10-7-221. Housing Modification [AMENDED]

Part 23. Self-Employment Programs and Other Services

612:10-7-233. Special consideration in state government employment for persons with severe disabilities [AMENDED]

Part 25. Transition from School to Work Program

612:10-7-242. Pre-Employment Transition Services [AMENDED]

612:10-7-245. Definitions [AMENDED]

Subchapter 9. Rehabilitation Teaching Services

Part 1. General Provisions

612:10-9-5. Vocational rehabilitation [NEW]

Part 5. Services

612:10-9-32. Diagnosis and evaluation [REVOKED]

612:10-9-38. Vocational rehabilitation [REVOKED]

Subchapter 11. Independent Living Services for Older and Individuals Who are Blind

Part 1. Scope of Services

612:10-11-1. Purpose [AMENDED]

612:10-11-7. Administrative review [AMENDED]

Subchapter 13. Special Services for the Deaf and Hard of Hearing

Part 3. Certification of Interpreters

Permanent Final Adoptions

612:10-13-21. Code of ethics [AMENDED]

AUTHORITY:

Commission for Rehabilitation Services; 56 O.S. § 199.1-2; 74 O.S. § 166.1 et seq.; 34 CFR 361; 34 CFR 361.36; 34 CFR 361.42; 34 CFR 361.48; 34 CFR 361.48(b); 34 CFR 361.5; 34 CFR 361.5(c)(15); 34 CFR 361.5(c)(29) and (30); 34 CFR 361.54; 29 USC 701 et seq; 29 USC 705; 29 USC 705(11); 29 USC 709(c); 29 USC 720(a)(2); 29 USC 722(a); 29 USC 722(a)(2)(B); 29 USC 722(b)(4)(A); 29 USC 723(a).

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n/a

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n/a

GIST/ANALYSIS:

Revisions to Chapter 10 consist of division name change of Visual Services (VS) to Services for the Blind and Visually Impaired (SBVI). New rule 612:10-7-2.3.1 Work Experience will assist Counselors in distinguishing between On the Job Training and Work Experience. Updates to definitions, citations and removal of antiquated language.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

612:10-1-1. Purpose

The purpose of this Chapter is to set forth rules for the provision of services provided by the Division of Vocational Rehabilitation and the Division of Visual Services for the Blind and Visually Impaired.

612:10-1-2. Definitions

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

"Act" means the Rehabilitation Act [29 USC 701 et seq.].

"ADL" Activities of Daily Living often refer to the routine activities carried out for personal hygiene and health (including bathing, dressing, feeding) and for operation of a household.

"Applicant" means an individual who has completed and signed an agency application form or has otherwise requested vocational rehabilitation services; who has provided information necessary to initiate an assessment to determine eligibility and priority for services; and who is available to complete the assessment process.

"Assistive technology" means technology designed to be utilized in an assistive technology device or service.

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

"Assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.

"Authorized Representative" means a client's or applicant's parent, guardian, advocate (i.e. Client Assistance Program) or other person designated by the client or applicant as the individual authorized to deal with the Department on behalf of the client or applicant, consistent with provisions of the Act. Authorized representative does not include an employee of the Department of Rehabilitation Services, another state agency, or vendor of the Department unless the person is actually the parent, guardian, or is serving in the capacity of guardian (for example: court appointed).

"Best correction" refers to the use of standard eyeglasses or contact lenses and does not include the use of bioptic telescopic systems or specialized lenses which cannot be worn by the individual on a sustained basis.

"Blind" means persons who are blind within the meaning of the State Law relating to Vocational Rehabilitation. Legal blindness means a visual acuity of 20/200 or less in the better eye with best correction, or a visual field of 20 degrees or less.

"Client/Consumer" means an individual found eligible and receiving services under the Act.

"Clubhouse model" means a psychosocial and vocational approach to work adjustment for people with mental illness. The work-ordered day is a core element of the clubhouse, which focuses on strengths, talents and abilities. Work in the clubhouse helps members develop appropriate social skills and gain self-worth, purpose, and confidence. The clubhouse enables members to return to the workforce and achieve employment outcomes.

"Community rehabilitation program" (CRP) means a program that directly provides or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and provides singly or in combination, services for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement.

"Comparable services and benefits" means services that are provided or paid for in whole or in part by other Federal, state or local public agencies, health insurance or employee benefits, and are available to the individual at the time needed to further the progress of the individual toward achieving his/her identified employment outcome.

"Compensatory training" means training required before the client can enter a formal training program or employment, such as pre-vocational or personal adjustment training.

"Competitive integrated employment" means full or part-time work that is compensated at or above minimum wage, offers an individual with a disability benefits and opportunities for advancement comparable to those offered to employees in similar positions, and is performed in a setting where the individual with a disability interacts with persons without disabilities to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons. Specific criteria defining competitive integrated employment are detailed in 34 CFR 361.5(c)(9)."

"Consumer Independence Support Services" (CISS) are defined as providing independent living assessment, intensive counseling, community integration, and housing modifications to further assist consumers with severe disabilities in achieving independence.

"Continuity of Services" means once an individual is selected for services in accordance with policy, regardless of the priority category from which the individual was selected, the individual will receive the necessary purchased services, including post-employment services.

"Counselor" means the qualified rehabilitation professional, who is an employee of the designated state unit, and who has primary responsibility for the management of an individual's rehabilitation services case record, including determination of eligibility, service planning and management, counseling and guidance, and determination of successful or unsuccessful rehabilitation. Counselor is equivalent to such terms as ~~VR/VS~~ VR/SBVI Specialist and ~~VR/VS~~ VR/SBVI Coordinator.

"Customized employment" means competitive integrated employment, for an individual with a significant disability, that is based on a determination of the unique strengths, needs and interests of the individual; designed to meet the specific abilities of the individual and the business needs of the employer; and carried out using flexible strategies such as those detailed in 34 CFR 361.5(c)(11).

"Department" unless otherwise indicated in the text, means the Department of Rehabilitation Services as constituted in 74 O.S., Section 166.1 et seq.

"DRS" means the Department of Rehabilitation Services.

"DVR" means the Division of Vocational Rehabilitation.

~~"DVS"~~ "DSBVI" means the Division of ~~Visual~~ Services for the Blind and Visually Impaired.

"Eligibility" or **"Eligible"** means:

(A) when used in relation to an individual's qualification for Vocational Rehabilitation services, a determination that the individual has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; can benefit in terms of an employment outcome from rehabilitation services; and requires vocational rehabilitation services to prepare for, secure, retain, advance in or regain employment;

(B) when used in relation to an individual's qualification for Supported Employment services, a determination that the individual is eligible for Vocational Rehabilitation services; is an individual with the most significant disabilities (priority group one); and

(i) for whom competitive employment has not traditionally occurred; or

(ii) for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and

(iii) who, because of the nature and severity of their disability, need intensive supported employment services, and extended services after the transition from intensive supported employment services, in order to perform such work;

(C) when used in relation to an individual's qualification for Rehabilitation Teaching services, a finding that an individual is legally and/or functionally blind, has a rapidly progressive eye condition; or has a visual impairment that with or without secondary disabilities results in functional visual limitations; the individual has identifiable deficiencies in independent living due to disabilities; and it is expected services will improve the individual's independence in the home and community.

"Employment and Retention" (E&R) means short-term job coach support for individuals with severe disabilities who require assistance preparing for, obtaining, and maintaining employment.

"Employment outcome" means, with respect to an eligible individual, entering, advancing in, or retaining full-time or part-time competitive integrated employment as defined in 34 CFR §361.5(c)(9) (including customized employment, self-employment, telecommuting, or business ownership), or supported employment as defined in 34 CFR §361.5(c)(53), that is consistent with an individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (Note: As specified in federal rule, a designated State unit may continue services to individuals with uncompensated employment goals on their approved individualized plans for employment prior to the effective date of the final federal regulations until June 30, 2017, unless a longer period of time is required based on the needs of the individual with the disability, as documented in the individual's service record.)

"Extended employment" means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act and any needed support services to an individual with a disability to enable the individual to continue to train or otherwise prepare for competitive integrated employment.

"Extended period of time" means, with respect to duration of vocational rehabilitation, services that are expected to extend at least 6 months from eligibility.

"Extended services" means ongoing support services provided to individuals with the most significant disabilities,

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including youth with the most significant disabilities, after the time-limited vocational rehabilitation services have been completed and job stabilization has been achieved. They consist of specific services, including natural supports, needed to maintain the supported employment placement. Extended services are paid from funding sources other than DRS and are specifically identified in the IPE, except that DRS may provide and pay for extended services for youth with the most significant disabilities for a period not to exceed 4 years or extend beyond the date when the youth reaches age 25.

"Extreme medical risk" means a risk of substantially increasing functional impairment or risk of death if medical services are not provided expeditiously.

"Functional capacities" means a client's assets, strengths, and resources which maintain or increase the individual's ability to work. Functional capacities include mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills.

"Functional limitations" means physical or mental conditions, emergent from a disability, which impair, interfere with, or impede one or more of an individual's functional capacities.

"Higher education" means universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing.

"Highly challenged" describes a client receiving supported employment services who, due to the nature of the disability, requires a greater level of support from the job coach to achieve and maintain employment.

"IEP" means Individualized Education Program as required by the Individuals with Disabilities Education Act.

"Independent Living (IL) Core Services" is defined as information and referral services; independent living skills training; peer counseling; individual and systems advocacy; and services that facilitate the transition of individuals with significant disabilities from institutions to community-based residences, assist individuals at risk of entering institutions to remain living in the community, and assist the transition to postsecondary life for youth with significant disabilities who were eligible for special education and are no longer in school.

"Independent Living Services" as defined in the Rehabilitation Act, 29 USC Section 705 (17) and (18), include IL core services and counseling, housing procurement and modifications, personal assistance, mobility training, rehabilitation technology, life skills training, interpreters, readers, transportation, community integration, supported living, physical rehabilitation, aids and devices, social and recreational opportunities, and other services that are necessary and not inconsistent with the Act's provisions related to independent living.

"Individual with a disability" means an individual having one or more physical or mental conditions which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

"Individual with a severe disability" means with respect to eligibility for the state's Optional Program for Hiring Applicants with Disabilities, an individual who has a physical or

mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome.

"Individual with a significant disability" means an individual with a disability:

(A) who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(B) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(C) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, intellectual disability, multiple sclerosis, muscular dystrophy, musculoskeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

"Individual with the most significant disability" means an individual with a disability:

(A) who has a severe physical or mental impairment that seriously limits three or more functional capacities in terms of an employment outcome;

(B) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(C) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, intellectual disability, multiple sclerosis, muscular dystrophy, musculoskeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

"Integrated setting" means:

(A) With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals

who are providing services to those applicants or eligible individuals.

(B) With respect to an employment outcome, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

"Intercurrent (acute) conditions" means an illness or injury occurring during the actual course of an individual's rehabilitation which, if not cared for, will complicate or delay achievement of the client's employment outcome as identified in the client's IPE.

"IPE" means the Individualized Plan for Employment.

"Job Club" is a structured learning experience for a client to build skills in self-assessment, resume development, job search and research strategies, and interview techniques to assist the person to enter a career of their choice.

"Job Coach/Employment Training Specialist" means a qualified individual providing support services to eligible individuals in supported employment and employment and retention programs. Services directly support the eligible individual's work activity including marketing and job development, applied behavioral analysis, job and work site assessment, training and worker assessment, job matching procedures, and teaching job skills.

"Long-term treatment" means medical or psychological treatment that is expected to last more than three months.

"Maintenance" is a service provided to assist with the out-of-ordinary or extra expenses to the individual resulting from and needed to support the individual's participation in diagnostic, evaluative, or other substantial services in the IPE. Activities of Daily Living (ADL) expenses are not eligible for maintenance payments.

"Milestones" means a payment system that reimburses a vendor based on incentives and outcomes. The vendor is paid when the client completes pre-defined checkpoints on the way to a desired employment goal.

"Multiple services" means the counseling and guidance provided as a routine part of case management plus two or more VR services. Comparable benefits and/or services can count toward meeting the definition of multiple services. Services routinely provided as a package do not count as multiple services for the purpose of determining the presence of a significant disability, even if two or more services are included in the package.

"Natural supports" means any assistance, relationships or interactions that allow a person to maintain employment in ways that correspond to the typical work routines and social interactions of other employees. Natural supports may be developed through relationships with people or put into place by the adaptation of the work environment itself, depending on the support needs of the person and the environment.

"Occupational license" means any license, permit, or other written authority required by a state, city or other governmental unit to be obtained in order to enter an occupation.

"Ongoing support services" means services specified in the IPE according to individual need, which support and maintain an individual with the most significant disabilities in supported employment. Sponsored ongoing support services are provided from the time of placement until the individual is stabilized on the job. Ongoing support services are provided by one or more extended services providers, or by natural supports, following transition throughout the individual's term of employment.

"Other Qualified Rehabilitation Personnel" means qualified rehabilitation personnel who, in addition to rehabilitation counselors, are necessary to facilitate the accomplishment of the employment outcomes and objectives of an individual (Section 100(a)(3)(E) of the Act.) Other qualified rehabilitation personnel include, but are not limited to, rehabilitation teachers of the blind who are certified at the national level.

"Package of services" means several services which are usually provided together for the same purpose. The services in a package are usually, but not always, from the same category of services (see definition of multiple services, this section). Examples include, but are not limited to: surgery, anesthesia, and hospitalization; or personal computer, software, and peripheral equipment.

"Personal assistance services" means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability.

"Physical and mental restoration services" means services which are necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive, within a reasonable period of time.

"Physical or mental disability" means a physical or mental condition which, if not corrected, materially limits, contributes to limiting or will result in limiting an individual's activities or functioning.

"Pre-employment transition services" means the required activities and authorized activities specified in 34 CFR 361.48(a)(2) and (3).

"Prior approval" refers to the receipt of approval from the granting authority prior to issuing the authorization for the purchase of goods and services.

"Rehabilitation Act" means the Rehabilitation Act [29 USC 701 et seq.].

"Related factors" means those factors which are not directly attributable to the impediment to employment, but which have impact on the potential for successful rehabilitation. They frequently become evident only from an assessment of the person's social, vocational, educational, and environmental circumstances.

"SBVI" means the Division of Services for the Blind and Visually Impaired, depending upon the context.

"Section 504 Plan" is a plan designed as a protection for students with disabilities who may not be considered eligible for special education under IDEA in compliance with Section 504 of the Rehabilitation Act of 1973 as amended.

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"Small business enterprises" means a small business operated by blind or other individuals with severe disabilities under the management and supervision of the state DRS. Such businesses include only those selling, manufacturing, processing, servicing, agricultural, and other activities which are suitable and practical for the effective utilization of the skills and aptitudes of individuals who are blind or individuals who have severe disabilities. Small business enterprise provides substantial gainful employment or self-employment commensurate with the time devoted by the operators to the business, the cost of establishing the business and other factors of an economic nature.

"Stabilization" means the period of time when job coach support is reduced to the long-term maintenance level while the individual retains employment, and personal satisfaction with the job, as well as employer satisfaction with the person's job performance. Stabilization must include appropriate individualized supports, including a minimum of two employee contacts and one employer contact per month.

"Substantial impediment to employment" means that a physical or mental disability (in the light of related medical, psychological, vocational, educational, cultural, social or environmental factors) that impedes an individual's occupational performance, by preventing his/her obtaining, retaining, or preparing for a gainful occupation consistent with his/her capacities and abilities.

"Supported employment" (SE) means competitive integrated employment, including customized employment, or employment in integrated work settings in which individuals are working on a short-term basis toward competitive work, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, for individuals with the most significant disabilities who meet the eligibility criteria for supported employment as defined in 34 CFR 361.5(c)(53). For purposes of this definition, "short-term basis" shall mean six months or up to 12 months in limited circumstances as described in 34 CFR 361.5(c)(53).

"Transition services" means, for a student or a youth with a disability, a coordinated set of activities designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, competitive integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation. Transition services (1) are based upon the individual student's or youth's needs, preferences and interests; (2) include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation; (3) promote or facilitate the achievement of the employment outcome identified in the student's or youth's individualized plan for employment; and (4) include outreach to and engagement of the parents, or, as appropriate, the representative of such a student or youth with a disability.

"Transportation" is a service provided to assist with the costs of travel, including instruction in the use of public

transportation vehicles and systems, which result from and are needed to support the individual's participation in diagnostic, evaluative, or other substantial and necessary VR services.

"VR" means the Division of Vocational Rehabilitation, or the more general term vocational rehabilitation services, depending upon the context.

~~**"VS"** means the Division of Visual Services, depending upon the context.~~

612:10-1-3. Basic philosophy of rehabilitation programs

(a) **Purpose.** The purpose of programs and services provided by the Division of Vocational Rehabilitation (DVR) and the Division of ~~Visual Services~~ for the Blind and Visually Impaired (DVS) (DSBVI) is to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society through comprehensive programs of vocational rehabilitation. Vocational rehabilitation programs are designed to assess, plan, develop and provide vocational rehabilitation services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice, so that they may prepare for and engage in gainful employment (34 CFR 361.1 (b)).

(b) **Basic philosophy.** DVR and ~~DVS~~ DSBVI vocational rehabilitation programs are carried out in accordance with the principles stated in Section 100 (3) of the Rehabilitation Act including,

- (1) Individuals with disabilities, including individuals with the most significant disabilities, are generally presumed to be capable of engaging in gainful employment and the provision of individualized vocational rehabilitation services can improve their ability to become gainfully employed.
- (2) Individuals with disabilities must be provided the opportunities to obtain gainful employment in integrated settings.
- (3) Individuals with disabilities must have the opportunity to be active and full partners in their vocational rehabilitation process.
- (4) Qualified vocational rehabilitation counselors and other qualified and specialized rehabilitation personnel are necessary to facilitate the accomplishment of the employment outcomes and objectives of an individual.

612:10-1-3.1. Procedural exceptions

Procedures set forth in this Chapter are not intended to reflect every situation that might confront DVR or ~~DVS~~ DSBVI staff or to replace the staff's use of good judgment. In individual cases an exception from basic procedures may be requested. Authority to approve certain deviations from standard procedure rests with the division administrator. Authority to approve certain procedural exceptions has been delegated to program managers and field coordinators. Only those exceptions stated in rule may be applied to rules.

612:10-1-3.2. Pilot projects

The purpose of pilot projects is to allow the Divisions of Vocational Rehabilitation and ~~Visual~~ Visual Services for the Blind and Visually Impaired to design and evaluate service delivery innovations on a scale that will provide for an effective trial without being disruptive to the entire organization. Such pilot projects might include trials of innovative policies, standards, and/or procedures.

(1) **Authorization of pilot projects.** The Division Administrator may approve applications for pilot projects after review and approval of the pilot by the ~~DVR/DVS~~ DVR/DSBVI Management Team. Approval of an application for a pilot project by the Division Administrator will constitute authority to implement the pilot project for a length of time to be specified by the Division Administrator. The Division Administrator can terminate the pilot project at any time prior to the specified project duration. The pilot project may not be extended beyond the originally approved time period.

(2) **Effect of DRS policy on pilot projects.** The Director of the Department of Rehabilitation Services may waive the applicability of specified departmental policies when necessary to implement a meaningful trial of the approved pilot project. The waiver will apply only to the pilot project specified by the Director, and will be effective only for the duration of the pilot project. The waiver will end immediately upon termination or completion of the model project.

612:10-1-5. Confidentiality

(a) **General guidelines.** All client or applicant information acquired will remain the property of DRS. All casework materials are to be maintained in the appropriate case record. The terms "release of information", "release of personal information", and similar terms refer to providing access to the record, or providing copies, summaries, descriptions, or other reproductions of the actual case record materials and not to the materials themselves. All applicants, clients, or client representatives will be informed of the Department's policies on confidentiality of personal information. This information will only be used and released for purposes directly related to the administration of the Vocational Rehabilitation and ~~Visual~~ Visual Services for the Blind and Visually Impaired programs. Information containing identifiable personal information will not be shared with advisory or other bodies who do not have official responsibility for the administration of these programs. In the administration of the program, the DVR and ~~DVS~~ DSBVI units may obtain personal information from service providers and cooperating agencies under assurances the information will not be further divulged. Use and release of personal information will conform to applicable state and federal laws and regulations. Questions regarding release of information are to be directed to the Department's general counsel. Staff are to consult the general counsel before providing trial testimony, depositional testimony, or a sworn affidavit concerning consumer information. Moreover, if served with a subpoena for the release of client information, staff should notify the general counsel immediately. In a legal proceeding, client information

can only be released without the client's consent in response to a court order. A subpoena by itself is not sufficient to authorize disclosure of client information.

(b) **Written release required.** Release of personal information must be by written consent of the individual or authorized representative. If requested in writing by an applicant or eligible individual, DRS will make all requested information in that individual's record of services available to the individual in a timely manner except as provided in subsection (c). The Department's Authorization for Release of Information form may be used when the client requests that personal information be released by DRS to a third party and may also be used to request confidential information from other sources. Other release forms are acceptable, as long as they provide the required information. Written authorization for release of information must include:

- (1) the nature of the information to be released;
- (2) designation of the parties to whom the information is to be released;
- (3) the specific purpose for which the released information may be used;
- (4) designation of the agency or person authorized to disclose the information; and
- (5) dates of initiation and termination of consent.

(c) **Release of information to the individual.** The individual, or the individual's representative, will be given access to the relevant case record, or provided copies of requested information upon providing a written authorization for release of information, except as in (1) through (3) of this Subsection.

(1) Psychological, psychiatric, mental health and substance abuse treatment records and information from psychological, psychiatric, mental health and substance abuse treatment practitioners may only be obtained provided the requirements of Section 1-109 of Title 43A of the Oklahoma Statutes are met. Under these circumstances, refer the individual, or the individual's representative, to the treating health professional.

(2) When a DRS professional staff person believes medical or other information not covered in (1) of this Subsection may be harmful to the individual, the information may not be released directly to the individual but must be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.

(3) Information obtained from another organization or agency may be released only through that agency, or under the conditions established by the outside agency, organization or providers. For example, information from the Veteran's Administration and Social Security Administration may not be released. Refer the individual requesting such information to the source from which the information was obtained.

(d) **Request for information correction.** An individual who believes that information in the individual's case record is

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inaccurate or misleading may request that the information be amended. Even if the information is not amended, the request for amendment must be documented in the case record.

(e) **Release of information to other programs or authorities.** Paragraphs (1) through (4) of this Subsection provide the rules governing release of personal information to other programs or authorities.

(1) Upon receiving the informed written consent of the individual, or the individual's representative, information may be released to another agency or organization. Only that information that would be released to the involved individual, or the individual's representative will be released, and only to the extent that the other program or organization demonstrates that the information requested is necessary for its program.

(2) Personal information will be released if required by Federal law or regulations.

(3) Personal information will be released in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to an order issued by a judge, magistrate, or other authorized judicial officer.

(4) Personal information may be released in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(f) **Release of information for audit, evaluation or research.** Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research, only:

(1) for the purposes directly connected with the administration of the DVR or ~~DVS~~DSBVI program;

(2) for purposes which would significantly improve the quality of life for persons with disabilities; and

(3) if the organization, agency or individual assures:

(A) The information will be used only for the purpose it is being provided;

(B) The information will be released only to persons officially connected with the audit, evaluation or research;

(C) The information will not be released to the individual;

(D) The information will be managed in a manner to safeguard confidentiality; and

(E) The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative. [34CFR361.38]

612:10-1-6. Due process

(a) **Notification of rights to due process.** Any applicant or client of DVR or ~~DVS~~DSBVI dissatisfied with a determination that affects the provision of vocational rehabilitation services may request a timely review of the determination. Each applicant or client, or as appropriate, the individual's authorized representative will be informed of:

(1) the right to get decisions regarding the individual's case reviewed by an impartial hearing officer;

(2) the right to pursue mediation on decisions regarding the individual's case;

(3) the names and addresses of individuals with whom requests for mediation or due process hearings may be filed;

(4) the manner in which a mediator or impartial hearing officer may be selected; and

(5) the availability of assistance from the client assistance program.

(b) **When notification of rights to due process is required.**

The notifications specified in (a) shall be provided in writing, and in appropriate accessible format:

(1) at the time an individual applies for VR services;

(2) at the time an individual is assigned to the State's order of selection;

(3) at the time the Individualized Plan for Employment is developed; and

(4) upon reduction, suspension, or cessation of VR services for the individual.

(c) **Client Assistance Program (CAP).** The purpose of the Client Assistance Program (CAP) as described in this Section is to provide assistance with informing and advising clients and applicants of all available benefits under the Rehabilitation Act. When requested by clients and applicants, CAP will assist them in their relationships with projects, programs, and Community Rehabilitation Programs providing services to them under the Act.

(1) The Oklahoma CAP has the authority to pursue legal, administrative and other appropriate remedies to ensure the protection of the rights of individuals with disabilities who are receiving treatment, services or rehabilitation under the Act within the State.

(2) Vocational Rehabilitation agencies are required by Federal statute to advise all clients and applicants of the existence of CAP, the services provided by the program, and how to contact the program. A brochure is provided to each individual at the time of application and development of the IPE.

(3) Counselors must assure clients and applicants have access to CAP without fear of reprisal and are not pressured against or otherwise discouraged from using CAP services.

(4) The CAP staff members will provide the following services:

(A) Helping clients or applicants to understand rehabilitation service programs under the Act;

(B) Advising clients or applicants of benefits available to them through rehabilitation programs authorized under the Act and their rights and responsibilities in connection with those benefits;

(C) Otherwise assisting clients and applicants in their relationships with projects, programs, and Community Rehabilitation Programs providing rehabilitation services under the Act;

(D) Helping clients or applicants by pursuing or assisting them in pursuing legal, administrative, and other available remedies when necessary to ensure the protection of their rights under the Act;

- (E) Advising State and other agencies of identified problem areas in the delivery of rehabilitation services to individuals with disabilities and suggesting methods and means of improving agency performance; and
- (F) Providing information to the public concerning the CAP and Title I of the ADA.
- (5) Clients may be referred to CAP by any one of the following:
 - (A) The client's counselor;
 - (B) Other DRS representative;
 - (C) Office of ~~Handicapped~~Disability Concerns' Hotline;
 - (D) Self;
 - (E) Any other interested party.
- (6) Every client or applicant has the right to protection of information provided by him/her from unauthorized or indiscriminate disclosure. DVR and ~~DVS~~DSBVI will provide CAP officials information regarding an individual's case in accordance with 612:10-1-5 and applicable Federal law and regulations.
- (7) The CAP staff will make periodic field visits to facilitate CAP's availability to clients or applicants who cannot travel to Oklahoma City.
- (d) **Supervisory review.** DVR and ~~DVS~~DSBVI use a supervisory review process to resolve disagreements as close to the field service delivery level as possible. The objective of the supervisory review process is a timely resolution of disagreements, and is not to be used to delay or deny a fair hearing before a hearing officer or the services of an impartial mediator. The supervisory review of a counselor determination starts the 60 day time period established under (f)(5) of this Section. The request for a fair hearing is submitted at this time in accordance with (f)(2) of this Section.
 - (1) The supervisory review is usually conducted by the program manager. If the program manager was involved in the disputed determination, the field coordinator conducts the administrative review. If the field coordinator was involved in the disputed determination, the division administrator conducts the administrative review.
 - (2) The decision that results from the administrative review will be stated in a letter to the individual, or to the individual's representative, with copies to the case record, the program manager, and the hearings coordinator. The letter will identify the individual, case number, caseload, and office location. The body of the letter will state the reason for the administrative review and the decision resulting from that review. If the administrative review resolves the disagreement, the Withdrawal of Request for Hearing form must be submitted with the copy of the letter that is sent to the hearings coordinator.
- (e) **Mediation.** Whenever a fair hearing is requested under this Section, mediation shall be offered as an option to resolve a disputed decision. DRS uses the voluntary mediation services of the Oklahoma Supreme Court. The supervisor will arrange for a mediator with the Early Settlement Center that is most convenient to the consumer upon receipt of a request for mediation. DRS will bear the cost of the mediation. The

mediation session will be scheduled in a timely manner. An agreement reached by the parties to the dispute in the mediation will be set forth in writing. Discussions that occur during the mediation process will be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. Should the dispute be resolved through mediation, a withdrawal of request for hearing must be submitted to the hearings coordinator. The parties to the mediation may be required to sign a confidentiality pledge prior to commencement of the process. Nothing in this Subsection shall be construed to preclude the parties from informally resolving the dispute. The Departmental representative attending the mediation must be the individual who has final decision making authority for the question in dispute. The mediation:

- (1) must be entered into voluntarily by all parties;
- (2) is not used to deny or delay the hearing or any other right; and
- (3) Is conducted by a qualified and impartial mediator.
- (f) **Fair hearing process.** The fair hearing process will be conducted in accordance with (1) through (10) of this Subsection.
 - (1) **Services under IPE to continue.** No services being provided under the IPE shall be stopped, delayed, or reduced by the Department pending a final resolution of a requested hearing unless so requested by the individual or individual's authorized representative; or the service was obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual with disabilities.
 - (2) **Request for a fair hearing.** The individual has 30 calendar days following the date on the notice of the adverse decision to request a fair hearing.
 - (A) The individual requesting a fair hearing, may submit it to the local office, or may send it directly to the hearings coordinator in State Office. DVR and ~~DVS~~DSBVI staff will assist the individual in completing this form and with preparation of evidence from the case record in conformance with 612:10-1-5, if so requested.
 - (B) DVR and ~~DVS~~DSBVI staff will immediately notify their supervisor of the request for a fair hearing so that the administrative review can be started by the appropriate staff person. The completed Hearing Summary form, a copy of the notice of the adverse decision, and all supporting materials to be used in the hearing must be sent to the hearings coordinator as soon as possible. If a request for a fair hearing is submitted to the local office, staff will immediately forward it with the other materials.
 - (C) Prior to the actual fair hearing, the hearings coordinator will provide copies of materials the agency will use in the fair hearing to the individual and/or the individual's representative in conformance with 612:10-1-5.
 - (3) **Withdrawal of request for a fair hearing.** The individual, or the individual's representative, may submit a withdrawal of request for hearing any time following the submission of a request for a fair hearing up to the

time the hearing is actually held. If the issue is resolved prior to the fair hearing, the individual, or the individual's representative, must submit a Withdrawal of Request for Hearing to end the fair hearing process.

(4) **Selection of impartial hearing officer.** The hearings coordinator will select an impartial hearing officer from a list of qualified impartial hearing officers maintained and identified by the State unit. Once selected, the impartial hearing officer will assume responsibility for arranging and conducting the fair hearing with the assistance of agency staff as necessary. The hearings coordinator will be apprised of events in the hearing process, and will be provided copies of all correspondence.

(A) Selections will be made randomly; or by agreement between the director of the designated State unit and the applicant or eligible individual or, as appropriate, the individual's representative; from the list of available impartial hearing officers. The hearings coordinator will forward all relevant materials to the assigned impartial hearing officer.

(B) The impartial hearing officer will send written notice of the fair hearing to all parties involved. The written notice of the fair hearing will include the name, address, and a brief vita of the impartial hearing officer.

(C) The individual may request a different impartial hearing officer based upon presented evidence that a conflict of interest exists consistent with Section 7 (16) of the Rehabilitation Act and 34 CFR 361.5(b)(25). A request for a different impartial hearing officer must be made within five days of receiving the fair hearing notice.

(5) **Scheduling of the fair hearing.** The fair hearing must be held within 60 calendar days from the date the request for a fair hearing is received, unless the issue is resolved prior to the 60th day or the parties agree to a specific extension of time. The administrative review must be conducted and concluded within the same 60 days. Delays or continuances will not be given for the purpose of extending the provision of services. Any agreement to an extension of time must be formalized in writing.

(6) **Consumer's participation in hearing.** At a fair hearing, the individual, or the individual's representative, is afforded the opportunity to:

- (A) present additional evidence, information, and witnesses to the impartial hearing officer;
- (B) be represented by counsel or other advocate selected by the applicant or eligible individual; and
- (C) examine all witnesses and other relevant sources of information and evidence.

(7) **Agency staff attendance.** Professional staff involved in the disputed determination will appear at the hearing to provide appropriate information and evidence and testimony. Other staff will appear as directed.

(8) **Order of proceedings in the fair hearing.** The Impartial Hearing Officer will conduct the fair hearing in accordance with State laws regarding conduct of individual proceedings before an agency, and applicable Federal

laws and regulations. Although the order of proceedings is at the discretion of the Hearing Officer, generally, the fair hearing follows this order of proceedings:

- (A) presentation, arguments, and disposition of all preliminary motions and matters;
- (B) opening statements;
- (C) information and evidence presented by the agency;
- (D) evidence presented by the grievant;
- (E) rebuttal by either or both sides;
- (F) closing statements by the grievant;
- (G) closing statements by the agency; and
- (H) rebuttal by grievant.

(9) **Decision.** The hearing officer makes a decision based on the provisions of the approved State Plan, the Act, Federal vocational rehabilitation regulations, and State regulations and policies that are consistent with Federal requirements and on whether or not the counselor properly applied rules. The hearing officer does not have the authority to rule upon the legality of DRS rules that are consistent with Federal requirements. A decision made after a fair hearing shall be final, unless a party to the fair hearing requests a review under Paragraph (10) of this Subsection. The hearing officer provides the individual, or the individual's representative, and the hearings coordinator a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing. The hearings coordinator will immediately forward the decision to the Director of DRS. The impartial hearing officer may make one of several decisions, which include, but are not limited to:

- (A) finding in favor of the grievant;
- (B) upholding the determination or action of the agency;
- (C) accepting a withdrawal of the appeal confirmed in writing signed by the grievant, or the grievant's representative; or
- (D) accepting a settlement of the issues agreed to by the grievant and the agency which must include a written withdrawal of request for a hearing.

(10) **Review of impartial hearing officer's decision.** Any party involved in a fair hearing may request an impartial review of the impartial hearing officer's decision within 20 calendar days of that decision. This review will be conducted by the Governor or the Governor's designee to whom DRS is assigned. The review will be conducted in accordance with the standards in (A) through (E) of this paragraph:

- (A) The Governor or the Governor's designee will not delegate responsibility for this review to any officer or employee of DRS.
- (B) The Governor or the Governor's designee will provide an opportunity for the submission of additional evidence and information relevant to a final decision concerning the matter under review.
- (C) The Governor or the Governor's designee will make a final decision within 30 days of the request

for administrative review. The decision will be provided to all parties, and/or to the parties' authorized representatives, in writing. The written decision will include a full report of the findings, and the grounds for the decision.

(D) The Governor or the Governor's designee cannot overturn or modify a decision, or part of a decision, made by an impartial hearing officer that supports the position of the individual unless the Governor or the Governor's designee concludes, based upon clear and convincing evidence, that the decision of the hearing officer is clearly erroneous on the basis of being contrary to the approved State plan, the Act, Federal vocational rehabilitation regulations, or State regulations and policies that are consistent with Federal requirements. The Governor or the Governor's designee will apply the standards presented in (i) through (iii) of this Subparagraph when conducting the review of the hearing officer's decision.

(i) The hearing officer's decision shall not be arbitrary, capricious, an abuse of discretion, or otherwise unreasonable.

(ii) The hearing officer's decision shall be supported by substantial findings of fact.

(iii) In reaching the initial decision, the impartial hearing officer shall correctly apply Federal and State law, regulation, agency policy, and the approved State Plan as they pertain to the specific issue in question.

(E) A decision made under this Paragraph shall be final unless a party involved in the hearing brings a civil action.

(g) **Civil proceedings.** Any party aggrieved by a final decision of an impartial hearing officer, or by the Governor or the Governor's designee, may bring a civil action for review of the decision. The action may be brought in any State court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy. If a party brings a civil action, the final decision of the impartial hearing officer, or of the Governor or the Governor's designee, shall be implemented pending review by the court. In any action brought under this Subsection, the court:

(1) shall receive the records relating to the hearing, and the records relating to any review conducted under (f)(10), if applicable;

(2) shall hear additional evidence at the request of a party to the action; and

(3) basing the decision of the court on the preponderance of the evidence, shall grant such relief as the court determines to be appropriate. [29 USC 722]

(h) **Standards for impartial hearing officers.** In addition to qualifications required in a contract with the Department, an impartial hearing officer must meet the standards set forth in (1) through (6) of this Subsection:

(1) cannot be an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher learning);

(2) cannot be a member of the Oklahoma Rehabilitation Council;

(3) has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(4) must have knowledge of the delivery of vocational rehabilitation services, the State plan required under Section 101 of the Act, and the Federal and State rules governing the provision of such services and training with respect to the performance of official duties;

(5) must have no personal, professional or financial interest that would be in conflict with the objectivity of the impartial hearing officer; and

(6) must have successfully completed impartial hearing officer training presented by DRS.

(i) **Standards for impartial mediators.** In addition to qualifications required in a contract with the Department, an impartial mediator:

(1) will be trained and certified or licensed in effective mediation techniques;

(2) will not be an employee of a public agency (other than an Administrative Law Judge, hearing examiner, employee of a State Office of Mediators, or employee of an institution of higher education);

(3) will not be a member of the Oklahoma Rehabilitation Council;

(4) must be knowledgeable in laws and regulations relating to the provision of VR services;

(5) has not been involved previously in the vocational rehabilitation of the applicant or eligible individual; and

(6) must have no personal, professional or financial interest that would be in conflict with the impartiality of the mediator.

612:10-1-7. Purchase of services and goods for individuals with disabilities

(a) All Department authorizations are made in compliance with the state purchasing policy under legal authority of the Director or by an employee to whom the Director has delegated such authority. Services, other than diagnosis and pre-employment transition services for students with disabilities regardless of whether the student has applied or been determined eligible for vocational rehabilitation services, must be in an approved Individualized Plan for Employment prior to authorization. All authorizations are to be issued prior to or simultaneously with the provision of the services. Verbal authorizations may be made when needed to ensure effective delivery of services. Verbal authorization must be followed immediately by the actual authorization. Separate authorizations for each fiscal year are required when a planned service extends beyond a single fiscal year. Rehabilitation professionals may not authorize fees for services in excess of those established by the Department unless approved by the Division Administrator. A prior written purchasing agreement is required before authorization can be made to any medical vendor or post-secondary school. Other nonmedical vendors will not require a prior written purchasing agreement unless stated otherwise in the DRS policy manual section(s) for that

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service. When a vendor has a prior written purchasing agreement with the Department, and required approvals have been obtained, authorization may be issued for consumer services directly to that vendor. All other consumer services will be purchased pursuant to the rules in (g) and (h) of this Section. However, a requisition may be submitted to the DRS Purchasing Section if, in the judgment of the responsible rehabilitation professional, the best interests of the consumer and/or the agency would be served by having the Purchasing Section handle the procurement. In either case, once items have been received and checked against the authorization, the appropriate DVR or ~~DVS~~DSBVI staff, in accordance with (g) and (h) of this Section, approves the claim, then forwards it to the DRS Financial Services Division. When a vendor does not abide by the authorization or written purchasing agreement or bills and accepts fees from the client in addition to those agreed upon, the rehabilitation professional will bring this to the immediate attention of the supervisor for action by the administration. The vendor will not be used for further rehabilitation services until agreement to discontinue the objectionable practice is reached.

(b) Since the Department is a state-federal agency, it does not pay sales, excise, or transportation taxes.

(c) All claims for medical and/or nonmedical client services must be filed on claim forms approved by the Department. When the provision of an authorization is fulfilled, payment for the authorized client services constitutes payment in full. The client will not have any financial liability other than the amount required of clients who must participate in the cost of the service provided. The individual is liable for services he/she arranged which were not planned and initiated under the auspices of DRS. When DVR and ~~DVS~~DSBVI funds are used to supplement third party medical resources, participation cannot exceed the difference between the third-party payment and the Department's established schedule.

(d) The client must transfer, assign, or authorize payments to the Department of any and all claims against Health Insurance or Liability Insurance companies or other third parties, to the full extent of all payments for medical services made by the Department.

(e) The Department retains right and title to any tools, equipment, durable medical equipment, or other goods costing \$500 or more purchased with DVR and ~~DVS~~DSBVI funds, until and unless such goods are released to the client. Upon delivery of any such goods to the client, a Receipt for Equipment and Title Agreement must be completed and approved.

(1) **Completion of Program:** Any tools, equipment or durable medical goods purchased for training or occupational purposes remain with the client after completion of the program of services if they can be used in the client's chosen vocation. If the client fails to complete the program of service, the counselor will make effort to reclaim the goods to transfer to another client.

(2) **Disposition at closure:** Case recording must reflect the disposition at the time of closure of tools, equipment, and goods provided the client. All occupational tools, equipment, and durable medical goods remain the property of the agency until released. If the client is not

using the items, the counselor will pick them up if an economical savings to the agency will result, and if the transfer will not endanger the health or safety of the client.

(3) **Title Release:** Title on any tools, equipment or durable medical equipment purchased with DRS funds for training or occupational purposes will not be released to the client until the counselor has determined the client is using the items as planned.

(f) When the rehabilitation professional determines an authorization or portion of an authorization will not be utilized, procedures to cancel the remaining services will be completed. Before the case is closed, all unliquidated authorizations must be canceled or accounted for to determine if a claim will be made against any outstanding authorization.

(g) Purchasing consumer goods or services, other than direct client payments, when there is no prior written purchasing agreement is basically a three step process. These steps include specifying the requirements for the goods or services, authorizing for the purchase, and receiving delivery of the goods or services. For audit purposes, no one person can perform more than one of these steps. A different person is required for:

- (1) identifying the requirement for the purchase;
- (2) placing the order; and
- (3) accepting the material or service.

(h) When a prior written purchasing agreement for consumer goods or services, other than direct client payments, is not required, and the service or package of services to be obtained will cost the amount of the DCAM authority order limit or less, the rehabilitation professional and client will jointly choose an appropriate vendor. The rehabilitation professional will then authorize for the planned services to the chosen vendor. When a prior written purchasing agreement for consumer services, other than direct client payments, is not required, and the service or package of services will cost more than the DCAM authority order limit, the rehabilitation professional will follow rules in (1) through (7) of this Subsection.

(1) The rehabilitation professional will obtain specialist recommendations for purchase requirements and approvals in accordance with agency policy.

(2) The participation of the client, or the client's authorized representative, will be obtained in deciding upon at least three vendors to be contacted by the rehabilitation professional to obtain bids for the goods or services. The rehabilitation professional will review available vendor information with the client, or client's authorized representative, to jointly determine which vendor(s) can best meet the needs of the client in terms of product and service function, quality, and vendor accessibility.

(3) At least three vendors offering the goods or services will be contacted to obtain bids. To expedite planning and service delivery, bids may be obtained verbally. Upon request, contacted vendors will be afforded at least 24 hours in which to prepare and submit the verbal bid. The rehabilitation professional will ensure that all bids are submitted in writing for the same or comparable items, and will document the bids received by using the Vendor Bid Documentation Form.

(4) The rehabilitation professional will issue the appropriate authorization and claim to the vendor submitting the lowest and best bid. If the rehabilitation professional managing the case is also the recognized specialist who identified the purchase requirements, then the supervisor will issue the appropriate authorization. Authorization may be issued to a vendor not submitting the lowest bid only with strong documentation that the selected vendor can best meet the needs of the client. When the bid is in excess of \$5,000.00 the successful bidder will sign a non-collusion statement (to be sent with the claim), which will be maintained in the case service record.

(5) In the case of a vehicle modification or housing modification, upon completion of the authorized services, the counselor will contact the AT Specialist to schedule inspection of the work in accordance with 612:10-7-220 and ~~612:10-11-38~~. The AT Specialist will complete the "Assistive Technology Inspection Report" verifying the modification conforms to acceptable standards and the work is satisfactory.

(6) Upon delivery of the goods or services in accordance with the IPE and authorization, a rehabilitation staff person other than the specialist who specified the purchase requirements and the rehabilitation professional who authorized the purchase will accept delivery, verify that goods received match the vendor invoice, sign the appropriate claim form, sign and attach the invoice and forward them to the DRS Financial Services Division.

(7) Upon delivery of any goods costing \$500 or more to the client, a Receipt for Equipment and Title Agreement must be completed and approved.

(8) Itemized documentation will be in the case record on all orders costing less than \$500 and the client will acknowledge their receipt. (For example, signing and dating the packaging slip, vendor's invoice, or typed list of goods.)

(9) Returned or repossessed items must be documented on for "Receipt for Equipment and Title Agreement" and the final disposition noted in Case Narrative entry.

(i) Program Managers will review case records when submitted for approvals to ensure that purchases are being awarded in a manner that ensures competition and client participation within the scope of DRS and applicable fiscal rules. At least once each fiscal year a random selection of case records will be reviewed by the DRS Central/Departmental Services Unit to monitor compliance with DRS and applicable fiscal rules. If a Program Manager has reason to believe that a rehabilitation professional is not making a good faith effort to award purchases in a competitive manner and in accordance with agency policy, a fiscal audit of the entire caseload will be requested to determine the appropriate action to take.

(j) Pursuant to 74 O.S. 85.44A, any goods or services required under a court order shall be purchased in accordance with DRS fiscal rules.

SUBCHAPTER 3. CLIENT PARTICIPATION IN COST OF SERVICES

612:10-3-2. Consideration of comparable services and benefits

(a) Prior to providing any VR service to an eligible individual, except those services specified in Paragraph (1), the VR counselor will determine whether comparable services and benefits are available under any other program unless any of the conditions in Paragraph (2) apply to the individual.

(1) The VR services listed in (A) through (F) are to be provided without first determining the availability of comparable services and benefits. However, comparable services and benefits may be used for these VR services if the comparable services and benefits are readily available at the time the VR services are needed. VR services exempt from a required search for comparable services and benefits are:

(A) information and referral services to eligible individuals not in an open priority group under the order of selection;

(B) assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

(C) counseling and guidance, including information and support services to assist an individual in exercising informed choice;

(D) referral and other services to secure needed services from other agencies through cooperative agreements;

(E) job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services; and

(F) rehabilitation technology, including telecommunications, sensory, and other technological aids and devices.

(2) Determining whether comparable benefits and services are available will not be required prior to providing any VR services if that determination would interrupt or delay:

(A) the progress of the individual toward achieving the employment outcome identified in the IPE;

(B) an immediate job placement; or

(C) the provision of such services to any individual at extreme medical risk.

(b) Counselors will advise clients of available benefits, help in completing the application for such benefits when needed, and refer clients to the appropriate contact person. Each client is required to apply for such benefits. ~~DVR and DVSD~~ DSBVI will not participate in the cost of services for any client who fails to apply for and accept available comparable benefits.

(c) Whether or not the client must participate in the cost of VR services has absolutely no effect upon the required search for, or use of, available comparable benefits. Available comparable benefits cannot be used in place of client resources when the client is required to participate in the cost of VR services.

(d) Awards and scholarships based upon merit will not be counted as comparable benefits.

(e) A student loan is not a comparable benefit. Failure to apply for a student loan which must be repaid will not be cause

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to withhold participation by DVR or ~~DVS~~DSBVI. Clients who have defaulted on a student loan will not be assisted with post-secondary training until the client has cleared the default or has made arrangement with the lender on the terms of payment. Documentation of the arrangement made must be in the case record before post-secondary training services are provided when it is known a client has defaulted on a loan. The counselor will inform such clients of organizations which can help resolve debt problems, such as credit counseling services and legal aid.

(f) Clients are expected to provide the counselor a copy of the award letter(s) or other written notice of comparable benefits received from other sources, and it is expected the comparable services and benefits available to the client will be used to defray all or part of the cost of the individual's IPE.

(g) The client's IPE will be reviewed and amended by the client and VR counselor whenever comparable services or benefits that were not accounted for in the original plan become available to the client.

(h) Cooperative agreements between DRS and other service providers may affect how comparable services and benefits available from such service providers will be applied in an IPE. Cooperative agreements entered into by DRS with other service providers will include:

- (1) provisions for determining and stating the financial responsibility of each agency in providing services;
- (2) conditions, terms, and procedures for DRS to be reimbursed by other agencies for providing covered services;
- (3) procedures for resolving interagency disputes under the agreement; and
- (4) coordination of agency procedures for timely VR services delivery.

612:10-3-3. Client participation in services cost and financial status determination

(a) DVR and ~~DVS~~DSBVI require the client to participate in the cost of some vocational rehabilitation services if the client and/or client's family income exceeds the established basic living requirement for the applicable family size. Any client who has been determined eligible for Social Security benefits under Title II or XVI of the Social Security Act is exempt from client participation in service costs.

(b) Before an individual can be provided services other than those listed in DRS policy, the counselor must evaluate the client's financial situation to determine if the client must participate in the cost of services, and if so, the amount of such participation. Any client whose available family income exceeds the applicable basic living requirements is required to apply the monthly surplus to the cost of services during each 30 day period services are provided. DVR and ~~DVS~~DSBVI funds will not be used to purchase services based on client's financial status when there is any refusal on client's behalf to participate in the cost of services. However, the client can be provided services not based on financial status. Any client who does not have a surplus is not required to participate in the cost of services. Financial status does not exempt the client from

required use of comparable benefits. If a payment is required of the client, it will be made to the vendor.

(c) The counselor will re-evaluate the client's financial situation at least annually and any time there is a change in the financial situation of the client or family. The amount of client participation in cost is based upon the most recent determination of client's financial status at the time the IPE or amendment is written, and is stated in the IPE or amendment.

(d) The client's financial status must be verified when an IPE includes services which require client participation in cost of services. Information used to verify the client's financial status includes such documents as income tax returns, bank statements, pay stubs, canceled checks, payment receipts, and/or payroll documents. It is the client's responsibility to provide the documents needed for verification of financial status information for the family. If the client refuses to provide the requested verification, DVR and ~~DVS~~DSBVI resources will not be used to defray the cost of services which require client participation in cost of services.

612:10-3-4. Services exempt from client participation in service costs

(a) DVR and ~~DVS~~DSBVI clients who have income and assets above the basic living requirements will be required to apply surplus resources to the cost of rehabilitation services except for the following services which do not require a determination of financial status:

- (1) services provided to assess eligibility and rehabilitation needs (services which would require the individual's participation in cost under an IPE will also require the individual's participation in cost during an evaluation of the individual's ability to benefit from VR services);
- (2) counseling, guidance, referral, and other services provided directly by DVR and ~~DVS~~DSBVI staff;
- (3) on-the-job training, work experiences, internships and apprenticeships;
- (4) personal or work-adjustment training;
- (5) reader services;
- (6) interpreter services;
- (7) personal assistance services;
- (8) job-related services including job search and placement, job retention services, follow-up services and follow-along services;
- (9) compensatory training;
- (10) job coaching services (i.e., supported employment, employment and retention, transitional employment); or
- (11) any auxiliary aid or service that an individual with a disability require under Section 504 of the Rehabilitation Act or the Americans with Disabilities Act, or regulations implementing those laws, in order for the individual to participate in the VR program; and
- (12) library services.

(b) Recipients of Social Security benefits under Titles II (federal old age, survivors, and disability insurance benefits) or XVI (SSI) of the Social Security Act do not have to participate financially in the cost of their rehabilitation program.

**SUBCHAPTER 7. VOCATIONAL
REHABILITATION AND ~~VISUAL~~ SERVICES FOR
THE BLIND AND VISUALLY IMPAIRED**

**PART 1. SCOPE OF VOCATIONAL
REHABILITATION AND ~~VISUAL~~ SERVICES FOR
THE BLIND AND VISUALLY IMPAIRED**

**612:10-7-1. Overview of Vocational Rehabilitation
and ~~Visual~~ Services for the Blind and
Visually Impaired**

(a) Vocational rehabilitation services are provided by the Division of Vocational Rehabilitation and the Division of ~~Visual~~ Services for the Blind and Visually Impaired to help eligible individuals achieve employment outcomes that are consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of each eligible individual. VR services for individuals are meant to result in competitive employment in an integrated setting. Vocational rehabilitation services include services for individuals and services to groups of individuals.

(b) Vocational rehabilitation services for an individual are prescribed in an Individualized Plan for Employment (IPE) that is based on an assessment of the individual's rehabilitation needs, guidance provided by a qualified vocational rehabilitation professional and the individual's informed choice with regard to employment goal, services and service providers. Services may include but are not limited to:

- (1) an assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;
- (2) counseling and guidance, including information and support services to assist an individual in exercising informed choice;
- (3) referral and other services to secure needed services from other agencies through cooperative agreements if such services are not available from DVR or ~~DVS~~ DSBVI;
- (4) job-related services, including job search and placement assistance, customized employment services, services leading to self-employment, job retention services, ongoing services, and extended services;
- (5) vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials;
- (6) to the extent that financial support is not readily available from a source (such as health insurance or comparable services and benefits) other than DVR or ~~DVS~~ DSBVI, diagnosis and treatment of physical and mental impairments;
- (7) maintenance for additional costs incurred while participating in an assessment for determining eligibility and vocational rehabilitation needs or while receiving services under an Individualized Plan for Employment;
- (8) transportation, including training in the use of public transportation vehicles and systems, that is provided in connection with the provision of any other service

described in this section and needed by the individual to participate in rehabilitation services or to achieve an employment outcome;

(9) on-the-job or other related personal assistance services provided while an individual is receiving other services described in this section;

(10) interpreter services provided by qualified personnel for individuals who are deaf or hard of hearing, and reader services for individuals who are determined to be blind;

(11) rehabilitation teaching services, and orientation and mobility services, for individuals who are blind;

(12) occupational licenses, tools, equipment, and initial stocks and supplies;

(13) technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent such resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome;

(14) rehabilitation technology, including rehabilitation engineering, assistive technology devices and assistive technology services;

(15) transition services for students with disabilities, that facilitate the achievement of the employment outcome identified in the Individualized Plan for Employment, and pre-employment transition services as described in 34 CFR 361.48(a) and 29 USC 733;

(16) supported employment services for individuals with the most significant disabilities that need ongoing support services from a job coach to obtain and maintain employment;

(17) employment and retention services for individuals with significant disabilities who require short term job coach support to obtain and maintain a successful employment outcome;

(18) transitional employment services for individuals with the most significant disabilities due to mental illness who have little or no successful work history and need work adjustment/trial work experience;

(19) work experiences, internships, and apprenticeships;

(20) services to the family of an individual with a disability necessary to assist the individual to achieve an employment outcome; and

(21) specific post-employment services necessary to assist an individual with a disability to, retain, regain, or advance in employment.

(c) Vocational rehabilitation services for groups of individuals with disabilities are described in 34 CFR 361.49 and include:

- (1) In the case of any type of small business operated by individuals with significant disabilities the operation of which can be improved by management services and supervision provided by DVR or ~~DVS~~ DSBVI, the provision of such services and supervision, along or together with the acquisition by DVR or ~~DVS~~ DSBVI of vending facilities or other equipment and initial stocks and supplies.

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(2) Equipment for clients who are going into self-employment requires prior approval from RSA.

(23) Transition services to youth and students with disabilities who may not have applied or been determined eligible for vocational rehabilitation services, that involve collaboration of a vocational rehabilitation counselor with education agencies, programs serving individuals with developmental disabilities, businesses, workforce programs, independent living centers, housing and transportation authorities and related entities. Such services are to benefit a group of youth or students with disabilities and may not be individualized services related to an individual plan for employment. Services may include group tours of training programs and businesses, career fairs, interview practice, resume writing, and other group activities that support future employability.

(4) High school students who have a disability and are not clients of the DRS, but are going to a conference or camp to provide them with the necessary tools and education for employment requires prior approval from RSA.

(35) The use of telecommunications systems (including telephone, television, video description services, tactile-vibratory devices, satellite, radio, and other similar systems) that have the potential for substantially improving delivery methods of activities described in this section and developing appropriate programming to meet the particular needs of individuals with disabilities;

(46) Special services to provide access to information for individuals who are blind, visually impaired, deaf, hard of hearing or deaf-blind including:

- (A) the use of telecommunications, Braille, sound recordings, or other appropriate media;
- (B) captioned television, films, or video cassettes for individuals who are deaf or hard of hearing;
- (C) tactile materials for individuals who are deaf-blind; and
- (D) other special services that provide information through tactile, vibratory, auditory, and visual media.

(57) Technical assistance to businesses that are seeking to employ individuals with disabilities.

(68) Consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.

(79) The establishment, development or improvement of assistive technology demonstration, loan, reutilization or financing programs in coordination with activities authorized under the Assistive Technology Act of 1998.

(810) The establishment, development or improvement of a community rehabilitation program that is used to provide vocational rehabilitation services that promote integration into the community and prepare individuals with disabilities for competitive integrated employment.

person. The counselor is responsible for providing interpreter services to applicants who are deaf or non-English speaking.

(b) The rehabilitation counselor is responsible for the determination of an individual's eligibility to receive services from DVR or ~~DVSDSBVI~~. In cases where the counselor has difficulty in making an eligibility determination, the counselor will consult with the supervisor. For further clarification, the case will be reviewed by the field coordinator for a decision. Individuals who are legally blind are to be referred to the appropriate rehabilitation teacher for determination of eligibility for the rehabilitation teaching program.

(c) The counselor's primary vocational rehabilitation service is counseling and guidance with job placement. Additional services must be justified as necessary to compensate for, correct or circumvent an impediment to employment. Every IPE must include a plan of counseling and guidance services. Regular documentation of counseling sessions will be included in every DVR and ~~DVSDSBVI~~ case.

(d) The rehabilitation counselor is to ensure that the client is a full participant in the decisions that are made concerning his or her vocational rehabilitation. This responsibility is carried out by providing the individual with as much relevant information as is available so that the individual, and/or the individual's authorized representative, can exercise informed choice consistent with the Department's policies. The minimum information concerning service choice to be supplied includes:

- (1) service cost;
- (2) available service providers;
- (3) service accessibility;
- (4) expected duration of services;
- (5) consumer satisfaction with the services in question, to the extent that such information is available;
- (6) qualifications of potential service providers;
- (7) the types of services offered by the potential service providers;
- (8) the degree to which services are provided in integrated settings; and
- (9) outcomes achieved by individuals working with the service provider, to the extent such information is available.

(e) The individual will be notified in writing of any adverse determination made by professional staff concerning that individual's case. This notification will be made in a timely manner, and in a manner that supports the individual's right to due process.

(f) The counselor will complete a financial status determination form prior to the provision of any service (other than exempt services listed in 612:10-3-4) to determine if the client will be required to participate in the cost of services.

(g) The counselor will inform each individual of his or her rights and responsibilities as an applicant or client of DVR and ~~DVSDSBVI~~. Cross reference 612:10-7-3

(h) The Department of Rehabilitation Services (DRS) has an obligation under state and federal law to provide services in a fair and impartial manner. State Ethics Commission Rules state that the proper operation of state government requires that the state employee be independent and impartial; that state

612:10-7-2. Field staff responsibilities

(a) The counselor is responsible for contacting each referral within 30 days of receipt of the referral information. The counselor is responsible for completing a contact by telephone or in

employees not use state office to obtain private benefits; that a state employee must avoid action which creates the appearance of using state office to obtain a private or inappropriate benefit; and that state employees exercise their powers without prejudice or favoritism.

612:10-7-2.5. Work Experience

(a) When Work Experience (WE) will best suit the client's needs, this type of training can be considered. In order for the client to gain work experience and obtain employment, WE can be provided in conjunction with any other DRS Service. The nature of the work training experience may (or may not) match the consumer's employment goal on the IPE. This service does not require client participation in cost of services.

(b) In selecting work training sites, the counselor must assure the items in (1) - (5) of this Subsection are met;

(1) The business or individual must be willing to train and provide experience to DRS clients for specific duties, skills and occupations.

(2) DRS will provide proper equipment and other accommodations as needed.

(3) The individual who actually does the training must be the employer or an employee of the business and have the knowledge, skill, and ability to train the client.

(4) Time must be devoted daily to the training of the client.

(5) It is expected the client will be employable after a reasonable period of training.

(c) The length of time for Work Experience needed for training will vary with the complexity of the job being learned. However, Work Experience cannot exceed six (6) months.

(d) Individuals and businesses which provide Work Experience are expected to compensate WE participants according to applicable minimum wage and hour regulations under the Fair Labor Standards Act. The employer must pay the client at least the applicable minimum wage.

(e) Work Experience payments are reimbursement for training by the employer. Reimbursement is paid to the employer who pays the client just like his or her own employees. It is not permissible for the employer to endorse the reimbursement check and give it to the client in lieu of wages.

(f) Reimbursement for Work Experience is paid on a monthly basis.

612:10-7-3. Client responsibilities

To make the rehabilitation effort a success, the individual and agency's staff must work together to reach chosen goals. This shared responsibility requires that the client or applicant for services accept the basic responsibilities in (1) through (12) of this Subsection. Other specific client responsibilities are stated in relevant manual sections. It is the counselor's responsibility to fully and appropriately inform the client of client responsibilities.

(1) Provide information and be available to complete the assessment process to find out if you are eligible for services.

(2) Be on time and keep appointments with ~~DVR/DVS~~DVR/DSBVI staff, doctors and others. Call in advance or as soon as possible, if you cannot come to an appointment.

(3) Follow the advice of doctors and other medical professionals to include compliance with all prescribed medications.

(4) Participate with your ~~DVR/DVS~~DVR/DSBVI counselor in developing the Individualized Plan for Employment, (IPE) including participating in assessments needed to determine your needs and strengths.

(5) Provide enrollment documents to home/supervisor counselor before the college or university's designated "Drop and Add" deadline so an authorization can be issued, if your IPE includes educational and training services.

(6) Attend education or training classes on a regular basis and make at least passing grades, if your IPE includes these services.

(7) Review your IPE with your counselor at least once a year and participate in making revisions to the plan when needed.

(8) Maintain satisfactory progress toward completing the IPE.

(9) Abstain from abuse of drugs and/or alcohol. Individuals who abuse drugs and/or alcohol while receiving services will be referred to the Oklahoma Department of Mental Health and Substance Abuse Services (ODMH-SAS) and/or other appropriate agencies for purposes of seeking treatment. All case services will be suspended. If the client refuses or fails to cooperate with seeking treatment, or is not available to pursue a DRS program, this will be considered as reasonable cause for case closure.

(10) Keep the appropriate professional informed of changes in the individual's address, financial status, or other program-related changes.

(11) Apply for and make appropriate use of any comparable benefits and services for which the client is eligible to defray in whole or in part the cost of services in the individual's IPE and provide verification of financial aid award status to counselor.

(12) Work with the counselor to obtain or keep suitable gainful employment or appropriate independent living outcomes as services are being completed.

PART 3. CASE PROCESSING REQUIREMENTS**612:10-7-21.1. Processing incoming referrals**

(a) **Processing incoming referrals.** All referrals to DVR and ~~DVS~~DSBVI will be contacted by the VR counselor and appropriate action taken within 30 days, after receipt of the referral information. The counselor is responsible for completing a contact by telephone or in person. The counselor is responsible for providing interpreter services to referrals who are deaf or non-English speaking. In situations where the individual cannot be personally contacted, correspondence will be mailed to the individual for informational purposes.

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(b) **Referrals to rehabilitation teachers.** All individuals who are legally blind, whether being served by a DVR counselor or a ~~DVS~~DSBVI counselor, will be referred to a rehabilitation teacher. Rehabilitation teachers may also receive counselor referrals and provide services for individuals who are not legally blind but have functional limitations due to vision loss and have potential to benefit from rehabilitation teaching services.

612:10-7-21.2. Information and referral system

(a) DVR and ~~DVS~~DSBVI staff will ensure that individuals with disabilities, including eligible individuals who do not meet order of selection criteria when the agency is operating under an order of selection, are provided accurate vocational rehabilitation information and guidance, using appropriate modes of communication. This information and guidance will be used to assist the individual in preparing for, securing, retaining, or regaining employment.

(b) Staff will ensure that individuals with disabilities are appropriately referred to Federal and State programs, including other components of the workforce investment system. An appropriate referral shall:

- (1) be to the Federal or State program(s) best suited to address the specific employment needs of the individual; and
- (2) include, for each involved program, provision to the individual of:
 - (A) a notice of the referral from DVR or ~~DVS~~DSBVI to the agency responsible for the program;
 - (B) information identifying a specific point of contact within the agency responsible for the program; and
 - (C) information and advice regarding the most suitable services to assist the individual.

612:10-7-24.1. Basic eligibility requirements for vocational rehabilitation services

(a) An individual is eligible for vocational rehabilitation services under the Rehabilitation Act through the State Department of Rehabilitation Services if the individual:

- (1) has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment;
 - (2) is determined by a qualified vocational rehabilitation counselor to require vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment; and
 - (3) can benefit in terms of an employment outcome from vocational rehabilitation services.
- (b) The agency presumes that an applicant with a physical or mental impairment that constitutes or results in a substantial impediment to employment can benefit from vocational rehabilitation services in terms of an employment outcome, unless the agency demonstrates, based on clear and convincing evidence, that the individual is incapable of benefiting from

rehabilitation services due to the severity of the individual's disability.

(c) An individual who has a disability or is blind as determined pursuant to Titles II (federal old age, survivors, and disability insurance benefits) or XVI (SSI) shall be:

- (1) considered to have a significant disability under the order of selection; and
 - (2) presumed to be eligible for vocational rehabilitation services, (provided that the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual) unless clear and convincing evidence demonstrates that the individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the individual's disability.
- (d) Eligibility requirements shall be applied without regard to:

- (1) duration of residence in the state,
 - (2) type of disability,
 - (3) age, except that in serving eligible individuals below working age, the client must be expected to reach working age by the time the IPE is completed, and DRS will not provide services that are the responsibility of the public school system.
 - (4) gender, race, color or national origin,
 - (5) type of expected employment outcome,
 - (6) source of referral, or
 - (7) the particular service needs or anticipated cost of services required by an applicant or applicant's family.
- (e) **Disabled veterans.** Disabled veterans are eligible for vocational rehabilitation services on the same basis as other individuals with disabilities subject to the following restrictions:
- (1) Disabled veterans are not provided services which can be secured from the Veterans Administration (VA), unless use of VA services will cause a substantial delay of services.
 - (2) Veterans receiving additional benefits under the G. I. Bill or the War Orphan Act may be provided services if such services do not duplicate those being received from the VA.

(f) **Applicants who are employed.** Employed persons who meet basic eligibility requirements may be provided vocational rehabilitation services to advance in or retain employment, or when the employment is not consistent with the individual's strengths, resources, priorities, concerns, abilities, interests and capabilities.

(g) **Citizenship.** Participation in the VR program is available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees and parolees, and other immigrants authorized to work in the United States.

(h) **Criteria.** Some conditions have unique criteria that must be considered when determining eligibility.

- (1) **Alcoholism/Drugs.** Individuals may be eligible for vocational rehabilitation services based on a substance abuse diagnosis that may be made by a qualified professional. Clients must be willing to undergo random

alcohol/drug screening. DRS does not pay for detoxification or replacement drug treatment. Documentation from qualified Drug and Alcohol treatment professionals indicating that the client is presently substance-free, maintaining sobriety, and actively participating in a treatment or maintenance program if recommended by the treating professional must be filed in the case record upon IPE development.

(2) **Allergies/Asthma.** Allergies/asthmatic conditions that require continuous or intermittent medical intervention and result in a substantial impediment to employment will be considered eligible for services.

(3) **Deafness and Hearing Loss.** The rehabilitation professional will base eligibility determination upon one of the measurement methods listed below, as performed by a qualified audiologist or other qualified professional as determined by the Department. The case record must document the method chosen provides the most accurate evaluation of functional hearing level for the individual.

(A) **Eligibility criteria.** Eligibility criteria for each method of measurement are listed in (i) through (iv) of this Subsection. An individual will also be considered to have a qualifying disability when documentation indicates the hearing loss is progressive and the progression is substantial enough to result in an impediment to employment.

(i) **Average hearing loss.** Average hearing loss, which is determined by computing average of the pure tone thresholds for each ear at 1000Hz, 2000Hz, 3000Hz and 4000Hz. An individual is considered to have a qualifying disability based upon average hearing loss when:

- (I) The hearing loss in one ear is profound (91 dB or greater) and the hearing loss in the better ear is at least 15 dB; or
- (II) The hearing loss in the better ear is 30 dB or greater.

(ii) **Speech recognition threshold (SRT).** An individual is considered to have a qualifying disability when:

- (I) the speech reception threshold in one ear is 91 dB or greater and is at least 15 dB in the better ear; or
- (II) the speech reception threshold in the better ear is 30 dB or greater.

(iii) **Speech discrimination or word recognition score.** An individual is considered to have a qualifying disability when the speech discrimination or word recognition score is 70% or less.

(iv) **Articulation index.** An individual is considered to have a qualifying disability when the articulation index is 70% or less.

(B) **Severity of Hearing Loss.** All individuals who qualify as having a severe hearing loss will be referred to a Rehabilitation Counselor for the Deaf and Hard of Hearing (RCD). Relevant information provided will include copies of the initial interview narrative recording, medical information, eligibility

data entry form, Individualized Plan for Employment, pertinent copies of case narratives and DRS application form. On receipt of a referral, the RCD will contact the client and make a determination of potential for Deaf and Hard of Hearing services. The referring counselor will be informed in writing of the RCD's findings.

(i) **Severe Hearing Loss.** Average hearing loss, as calculated above, is considered severe when:

- (I) The hearing loss in one ear is profound (91 dB or greater) and the hearing loss in the better ear is at least 31 dB; or
- (II) The hearing loss in each ear is 55 dB or greater.

(ii) **Severe Speech Recognition Threshold (SRT).** An individual is considered to have severe disability when:

- (I) The SRT in one ear is 91 dB or greater and the SRT in the better ear is at least 31 dB; or
- (II) The SRT in each ear is 55 dB or greater.

(iii) **Severe Speech Discrimination or word recognition score.** An individual is considered to have a severe disability when the speech discrimination or word recognition score is 59% or less.

(4) **Diabetes:** The individual must require prescribed medication to control the condition. Those persons whose diabetes is controlled by diet and exercise alone or whose condition does not result in a substantial impediment to employment will not be considered eligible. Eligible clients will be required to undergo a visual exam by a licensed ophthalmologist at least once a year. Diabetes management training will be incorporated into the IPE unless the client shows that he/she has previously completed diabetes management training. When recommended by a physician, diabetes management training will be incorporated into the IPE regardless of past diabetes education received by the individual.

(5) **Facial and Disfigurement Conditions.** When these conditions result in an impediment to employment an individual may be eligible for VR services.

(6) **Learning Disabilities.** ~~An individual may be identified as learning disabled.~~ Learning disabilities is a general term that refers to a group of disorders manifested by significant difficulties in the attainment and use of listening, speaking, reading, writing, reasoning, or mathematical abilities. Learning disabilities are identified when there are difficulties learning and using academic skills, as indicated by at least one of the following occurring even with interventions: Inaccurate or slow reading, difficulty understanding the meaning of what is read, difficulties with spelling, difficulties with written expression, difficulties mastering numbers sense, facts or calculation, and difficulties with mathematical reasoning. Also, academic skills are significantly below those expected for the student's chronological age and causes issues with academic and occupational performance. Academic areas include,

impairment in reading, impairment in written expression, and impairment in mathematics.

~~(A) When there is a marked discrepancy between verbal and performance intellectual level or~~

~~(B) When the individual's achievement on individually administered, standardized tests in reading, mathematics or written expression is substantially below that expected for age, schooling and level of intelligence (DSM, current edition).~~

(7) **Mental Disorders.** Individuals may be eligible for vocational rehabilitation services based on a mental health diagnosis made by a qualified professional (612:10-7-98 (17)(A)(1-5)). Documentation must be filed from a qualified professional indicating the client is participating in a treatment plan and in compliance with all medication as prescribed. Treatment must be incorporated as a service in the IPE for individuals with a mental disorder.

(8) **Intellectual Disability.** To be eligible, individuals having an I.Q. of 69 or below and substantially limited adaptive functioning, as measured by an individual intelligence test, will be considered to have a substantial disability. Individuals eligible under IDEA with an I.Q. level higher than 69 may be considered to have a substantial impairment provided the documentation used by the school in determining eligibility under IDEA, in the counselor's judgment, confirms the individual is functioning in the intellectual disability range of ability. Individuals not enrolled in public school special education classes with an I.Q. higher than 69 may be considered to have a substantial impairment provided appropriate documentation confirms the individual is functioning in the intellectual disability range of ability.

(9) **Height.** To be eligible, a person's stature must constitute or result in a substantial impediment to employment.

(10) **Obesity.** To be eligible, a person must be considered obese according to a recognized medical classification protocol and the impairment must constitute or result in a substantial impediment to employment. Some type of weight loss plan or treatment for obesity must be included as a service in the IPE.

(11) **Visual.** Any of the following conditions may provide a basis for eligibility due to visual disability:

(A) **Blindness.** A central visual acuity of 20/200 or less in the better eye with best correction, or a limitation in the field of vision in the better eye so that the widest diameter of the visual field subtends an angle of 20 degrees or less. "Best correction" refers to the use of standard eyeglasses or contact lenses, and does not include use of bioptic telescopic systems or any specialized lenses which cannot be worn by the individual on a sustained basis.

(B) **Visual impairment.** A central visual acuity of 20/60 or less in the better eye with best correction, or other visual condition which, for the individual, results in functional limitations and constitutes a barrier to employment. Other visual conditions which may result in functional limitations include, but are

not limited to, limited peripheral vision, extreme light sensitivity, loss of depth perception, loss of stereopsis, diplopia (double vision), aphakia, total absence of color discrimination or red-green deficiency, blurred vision, eye muscle and movement conditions, and cortical visual impairment.

(C) **Progressive eye disease.** Diagnosis of a progressive sight threatening disease or condition that has resulted in functional limitations for the individual or is expected to progress rapidly. Progressive eye diseases which may result in significant vision loss include, but are not limited to, retinitis pigmentosa, diabetic retinopathy, glaucoma and macular degeneration.

(12) **Re-evaluation.** Individuals with chronic disabilities that can be removed with little or no residual limitations will not be eligible for purchase of services other than those related to the required treatment.

612:10-7-24.2. Assessment for determining eligibility

(a) To determine whether an individual is eligible for vocational rehabilitation services:

(1) the counselor will use to the maximum extent possible and appropriate existing data including counselor observations, education records, information provided by the individual or the individual's family, and determinations made by officials of other agencies; and

(2) to the extent necessary provide appropriate assessments, including provision of goods and services during the assessment, to obtain additional documentation necessary to make the determination of eligibility and priority group assignment. The counselor will carefully evaluate the need to provide assistive technology devices and services or worksite assessments.

(b) The counselor will determine whether an individual is eligible for vocational rehabilitation services within a reasonable period of time, not to exceed 60 days after the individual has submitted an application for services. This time period may be extended only when unforeseen and exceptional circumstances beyond the control of the Department preclude completing the determination of eligibility within the 60 days and the individual agrees a specific extension of time is warranted as documented on the Need for Extension of Time to Determine Eligibility form; or a trial work period or an extended evaluation is needed to determine the individual's ability to benefit from VR services.

(c) Documentation that the individual has a disability which constitutes or results in an impediment to employment must come from qualified professionals.

(d) Eligibility determinations will be expedited for applicants who have been determined eligible for vocational rehabilitation services by an American Indian Vocational Rehabilitation Services (AIVRS) Program. Counselors will work cooperatively with the applicable American Indian VR Program to obtain pertinent diagnostic and other documentation, and utilize such documentation, as appropriate, in making eligibility decisions that are prompt or, whenever feasible, immediate.

(e) A qualified rehabilitation professional may proceed with a determination of eligibility if there is an obvious and/or observable disability that results in an impediment to employment. The VR specialist will document observations pertaining to the applicant's disability. After making the determination of eligibility the VR specialist may authorize any assessments and services necessary to further document eligibility, establish priority group placement and determine rehabilitation needs for development of the Individualized Plan for Employment.

(f) Diagnosis and evaluation are to be provided only for determination of eligibility for VR services, priority group placement, and determination of VR service needs. DVR and ~~DVS~~DSBVI funds are not to be used to assist an individual in establishing eligibility for other programs.

(g) When necessary, diagnostic evaluations may be purchased at any time during the life of the case.

(h) If an individual is determined eligible, the VR counselor will notify the individual in writing. If the individual is determined to be ineligible, the counselor will notify the applicant and provide information on further options in accordance with DRS policy on ineligibility decisions.

(i) Eligibility for supported employment. The counselor may not find an individual ineligible for supported employment services because a resource for providing extended services cannot be identified. In this instance, the counselor will:

- (1) accept the individual as eligible for VR services;
- (2) plan VR services as appropriate, including the expected availability of extended services; and
- (3) seek out and/or help in developing the needed extended services resource.

612:10-7-25.1. Order of selection

(a) **Need for order of selection.** The Department, in consultation with the Oklahoma Rehabilitation Council, has determined, due to budgetary constraints or other reasoned limitations, that it cannot serve all individuals who are determined eligible for DVR and ~~DVS~~DSBVI services. The Department consults with the Oklahoma Rehabilitation Council regarding the:

- (1) need to establish an order of selection, including any re-evaluation of the need;
- (2) priority categories of the particular order of selection;
- (3) criteria for determining individuals with the most significant disabilities; and
- (4) administration of the order of selection.

(b) **Priority groups.** It is the policy of DRS to provide vocational rehabilitation services to eligible individuals under an order of selection. Under the order of selection, the Department has established three priority groups on the basis of serving first those with the most significant disabilities. Every individual determined to be eligible for DVR and ~~DVS~~DSBVI services is placed in the appropriate priority group based upon the documentation used to determine eligibility and/or vocational rehabilitation needs. Selection and placement in a priority group is based solely upon the significance of the eligible individual's disability, and is not based upon the type

of disability, geographical area in which the individual lives, projected type of vocational outcome, age, sex, race, color, creed, religion, or national origin of the individual. The priority groups are:

(1) **Priority Group 1.** Eligible individuals with a most significant disability are individuals with the most significant barriers to employment. A most significant barrier is one that includes a severe mental or physical impairment resulting in serious limitations in three or more functional capacities and which can be expected to require multiple vocational rehabilitation services over an extended period of time.

(2) **Priority Group 2.** Eligible individuals with a significant disability are individuals with significant barriers to employment. A significant barrier is one that includes a severe physical or mental impairment resulting in serious limitations in at least one, but not more than two, functional capacities and which can be expected to require multiple vocational rehabilitation services over an extended period of time.

(3) **Priority Group 3.** Eligible individuals with disabilities not meeting the definition of individual with a significant or most significant barrier to employment.

(c) **Implementation.** Prior to the start of each fiscal quarter, or when circumstances require, the DRS Director will determine in which priority groups new Individualized Plans for Employment will be written and initiated. The Director may restrict the writing and initiation of new Individualized Plans for Employment within a priority group to cases having eligibility dates falling on or before a specified date providing that all consumers in higher priority groups are being served. Considerations in making this determination will include, but not be limited to, the projected outcomes, service goals, expenditures, and resources available for each priority group. Projected costs and resources for each priority group will be based upon costs of current Individualized Plans for Employment, anticipated referrals, availability of financial resources, and adequacy of staffing levels. The Director will implement actions under the order of selection through written notice to DVR and ~~DVS~~DSBVI staff. The written notice will specify the implementation date of the action and direct DVR and ~~DVS~~DSBVI staff on how to handle cases by priority group and application date. DVR and ~~DVS~~DSBVI staff will inform each eligible individual on their caseloads:

- (1) of the priority groups in the order of selection;
- (2) of the individual's assignment to a priority group; and
- (3) of the individual's right to appeal that assignment.

(d) **Closing and opening priority groups.** When all or part of a priority group is closed, designated cases within that priority group without a written IPE will be placed on a waiting list after the individual has been determined to be eligible. No IPE will be written for cases on the waiting list. Staff will continue to take applications, diagnose and evaluate all applicants to determine eligibility and vocational rehabilitation needs, find the individual eligible when documentation supports such a decision, then place each eligible individual's case in the appropriate priority group. If an eligible individual is placed in

a closed priority group, his or her case will go on the waiting list and no IPE will be written or initiated. The DRS Director will notify DVR and ~~DVSDSBVI~~ staff in writing when all or part of a closed priority group is opened. When this directive includes new applicants who are found eligible, individuals already on the waiting list within that same priority group will be given priority over new applicants. When all or part of closed priority groups are opened, staff will contact individuals on the waiting list to develop and implement their Individualized Plans for Employment using the priorities in Paragraphs (1) - (3) of this Subsection:

- (1) contact individuals within the highest open priority group first, Most Significant being the highest of all priority groups;
 - (2) within each opened priority group, staff will contact individuals on the waiting list in order of application date, earliest application date first; then
 - (3) staff will contact individuals whose cases will remain on the waiting list to explain how their cases will be handled.
- (e) **Continuity of services.** Any individual with an IPE that existed prior to the date all or part of that individual's priority group was closed will continue to receive services as planned. Such an IPE may be amended if the changes are necessary for the individual to continue progress toward achieving an appropriate employment outcome, or are otherwise necessary within policy. Persons requiring post employment services will also be provided the necessary services regardless of priority group assignment.
- (f) **Information and referral services.** Information and referral services will remain available to eligible individuals who are not in an open priority group. These individuals will be given information and guidance, using appropriate modes of communication, to assist such individuals in preparing for, securing, retaining or regaining employment, and will be appropriately referred to Federal and State programs (other than the vocational rehabilitation program) including other components of the statewide workforce investment system in the state. No IPE will be written to provide such services to these individuals.

612:10-7-31. Transfer of cases

- (a) **Transfer of cases between caseloads.** When it has been determined an individual has moved from one counselor's area to another, the individual could be served more appropriately under another DVR or ~~DVSDSBVI~~ program, or in the supervisor's opinion, transfer is in the best interest of the individual, the case will be transferred.
- (b) **Transfer of cases between programs.** Prior to transferring a case between DVR and ~~DVSDSBVI~~, the transferring counselor must obtain the required specialist information to support the change of primary disability. The transferring counselor will review the case record to ensure it is complete, accurate and contains the information necessary for the receiving counselor to find the individual and continue services without interruption.

PART 5. CASE STATUS AND CLASSIFICATION SYSTEM

612:10-7-50. Eligibility Status

- (a) **Use of Eligibility Status.** An active case is defined as one which has been accepted as meeting the basic eligibility requirements. An applicant who has been determined eligible for vocational rehabilitation will be placed in Eligibility Status for completion of a comprehensive assessment to determine employment goal and rehabilitation needs and for development of the Individualized Plan for Employment (IPE). An individual who is placed in an order of selection priority group that is not currently being served will be placed on a waiting list and held there pending further directives from the Director concerning opening or closing of priority groups.
- (b) **Case recording requirements.** The counselor records activities during this period by individual entry or by summary recording at regular intervals in case narratives. Copies of pertinent case information will be shared with all DVR or ~~DVSDSBVI~~ professionals involved in the case. During eligibility status and throughout the life of the case, ~~DVSDSBVI~~ counselors and rehabilitation teachers will share pertinent information related to a case they jointly serve. Pertinent case information will also be shared with contracted vendors, when appropriate, with a release signed by the client. If an IPE cannot be developed during this period, the client's case is closed with a full explanation to the client and documentation as to the reason for closing the case. This documentation will be completed on a closure letter and a copy given to the client.

612:10-7-51. Individualized Plan for Employment

- (a) **Options for developing the Individualized Plan for Employment (IPE).** The VR counselor will provide the eligible individual, or the individual's authorized representative, in writing and in appropriate mode of communication, with information on the individual's options for developing the IPE.
- (1) The required information will include the following:
 - (A) information on the availability of assistance, to the extent determined to be appropriate by the eligible individual, or authorized representative, from a qualified VR counselor in developing all or part of the IPE, and the availability of technical assistance for this purpose;
 - (B) a description of the required content of the IPE;
 - (C) as appropriate:
 - (i) an explanation of agency requirements for client participation in cost of services;
 - (ii) additional information requested by the individual or authorized representative;
 - (iii) information on the availability of assistance in completing ~~DVR/DVSDVR/DSBVI~~ forms required in developing the IPE;
 - (iv) For cases involving Mental Disorders and Obesity, treatment must be incorporated as a service in the IPE, in accordance with DRS policy.

(D) a copy of a DRS publication addressing client's rights and responsibilities.

(2) For cases in an open priority group, the IPE must be completed and signed as soon as possible, consistent with the needs of the individual, but not more than 90 calendar days following the eligibility determination, unless the individual or the authorized representative and the VR or ~~VSSBVI~~ counselor jointly agree to an extension of time of a specific duration. The 90-day time frame for development of the IPE will be applied from the date a closed priority group is reopened.

(b) **Vocational objective.** The primary purpose in providing vocational rehabilitation services is to assist an eligible individual obtain appropriate competitive employment in an integrated setting consistent with the individual's informed choice. The choice of a vocational objective for an individual receiving vocational rehabilitation services must be based primarily upon the individual's strengths, resources, priorities, concerns, abilities, interests and capabilities, consistent with the general goal of competitive integrated employment.

(1) **Informed choice.** The vocational objective is to be chosen with the full participation of the client. The client's interests and informed choice determine his or her vocational goal to the extent these factors are consistent with the client's strengths, resources, priorities, concerns, abilities, interests and capabilities.

(2) **External conditions.** Factors such as the local labor market or local economy must also be taken into consideration. However, in most cases these factors cannot be used as the only basis upon which to determine whether a vocational objective is appropriate.

(c) **General requirements for the Individualized Plan for Employment.**

(1) The IPE documents the client's chosen employment goal, and the planning of vocational rehabilitation services which are necessary to achieve a successful employment outcome. The client will be a full participant in the development of the IPE or any amendments consistent with Federal and State regulations, laws, and statutes. The eligible individual must be given the opportunity to exercise informed choice in selecting an employment outcome, the specific VR services to be provided under the plan, the service providers, and the methods for service delivery. For cases in an open priority group, the IPE must be agreed to and signed by the eligible individual or authorized representative, approved by a VR counselor and, as appropriate, other administrators employed by DVR or ~~DVSDSBI~~ within 90 days of determination of eligibility, unless the individual or the authorized representative of the individual and the VR or ~~VSSBVI~~ counselor jointly agree to an extension of time of a specific duration. To the maximum extent possible, the IPE is to be provided in the native language or mode of communication of the individual or, as appropriate, of a parent, family member, guardian, advocate, or authorized representative. It is also required the client receive a copy of the plan and any subsequent amendments.

(2) The IPE is subject to continuous development and change. Substantial changes to the IPE are documented as amendments. A substantial change is broadly defined as any change in the employment objective, or in service needs or available resources not accounted for in the original IPE or existing amendment(s). The amount of any client participation in the cost of a service will be based upon the determination of client's financial status completed at the time the relevant IPE or amendment is written, and is to be stated in the IPE or amendment. If services based upon financial status are included in the original IPE and/or in the amendment, a new Financial Status Determination form will be completed when the IPE is amended. A copy of any Amendment to an Individualized Plan for Employment will be given to the client, or client's authorized representative, as appropriate.

(3) Diagnosis related to eligibility or the IPE can be provided at any time it is necessary during the life of the case.

(4) An IPE is not considered in effect until all required approvals have been obtained in accordance with Department policy.

(5) Plan reviews are comprehensive reviews of the entire IPE. A plan review can be done at any time, but must be done at least annually. The client must be given the opportunity to review the plan and, if necessary, participate in its redevelopment and agree to its terms. A financial status determination will be completed at the time of plan review when the IPE includes services based upon client's financial status.

(d) **Content of the Individualized Plan for Employment.** The Individualized Plan for Employment must include:

(1) a description of the specific employment outcome that is chosen by the client consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice consistent with the general goal of competitive integrated employment (except that in the case of a student or a youth with a disability, the description may be a description of the individual's projected post-school employment outcome), and the estimated timeframe for the achievement of the employment outcome;

(2) a description of the specific VR services that are:

- (A) needed to achieve the employment outcome including as appropriate, the provision of assistive technology services and devices, and personal assistance services, including training in the management of such services;
- (B) provided in the most integrated setting that is appropriate for the service involved and is consistent with the informed choice of the client; and
- (C) timelines for the achievement of the employment outcome and for the initiation of services.

(3) a description of the service provider chosen by the client or authorized representative, and the methods of services delivery;

(4) a description of the criteria that will be used to evaluate progress toward achieving the employment outcome;

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- (5) the terms and conditions of the IPE including as appropriate:
 - (A) the responsibilities of DVR or ~~DVS~~DSBVI;
 - (B) the responsibilities of the client, including:
 - (i) the client's responsibilities for the employment outcome;
 - (ii) the client's participation in paying the cost of VR services; and
 - (iii) the client's responsibility to apply for, accept, and use comparable services and benefits to defray in whole or in part the cost of VR services.
- (6) for an IPE that includes supported employment services, information identifying:
 - (A) the extended services needed by the client; and
 - (B) the source of the extended services, including natural supports, or an explanation concluding there is a reasonable expectation a source will become available; and
 - (C) the weekly work goal.
- (7) if it appears they will be necessary, a statement of needed post-employment services.

612:10-7-55. Job Ready

(a) ~~The Use of Job Ready status.~~ **Status:** This status is used when services incidental to placement are the only services being provided. Job Ready Status is used to identify individuals who are qualified, willing and able to begin an active job search. Job Ready Status can also be used for individuals pursuing a variety of work experiences, including internships, apprenticeships, or temporary jobs to supplement income while attending school or receiving other vocational rehabilitation services. Job Ready status can be used at any time during the life of the case, once an Individual Plan for Employment (IPE) is in place.

(1) Job Ready Status should only be used after consultation with the Participant to insure the person is aware they are considered an active job seeker and may be contacted about employment or work experiences in which they have expressed an interest. Also, Job Ready Status should not be used for those who have been referred to an Employment Services Provider for assistance with services such as Employment & Retention, Customized Employment Supported Employment, etc.

(2) Those individuals who are in job ready status but are no longer participating in a job or work experience search should be removed from Job Ready Status. Individuals who have located a job or work experience and are not currently pursuing another position should also be removed.

(b) ~~Supported employment.~~ **Cases are placed in Job Ready status at the beginning of the "Job Stabilization" Milestone. 2 The "Job Stabilization" Milestone is complete when the client has reached the minimum number of weeks of employment required in the contract, is working the minimum work hours set in the weekly work goal defined in the IPE, and all other requirements of the contract are met.**

(eb) ~~Case recording requirements.~~ **Recording Requirements:** ~~Case recording~~

~~in this status must document that the client is ready for employment, the fulfillment of the counselor's responsibility to assist the client with placement, and the client's efforts to obtain employment. The information on the Job Ready page in AWARE case management system should be completed in conjunction with the Participant to insure it is accurate and timely. The information should be reviewed periodically to make sure it is up-to-date.~~

PART 9. ACTIONS REQUIRING REVIEW AND APPROVAL

612:10-7-87. Actions requiring supervisor's approval

Actions requiring supervisory approval include:

- (1) All actions of a newly employed counselor/teacher.
- (2) All IPE's or amendments when the total of the planned DVR and ~~DVS~~DSBVI expenditures for the entire case exceed \$25,000.
- (3) All case closures in which an IPE was developed and the case was placed into service status or beyond.
- (4) Transfer of cases from one counselor/teacher caseload to another outside the sending supervisor's unit (signed by the supervisor of the sending counselor or teacher).
- (5) All IPE's which include purchase of physical or mental restoration services, prescription drugs or prescribed medical supplies lasting more than three months.
- (6) Small Business plans with a cost to the agency in excess of \$10,000.00.
- (7) Vehicle or home modifications over the DCAM authority order limit and housing modifications involving structural modifications.
- (8) Vehicle repairs that exceed \$1,000.00 for the life of a case.
- (9) Dental services with a projected cost over \$5,000.00.

PART 11. PHYSICAL AND MENTAL RESTORATION SERVICES

612:10-7-98. General guidelines for physical and mental restoration services

(a) To the extent that assistance is not readily available from a source other than DVR or ~~DVS~~DSBVI, diagnosis and treatment of physical and mental impairments may be provided to assist the individual with a disability in preparing for, securing, retaining or regaining employment. Physical or mental restoration services are provided only when the condition is stable, or slowly progressive. A slowly progressive condition is one in which the client's functional capacity is not expected to diminish so rapidly as to prevent successful completion of vocational rehabilitation services, and/or employment for a reasonable period of time. The individual is liable for services he or she arranged which were not planned and initiated under the auspices of DVR and ~~DVS~~DSBVI. DVR and ~~DVS~~DSBVI will not pay for hospitalization or treatment occurring prior

to initiation of an Individualized Plan for Employment (IPE). DVR and ~~DVS~~DSBVI will not pay for emergency hospitalization or treatment needed at the time of referral. However, diagnostic examinations or information may be paid from DVR and ~~DVS~~DSBVI funds for use in eligibility determination, priority group placement, or determination of vocational rehabilitation needs. Physical and/or mental restoration services will be purchased only from licensed or board certified health professionals unless otherwise specified in DRS policy. Payment will be made in accordance with the established fee schedule of the Department.

(b) Temporary conditions with sudden onset do not fall within the definition of impairment for eligibility purposes. Emergency treatment of remediable conditions will not be purchased by DVR and ~~DVS~~DSBVI except under intercurrent illness policy. When the staff is in doubt as to the effect of such a condition upon the outcome of the IPE objectives, a medical consultation may be requested.

(c) DVR and ~~DVS~~DSBVI do not provide long-term or ongoing physical or psychological treatment. DVR and ~~DVS~~DSBVI funds cannot be used to initiate treatment that is reasonably anticipated to last more than three months unless supervisory approval has been obtained for a three month extension. Additional three month extensions may be approved if the client maintains reasonable progress toward achieving the vocational goal. Persons needing long-term or ongoing treatment are to be referred to other medical assistance sources if available.

(d) Payment from DVR and ~~DVS~~DSBVI funds may be planned and authorized only after applicable third party pay sources provide verification of the expense they will cover, and not cover, associated with the physical or mental restoration services in question. When DVR and ~~DVS~~DSBVI funds are used to supplement a third party pay source, planned services and the authorization will be limited to those expenses that fall within the scope of the program and that do not exceed the difference between what the third party pay source will pay and the Department's established payment schedule.

(e) Individuals with chronic disabilities that can be removed with little or no residual limitations will not be eligible for purchase of services other than those related to the required treatment.

(f) Physical and mental restoration services may include but are not limited to:

- (1) Braces and orthotic devices.
- (2) Chiropractic services. A chiropractor providing treatment must be duly licensed to practice his profession in Oklahoma, have a current provider/vendor agreement with DRS, and following evaluation of the client's needs, must provide a treatment plan with goals, time frames and the estimated number of treatments required to meet the goals. Treatment may not be extended beyond three months unless progress toward treatment goals can be determined.
- (3) Dental services. Dental services may be provided to treat or correct dental conditions that constitute an impediment to employment or participation in the rehabilitation process, produce health problems or aggravate

an existing disability. Dental services with a projected cost over \$5,000.00 require review by the DRS dental consultant and supervisory approval.

(4) Dialysis and treatment for end-stage-renal-disease. DVR and ~~DVS~~DSBVI may assist with the cost of Medicare deductible, co-insurance, and services not covered by Medicare if documentation states other resources are not available and the client is actively participating in an IPE with treatment as part of the plan. Requests for kidney transplants must be approved by the medical consultant.

(5) Prescription drugs and prescribed medical supplies. Prescription drugs and/or prescribed medical supplies may be purchased when required for proper diagnosis, for post-operative treatment, or to stabilize a documented disability. The need for the drugs and/or medical supplies must be documented in a physician's report. Payment will be made for generic type drugs unless the physician specifically requests a brand name drug.

(6) Hearing aids and audiological services.

(7) Hospitalization when recommended by a physician and the client is to receive medical treatment or surgery. Hospitalization may also be authorized for diagnostic services upon recommendation of a physician.

(8) Treatment for intercurrent illness. Intercurrent illness is an illness or injury which occurs during the course of an individual's vocational rehabilitation and, if not treated, will complicate or significantly delay achievement of the client's employment outcome. DVR and ~~DVS~~DSBVI will purchase treatment for intercurrent illness or injuries if the client is not covered by health insurance or eligible for comparable services and benefits, or when the provision of services through comparable services and benefits would significantly interrupt or delay treatment for an individual at extreme medical risk, jeopardize a job placement or impair the individual's progress in achieving the planned employment outcome.

(9) Laboratory work and x-rays if required by the physician to complete his examination or in conjunction with diagnosis or treatment.

(10) Low vision services.

(11) Medical examinations, when necessary to determine eligibility, achieve a goal in the IPE or when related to an intercurrent illness.

(12) Nursing services can be provided for a client who is convalescing from physical restoration services if recommended by the doctor of treatment. Either Registered Nurses or Licensed Practical Nurses may be used to provide this service when a current medical vendor agreement is on file with the Department. Volunteers may be used if less technical care is needed and if approved by the client's physician.

(13) Physical and occupational therapy may be provided on either an in-hospital or outpatient basis if recommended by the attending physician.

(14) Post-operative care of cataract patients.

(15) Prosthetic eyes, glasses and other optical aids.

- (A) Glasses and other visual aids and services may be prescribed or provided by either an ophthalmologist or an optometrist. Other optical aids recommended by optical aid clinics are purchased upon the recommendation of the specialist(s) in one or more such clinics. Prosthetic eyes are provided, upon the recommendation of an ophthalmologist.
- (B) Lenses and frames for glasses purchased by DRS will be authorized at fee schedule prices. The vendor may add a service charge not to exceed the established fee. An additional code and fee may be added for tinting if it has been prescribed by the physician or optometrist that performed the eye examination with written medical/vocational justification.
- (C) The fee that has been established for frames will only cover the cost of plain sturdy frames. Clients do not have the option of selecting more expensive frames and paying the difference between the vendor's price and the amount authorized. If the vendor accepts payment from the client or a representative of the client and also files a claim with the Department for the same services, a violation of the Provider Agreement has occurred and the vendor would be subject to sanctions.
- (D) If a client selects special frames and has sufficient resources to purchase them, the frames should not be included on the authorization and the client would be responsible for the entire cost of the frames.
- (16) Prosthetic limbs.
- (A) Prosthetic limbs may be provided if the prosthesis is recommended by a physician. The client who has successfully worn a prosthesis will not be required to see an orthopedist or physiatrist, or attend an amputee clinic unless some other disorder is apparent.
- (B) An individual who has never worn a prosthesis must be seen by a physician before the prosthesis is provided. The client must agree to training in its use. Gait training is considered Personal Adjustment Training and does not require client participation in cost. However, physical therapists providing the training are recognized as medical vendors and require authorizations completed on a Medical Service Authorization.
- (C) Persons with multiple amputations must have the special examination and training.
- (D) The counselor may authorize for a prescribed standard prosthesis without further review. The choice of prosthesis must be closely related to its intended use in a work setting, or in relation to reasonable independent living goals. Non-standard prostheses (i.e., myoelectric) will not be purchased with DRS funds unless medically justified and/or required for a specific employment, or independent living, outcome. When a prosthesis other than a standard prosthesis is prescribed the counselor will request a consultation from the appropriate medical consultant. Justification for the non-standard prosthesis must be documented in the case record.
- (17) Psychiatric and psychological treatment.
- (A) Psychotherapy may be provided for emotional conditions which may be expected to respond within a reasonable period of time. Psychotherapy can be provided only by the sources in (1) - (5) of this Subsection.
- (i) Psychiatrists certified by the American Board of Psychiatry and Neurology or completed the required training and are "Board Qualified", or who have spent a major portion of their time in a particular specialty for at least two years and are recognized as specialists in the local community (same criteria as applied to other medical specialists).
- (ii) Licensed Doctors of Medicine or Doctors of Osteopathy who have received specific training for and are experienced in performing mental health therapeutic, diagnostic, or counseling functions.
- (iii) Psychologists with a doctorate in clinical or counseling psychology who hold a valid license to practice psychology.
- (iv) Psychologists with a doctorate in clinical or counseling psychology who are employed by governmental agencies exempt from the licensing law.
- (v) Other licensed clinicians or those employed by governmental agencies who have received administrative approval to provide this treatment service.
- (B) Upon receipt of a written report from the therapist, the supervisor may approve additional three-month periods of therapy. Clients needing long-term or ongoing psychiatric or psychological treatment will be referred to the appropriate community mental health center.
- (C) Personal Adjustment Counseling may be provided for those persons with emotional conditions who may benefit from counseling to bring about a more adequate social adjustment, alleviate superficial anxiety, and to create more effective interpersonal relationships. Personal Adjustment Counseling may be provided by: those individuals listed in (17) (A) of this Subsection.
- (18) Speech therapy/training as recommended in a speech evaluation. Speech therapy, although provided by recognized speech therapists, is considered Personal Adjustment training and is not based on financial status. The providers of speech therapy are classified as medical vendors.
- (19) Surgery and medical treatment.
- (A) Surgery and complex or unusual medical treatment may be provided when recommended by a specialist. Medical consultant approval will be obtained prior to planning and authorizing a diagnostic procedure which could lead to immediate surgical treatment. The medical consultant will give conditional approval for the possible surgery if deemed

necessary. Normal post-operative care is an integral part of the surgery; therefore, no post-operative charges are to be paid above the approved surgical fee. (B) Specified outpatient surgical services are approved for payment when provided in qualified outpatient surgical facilities. Qualified facilities include Medicare certified free standing ambulatory surgical centers, Medicare certified hospitals offering outpatient surgical services, and hospitals which have an agreement with DRS.

(C) The counselor will advise the client he/she may be liable for any balance due when payment by private insurance exceeds the Department allowable rate.

(20) Weight loss treatment. A weight loss plan or treatment are included as a service in the IPE for individuals who are eligible on the basis of obesity. A licensed dietician or a physician skilled in weight reduction must monitor any treatment program authorized by the agency. Surgery for weight loss is not provided unless medically recommended as treatment for morbid obesity, a second confirming medical opinion is obtained, the surgery is approved by the DRS medical consultant and supervisory approval is obtained. Before approving DRS provision of surgery for treatment of morbid obesity, the supervisor shall consider the individual's past experience with standard weight loss protocols, and medical and behavioral factors that may impact the individual's ability to obtain long-term benefit from the surgery.

(21) Wheelchairs and other durable medical equipment when prescribed by a physician or recommended by an occupational therapist, physical therapist, assistive technology specialist or person with equivalent qualifications. Power mobility devices may be purchased for individuals when necessary to assist the client in achieving IPE goals.

(A) The client, and/or client's authorized representative, will participate in choosing from which vendor the wheelchair or durable medical equipment will be purchased. Wheelchairs and other durable medical equipment will be authorized at the agency approved fee.

(B) The client, or client's family or authorized representative as appropriate, is responsible for maintaining wheelchairs or other durable medical equipment in good working order. DVR and ~~DVS~~DSBVI will pay for repairs to wheelchairs or other durable medical equipment during the life of the case unless there is clear evidence the equipment has been damaged due to client abuse or neglect. An agency-purchased wheelchair will be returned to the agency if the client becomes unable to use it.

(C) Wheelchair rental may be authorized for a period not to exceed six months when necessary to assist the client with mobility. An exception can be made if it is documented that rental is more cost effective than purchase.

PART 13. SUPPORTIVE SERVICES

612:10-7-130. Maintenance

(a) **General guidelines.** Maintenance is a supportive service provided to assist with the out-of-ordinary or extra expenses to the individual resulting from and needed to support the individual's participation in diagnostic, evaluative, or other substantial services in the IPE. Maintenance, including payments, may not exceed the cost of documented expenses to the individual resulting from service provision. Authorizations for maintenance will not be issued to pay the cost, or part of the cost, for any other service or expense.

(b) **Provision of maintenance.** To receive maintenance, an individual must be either an eligible DVR or ~~DVS~~DSBVI client or an applicant for vocational rehabilitation services undergoing diagnostic evaluation and testing. For an accepted client, maintenance must be a supportive service related to outcomes listed in the Individualized Plan for Employment. The costs of the maintenance may not exceed the amount of increased expenses that the IPE causes for the individual or his/her family. The provision of maintenance as a supportive service is not synonymous with general assistance payments. It is not intended to pay for those living costs that exist irrespective of the individual's status as a DVR and ~~DVS~~DSBVI client. Maintenance payments must be carefully tied to the achievement of specific VR outcomes which must be stated and documented in the case record and the IPE to justify such payments. Maintenance cannot substitute for or supplement income assistance payments.

(1) **Maintenance for diagnostic and evaluation services.** Maintenance payments for individuals receiving diagnostic or evaluation services may be authorized for overnight care, short-term lodging and/or meals.

(2) **Maintenance for physical restoration services.** Maintenance for physical restoration services is paid to the client until he/she is able to work. The client must be in his/her own home and the covered period of convalescence is to be 60 days or less. For convalescent periods in excess of 60 days, the counselor will refer the client to other sources for assistance (public assistance, SSI). In no instance will medical maintenance be paid while the client is hospitalized.

(3) **Maintenance for training.** Maintenance can be authorized for full time vocational school students or college students. Maintenance can be authorized for a client granted an exception to the full-time attendance requirement under 612:10-7-150(a). DRS will not pay for assistance with room and board expenses if there is a state funded vocational school, college or university within 40 miles of the client's official residence. In addition, DRS will only sponsor room and board expenses related to on-campus housing options with the lowest cost. Exceptions to this policy may be granted due to issues such as disability requirements. All exceptions must be approved by the Programs Manager and thorough justification must be documented in the case.

(4) **Maintenance for job search services.** Maintenance for job search services requires an IPE with major services directed toward the goal of employment.

- (5) **Maintenance for job relocation.** Maintenance may be paid to a client for assistance in relocating to a new job site. Maintenance services for this purpose must be identified on the IPE.
- (c) **Clothing expenses.** Clothing and/or uniforms can be purchased when needed to begin training or enter employment. Everyday clothing needs of the client are considered as part of the basic living requirements. Any clothing purchased for the client must be:
- (1) required by the training facility;
 - (2) necessary to participate in job search or begin employment; or
 - (3) necessary to begin a training program that requires clothing standards beyond the client's means.
- (d) **Day care expenses.** Day care expenses will be paid for from DVR and ~~DVSDSBVI~~ funds only when necessary to participate in the IPE, and it is fully documented that no other resources are available for this service, including family members and friends.

PART 15. TRAINING

612:10-7-142. General guidelines for training services

(a) **Types of training.** Training provided by DVR and ~~DVSDSBVI~~ may include:

- (1) **Vocational.** Vocational training provides the knowledge and skills necessary for performing the tasks involved in an occupation. Such knowledge and skills may be acquired through training from an institution, on-the-job, by tutors or through a combination of these methods. Vocational training may be provided for any occupation.
 - (2) **Prevocational.** Prevocational training includes any form of academic or basic training provided for the preparatory skills needed for entrance into a vocational training program or employment. Prevocational training is initiated to enhance occupational knowledge or skills or to remove an educational deficiency interfering with employment.
 - (3) **Personal or work adjustment.** Personal or work adjustment training includes any training given for one or a combination of the reasons given in (A) - (D) of this paragraph.
 - (A) To assist the individual in developing personal habits, attitudes, and skills enabling the individual to function effectively in spite of disability.
 - (B) To develop or increase work tolerance prior to engaging in prevocational or vocational training or in employment.
 - (C) To develop work habits and to orient the individual to the world of work.
 - (D) To provide skills or techniques enabling the individual to compensate for a disability such as the loss of a body part or the loss of a sensory function.
- (b) Training may be provided for clients who:
- (1) are mentally, physically and/or emotionally capable of pursuing a course of training to completion;

- (2) require training to achieve an employment outcome or other goals established in the Individual Plan for Employment (IPE); and

(3) are determined to have a reasonable opportunity for obtaining employment in the chosen vocation.

(c) Decisions related to training are based on the individual needs and informed choices of the client as identified in the IPE.

(d) DVR and ~~DVSDSBVI~~ will only pay tuition and fees for courses which count toward requirements consistent with the vocational goal of the IPE. Training of DVR and ~~DVSDSBVI~~ clients is provided by colleges, universities, private business and trade schools, state supported vocational schools, employers in the form of on-the-job training, sheltered workshops, and other approved training facilities with valid contracts.

(e) Federal regulations require a search for comparable services and benefits with the results documented before payment can be made for training in the following institutions: colleges, universities, community/junior colleges, public or private vocational/technical schools, or hospital schools of nursing. PELL grants and other available Federal/State student aid (excluding merit awards) must be applied to tuition, fees and all other educational expenses as a first dollar source prior to consideration of the expenditure of DRS funds.

(f) Training costs will not be authorized beyond the first DVR and ~~DVSDSBVI~~ sponsored enrollment until proof of the availability of comparable benefits is received by the counselor.

(g) Once training has begun, the client is expected to progress toward the vocational objective at a steady rate. This requires the client to attend training on a regular basis, and maintain a full-time load unless an exception is granted by the counselor due to severity of disability, scheduling problems or other valid reasons. Training progress reports or other methods of reporting (i.e., grade reports, transcripts) are utilized to document training progress. Sporadic attendance and reduced training loads causing a delay in the completion of training must be reviewed by the counselor. The client is responsible for advising the counselor of problems encountered during the training program.

(h) All types of institutional, technical, personal adjustment or employment training are purchased by an authorization issued by the counselor.

612:10-7-149. College and university training

(a) Training for rehabilitation clients is provided in those colleges and universities which are accredited by the appropriate accrediting agency, whose credits will be given full recognition by other accredited colleges and universities, and which are under contract. Private and denominational colleges and universities may be used for the training of DRS clients, provided they are accredited and under contract.

(b) Clients approved for college or university training must exhibit the ability to do college work. The counselor will have evidence in the case file indicating the client's ability to do college work before a program is developed calling for training at the college or university level.

(c) For DVR and ~~DVSDSBVI~~ clients pursuing a college or university degree, the Department will sponsor only the

number of semester hours or remaining hours required for a specific degree. Exceptions may be approved by the counselor. (d) Previously completed credit hours which are applicable to the degree requirements will be incorporated in the development of the IPE. When a client changes majors, DVR and ~~DVSDSBVI~~ funding will be limited to the number of credit hours needed for the new major minus the number of DVR and ~~DVSDSBVI~~ funded credit hours lost due to the change in majors, unless the change in majors results from circumstances beyond the client's control.

612:10-7-150. Continued eligibility for college or university training

(a) **Requirements for continued eligibility.** DVR or ~~DVSDSBVI~~ clients in college or university training will be expected to attend classes regularly and make continuous progress toward graduation. ~~To continue assistance with college or university training, the client must maintain a cumulative 2.0 grade point average (GPA), based on a four point (4.0) scale. The client must carry the minimum number of semester hours determined to be full time at the school attended. Exceptions may be granted by the counselor, based on severity of disability, scheduling problems, or other valid reasons. When a client fails to meet the requirements for continued sponsorship the guidelines in (1) — (5) of this Subsection are to be followed:~~

- ~~(1) Payment of training services based on client's financial status will not be provided if the client's grades fall below 1.5 cumulative GPA.~~
- ~~(2) Training services may be paid for a client having a cumulative GPA between 1.5 and 1.9 for the first semester that grades fall below 2.0 cumulative GPA. Subsequent enrollments can only be paid if the student's cumulative GPA shows progress.~~
- ~~(3) A client failing to meet the grade point requirement may continue to receive services not based on financial status.~~
- ~~(4) A client failing to meet grade point requirements may be approved by the counselor if there are extenuating circumstances beyond the client's control.~~
- ~~(5) A client failing to meet grade point requirements will be contacted as soon as appropriate to complete a program review to determine if a change in services, vocational goal, or objectives is needed. A client failing to meet chosen goals will not have his/her case closed until the counselor has provided counseling and guidance and determined that a change in the IPE is inappropriate. The counselor should investigate the need for further vocational and/or educational evaluation to explore alternative employment goals.~~

(b) To continue assistance with college or university training, the client must maintain a cumulative 2.0 grade-point average (GPA), based on a four point (4.0) scale.

(c) The client must maintain at a minimum the cumulative GPA, required by the Institution for the client's major field of

study. If the client is unable to consistently maintain the minimum cumulative GPA for their chosen field of study, the Counselor will reassess the justification for continued training and whether a change in vocational goal is necessary.

(d) The client must carry the minimum number of semester hours determined to be full time at the school attended. Exceptions may be granted by the counselor, based on severity of disability, scheduling problems, or other valid reasons.

(e) When a client fails to meet the requirements for continued sponsorship the guidelines in 1- (5) of this Subsection are to be followed:

- (1) Payment of training services based on client's financial status will not be provided if the client's grades fall below 1.5 cumulative GPA.
- (2) Training services may be paid for a client having a cumulative GPA between 1.5 and 1.9 for the first semester that grades fall below 2.0 cumulative GPA. Subsequent enrollments can only be paid if the student's cumulative GPA shows progress.
- (3) A client failing to meet the grade point requirement may continue to receive services not based on financial status.
- (4) A client failing to meet grade point requirements may be approved by the counselor if there are extenuating circumstances beyond the client's control.
- (5) A client failing to meet grade point requirements will be contacted as soon as appropriate to complete a program review to determine if a change in services, vocational goal, or objectives is needed. A client failing to meet chosen goals will not have his/her case closed until the counselor has provided counseling and guidance and determined that a change in the IPE is inappropriate. The counselor should investigate the need for further vocational and/or educational evaluation to explore alternative employment goals.

(f) **Withdrawals and failures.** Clients who withdraw or fail courses paid by DVR and ~~DVSDSBVI~~ will be required to pay for a like number of hours during the following enrollment period subject to the guidelines in (a) of this Section.

612:10-7-152. Payment of tuition and fees at colleges and universities

(a) **Public institutions of higher learning.** Tuition and fees for DVR and ~~DVSDSBVI~~ clients attending public colleges and universities will be paid at the rate set for resident students by the Oklahoma Regents for Higher Education and within limits prescribed by the Legislature. DVR and ~~DVSDSBVI~~ will pay those fees charged to all students and special fees associated with required courses in the student's major field of study.

(b) For the first 60 credit hours or during the completion of an Associate's degree, DRS will only sponsor up to the cost of tuition and fees charged by the local state funded community college or state university within 40 miles of the client's official place of residence. If the client chooses to attend a different training site, DRS will only sponsor an amount equivalent to the amount that would be sponsored if attending the local college/university. Additional transportation or maintenance

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costs related to attending another training site will not be sponsored by DRS.

(c) For the completion of a Bachelor's degree, DRS will only sponsor up to the cost of tuition and fees charged by the state funded college or university closest to the client's official place of residence that offers a program to reach the vocational objective. Additional transportation or maintenance costs related to attending another training site will not be sponsored by DRS.

(d) Exceptions to the policies for college/university training must be approved by the Programs Manager through justification and must be documented in the case. Possible exceptions include but are not limited to:

(1) The need to attend a school outside of the 40 mile limit is due to disability related factors such as the need for accessible on-campus housing.

(2) The degree major approved by the DRS Counselor for the client is not available at the local college or university.

(e) After the completion of the first semester, a grade report, proof of enrollment, and an itemized invoice are required documentation to support the authorization for tuition and fees. It is the responsibility of the client to provide this support documentation. The client may provide this documentation electronically or as a printed document in the standard format used by the school.

(f) **Private institutions of higher learning.** Tuition and fees for students in attendance at accredited private or denominational schools will be paid at the same rate as that paid at state-supported colleges or universities of equal rank. After the completion of the first semester, a grade report, proof of enrollment, and an itemized invoice are required documentation to support the authorization for tuition and fees. It is the responsibility of the client to provide this support documentation. The client may provide this documentation electronically or as a printed document in the standard format used by the school.

(g) **Federal/State student aid.** Pell Grant and all other Federal/State aid (excluding merit awards) must be applied to tuition, fees and all other educational expenses as a first dollar source prior to the consideration of the expenditure of DRS funds regardless of whether the student is attending a public or private institution of higher education.

(h) **Cost documentation.** Each client is responsible for providing the counselor a copy of the college or university's current semester costs before the designated "Drop and Add" date.

612:10-7-158. Training for individuals in custody of the Department of Corrections

DVR and ~~DVS~~DSBVI funds are not used to defray the cost of training for individuals in the custody of the Department of Corrections. This does not apply to individuals who meet the criteria set forth within a joint memorandum of understanding between DRS and the Department of Corrections.

612:10-7-161. Public and private vocational schools

(a) Client training may be purchased from public or private vocational schools that have a valid purchasing agreement with DRS, after use of available comparable benefits such as PELL grants and other federal/state student aid (excluding merit awards).

(b) Privately-owned vocational schools must be accredited or licensed through the appropriate state board, if applicable, before a purchasing agreement with DRS can be finalized. Tuition at privately owned vocational schools will be paid at rates approved by the Oklahoma Commission for Rehabilitation Services sitting as the Rates and Standards Committee. The authorized rate will remain constant during the contract period.

(c) Continued eligibility of a client in training at a vocational school will be based on the client's performance in respect to grades, progress and attendance. The minimum standards used by the training facility for satisfactory progress in respect to grades and attendance will be utilized by DVR and ~~DVS~~DSBVI staff in determining the progress of the client.

(1) DVR and ~~DVS~~DSBVI sponsored clients attending vocational technical schools who withdraw or fail course work will be required to pay for like credit or clock hours during the following enrollment period.

(2) A client who fails to meet agency sponsorship guidelines for training at vocational technical schools may continue to receive services not requiring client participation in cost of services.

(3) A client failing to meet agency sponsorship guidelines may be approved by the counselor if there are extenuating circumstances.

(4) A client failing to meet agency sponsorship guidelines will be contacted as soon as appropriate to complete a program review to determine if a change in services, vocational goal or objective is needed. A client failing to meet chosen goals will not have her/his case closed until the counselor has provided counseling and guidance and has determined that a change in the IPE is inappropriate. The counselor should investigate the need for further vocational and/or educational evaluation to explore alternative employment goals.

612:10-7-162. Textbooks, supplies, training tools and equipment

(a) For clients attending training, an allowance may be provided to cover the actual cost of required books, supplies, training tools and equipment, after available comparable benefits have been applied. When an allowance is provided, the client will be required to furnish documentation of the costs of required books, supplies, tools or equipment. The counselor will work with the client in obtaining and utilizing comparable benefits including the PELL grant and planning for the use of other resources to help meet this expense. The textbook allowance will be adjusted the following semester for clients who fail or withdraw from courses paid by DVR or ~~DVS~~DSBVI. Only textbooks for the current semester's enrollment will be provided.

(b) Training tools and equipment costing more than \$500 will be purchased directly from the vendor in accordance with DRS policy.

(c) The client, or client's family or authorized representative as appropriate, is responsible for maintaining supplies and training tools in good working order. DVR and ~~DVS~~DSBVI will pay for repairs to supplies and training tools purchased with DVR and ~~DVS~~DSBVI funds during the life of the case unless there is clear evidence the supplies or training tools have been damaged due to client abuse or neglect.

(d) Gun "kits", but not operable firearms, used as training tools may be purchased for students in gun-smithing school only.

(e) The Department retains title to any tools costing \$500 or more purchased for training purposes until title is released by an authorized agent of the Department. The counselor will complete the Receipt for Equipment and Title Agreement, and obtain necessary signatures, before releasing such tools to the client. Any tools purchased for training purposes remain with the client while he/she is in training and after the completion of the training if they can be used in the client's chosen vocation. If the client drops out of training, DRS at its discretion may take steps to repossess the tools to transfer to another client.

(f) Case recording must reflect the disposition of tools and materials provided the client before the case is closed.

(g) Computers and related high tech equipment necessary for the client to participate in a training program or required by the training entity may be purchased as a client service in accordance with agency policy. The cost of computers and related equipment will not be included in an allowance for textbooks and supplies.

PART 17. SUPPORTIVE EMPLOYMENT SERVICES

612:10-7-183. Ongoing support services

The individual will be provided needed and appropriate ongoing support services such as job site training, transportation, service to family members, or any service necessary to achieve and maintain the supported employment placement throughout the term of employment. DVR and ~~DVS~~DSBVI sponsored support services are provided from the time of placement until the individual is stabilized on the job (completion of "Stabilization Milestone") by the service provider.

612:10-7-184. Extended services

Extended services are a continuation of ongoing support services provided to individuals in Supported Employment at completion of stabilization, during the "Successful Rehabilitation" Milestone and beyond case closure. Such services consist of the provision of specific services, including natural supports, needed to maintain the supported employment placement. Extended services are specifically identified in the IPE. Except as provided by federal law with regard to youth with the most significant disabilities, extended services are paid from funding sources other than DVR and ~~DVS~~DSBVI. An individual may not be found ineligible for supported employment

services because the resource for providing extended services cannot be identified.

PART 19. SPECIAL SERVICES FOR INDIVIDUALS WHO ARE BLIND, DEAF, OR HAVE OTHER SEVERE/SIGNIFICANT DISABILITIES

612:10-7-199. Reader/recording services

(a) Reader services may be purchased for individuals who are blind, visually impaired or have difficulty reading standard print books/materials due to any other disability. Reader services ~~are exempt from client participation in cost of service.~~ Hours of reader service purchased shall be based upon the client's needs with respect to reading of textbooks, training materials or other printed materials used in the rehabilitation process may be provided for those consumers who are involved in educational or vocational training, employment search or entry into employment. Clients will be expected to utilize any comparable services, including available assistive technology devices and services prior to authorization of reader services.

(b) ~~Payment for reader services will be based on the Federal Minimum Wage, unless the counselor justifies use of a higher basis for readers of specialty subjects (e.g., law, science, technology, professions).~~ Reader services may not be paid in advance. Payment is authorized directly to the client in the same manner as maintenance or transportation and may be included on the same authorization with either or both of these other services. Reader services are exempt from client participation in cost of service. DRS will pay up to five (5) hours of reader service per month. Additional hours of reader service may be approved by the Programs Manager with justification.

(c) ~~Individuals who have difficulty reading or using standard print materials will be referred to existing resources for recorded, large print, Braille and digital books and materials. Any required fee or materials cost for a recorded/digital textbook service may be paid through DVR and DVS funds and is not based on financial status determination.~~ Payment for reader services will be based on the Federal Minimum Wage. However, the counselor may authorize up to \$2.00/hour above minimum wage with consideration being given to factors such as the significance of the event and the likelihood of technical/foreign language being used. Reader services may not be paid in advance. Payment is authorized directly to the client in the same manner as maintenance or transportation and may be included on the same authorization with either or both of these other services.

(d) The individual receiving the service shall maintain a record of the reading time he/she has been provided. The record must be signed and dated by the reader and the individual, and returned to the counselor at the end of each month. The record shall include:

- (1) Individual's name;
- (2) Reader's name and address;
- (3) Date service started and ended
- (4) Subjects read and time devoted to each

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(e) Individuals who have difficulty reading or using standard print materials will be referred to existing resources for recorded, large print, Braille and digital books and materials. Any required fee or materials cost for a recorded/digital text-book service, reading or scanner app may be paid through DVR and DSBVI funds and is not based on financial status determination.

612:10-7-201. Rehabilitation teaching services

Rehabilitation teachers provide counseling and instruction to aid clients in adjusting to blindness and severe visual impairment. All clients who are legally blind, severely visually impaired or have a rapidly progressive eye condition are to be referred to a rehabilitation teacher. Exceptions are allowed in instances where rehabilitation teaching services have been provided and the client appears to be functioning independently, or when physical restoration services are planned which will likely restore the client's functioning to a level which would remove the need for rehabilitation teaching. Rehabilitation teachers employed by the Division of ~~Visual~~ Visual Services for the Blind and Visually Impaired may serve clients who are legally blind jointly with the DRS counselor.

612:10-7-205. Services to persons who are deaf-blind

(a) **Overview of services.** Because of the overwhelming impact upon the individual with a combination disability of deafness and blindness, a multiple disciplinary approach is needed to adequately serve these individuals. Unique problems in mobility and communication can cause severe social, recreational, academic deprivation and long term prevocational training may be necessary. Persons who are deaf-blind are capable of competitive employment and the counselor will carefully evaluate expected employment outcomes.

(b) **Deaf-Blindness Specialist.** To promote and coordinate appropriate services for persons with dual losses of vision and hearing, the Division of ~~Visual~~ Visual Services for the Blind and Visually Impaired employs a Deaf-Blindness Specialist. This specialist works with counselors, rehabilitation teachers and others who provide services directly to clients who are deaf-blind. A major role served by this specialist is coordinating services and ensuring dialogue among schools, programs, agencies and organizations serving the deaf and blind.

612:10-7-206. Assistive technology services for individuals with visual impairments

The need for assistive technology devices and services is to be addressed in the client's Individualized Plan for Employment. Counselors and rehabilitation teachers may refer clients with visual disabilities to the Division of ~~Visual~~ Visual Services for the Blind and Visually Impaired assistive technology laboratory for blindness and low vision which may provide or procure:

- (1) assistive technology evaluations;
- (2) recommendation of assistive technology devices and services to meet individual needs;
- (3) training in use of technology and devices, referral to training sources and information on training options;

(4) information on technologies and devices to meet specific individual needs;

(5) technical assistance for installation and operation of select applications and devices; and

(6) demonstration and loan of adaptive aids, devices, electronic and computer technologies and other assistive technology products.

PART 21. PURCHASE OF EQUIPMENT, OCCUPATIONAL LICENSES AND CERTIFICATIONS

612:10-7-216. Tools, occupational equipment, initial stocks and supplies

(a) Tools, occupational equipment and supplies will be provided to eligible clients to the extent necessary to achieve their vocational goal providing the client has adequate resources available for the proper maintenance and upkeep of such tools and equipment. The client, or client's family or authorized representative as appropriate, is responsible for maintaining tools, occupational equipment, initial stocks, and supplies in good working order. DVR and ~~DVS~~ DSBVI will not pay for repairs to tools, occupational equipment, initial stocks and supplies purchased with DVR and ~~DVS~~ DSBVI funds once title has been released to the client. DVR and ~~DVS~~ DSBVI will not pay for repairs before title is released when there is clear evidence that the damage resulted from abuse or neglect.

(b) The client will retain possession and control of articles while engaging in the job or occupation for which articles were provided, or when title is released to client. Occupational tools, occupational equipment, and initial stocks and supplies are defined as follows:

(1) Occupational tools are considered to be those minimum tools required for a designated trade, necessary to the employment of the individual, and not furnished by the employer. DRS will NOT purchase operable firearms even if required for employment. Counselor will assist consumer in finding resources to help in this purchase if necessary.

(2) Occupational equipment is equipment required to meet the minimum needs of an individual in starting and conducting a business of his or her own.

(3) Initial stocks and supplies are those materials and merchandise necessary for the client to become operational in a business.

(c) Purchase of occupational tools, equipment and initial stocks and supplies will be made in accordance with 612:10-1-7. If the client is required to participate in cost of services, the payment will be made to the nonmedical vendor. When the equipment is received and/or installed, the appropriate rehabilitation professional completes the Receipt for Equipment and Title Agreement. If the purchase total is \$5,000 or more, the rehabilitation professional then signs the vendor's invoice and routes it to DRS state office.

(d) Used tools or equipment may be purchased when it is evident considerable savings may be affected. Used equipment or tools are to be appraised piece-by-piece by at least three shop

owners or managers in the same type of work, and who are not acquainted with the vendor.

(e) If the counselor, after a thorough check of the tools or equipment, finds they are not being used for the purpose for which they were purchased, the counselor is to repossess the tools or equipment by executing the Release or Receipt of Equipment form.

612:10-7-220. Vehicle modification services

(a) Vehicle modification services may be provided as needed to enable a Vocational Rehabilitation client to prepare for, enter or retain employment. Vehicle modifications include the range of modifications and special equipment needed by a person with an impairment to drive or be a passenger in a vehicle. Vehicle modifications above the State Capitalization rate are subject to the Prior Approval from RSA in accordance with 2 CFR 200.439.

(b) Vehicle modification services provided to an individual in the Vocational Rehabilitation program may include:

- (1) purchase and installation of adaptations or devices in a vehicle;
- (2) assistance with payment of the portion of the cost attributable to modifications pre-installed in a new or used vehicle purchased from a dealer;
- (3) evaluation of an individual's ability to operate a motor vehicle;
- (4) prescription of required devices specific to both the individual's needs and the vehicle; and
- (5) training in the operation of the vehicle.

(c) Vehicle modifications which are projected to cost the amount of the DCAM authority order limit or less will be made in accordance with 612:10-1-7. Vehicle modifications projected to cost more than the DCAM authority order limit will require additional processing by DRS Central/Departmental Services after the process is completed by the counselor as outlined in Categories A through C below. Clients purchasing new vehicles shall apply for any mobility equipment rebate available from the vehicle manufacturer and the amount of any such rebate shall be assigned to DRS.

- (1) Category A: New or used vehicle with structural modifications: In this process, the vehicle will be purchased by client choice and not obtained through a bid process. The client will be responsible for the purchase of the vehicle and DRS will be responsible for the costs attributable to the structural modifications.
- (2) Category B: New or used vehicle with structural modifications and accessibility modifications additions: In this process, the vehicle will be purchased by client choice and not obtained through a bid process. The client will be responsible for the purchase of the vehicle and DRS will be responsible for the costs attributable to the structural modifications and the accessibility modification additions. DRS will participate in this method only if the client obtains warranty from the mobility aids vendor. A copy of the warranty agreement will be obtained by the counselor and maintained in the case file.
- (3) Category C: Any modifications to a new or used vehicle not purchased as part of the vehicle package

with a cost greater than the DCAM authority order limit will require additional processing by C/DS after the bid process is completed by the counselor in accordance with 612:10-1-7.

(d) The qualifications in (1) - (9) of this Subsection apply to all vehicle modifications.

(1) The client or individual providing the transportation must have a current, valid driver's license. If the client will be driving the vehicle and does not yet have a driver's license, he/she must be legally permitted to drive or participate as a driving student.

(2) The name of the client must appear on the title to the vehicle and current vehicle registration. The client may be listed as a co-owner on these documents.

(3) The client must agree to maintain the vehicle for the predictable life of the equipment and is responsible for maintaining special equipment in good working order. DRS may pay for repairs to such equipment during the life of the case unless there is clear evidence that the special equipment has been damaged due to client abuse or neglect as determined by the dealer, vendor or Assistive Technology Specialist.

(4) The client must maintain both collision and comprehensive insurance on the vehicle, including the equipment.

(5) The vehicle must be evaluated by an Assistive Technology Specialist or person with equivalent qualifications (Driver Rehabilitation Instructor, Occupational Therapist, Rehab Engineer, etc.) for identification of the appropriate adaptive equipment and assessment of the compatibility of the vehicle with recommended adaptive equipment.

(6) A used vehicle must be inspected by an ASE or manufacturer certified mechanic to assure it is mechanically and structurally sound before equipment can be installed. This inspection may be authorized by the counselor if necessary. If the ASE or manufacturer certified mechanic recommends it, a separate inspection related to structural soundness will be completed. This inspection may be authorized by the counselor.

(7) Existing modifications on a new or used vehicle shall be inspected for the appropriateness of the adaptive equipment for the consumer's needs by the Assistive Technology Specialist or other qualified person. DRS also requires documentation that existing modifications on a used vehicle have been inspected by the mobility equipment dealer/vendor to determine efficiency, quality and fair market value of the modification or adaptive equipment. This documentation may be obtained directly from the mobility equipment dealer/vendor or from the lender when such documentation has been required for loan approval.

(8) DRS will not pay the expense of replacing the equipment unless the equipment no longer meets the needs of the client as determined through review of current medical reports and assistive technology evaluation indicating replacement is required to meet the IPE goals.

(9) Certain types of vehicle modification equipment are considered "transferable" by design: i.e., hand controls, left foot accelerator, and hitch lift systems for wheelchairs/scooters. DRS may assist with the cost of transferring this type of equipment to meet the IPE goals. These modifications are categorized as non-structural modifications.

(10) When vehicle modifications are completed, installation is to be inspected by an Assistive Technology Specialist or person with equivalent qualifications, to determine if the authorized equipment conforms to prescribed standards, is properly installed and meets the functional needs of the client. The counselor must obtain a statement of satisfaction from the client.

612:10-7-221. Housing Modification

(a) Modification of a residence may include installation of ramps, widening of doors, installation of grab bars and other accessibility modifications when such modifications are necessary to support the consumer in achievement of an employment outcome. Major structural modifications such as room additions or major wall removal will not be provided by DRS without supervisor approval. Housing modifications that will cost more than the DCAM authority order limit require supervisor approval. All housing modifications are subject to the Prior Approval from RSA in accordance with 2 CFR 200.439.

(b) In all situations where housing modification is to be done, the owner of the house must sign a written release form. In those situations where the consumer is a renter, the renter/consumer is responsible for obtaining the written release from the owner. The counselor must make a referral to the Assistive Technology (AT) Specialist who will make the evaluation of the residence and recommend the modifications needed to make the residence accessible and usable for the consumer. After modifications have been completed the counselor will contact the AT Specialist for inspection of the home, to ensure the modifications conform to prescribed standards and meet the consumers accessibility needs. The AT Specialist will provide a report to the counselor and the counselor must get a statement of satisfaction from the consumer.

PART 23. SELF-EMPLOYMENT PROGRAMS AND OTHER SERVICES

612:10-7-233. Special consideration in state government employment for persons with severe disabilities

(a) Oklahoma statute [74 O.S. 840-4.12] establishes provisions to promote the employment of persons with severe disabilities in state government. The law waives written entrance examinations and certain other hiring procedures administered by Human Capital Management (HCM) for persons who are certified as having a severe disability based on standards and criteria established by the Administrator of HCM. Such applicants must be legal residents of Oklahoma and must meet minimum qualifications specified in applicable

job specifications. Rules implementing the provisions of 74 O.S. 840-4.12 are found at ~~OAC 530:10-9-100~~612:10-7-100. HCM rules refer to these provisions as the Optional Program for Hiring Applicants with Disabilities.

(b) For purposes of the Optional Program for Hiring Applicants with Disabilities, the Department of Rehabilitation Services (DRS) shall certify that an applicant has a severe disability according to the definition of "individual with a severe disability" in OAC 612:10-1-2, which the HCM Administrator has established as the standard for disability certification. DRS shall provide electronic or written verification of an applicant's severe disability to the applicant and to Human Capital Management.

(c) Counselors will document the severity of the disability using existing DRS case information for current or former clients. Individuals who have not been DRS clients will provide the counselor with documentation necessary for determining that the individual has a severe physical or mental impairment which seriously limits one or more functional capacities. Medical examinations may not be purchased solely to certify eligibility under 74 O.S. 840-4.12.

PART 25. TRANSITION FROM SCHOOL TO WORK PROGRAM

612:10-7-242. Pre-Employment Transition Services

(a) **Students with a Disability.** Vocational Rehabilitation (VR) must collaborate with local educational agencies (LEAs) to provide, or arrange for the provision of, Pre-employment Transition Services (Pre-ETS) for all students with a disability in need of such services.

(1) A "Student with a Disability" as defined in Oklahoma is ages 16 through 21 and eligible for and receiving special education or related services under an Individualized Education Program (IEP); or an individual with a disability for purposes of Section 504 (individual does not need to have a 504 plan to meet the definition requirements).

(2) An individual as young as 14 years old may be considered a "Student with a Disability" if Pre-ETS is determined necessary by the IEP team.

(3) The definition of "Student with a Disability" applies to all students enrolled in educational programs, including postsecondary education programs or other recognized education programs, so long as they satisfy the age requirements. The definition is inclusive of secondary students who are homeschooled, as well as students in other non-traditional secondary educational programs.

(4) A student with a disability receiving pre-employment transition services is a client for whom goods and services may be procured in the same manner as for clients with an approved Individualized Plan for Employment pursuant to OAC 612:10-1-7.

(b) **Required Activities.** Services may be provided to students, or groups of students, with disabilities who are eligible or potentially eligible for VR services in the following areas:

(1) Job exploration counseling.

- (2) Work-based learning experiences, which may include in-school or after school opportunities or experience outside the traditional school setting, including internships, that is provided in an integrated environment to the maximum extent possible.
 - (3) Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education.
 - (4) Workplace readiness training to develop social skills and independent living.
 - (5) Instruction in self-advocacy, including instruction in person-centered planning, which may include peer mentoring, including peer mentoring from individuals with disabilities working in competitive integrated employment.
- (c) **Delivery of Services.** Pre-ETS may be delivered in collaboration with school districts/LEAs via any combination of:
- (1) Vocational rehabilitation counselors
 - (2) The vocational rehabilitation counselor will coordinate Pre-ETS with other entities who maybe delivering these services.
 - (3) Other entities contracted with VR such as:
 - (A) Community Rehabilitation Programs
 - (B) Independent Living Centers
- (d) **Considerations under 00S.** VR must continue to provide Pre-ETS to students with disabilities who were receiving such services prior to being determined eligible for ~~VSSBVI~~ and are placed in a closed category.
- (e) **Pre-Employment Transition Coordination.**
- (1) District office staff will be responsible for attending IEP meetings for students with disabilities when invited; using conference calls and video conferences, when necessary;
 - (2) working with local workforce development boards, job centers and employers to develop work opportunities for students with disabilities, including apprenticeships, internships, summer employment and other employment opportunities available throughout the school year;
 - (3) working with schools to coordinate and ensure the provision of Pre-ETS; and
 - (4) attending person-centered planning meetings for individuals with developmental disabilities receiving SSI-D/Medicaid when invited.

612:10-7-245. Definitions

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

"FLSA" means the Fair Labor Standards Act which sets forth labor standards and protections as enforced by the U.S. Department of Labor.

"IDEA" means the Individuals with Disabilities Education Act, P.L. 101-476 which ensures the rights and protections of children with disabilities and their parents being served by public education agencies through special education services and on an individualized education program (IEP).

"IEP" means Individualized Education Program. This is an educational document developed on an annual basis that documents the educational and transition goals students are working toward each year in grades PK-12.

"LEA" means Local Educational Agency, or local school district.

"SDE" means State Department of Education.

"SECTION 504 Plan" is a plan designed as a protection for students with disabilities who may not be considered eligible for special education under the IDEA in compliance with Section 504 of the Rehabilitation Act of 1973 as amended.

"Teacher coordinator" means a teacher employed by a school who is released as part of her work day and responsible for working with ~~DVR/DVS~~DVR/SBVI counselors and students eligible for the Transition from School to Work Program.

"Work Adjustment Training (WAT)" is provided on a work site, in a school, or in an approved Community Rehabilitation Program having valid contracts with DRS. WAT may also include (but is not limited to) activities aimed toward work tolerance, development of personal habits, attitudes, and work habits necessary to orient the individual to the world of work. High school students eligible for this service must be at least 16 years of age and may not participate for more than 18 months unless determined necessary by the counselor and client.

"School Work Study (SWS)" allows students with disabilities to work on the school campus. The students are supervised or closely monitored by school personnel, and the school pays the students a stipend with DRS making reimbursement to the school for that payment. The stipend is not a wage/salary. The school maintains liability for the students while working on campus.

"Trial Work/Extended Evaluation" has the meaning given these terms in DRS policy and federal law/rules.

"Work Site Learning (WSL)" allows students with disabilities to work in the community. The students are supervised or closely monitored by school personnel, and the school pays the students a stipend with DRS making reimbursement to the school for that payment. The stipend is not a wage/salary. The school maintains liability for the students while working off campus.

"Employer Work Study (EWS)" allows students with disabilities employment experience in part-time jobs in the community with the employers paying the wages/salary(ies). In this instance, the students are employees of the community employers, and DRS does not reimburse the employers for the wages/salary(ies).

SUBCHAPTER 9. REHABILITATION TEACHING SERVICES

PART 1. GENERAL PROVISIONS

612:10-9-5. Vocational rehabilitation

The consumer can receive the services of the Instructional Services program while being served through the Vocational Rehabilitation counseling program. The staff member will

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provide comprehensive instructional services necessary for the consumer to meet the employment goal.

(1) **Referral from rehabilitation counselor.** Consumers who are legally blind or severely visually impaired receiving services through a rehabilitation counselor will be referred for Rehabilitation Teaching and Orientation & Mobility (O & M) services. Through the diagnosis and evaluation process the staff member gathers information to aid in determining needs for instructional services.

(2) **Rehabilitation teaching services in joint cases.** Important services provided by the teacher include evaluation and training in areas related to employment which include but are not limited to consumer and family adjustment to blindness, competence in communication, job readiness skills, personal management, home management, and basic orientation to immediate surroundings to facilitate safe mobility at home and work.

(3) **Orientation and Mobility referral for joint cases.** Important services provided by the O & M Specialist include, but are not limited to, evaluation and training for safe travel in the workplace, cane travel, preparation for dog guide, and local transportation usage.

(4) **Joint service status.** When it is determined a consumer can benefit from both instructional and counseling services the instructional staff and counselor, through consultation with each other and the consumer, will each develop a program of services. During the provision of services, the counselor and instructional staff will share pertinent information including narrative recording, through regular contact and case staffing. The formation of the instructional service plan should include objectives and services to be provided.

(5) **Closing joint cases.** When preparing a joint case for closure, the instructional staff and counselor will consult one another to determine readiness for closure.

PART 5. SERVICES

612:10-9-32. **Diagnosis and evaluation [REVOKED]**

~~Through diagnosis and evaluation the rehabilitation teacher gathers information to aid in determining eligibility as well as goals and strategies that may be included in the IPE.~~

~~(1) **Diagnosis.** The teacher must determine the medical causes of impairments to recognize the problems of each consumer and how they affect the ability to function. Individual differences and capabilities will be considered. The teacher will secure medical and/or psychological information when possible. If the teacher's evaluation indicates a need for medical or psychological treatment the specialist will refer the consumer to outside resources for help if it is not within the scope of rehabilitation teaching.~~

~~(2) **Vocational evaluation.** The rehabilitation teacher plays an important role in the evaluation of a consumer's ability to benefit from rehabilitation services in terms of the employment outcome.~~

~~(A) The rehabilitation teacher evaluates the consumer's characteristics and skills based on observation and assessment.~~

~~(B) An important service provided by the teacher is the initial evaluation of the consumer's adjustment to vision loss and ability to function independently. Areas to be evaluated include, but are not limited to, consumer and family attitudes toward blindness, degree of competence in communication, personal management, home management, and basic orientation to immediate surroundings.~~

~~(3) **Family evaluation.** The teacher must be aware of the family influence on the rehabilitation outcome that can be expected for an individual.~~

~~(4) **Community evaluation.** Visual impairment may restrict consumer's use of and access to community resources. Location, cost, eligibility, visual prerequisites, attitudinal barriers, and the level of consumer's skills are to be considered when evaluating community resources.~~

~~(5) **Evaluation of personal adjustment skills.** Prior to the development and implementation of the IPE, the rehabilitation teacher will thoroughly evaluate the consumer's functional limitations and skills, to include basic skills such as home management, communication, personal management, health management, and adjustment to disabilities.~~

612:10-9-38. **Vocational rehabilitation [REVOKED]**

~~The consumer can receive the services of the Instructional Services program while being served through the Vocational Rehabilitation counseling program. The staff member will provide comprehensive instructional services necessary for the consumer to meet the employment goal.~~

~~(1) **Referral from rehabilitation counselor.** Consumers who are legally blind or severely visually impaired receiving services through a rehabilitation counselor will be referred for Rehabilitation Teaching and Orientation & Mobility (O & M) services. Through the diagnosis and evaluation process the staff member gathers information to aid in determining needs for instructional services.~~

~~(2) **Rehabilitation teaching services in joint cases.** Important services provided by the teacher include evaluation and training in areas related to employment which include but are not limited to consumer and family adjustment to blindness, competence in communication, job readiness skills, personal management, home management, and basic orientation to immediate surroundings to facilitate safe mobility at home and work.~~

~~(3) **Orientation and Mobility referral for joint cases.** Important services provided by the O & M Specialist include, but are not limited to, evaluation and training for safe travel in the workplace, cane travel, preparation for dog guide, and local transportation usage.~~

~~(4) **Joint service status.** When it is determined a consumer can benefit from both instructional and counseling~~

services the instructional staff and counselor, through consultation with each other and the consumer, will each develop a program of services. During the provision of services, the counselor and instructional staff will share pertinent information including narrative recording, through regular contact and case staffing. The formation of the instructional service plan should include objectives and services to be provided.

(5) **Closing joint cases.** When preparing a joint case for closure, the instructional staff and counselor will consult one another to determine readiness for closure.

SUBCHAPTER 11. INDEPENDENT LIVING SERVICES FOR OLDER AND INDIVIDUALS WHO ARE BLIND

PART 1. SCOPE OF SERVICES

612:10-11-1. Purpose

(a) Older Blind Independent Living Services (OB) is a formalized program of services with the purpose of enhancing the ability of an individual with severe vision loss to live independently and function within his/her family and community even when he/she cannot gain or regain skills to fully perform duties of a homemaker. Older persons who have vision loss remain more independent when they learn new skills to help them adjust to blindness and make the most of their remaining vision. Through one-on-one instruction, they remain independent or reach this goal which increases confidence, self-esteem and quality of life.

(b) Personal adjustment services through OB are defined as services that allow control of one's life based on the choice of acceptable options which minimize reliance on others in decision making and in performing every day activities.

612:10-11-7. Administrative review

Any individual who is an applicant or client of OB services must be advised of his/her right to request a timely review or a re-determination of any action taken by DRS staff. The review will be conducted by the Administrator for Visual Services for the Blind and Visually Impaired or his/her designee, who shall respond to the applicant or client in writing with the findings and conclusions of the review.

SUBCHAPTER 13. SPECIAL SERVICES FOR THE DEAF AND HARD OF HEARING

PART 3. CERTIFICATION OF INTERPRETERS

612:10-13-21. Code of ethics

The interpreter/transliterater shall agree to abide by the Oklahoma Quality Assurance Ethical Standards National

Association of the Deaf (NAD) and the Registry of Interpreters for the Deaf, Inc. (RID) Code of Professional Conduct. Federal, state, or other laws or regulations may supersede the Ethical Standards NAD-RID Code of Professional Conduct if a conflict is present between existing law or regulations and the Ethical Standards Code of Professional Conduct. The interpreter/transliterater will abide by the rule of the law.

(1) The interpreter/transliterater shall be dedicated to providing competent interpreting services in a manner befitting a professional.

(A) The interpreter/transliterater shall conduct him/herself in a manner which will reflect high standards of professionalism. This requires proper behavior suitable to the circumstances of the interpreting assignment.

(B) The interpreter/transliterater will dress appropriately to the circumstances of the interpreting assignment. Dress will be as unobtrusive as possible, and care will be taken to avoid cloth patterns or accessories which would interfere with clear perception of the consumer(s) through distraction or poor foreground/background contrast.

(C) The interpreter/transliterater will, to the maximum extent possible, choose positioning of themselves to avoid distracting backgrounds or inadequate lighting, and within comfortable visual/audible range of the consumer(s).

(D) The interpreter/transliterater will request compensation for services in a professional and judicious manner. The interpreter/transliterater will be knowledgeable of fees commensurate with their level of skill, level of certification, length of experience, and nature of the interpreting assignment, as well as fees customary to the geographic region.

(E) The interpreter/transliterater duty is to function fully as the support team interpreter/transliterater when engaged in a team assignment environment to assure the accuracy of the message is rendered.

(2) The interpreter/transliterater uses discretion in accepting assignments based upon language competency with regard to the setting and/or consumers involved and according to the Oklahoma interpreter certification Level of Limitations.

(A) The interpreter/transliterater will base acceptance of assignments upon his/her qualifications to handle the English language characteristically utilized in any given situation. If an interpreter/transliterater cannot understand the English language used, nor express it in sign language, or cannot maintain an acceptable pace, the interpreter/transliterater should not accept the assignment.

(B) The best practice for a professional interpreter/transliterater will be to make every reasonable effort to assess the language skills of the consumer(s) involved to determine his/her ability to understand and be understood in the given assignment by asking appropriate questions of the requestor of services, without asking the identity of the consumer. If this

assessment prior to acceptance is not possible, the interpreter/transliterators should arrive at the assignment early to assess the language skills taking care that the communication exchange is not assignment related. At this time, the interpreter/transliterators may decide to proceed with the assignment, or decline the assignment. If the assignment is declined prior to the assignment, or later during the assignment, assistance may be required in securing a more qualified interpreter to take the assignment at that time, or at a later scheduled time.

(C) A certification level is a guideline to what levels may be able to perform in various situations. If a Deaf individual deems an interpreter/transliterators as "qualified" they should be permitted to function as such, as long as it does not violate established Oklahoma interpreter certification Level of Limitations, regulations or laws.

(D) The interpreter/transliterators should be familiar with statutory requirements regarding interpreter qualifications in a state before accepting an assignment in that state which might require a higher level of certification.

(E) The interpreter/transliterators may decline or discontinue assignments if working conditions are not safe, healthy, or conducive to interpreting.

(F) The interpreter/transliterators may render pro bono services providing it is a fair and reasonable manner.

(3) The interpreter/transliterators uses discretion in accepting assignments based upon the capacity to maintain impartiality with regard to the setting and/or consumers involved.

(A) The interpreter/transliterators should accept assignments only when the interpreter/transliterators feels comfortable dealing with the content of the communication in an impartial manner. If the personal feelings or beliefs of the interpreter/transliterators would interfere with rendering the message accurately, the interpreter/transliterators should withdraw from the assignment.

(B) Interpreters/transliterators should refrain from providing interpreter services in situations where family members, or close personal or professional relationships may affect impartiality.

(C) Interpreters/transliterators should strive for complete neutrality between consumers in the interpreting assignment. This neutrality can be compromised for various reasons. Whenever neutrality is compromised, it is the obligation of the interpreter/transliterators to assure that all affected consumers are duly advised and given the option of declining the interpreter/transliterators assignment.

(D) The interpreter/transliterators should avoid performing dual or conflicting roles while in the role as the interpreter/transliterators during the interpreting assignment.

(4) The interpreter/transliterators shall judiciously safeguard assignment related information because it is confidential. Exceptions to confidentiality include federal and/or state laws that mandate reporting a known crime or planning to commit a crime, fraud, or physical injury to the deaf person or another individual.

(A) A full time interpreter/transliterators may provide information to his/her employer or other appropriate staff for purposes of record keeping, program management, or supervision without breaching confidentiality.

(B) The right to privacy is inalienable for all citizens. The interpreter/transliterators has a fundamental obligation to safeguard any confidential information acquired from any source during an interpreter assignment. Injudicious disclosures of confidential information could adversely affect the consumer's reputation, and expose the interpreter/transliterators to liability.

(C) The interpreter/transliterators should consult legal counsel when in doubt concerning disclosure in a court of law, and professional rights and responsibilities.

(D) The interpreter/transliterators should inform consumers when federal or state mandates require disclosure of confidential information.

(5) The interpreter/transliterators shall provide information when necessary, to the consumers involved as to the role and appropriate use of the interpreter/transliterators. Assuring the education of consumers as to the proper use of an interpreter is a basic responsibility of the interpreter/transliterators. The experienced consumer may also provide such education. Consumer education should be succinct, and is best presented prior to an assignment to ensure a smooth communication exchange.

(6) The interpreter/transliterators conveys the content and affect of the communication transmitted using the language most easily understood by the persons involved in the communication/transaction.

(A) The interpreter/transliterators must transmit all communication in the exact way it is presented, conveying the speaker's intention. The interpreter/transliterators is not responsible for what is said or how it is said; only for conveying the message accurately and with the intended affect. The interpreter/transliterators shall withdraw from an assignment when his/her personal feelings interfere with rendering the message accurately with the intended affect.

(B) The interpreter/transliterators shall communicate in the manner most easily understood or preferred by the consumer(s), such as American Sign Language, Manually Coded English, finger spelling, gesturing, drawing, or writing.

(7) The interpreter/transliterators should not counsel nor interject personal opinion, but may exercise professional judgment in assessing whether or not communication is

being understood and may also inform the consumers involved of available resources as appropriate.

(A) ~~The interpreter/transliterators shall not step out of the role of communication facilitator by offering counsel or interjecting personal opinion. Exercising professional judgment and offering a professional opinion in assessing whether communication is being understood is not a breach of ethics.~~

(B) ~~Recommending known and available resources to the consumer is considered within the professional role of the interpreter/transliterators. The interpreter's responsibility in this regard is only to inform in a courteous and helpful manner. It is the consumer's decision whether they wish to follow through with any recommendation.~~

(8) ~~The interpreter/transliterators should pursue further knowledge and maintain competency in interpreting or transliterating skills. The interpreter/transliterators should strive to further knowledge and skills through active participation in workshops, professional meetings, interaction with professional colleagues, and reading of literature in the field.~~

(9) ~~The interpreter/transliterators has a responsibility to be aware of and comply with all federal or state laws regulating specialized interpreting fields (educational, legal, mental health).~~

[OAR Docket #20-598; filed 7-13-20]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 20. SPECIAL SCHOOLS

[OAR Docket #20-599]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. General Operating Procedures for the Schools
Part 1. General Educational Policies
612:20-3-5. Departmental resources [AMENDED]
Part 5. Standards of Conduct for all School Personnel
612:20-3-38. Use of alcohol, drugs and controlled substances by employees (Drug-Free Workplace) [AMENDED]
Subchapter 9. Special Service Programs [AMENDED]
612:20-9-2. Grants for Support Service Providers [NEW]

AUTHORITY:

Commission for Rehabilitation Services; 74 O.S.166.1 et seq; 70 O.S. 1724, 1733 and 1734

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Revisions to Chapter 20 consist of division name change of Visual Services (VS) to Services for the Blind and Visually Impaired (SBVI). New rule 612:20-9-2 implemented on Support Service Providers (SSP).

CONTACT PERSON:

Tina Calloway, Administrative Programs Officer, State Department of Rehabilitation Services, Executive Division, 3535 N.W. 58th Street, Suite 500, Oklahoma City, OK 73112-4824, (405) 951-3552.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 3. GENERAL OPERATING PROCEDURES FOR THE SCHOOLS

PART 1. GENERAL EDUCATIONAL POLICIES

612:20-3-5. Departmental resources

(a) **In-service training.** State Office staff are available as resource persons through the Staff Development Unit. They are charged by the director with the responsibility of assisting the superintendents with the development of a meaningful, ongoing in-service training program patterned to serve the individual needs of each school and embodying the Department's school goals.

(b) **Rehabilitative and Visual Services for the Blind and Visually Impaired Division.** Coordination of efforts to make a smooth transition from secondary school to employment or further training will be facilitated by VR counselors trained to work with the blind and deaf. The Department of Rehabilitation Services will encourage and support efforts to enhance communication and cooperation between school and rehabilitation personnel.

PART 5. STANDARDS OF CONDUCT FOR ALL SCHOOL PERSONNEL

612:20-3-38. Use of alcohol, drugs and controlled substances by employees (Drug-Free Workplace)

(a) The Department of Rehabilitation Services has committed itself to a continuing good faith effort to maintain a drug-free workplace. The Oklahoma School for the Blind and the Oklahoma School for the Deaf recognize that alcohol and drug abuse in the workplace has become a major concern. The object of the schools' alcohol and drug prevention program is to

provide a safe and secure workplace to comply with federal and state health and safety regulations, and to prevent accidents.

(b) Staff development programs shall be conducted to inform each employee of the school's drug-free workplace program; the dangers of drug abuse in the workplace; this policy; available drug counseling and rehabilitation programs; and the penalties that may be imposed for drug abuse violations occurring in the workplace.

(c) The unlawful possession, sale, distribution, manufacture, or use of any drug, narcotic or controlled substance as defined in the Uniform Controlled Dangerous Substances Act and/or Title 63 O.S. ~~2-102-101~~ by any employee at any time on school premises or while on school business is prohibited and will not be tolerated. Judgment regarding the use of such substances will be based upon behaviors related to being under the influence of such substances or having an adverse effect upon job performance. Any employee found to be in violation of this policy will be subject to disciplinary action which may include termination of employment or satisfactory participation, at the employee's expense, in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(d) Each employee of the Oklahoma School for the Deaf or the Oklahoma School for the Blind is hereby notified that, as a condition of employment, the employee must abide by the terms of this policy. In addition, the employee must notify the Superintendent or his/her designee of any criminal drug statute conviction ~~for a violation of this law~~ regardless of where it occurred. Such notification must be made to the Superintendent or his/her designee no later than five (5) calendar days after conviction. In compliance with ~~P.L. 100-690, Title V, Subtitle D, (The Drug-Free Workplace Act)~~ the Superintendent shall provide notice of such violation to the Impact Aid Program, United States Department of Education, or other appropriate government agency within ten (10) calendar days after receiving such notice from the employee or otherwise receiving actual notice of such conviction. Within thirty (30) calendar days of receipt of the above notification, the School will take appropriate disciplinary action which may include termination of employment or require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency at the employee's expense.

(e) The unlawful possession, sale, distribution, manufacture, or use of an intoxicating beverage as defined in ~~Title 37 O.S. 50637A~~ O.S. § 1-103 by any employee in the workplace will not be tolerated. Judgment regarding the use of such substances will be based upon behaviors related to being under the influence of such substances or having an adverse effect upon job performance. Any employee found to be in violation of this policy will be subject to disciplinary action which may include termination of employment or satisfactory participation in an alcohol abuse assistance or rehabilitation program at the employee's expense

SUBCHAPTER 9. SPECIAL SERVICE PROGRAMS

612:20-9-2. Grants for Support Service Providers

(a) For the purposes of this section:

(1) Deaf-Blind means being legally blind as provided in definition of blindness at rule 10-1-2, and a hearing loss significant enough to impede everyday life.

(2) Support Service Providers (SSP) are individuals certified by a deaf-blind program recognized by the Department who provide access to the environment for individuals who are Deaf-Blind. This may include auditory information, environmental information and human guide. SSP duties include but are not limited to services to and on behalf of deaf-blind individuals for work related activities, to assist with employment applications, job interviews, or any other employment preparation task; for grocery or clothe shopping, banking, doctor or other appointments, meetings, social or religious events, reading mail or making calls. Transportation to such activities may be provided but cannot be the sole purpose of using a SSP.

(b) Subject to appropriations, the Oklahoma Department of Rehabilitation Services may issue request-for-proposals to provide grants to organizations that:

(1) Provide services for Deaf-Blind adults. Such services may include providing auditory and environmental information and human guide;

(2) Provide services for deaf-blind adults. Such grants shall be used to provide assistance to deaf-blind adults who are working towards establishing and maintaining independence; and

(3) Train support service providers. Such grants shall be used to provide training that will lead to certification of support service providers in Oklahoma.

(c) The total amount of grants provided under this section shall not exceed three hundred thousand dollars annually.

[OAR Docket #20-599; filed 7-13-20]

TITLE 655. SECRETARY OF STATE CHAPTER 25. NOTARY PUBLIC

[OAR Docket #20-428]

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PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

655:25-1-1.1. Availability of forms and instructions [AMENDED]

655:25-1-2. Application for commission as a notary public; renewal [AMENDED]

655:25-1-5. Bond, oaths, signatures, and seal; failure to file [AMENDED]

655:25-1-5.1. Term of notary commission [NEW]

655:25-1-8. Electronic notarization and seal [NEW]

Subchapter 3. Revocation, Resignation, and Death

655:25-3-1. Revocation [AMENDED]

655:25-3-2. Resignation [AMENDED]

655:25-3-3. Death [AMENDED]

Subchapter 5. Seal

655:25-5-2. Official seal [AMENDED]
 655:25-5-3. Lost ~~journal~~ or ~~stolen~~ seal [AMENDED]
 Subchapter 7. Change of Name or Address [NEW]
 655:25-7-1. Change of address [NEW]
 655:25-7-2. Change of name [NEW]
 Subchapter 11. Remote Online Notarization [NEW]
 655:25-11-1. Purpose [NEW]
 655:25-11-2. Definitions [NEW]
 655:25-11-3. Registration to perform remote online notarizations [NEW]
 655:25-11-4. Electronic signatures and electronic seals [NEW]
 655:25-11-5. Standards for identity verification [NEW]
 655:25-11-6. Standards for communication technology [NEW]
 655:25-11-7. Certificate of notarial act for remote online notarizations [NEW]
 655:25-11-8. Record retention and depositories [NEW]
 Appendix A. Contents and Sufficiency of Certificates of Remote Online Notarial Acts [NEW]

AUTHORITY:

Secretary of State; 49 O.S., § 203; SB 915 (2019)

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Subchapter 1. General Provisions
 655:25-1-1.1. Availability of forms and instructions [AMENDED]
 655:25-1-2. Application for commission as a notary public; renewal [AMENDED]
 655:25-1-5. Bond, oaths, signatures, and seal; failure to file [AMENDED]
 655:25-1-5.1. Term of notary commission [NEW]
 655:25-1-8. Electronic notarization and seal [NEW]
 Subchapter 3. Revocation, Resignation, and Death
 655:25-3-1. Revocation [AMENDED]
 655:25-3-2. Resignation [AMENDED]
 655:25-3-3. Death [AMENDED]
 Subchapter 5. Seal
 655:25-5-2. Official seal [AMENDED]
 655:25-5-3. Lost ~~journal~~ or ~~stolen~~ seal [AMENDED]
 Subchapter 7. Change of Name or Address [NEW]
 655:25-7-1. Change of address [NEW]
 655:25-7-2. Change of name [NEW]
 Subchapter 11. Remote Online Notarization [NEW]
 655:25-11-1. Purpose [NEW]
 655:25-11-2. Definitions [NEW]
 655:25-11-3. Registration to perform remote online notarizations [NEW]
 655:25-11-4. Electronic signature and electronic seals [NEW]
 655:25-11-5. Standards for identity verification [NEW]
 655:25-11-6. Standards for communication technology [NEW]
 655:25-11-7. Certificate of notarial act for remote online notarizations [NEW]
 655:25-11-8. Record retention and depositories [NEW]
 Appendix A. Contents and Sufficiency of Certificates of Remote Online Notarial Acts [NEW]

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655:25-11-4

Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday, Oklahoma Secretary of State, 421 NW 13th St., Suite 220, Oklahoma City, OK 73103.

INCORPORATIONS BY REFERENCE:

Incorporated standards:

X.509 standard, as adopted by the International Telecommunication Union on October 14, 2016

GIST/ANALYSIS:

Amendments and additions to Chapter 25 of the Secretary of State's administrative rules [OAC 655:25] the Remote Online Notary Act, as enacted in SB 915 (2019), effective January 1, 2020. SB 915 requires the Secretary of State to promulgate rules to implement and ensure the effective administration of the Remote Online Notary Act.

These permanent rules will also bring rules related to the commissioning of traditional notaries into compliance with SB 915 (2019) and Title 49 of the Oklahoma Statutes.

These permanent rules will supersede the emergency rules that were approved by the Governor on December 18, 2019, and effective January 1, 2020.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

655:25-1-1.1. Availability of forms and instructions

The following forms and instructions related to this Chapter are available for public use and may be obtained by contacting the Notary Department or from the Secretary of State website at www.sos.state.ok.us:

- (1) Application for Notary Public Commission;
- (2) Notarial Bond, with Oath of Office and Loyalty Oath; and
- (3) Application for Remote Online Notarization Authorization.
- ~~(3) Guidebook~~

655:25-1-2. Application for commission as a notary public; renewal

(a) Application contents. Every application for a notarial commission must include:

- (1) the printed name of the applicant exactly as he/she will sign documents as a notary;
- (2) former names, ~~complete only if applicant has been previously commissioned as an Oklahoma notary under a different name~~ the notary's name has changed since the last commission;
- (3) if a resident of this state, the county of residence and street address (see also (d) of this Section);
- (4) if a resident of another state, the county and street address of employment in Oklahoma and applicant's residence address (see also (d) of this Section);
- (5) ~~a statement~~ statements that the applicant;

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- (A) is at least 18 years of age;
 - (B) has never been convicted of a felony; and
 - (C) is able to read and write in English and a citizen of the United States;
- (6) a designation of new, renewal, or expired commission, including an expiration date if applicable;
- ~~(7) the mailing address where the applicant's commission is to be mailed;~~
- (7) a daytime telephone number; and
- (8) a valid email address for the applicant;
- (9) the signature of the applicant, which must match the printed name required in paragraph (1) of this subsection; and
- (10) an application fee of \$25.00 for a new or expired application and \$20.00 for a renewal application [49 O.S., §1.1].
- (b) **Renewal period.** Renewal applications must be filed and accepted prior to the expiration of the commission being renewed. However, ~~Renewal~~ renewal applications will ~~only not~~ be accepted ~~during the earlier than~~ six (6) weeks prior to the expiration date of the commission.
- (c) **New commission required.** The applicant ~~will~~ must apply for a new commission if:
- (1) The applicant has never been an Oklahoma notary public;
 - (2) The applicant has been an Oklahoma notary public but has let the commission expire; or
 - (3) The applicant is a current Oklahoma notary public and wishes to make changes on the current commission [see also 655:25-7-2].
- (d) **Post office boxes not allowed; ACP exception.** A post office box number cannot be accepted in lieu of a residence or employment address on the application. ~~If no~~ street address exists, a route number or directions to the Oklahoma residence or place of Oklahoma employment of the applicant must be provided. An exception to this requirement will be granted for individuals participating in the Address Confidentiality Program [22 O.S., § 60.14 and OAC 75:20].

655:25-1-5. **Bond, oaths, signature, and seal; failure to file**

- (a) **Filing.** Prior to performing the duties as a notary public and not more than sixty (60) days after issuance of a notary commission, the following must be filed with the ~~court clerk in the county in which the notary resides or if a non-resident, the county employed~~ Secretary of State:
- (1) ~~the commission;~~
 - ~~(2) the notary's oath of office and loyalty oath;~~
 - ~~(3) the notary's official signature;~~
 - ~~(4) an impression of the notary's official seal;~~
 - ~~(5) a bond in the sum of One Thousand Dollars (\$1,000.00), to be approved by the court clerk Secretary of State; and~~
 - ~~(6) a filing fee of \$10.00 [49 O.S., §2].~~
- (b) ~~The bond reflecting the commission number and oath of office shall be transmitted by the court clerk to the Secretary of State for filing and recording.~~

- (b) **Term of bond.** The notarial bond must be valid from the bond's effective date until the expiration date of the notary's current commission.
- (c) **Failure to file.** Failure to file the notarial bond, as set forth in this Section, will result in revocation of the notary's commission.

655:25-1-5.1. **Term of notary commission**

Each person appointed and commissioned as a notary public shall hold office for a term of four (4) years from the effective date of the notary's commission, unless a commission is resigned or revoked prior to the end of the four year term.

655:25-1-8. **Electronic notarization and seal**

As authorized by 12A O.S., §15-111, Oklahoma Uniform Electronic Transactions Act, an Oklahoma notary may perform an electronic notarization. An electronic notarization must meet all of the requirements of a traditional notarization, including the requirement that the principal appear in person before the notary. The notary's electronic seal must reproduce the required elements of the notary seal, as set forth in 49 O.S., §5.

SUBCHAPTER 3. REVOCATION, RESIGNATION AND DEATH

655:25-3-1. **Revocation**

- (a) A notary commission ~~may~~ will be revoked by the Secretary of State upon receipt of the following:
- ~~(1) a court order issued for such purpose;~~
 - ~~(2) conviction of any felony by an official notice by a county court clerk; or~~
 - ~~(3) failure to comply with Section 2 of Title 49 of the Oklahoma Statutes, requiring the notary to file a notarial bond within sixty (60) days after issuance of notary's commission [49 O.S., § 12(A)] an official notice by a public official in a position to order such suspension; or~~
 - ~~(4) failure to tender the statutory notary fees to the Secretary of State.~~
- (b) A notary commission shall be revoked by the Secretary of State:
- (1) upon receipt of a final judgment from a district court in this state or its equivalent in a foreign jurisdiction against a notary public in this state for performing a false or fraudulent notarial act [49 O.S., § 12(B)]; or
 - (2) for a period of eight (8), years upon receipt of a final judgment against a notary public for a violation of 49 O.S., § 6(B) from a district court of this state or its equivalent from a foreign jurisdiction [49 O.S., § 6.1].
- (c) Upon revocation of a ~~notary~~ notary's commission, notice of such action will be ~~mailed sent to the party ordering such revocation, the county court clerk of the county in which the notary's bond is filed and said~~ the address currently on file for the notary.

655:25-3-2. Resignation

- (a) A notary who resigns ~~their~~ notarial commission shall ~~submit~~deliver to the Secretary of State a written notice of resignation and the effective date of such resignation.
- (b) Notaries who cease to reside or work in this state shall resign their commission.
- (c) When a notarial commission is resigned, the notary shall destroy the official ~~seal~~seal(s).

655:25-3-3. Death

If a notary dies during the term of commission, the notary's heirs or personal representative, as soon as reasonably practicable after death, shall:

- (1) destroy the official ~~seal~~seal(s);
- (2) ~~deliver~~submit a ~~signed~~written notice of the date of death to the Secretary of State, signed by an heir or personal representative of the deceased notary.

SUBCHAPTER 5. SEAL

655:25-5-2. Official seal

- (a) A notary shall keep an official notarial seal that is the exclusive property of the notary and that may not be used by any other person. At the end of a notary's employment, an employer may not require the notary to surrender the seal.
- (b) The seal may be either a metal seal which leaves an embossed impression, ~~or a rubber stamp, or an electronic seal,~~ as defined in 49 O.S., § 5 and OAC 655:25-1-8.
- (c) A notary shall authenticate all official acts with this seal. The seal ~~impression~~ shall appear near the notary's official signature on a notarial certificate.

655:25-5-3. Lost journal or stolen seal

- (a) **Notification.** ~~Within 10 days after~~Upon the loss or theft of ~~the journal or seal,~~ the notary shall ~~deliver~~submit to the Secretary of State a written notice of the loss or theft and the date the seal was first discovered missing, and inform the appropriate law enforcement agency in the case of theft.
- (b) **Replacement.** When purchasing a replacement seal, it is advisable to have a character or symbol added to the seal to distinguish it from the missing one. ~~Within 10 days after~~After purchasing a new seal, the notary shall ~~deliver~~submit to the Secretary of State a written notice advising that a replacement seal has been purchased, the date of purchase, and, if applicable, the distinguishing character or symbol added.

SUBCHAPTER 7. CHANGE OF NAME OR ADDRESS

655:25-7-1. Change of address

Within 30 days after the change of a notary's Oklahoma residence address or Oklahoma employment address if a non-resident, the notary shall submit to the Secretary of State written notification of the new address [49 O.S., §11].

655:25-7-2. Change of name

If a notary's name changes in the middle of the commission term, the notary may:

- (1) continue to use the former name until the current commission expires; or
- (2) apply for a new commission, obtain and file a new bond and seal, along with official signature and oaths, and pay applicable fees [49 O.S., §11 and this Chapter].

SUBCHAPTER 11. REMOTE ONLINE NOTARIZATION

625:25-11-1. Purpose

The purpose of this Subchapter is to establish the procedures necessary to implement the Oklahoma Remote Online Notary Act, 49 O.S., §§ 201 through 214.

655:25-11-2. Definitions

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

"Communication technology" means an electronic device or process that allows a notary public and a remotely located individual to communicate with each other by sight and sound [49 O.S., § 202(1)].

"Credential analysis" means a process or service that meets the standards under Section 655:25-11-5(a)(1), through which a third person affirms the validity of an identification credential through review of public or private data sources [49 O.S., § 202(2)].

"Dynamic knowledge-based authentication assessment" means an identity assessment of a remotely located individual that is based on a set of questions formulated from public or private data sources for which the individual has not provided a prior answer.

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities [49 O.S., § 202(3)].

"Electronic record" means information that is created, generated, sent, communicated, received or stored by electronic means [49 O.S., § 202(4)].

"Electronic seal" means an electronic image attached to or logically associated with an electronic record that conforms to the requirements of Section 655:25-11-4(b).

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record [49 O.S., § 202(6)].

"Identification credential" means a non-expired passport, driver's license, or form of government-issued identification document that contains the signature and photograph of the individual.

"Identity proofing" means a process or service that meets the standards under Section 655:25-11-5(a)(2) by which a third person provides a notary public with the means to verify the identity of a remotely located individual through

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review of personal information from public or private data sources.

"Notary public" means an individual commissioned to perform notarial acts by the Secretary of State.

"Person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity [49 O.S., § 202(11)].

"Personal knowledge" means through dealings sufficient to provide reasonable certainty that the individual has the identity claimed, and "personally known" and "personally knows" have corresponding meanings [49 O.S., § 202(12)].

"Principal" means a remotely located individual whose electronic signature is notarized in a remote online notarization, whether in an individual or representative capacity, or who makes an oath, affirmation or acknowledgment in a remote online notarization, other than in the capacity of a witness [49 O.S., § 202(13)].

"Remote online notarization" or "remote online notarial act" means a notarial act performed for a remotely located individual facilitated by communication technology under this Subchapter.

"Remote presentation" means transmission to a notary public through communication technology of an image of a remotely located individual's identification credential that is of sufficient quality to enable the notary public to identify the individual and to perform credential analysis [49 O.S., § 202(15)].

"Remotely located individual" means an individual who is not in the physical presence of the notary public who performs a remote online notarization [49 O.S., § 202(16)].

655:25-11-3. Registration to perform remote online notarizations

(a) A notary public is authorized to perform remote online notarizations during the term of the notary public's commission if the notary public has registered under subsection (b) of this Section and received written authorization from the Secretary of State under subsection (f) of this Section.

(b) Registration under this section shall be by written application to the Secretary of State that includes the following information:

- (1) the applicant's full legal name;
- (2) the exact name under which the applicant is commissioned as a notary public, if different from the legal name;
- (3) the applicant's commission number as a notary public;
- (4) a description of the technologies or devices that the applicant intends to use to perform remote online notarizations;
- (5) the name, address, and website URL of any vendors or other persons that will directly supply to the notary public the technologies that the notary public intends to use; and

(6) a statement that the technologies identified in the application are compliant with 49 O.S., § 201 through 214 and with this subchapter.

(c) The application must be submitted electronically to the Secretary of State as provided by information posted on the Secretary of State's website.

(d) If, during the term of a notary public's commission, the notary public intends to use the technologies of another vendor or person than those identified in subsection (b)(3) of this Section, then an additional application identifying such other vendors or other persons must be submitted to the Secretary of State as provided in this section.

(e) Each application submitted under this section must be accompanied by a fee of Twenty-Five Dollars (\$25.00) [49 O.S., § 209].

(f) If the technology identified by the notary public in the notification required under subsection (b) of this Section conforms to the standards adopted under this subchapter and the notary public satisfies the requirements of this Section, the Secretary of State shall approve the use of the technology and issue to the notary public written authorization to perform remote online notarizations during the term of the notary public's commission.

(g) The Secretary of State may disapprove the application and reject the notary public's request for authorization for the following reasons:

- (1) the applicant is not currently commissioned as a notary public in the State of Oklahoma;
- (2) any reason for which the Secretary of State may deny, refuse to renew or revoke a commission under 49 O.S., § 12(A);
- (3) the notary public's failure to comply with Title 49 of the Oklahoma Statutes or this Subchapter;
- (4) any information required under subsection (b) of this Section is missing, inaccurate or incomplete; or
- (5) the technology identified by the notary public does not conform to the standards adopted under this Subchapter.

(h) The Secretary of State shall notify the applicant of approval or disapproval of the application within thirty (30) days after receipt. If the application is disapproved, the Secretary of State shall state the reasons for the disapproval.

(i) The renewal of the commission of a notary public who has previously received authorization to perform remote online notarizations under this Section does not constitute renewal of such authorization. A notary public who wishes to perform remote online notarizations after renewal of a prior commission must submit another application for registration under this Section.

(j) A notary public's authorization to perform remote online notarizations terminates if:

- (1) the notary public's name changes during the term of the notary public's commission [49 O.S., § 204(G)(1)]; and
- (2) the notary public elects to use the notary public's new name under a new commission [49 O.S., § 204(G)(2)].

(k) Nothing herein shall be construed to prohibit a notary public from receiving, installing, or using a hardware or software update to the technologies that the notary public identified [49 O.S., § 204(H)] under subsection (b) of this Section if the hardware or software update does not result in technologies that are materially different from the technologies that the notary public identified [49 O.S., § 204(H)].

655:25-11-4. Electronic signatures and electronic seals

(a) **Tamper-evident technology.** A notary public must select one or more tamper-evident technologies to perform remote online notarizations. A person may not require a notary public to use a technology that the notary public has not selected. The tamper-evident technology must consist of a digital certificate complying with the X.509 standard adopted by the International Telecommunication Union on October 14, 2016, or a similar industry-standard technology. A notary public must attach or logically associate the notary public's electronic signature and electronic seal to an electronic record that is the subject of a notarial act by use of the digital certificate. A notary public may not perform a remote online notarization if the digital certificate:

- (1) has expired;
- (2) has been revoked or terminated by the issuing or registering authority;
- (3) is invalid; or
- (4) is incapable of authentication.

(b) **Electronic seal.** A notary public must use the same unique electronic seal for all remote online notarizations. When affixed to an electronic record, an electronic seal must be clear, legible and photographically reproducible. An electronic seal is not required to be within a minimum or maximum size when photographically reproduced on an electronic record. An electronic seal used for remote online notarizations must substantially conform to the following design: a rectangular or circular seal with the notary public's name exactly as indicated on the notary's commission, the words "State of Oklahoma" and "Notary Public", the notary public's commission number, and the date of expiration of the notary public's commission [49 O.S., § 202(5)].

(c) **Security of electronic signature and electronic seal.** A notary public's electronic seal must remain within the exclusive control of the notary public, including control by means of use of a password or other secure method of authentication. A notary public may not allow any other individual to use his or her electronic seal to perform a notarial act. A notary public shall not disclose any access information used to affix the notary public's electronic signature or electronic seal to electronic records, except:

- (1) when requested by the Secretary of State or a law enforcement officer;
- (2) when required by court order or subpoena; or
- (3) pursuant to an agreement to facilitate notarial acts with a vendor or other technology provider identified in Section 655:25-11-3.

(d) **Termination of commission.** Upon resignation, revocation or expiration of the notary's commission, the notary public's electronic seal (including any coding, disk, digital certificate, card, software, or password that enables the notary public to attach or logically associate the electronic seal to an electronic record) must be destroyed or disabled to prohibit its use by any other person.

(e) **Notifications upon theft, vandalism or misuse.** A notary public shall immediately notify an appropriate law enforcement agency and the Secretary of State on actual knowledge of the theft or vandalism of the notary public's electronic signature, electronic seal or digital certificate. A notary public shall immediately notify the an appropriate law enforcement agency and Secretary of State on actual knowledge of the unauthorized use by another person of the notary public's electronic signature, electronic seal or digital certificate provider identified in Section 655:25-11-3.

655:25-11-5. Standards for identity verification

(a) **Multi-factor authentication.** If a notary public does not have satisfactory evidence of the identity of a principal under subsection (b) of this Section, the notary public must reasonably verify the principal's identity through a multi-factor authentication procedure as provided in this subsection. The procedure shall analyze the principal's identification credential that is the subject of remote presentation against trusted third-person data sources, bind the principal's identity to the individual following successful dynamic knowledge-based authentication assessment, and permit the notary public visually to compare the identification credential and the principal. The analysis of the identification credential and the dynamic knowledge-based authentication assessment shall conform to the following requirements:

(1) **Credential analysis.** The analysis of the identification credential that is the subject of remote presentation must use public or private data sources to confirm its validity and shall, at a minimum:

- (A) use automated software processes to aid the notary public in verifying the identity of each principal;
- (B) require that the identification credential passes an authenticity test, consistent with sound commercial practices that use appropriate technologies to confirm the integrity of visual, physical or cryptographic security features and to confirm that the identification credential is not fraudulent or inappropriately modified;
- (C) use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identification credential details; and
- (D) enable the notary public visually to compare for consistency the information and photograph on the identification credential and the principal as viewed by the notary public in real time through communication technology.

(2) **Identity proofing.** The notary public must perform an identity proofing procedure that consists of a dynamic

knowledge-based authentication assessment. The assessment is successful if it meets the following requirements:

- (A) The principal must answer a quiz consisting of a minimum of five questions related to the individual's personal history or identity formulated from public or private data sources;
 - (B) Each question must have a minimum of five possible answer choices;
 - (C) At least 80% of the questions must be answered correctly;
 - (D) All questions must be answered within two minutes;
 - (E) If the principal fails the first attempt, the principal may retake the quiz one time within 24 hours;
 - (F) During a retake of the quiz, a minimum of 40% of the prior questions must be replaced;
 - (G) If the principal fails the second attempt, the principal is not allowed to retry with the same online notary public within twenty-four (24) hours of the second failed attempt; and
 - (H) The notary public must not be able to see or record the questions or answers.
- (b) **Other methods of identity verification.** A notary public has satisfactory evidence of the identity of a principal if the notary public has personal knowledge of the identity of the principal or if the principal is identified by oath or affirmation of a credible witness in accordance with the following requirements:
- (1) To be a credible witness, an individual must have personal knowledge of the principal.
 - (2) The notary public must have personal knowledge of the credible witness or verify the identity of the credible witness by multi-factor authentication in accordance with subsection (a).
 - (3) A credible witness may be a remotely located individual if the notary public, credible witness, and principal can communicate by using communication technology.

655:25-11-6. Standards for communication technology

The communication technology used by a notary public in the performance of remote online notarizations must conform to the following requirements:

- (1) **Audio-video feeds.** Communication technology must provide for synchronous audio-video feeds of sufficient video resolution and audio clarity to enable the notary public and all remotely located individuals to see and speak with each other. The process must provide a means for the notary public reasonably to confirm that an electronic record before the notary public is the same electronic record in which the principal made a statement or on which the principal executed an electronic signature.
- (2) **Security measures.** Communication technology must provide reasonable security measures to prevent unauthorized access to:
 - (A) the live transmission of the audio-visual feeds;
 - (B) the methods used to perform the identify verification process under Section 655:25-11-5; and

(C) any electronic record in which the principal made a statement or on which the principal executed an electronic signature.

- (3) **Work flow.** If any remotely located individual must exit the workflow, the individual must restart the identify verification process under Section 655:25-11-5 from the beginning.

655:25-11-7. Certificate of notarial act for remote online notarizations

- (a) The certificate of notarial act for a remote online notarization must indicate that the notarial act was a remote online notarial act performed by means of communication technology.
- (b) A form of certificate for a remote online notarization satisfies the requirement of subsection (a) of this Section if it is in the form provided by applicable law and contains a statement substantially as follows: "This remote online notarization involved the use of communication technology."
- (c) A short form certificate provided in 49 O.S., § 119, or an acknowledgment form prescribed in 60 O.S., § 178.11, satisfies the requirement of subsection (a) of this Section if it is in substantially one of the forms provided in Appendix A of this Chapter.

655:25-11-8. Record retention and depositories

- (a) A notary public must retain an electronic journal and an audio-visual recording created under 49 O.S., § 206 in a computer or other electronic storage device that protects the journal and recording against unauthorized access by password or cryptographic process. The recording must be created in an industry-standard audio-visual file format and must not include images of any electronic record on which the remotely located individual executed an electronic signature.
- (b) An electronic journal must be retained for at least ten (10) years after the last notarial act chronicled in the journal. An audio-visual recording must be retained for at least ten (10) years after the recording is made [49 O.S., § 206].
- (c) A notary public must take reasonable steps to ensure that a backup of the electronic journal and audio-visual recording exists and is secure from unauthorized use.
- (d) On the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of an electronic journal or audio-visual recording must:
 - (1) comply with the retention requirements of this Section;
 - (2) transmit the journal and recording to one or more depositories under subsection (e); or
 - (3) transmit the journal and recording in an industry-standard readable data storage device to the Secretary of State.
- (e) A notary public, a guardian, conservator, or agent of a notary public, or a personal representative of a deceased notary public may, by written contract, engage a third person to act as a depository to provide the storage required by subsection (a) of this Section. The contract shall:

(1) enable the notary public, the guardian, conservator, or agent of the notary public, or the personal representative of the deceased notary public to comply with the retention requirements of this Section even if the contract is terminated; or

(2) provide that the information will be transferred to the notary public, the guardian, conservator, or agent of the notary public, or the personal representative of the deceased notary public if the contract is terminated.

APPENDIX A. CONTENTS AND SUFFICIENCY OF CERTIFICATES OF REMOTE ONLINE NOTARIAL ACTS [NEW]

(a) *For an acknowledgment in an individual capacity:*

State of Oklahoma

County of _____

This record was acknowledged before me by means of communication technology on (date) by (name(s) of person(s)).

(Signature of notary public)

Notary Public

(Electronic seal)

(My commission expires: _____)

(b) *For an acknowledgment in a representative capacity:*

State of Oklahoma

County of _____

This record was acknowledged before me by means of communication technology on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom the electronic record was executed).

(Signature of notary public)

Notary Public

(Electronic seal)

(My commission expires: _____)

(c) *For a verification upon oath or affirmation:*

State of Oklahoma

County of _____

Signed and sworn to (or affirmed) before me by means of communication technology on (date) by (name(s) of person(s) making statement).

(Signature of notary public)

Notary Public

(Electronic seal)

(My commission expires: _____)

(d) *For witnessing or attesting a signature:*

State of Oklahoma
County of _____

Signed (or attested) before me by means of communication technology on (date) by (name(s) of person(s)).

(Signature of notary public)
Notary Public
(Electronic seal)
(My commission expires: _____)

(e) *Certificate of acknowledgement executed for a corporation:*

State of Oklahoma
County of _____

The foregoing instrument was acknowledged before me by means of communication technology this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging), a (state or place of incorporation) corporation, on behalf of the corporation.

(Signature of notary public)
Notary Public
(Electronic seal)
(My commission expires: _____)

(f) *Certificate of acknowledgement executed for a partnership:*

State of Oklahoma
County of _____

The foregoing instrument was acknowledged before me by means of communication technology this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership.

(Signature of notary public)
Notary Public
(Electronic seal)
(My commission expires: _____)

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(g) *Certificate of acknowledgement executed for an individual acting as principal by an attorney-in-fact:*

State of Oklahoma
County of _____

The foregoing instrument was acknowledged before me by means of communication technology this (date)
by (name of attorney-in-fact) as attorney-in-fact on behalf of (name of principal).

(Signature of notary public)
Notary Public
(Electronic seal)
(My commission expires: _____)

(h) *Certificate of acknowledgement executed by any public officer, trustee, or personal representative:*

State of Oklahoma
County of _____

The foregoing instrument was acknowledged before me by means of communication technology this (date)
by (name and title of position).

(Signature of notary public)
Notary Public
(Electronic seal)
(My commission expires: _____)

(i) *Certificate of acknowledgement executed by a public trust:*

State of Oklahoma
County of _____

The foregoing instrument was acknowledged before me by means of communication technology this (date)
by (name), President or Chair of (name of trust), a public trust, on behalf of the trust.

(Signature of notary public)
Notary Public
(Electronic seal)
(My commission expires: _____)

[OAR Docket #20-428; filed 6-26-20]

**TITLE 655. SECRETARY OF STATE
CHAPTER 35. CERTIFICATION
AUTHORITIES**

[OAR Docket #20-429]

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RULES:

Subchapter 1. General Provisions [NEW]

655:35-1-1. Purpose [NEW]

Subchapter 3. Reciprocity [NEW]

655:35-3-1. Reciprocity [NEW]

655:35-3-2. Lapse of out-of-state license [NEW]

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These permanent rules establish certification authority reciprocity with states, U.S. territories, and foreign jurisdictions, as authorized by 12A O.S., § 15-121. The permanent rules are needed for the implementation of the Remote Online Notary Act [SB 915 (2019)], which became effective January 1, 2020. Certification authorities issue digital certificates, which are required during the remote online notarization process.

These permanent rules will supersede the emergency rules that were approved by the Governor and effective on December 18, 2019.

CONTACT PERSON:

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chris.coffman@sos.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 1. GENERAL PROVISIONS

655:35-1-1. Purpose

This Chapter establishes the procedures used by the Oklahoma Secretary of State to implement the provisions of 12A O.S., § 15-121(g)-(h).

SUBCHAPTER 3. RECIPROCITY

655:35-3-1. Reciprocity

Any certification authority that is registered in at least one state, U.S. territory, or other foreign jurisdiction may file with the Secretary of State proof of such registration. If the registration is current, then the Secretary of State shall allow the certification authority to operate in this state.

655:35-3-2. Lapse of out-of-state license

(a) If or when the out-of-state registration lapses, the certification authority may no longer operate in this state.

(b) If the out-of-state registration is reinstated, the certification authority may file proof of reinstatement with the Secretary of State, and the certification authority may again operate in this state.

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**TITLE 660. DEPARTMENT OF SECURITIES
CHAPTER 2. ORGANIZATION AND
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660:2-1-1. Purpose [AMENDED]

660:2-1-3. Definitions [AMENDED]

Subchapter 5. Authority and Actions of Administrator

660:2-5-1. Official actions [AMENDED]

660:2-5-4. Summary orders [REVOKED]

Subchapter 7. Investigations

660:2-7-3. Investigative processes [AMENDED]

Subchapter 9. Individual Proceeding Practices and Procedures

660:2-9-1. Hearings in general [AMENDED]

660:2-9-3. Prehearing proceedings and processes [AMENDED]

660:2-9-4. Authority to subpoena witnesses [AMENDED]

660:2-9-5. Representation [AMENDED]

660:2-9-6. Conduct of individual proceeding [AMENDED]

Subchapter 11. Procedures for Inspecting and/or Copying Public Records

660:2-11-4. Hours of inspection [AMENDED]

660:2-11-5. Procedures for inspection of records [AMENDED]

660:2-11-6. Procedures for copying records [AMENDED]

660:2-11-7. Fees [AMENDED]

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n/a

GIST/ANALYSIS:

The proposed rule amendments conform the rules with the Administrative Procedures Act of Oklahoma, clarify and streamline procedures for administrative hearings, adjust the hours for inspection of agency documents, correct statutory cites, and correct grammatical errors.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

660:2-1-1. Purpose

(a) The provisions of this Chapter set forth the organization and procedural rules governing the Department of Securities and have been adopted for the purpose of complying with 75 O.S., Section 302.

(b) The provisions of this Chapter relating to investigations and hearings shall apply to all investigations and hearings conducted by the Department in the enforcement of the Business Opportunity Act, the Land Sales Act, and the Securities Act, ~~and the Take over Act.~~

660:2-1-3. Definitions

Unless the context clearly indicates otherwise, or unless defined in this Section, terms used in this Chapter, if defined in the Oklahoma Uniform Securities Act of 2004, the Oklahoma Land Sales Code, or the Oklahoma Business Opportunity Sales Act ~~or the Oklahoma Take over Disclosure Act of 1985~~ shall have the meanings set forth in such acts. The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Administrator" means the Administrator of the Department of Securities.

"Business Opportunity Act" means the most recent codification of the Oklahoma Business Opportunity Sales Act in Title 71 of the Oklahoma Statutes.

"Commission" means the Oklahoma Securities Commission.

"Department" means the Oklahoma Department of Securities.

"Hearing Officer" means a person who has been duly ~~appointed~~ designated by the Administrator to hold hearings and, as required, render proposed orders.

"Land Sales Act" means the most recent codification of the Oklahoma Subdivided Land Sales Code in Title 71 of the Oklahoma Statutes.

"Securities Act" means the most recent codification of the Oklahoma Uniform Securities Act of 2004 in Title 71 of the Oklahoma Statutes.

~~**"Take over Act"** means the most recent codification of the Oklahoma Take over Disclosure Act of 1985 in Title 71 of the Oklahoma Statutes.~~

SUBCHAPTER 5. AUTHORITY AND ACTIONS OF ADMINISTRATOR

660:2-5-1. Official ~~actions~~ actions

(a) All ~~officials~~ official acts of the Administrator shall be evidenced by a written record, and all final orders, decisions, opinions, rules and other written statements of policy or interpretations formulated, adopted or used in the discharge of the function of the Administrator shall be available for public inspection.

(b) Official action of the Administrator shall not be bound or be prejudiced by any informal statement made or opinion given by the Administrator, Commission, or employees of the Department ~~of Securities.~~

660:2-5-4. Summary orders [REVOKED]

~~The Administrator may issue summary orders pursuant to the provisions set forth in:~~

- ~~(1) Sections 1-306(D), 1-411.F or 1-604 of the Securities Act;~~
- ~~(2) Section 814(D) of the Business Opportunity Act;~~
- ~~(3) Sections 628(D), 634(C), or 660 of the Land Sales Act; or~~
- ~~(4) Subsection (D) of Section 453 of the Take over Act.~~

SUBCHAPTER 7. INVESTIGATIONS

660:2-7-3. Investigative processes

(a) **Authority.** Investigations under the statutes administered by the Administrator shall be conducted by representatives designated and duly authorized for this purpose. Such representatives are authorized to exercise and perform the duties of their office in accordance with the statutes of the state of Oklahoma and the regulations of the Administrator, including administration of oaths and affirmations, in any matter under investigation by the Administrator. Nothing in this section shall prohibit the Administrator or ~~his~~ the Administrator's designee from expanding or restricting the scope of any investigation at any time during an investigation.

(b) **Investigative hearings.** Investigative hearings, as distinguished from hearings in individual proceedings, may be conducted in the course of any investigation undertaken by the Administrator, including inquiries initiated for the purpose of determining whether or not a respondent is complying with an order of the Administrator. Investigative hearings may be held before the Administrator, ~~or his~~ the Administrator's designee for the purpose of hearing the testimony of witnesses and receiving documents and other data relating to any subject under investigation. Such hearings shall be non-public.

(c) **Subpoena to testify or produce records.** While the Administrator encourages voluntary cooperation in investigations, the Administrator, ~~or his~~ or the Administrator's designee, at any stage of any investigation, may issue a subpoena ordering the person named therein to appear before a designated representative at a designated time and place, including the offices of the Department, to ~~provide testimony by deposition, testify, to file a sworn statement or affidavit, and/or to produce documentary evidence relating to any matter under investigation. Such testimony shall only be reduced to writing or otherwise recorded in any manner by the person taking the testimony, or under his direction.~~

(1) Testimony shall only be reduced to writing or recorded at the direction of the Department.

(2) Documents required by a subpoena shall be produced in the manner, form, and time frame instructed therein.

(d) **Subpoena to grant access.** The Administrator may issue a subpoena to grant access to, to examine, and to copy documents, books or other records of any person being investigated.

(e) **Service.** Subpoenas shall be served in the manner provided by law.

(f) **Written examination.** The Administrator or ~~his~~ the Administrator's designee may issue an order requiring persons to file a report or statement, or answers in writing and under oath to specific questions, relating to any matter under investigation.

(g) **Rights of witness.** Any person under investigation, compelled to furnish information or documentary evidence, shall be advised of the purpose and scope of the investigation, subject to the confidentiality requirements provided by law. Any person required to testify shall be entitled to review a copy of the transcript of ~~his~~ the person's own testimony, if transcribed, at the offices of the Department ~~of Securities~~. Any person required to submit documentary evidence shall be entitled to retain or, on payment of lawfully prescribed cost, to procure a copy of any document produced by such person. Any party compelled to testify or to produce documentary evidence may be accompanied and advised by counsel, provided that such counsel is duly licensed to practice law by the Supreme Court of Oklahoma. Such counsel may question such person briefly at the conclusion of the examination to clarify any of the answers such person has given.

(h) **Confidentiality.** Information or documents obtained by the Administrator and subpoenas issued in connection with an investigation shall be kept confidential and shall not be made

available to the public, unless expressly ordered by the Administrator, or disclosed pursuant to the provisions of Subchapter 9 of this Chapter or as otherwise provided by law.

(i) **Duty to Supplement.** Any person who has responded to a subpoena must supplement its response in a timely manner if the person learns that in some material respect the disclosure or response is incomplete.

SUBCHAPTER 9. INDIVIDUAL PROCEEDING PRACTICES AND PROCEDURES

660:2-9-1. Hearings in general

(a) **Authority.** Prior to the issuance of a final order in an individual proceeding, all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall be in writing and advise the parties of their right to a hearing and their obligation to file an answer, the time period within which a hearing must be requested, and the effect of a failure to file an answer and to request a hearing.

(b) **Public hearing.** All hearings shall be open to the public but may not be recorded by the public or any respondent by any electronic means.

(c) **Hearings on summary orders.** The provisions of this Subchapter shall not apply to proceedings for summary orders. ~~The procedures for hearings on summary orders shall be those set forth in:~~

(1) ~~Sections 1-306(D), 1-411(F), or 1-604(B) of the Securities Act;~~

(2) ~~Section 814(D) of the Business Opportunity Act;~~

(3) ~~Sections 628(D), 634(C) or 660 of the Land Sales Act; and~~

(4) ~~Subsections (D) and (E) of Section 453 of the Take-over Act.~~

660:2-9-3. Prehearing proceedings and processes

(a) **Scheduling.** As soon as is practicable after ~~the request for hearing is received, but in no event later than thirty (30) days after the request for hearing is received,~~ a hearing has been scheduled, the Administrator, or the Hearing Officer, shall enter a scheduling order that is intended to expedite the disposition of the action and ~~insure~~ ensure the fair, orderly and efficient conduct of the proceedings. The parties shall confer in person or by telephone and attempt to prepare a single agreed scheduling order to submit to the Administrator or the Hearing Officer. The agreed, proposed scheduling order shall be submitted to the Administrator or the Hearing Officer no later than fifteen (15) days after the hearing has been scheduled. If the proposed scheduling order is acceptable to the Administrator, or the Hearing Officer, no scheduling conference need be held. If the parties are unable to agree to a single scheduling order, the parties shall each submit, no later than twenty (20) days after the hearing has been scheduled, a proposed scheduling order to the Administrator, or the Hearing Officer, who shall issue an appropriate scheduling order or, prior to issuing such order, hold a scheduling conference in person or by telephone. The scheduling order shall establish at least the following:

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- (1) a schedule of discovery;
- (2) any limitations to be placed on discovery;
- (3) a preliminary list identifying all witnesses, documents and exhibits intended to be utilized at the hearing;
- (4) identification of any expert witness intended to be called;
- (5) the date for exchanging the documents and exhibits intended to be utilized at the hearing and the final list identifying all witnesses intended to be called at the hearing; and
- (6) such other matters as may aid in the disposition of the matter.

(b) **Discovery.**

- (1) Discovery may be obtained by one or more of the following methods:

(A) A party may serve a written request on any other party requiring the party to produce, within fifteen (15) days, for inspection and copying, any documents or tangible items that are in the possession, custody or control of the party and relevant to the subject matter of the individual proceeding and are not privileged. The number of requests to produce or permit inspection shall not exceed thirty (30) in number except by agreement of the party being required to produce or by order of the Administrator; or Hearing Officer. All documents will be produced at the offices of the Department or at such other place as the parties may agree in writing.

(B) A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters relating to facts, the application of law to fact, or opinions about either; and the genuineness of any documents described in the request. Copies of documents shall be served with the request to admit unless they have been or are otherwise furnished or made available for inspection and copying. The number of requests to admit for each party shall not exceed thirty (30) in number except by agreement of the party being required to respond or by order of the Administrator; or the Hearing Officer. Each matter upon which an admission is requested shall be separately stated. The matter is admitted unless, within fifteen (15) days after service of the request, or within such shorter or longer time as the Administrator; or the Hearing Officer; may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter and signed by the party. If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify ~~his~~the answer or deny only a part of the matter of which an admission is requested, ~~he~~the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure

to admit or deny unless ~~he~~the party states that ~~he~~the party has made reasonable inquiry and that the information known or readily obtainable by ~~him~~the party is insufficient to enable ~~him~~the party to admit or deny. The grounds for an objection must be stated. A party may not object solely on the ground that the request presents a genuine issue for trial.

(C) A party may take the testimony of a witness by ~~oral~~ deposition at the expense of that party. A party desiring a transcript must make appropriate arrangements with the reporter or transcriber to order and pay for it. A party desiring to take the deposition of another party, or an employee thereof, shall serve written notice to the witness, or his counsel. The notice shall state the time and place for taking the deposition and shall be served at least three (3) days before the person is required to appear. A party desiring to take the deposition of a non-party witness shall serve the witness with a subpoena in accordance with 660:2-9-4. A copy of the notice or subpoena shall be served on all other parties to the proceeding by means specified in paragraph (h) below. Unless otherwise agreed by the parties or ordered by the Administrator or Hearing Officer, a deposition under this provision shall not last more than six (6) hours, exclusive of breaks, and shall be taken only between the hours of 8:00 a.m. and 5:00 p.m. on a day other than a Saturday or Sunday and on a day other than a legal holiday.

- (2) A party who has responded to a request for production or request to admit must supplement or correct its response:

(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the Administrator, or the Hearing Officer.

- (3) In addition to limitations on discovery set forth in a scheduling order or any law, regulation, or rule, discovery does not include:

(A) Non-public information or documents from the personnel file of any Department employee;

(B) Non-public information or documents relating to any investigation conducted by the Department against unrelated parties;

(C) Non-public information or documents relation to any action brought by the Department against unrelated parties;

(D) Information or documents relation to any examination conducted by the Department of unrelated parties;

(D) Information or documents relations to any license applications or determinations made by the Department of unrelated parties; or

(F) Depositions of Department personnel.

- (c) **Motions in general.**

- (1) Unless otherwise permitted by these rules or by the Administrator, or the Hearing Officer, motions and responses thereto shall be served on all parties and shall:
 - (A) be made in writing and shall not exceed twenty (20) pages;
 - (B) state concisely the ~~question~~ questions(s) to be determined; ~~and be accompanied by any necessary supporting documentation; and~~
 - ~~(C) be served on all parties.~~
 - (C) state with particularity the grounds therefore and the relief or order sought; and
 - (D) be accompanied by a concise brief or a list of authorities upon which movant relies.
- (2) A response to a written motion shall be filed within fifteen (15) days after receipt of the motion but no later than one day prior to the date and time of the hearing. A response to a written motion shall not exceed twenty (20) pages. A reply to a response to a written motion may be filed within five (5) days after receipt of the response but no later than the date and time of the hearing. A reply to a response to a written motion shall not exceed five (5) pages.
- (3) The Administrator, or the Hearing Officer, may allow oral argument if it appears necessary to the Administrator, or the Hearing Officer, for a fuller understanding of the issues presented.
- (4) The filing or pendency of a motion does not alter or extend any time period prescribed by this Subchapter or by an order of the Administrator, or the Hearing Officer.
- (d) **Motions for summary decision.** A party may move for summary decision as to any substantive issue in the case. The Administrator, or the Hearing Officer, may issue a summary decision if he finds that there is no genuine issue as to any material fact and that the moving party is entitled to prevail as a matter of law.
- (e) **Prehearing conference.**
 - (1) Upon the request of a party or when the Administrator, or the Hearing Officer, believes it necessary or appropriate, a prehearing conference shall be held, as close to the time of hearing as is reasonable under the circumstances, to address the following matters:
 - (A) simplification of issues;
 - (B) the final list of witnesses and exhibits to be utilized at the hearing;
 - (C) admissions and stipulations of fact;
 - (D) stipulations regarding admission and authenticity of documents;
 - (E) requests for official notice;
 - (F) discovery disputes;
 - (G) pending motions; and
 - (H) other matters that will promote the orderly and prompt conduct of the hearing.
 - (2) At the conclusion of the prehearing conference, a ruling or order shall be entered reciting the action taken. The order shall control the subsequent course of the ~~action~~ proceeding unless modified by a subsequent order. The order shall be modified only to prevent manifest injustice.
- (f) **Failure to participate, appear, comply or cooperate.** A party's failure to participate in good faith in the preparation of a scheduling order or prehearing conference order; failure to comply with a scheduling order or prehearing conference order; failure to comply with or cooperate in discovery; or failure to appear at, substantially prepare for, or participate in good faith in, any hearing or conference, may result in any of the following sanctions:
 - (1) striking of any pleading in whole or in part;
 - (2) an order prohibiting a party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
 - (3) an order directing that designated facts be taken as established for purposes of the proceeding;
 - (4) staying the proceeding;
 - (5) default judgment; or
 - (6) such other order as the Administrator, or the Hearing Officer, may deem just and appropriate.
- (g) **Post prehearing conference.** If additional exhibits are discovered after the prehearing conference order is issued or after the date final documents and exhibits are exchanged, the party intending to use them shall immediately notify all other parties and furnish copies of the additional exhibits to such parties. If additional witnesses are discovered, all other parties shall be notified immediately and furnished the nature of the testimony along with the names and addresses of the witnesses. These additional exhibits or the testimony of the additional witnesses shall not be admitted at the hearing without the agreement of all parties or without a showing to the Administrator, or the Hearing Officer, that manifest injustice would be created if the exhibit or witness testimony were not permitted.
- (h) **Service and filing of papers.** Service of papers upon a party shall be made by personal delivery, regular first-class mail, facsimile transmission or electronic mail. All papers required to be served by a party shall be filed with the Administrator ~~within the applicable time for service~~ in accordance with the scheduling order. When a Hearing Officer is appointed, a person making a filing with the Administrator shall promptly provide to the Hearing Officer a copy of such filing. Papers filed with the Administrator shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service and the mailing address, facsimile telephone number or electronic mail address to which service was made, if not made in person.
- (i) **Signature and certification.** Every filing of a party represented by counsel shall be signed by at least one counsel of record and shall state ~~that counsel's business name, bar number, address, email address, and telephone number.~~ the filing and state his the party's name, residential address, email address, and telephone number on every filing. The signature of counsel or a party shall constitute a certification that:
 - (1) the person signing the filing has read the filing;
 - (2) to the best of his knowledge, information, and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the filing is not made for any improper

purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication; and

(3) ~~If~~ a filing is not signed, the Administrator, or the Hearing Officer, shall strike the filing, unless it is signed promptly after the omission is called to the attention of the party making the filing.

(j) **Computation of time.** A paper is filed when it is received by the Administrator. Unless otherwise specifically provided by ~~the Securities Act or~~ this Subchapter, computation of any time period prescribed by this Subchapter, or by an order of the Administrator, or the Hearing Officer, begins with the first day following the act or event that initiates the time period. The last day of the time period so computed is included unless it is a Saturday, Sunday, state holiday, or any other day when the Department's office is not open for public business, in which event the period runs until the end of the next business day. If a notice or other filing is served by mail and the party served is entitled or required to take some action within a prescribed time period after service, the date of mailing is the date of service, and three (3) days shall be added to the prescribed time period.

660:2-9-4. Authority to subpoena witnesses

(a) Subpoenas.

(1) Any party to an individual proceeding shall have the right to have subpoenas issued to require the attendance and testimony of witnesses at a designated time and place, or to require the production of documents and tangible items in the possession or under the control of the witness at a designated time and place. A party requesting the issuance of a subpoena shall submit the proposed subpoena in writing to the Administrator or the Hearing Officer. The proposed subpoena shall contain the name and address of the person to be subpoenaed; the name, bar number, address, email address, and telephone number of counsel of record, or if the party is not represented, the name, address, email address, and telephone number of the party requesting the subpoena; and if the production of documents or tangible items is sought, a particular description of such documents or tangible items. Where it appears to the Administrator, or the Hearing Officer, that the subpoena sought may be unreasonable, oppressive, excessive in scope, unduly burdensome, or not relevant, ~~he the Administrator or Hearing Officer may, in his the Administrator's or Hearing Officer's~~ discretion, as a condition precedent to the issuance of the subpoena, require the party seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. If after consideration of all the circumstances, the Administrator, or the Hearing Officer, determines that the subpoena or any of its terms is unreasonable, oppressive, excessive in scope, unduly burdensome or not relevant, ~~he the Administrator or the Hearing Officer~~ may refuse to issue the subpoena, or issue the subpoena only upon such conditions as fairness requires.

(2) A party requesting the issuance of a subpoena to an out-of-state witness may be required to show the relevance

of the information sought and the witness' contacts with this state as a condition precedent to the issuance of the subpoena. If after consideration of all circumstances, the Administrator, or the Hearing Officer, determines that the information sought is not relevant or the witness' contacts with the state are insufficient to establish jurisdiction over the witness, ~~he the Administrator or the Hearing Officer~~ may refuse to issue the subpoena.

(b) **Service.** Service of a subpoena in this state shall be by personal delivery or by certified mail with a return receipt requested and delivery restricted to the person named in the subpoena. Service shall be made at least three (3) days before the person is required to appear. Service of a subpoena outside of this state shall be served by any person in any manner prescribed for the service of a subpoena in a civil action in the state in which the subpoena is being served. The party requesting the subpoena shall be responsible for, and bear the cost of, service.

(c) ~~Return of service.~~ **Proof of service of subpoena.** The party requesting the subpoena shall promptly file a return of service with the Administrator including a certificate signed by the person making service. The party requesting the subpoena shall promptly file a notice with the Administrator advising that service has been made upon the person named in the subpoena. If service is effected by mail, the notice shall include a copy of the return receipt reflecting delivery and acceptance by certified mail, return receipt requested and delivery restricted to the person named in the subpoena. If service is effected by personal delivery to the person named in the subpoena, the notice shall include a written, notarized affidavit affirming such delivery by the person making delivery.

(d) **Objection to subpoena.** A person who has been served with a subpoena may object to the subpoena by filing a motion to quash with the Administrator within ten (10) days of service of the subpoena or by the date the person is ordered to appear, whichever is earlier.

(e) Enforcement of subpoenas.

(1) If a person under subpoena fails to appear as required, or fails to produce the documents or tangible items set forth in the subpoena, a party may apply to the Administrator for enforcement of the subpoena.

(2) An application to the Administrator for enforcement of a subpoena shall be made immediately upon the failure to comply with the subpoena or within such other time period as the Administrator may establish.

(3) Upon a timely request by a party for enforcement of a subpoena, the Administrator may apply to the district court of Oklahoma County or the district court in any other county where service can be obtained to enforce the subpoena, ~~as authorized by the Securities Act.~~

(f) **Fees.** Non-party witnesses subpoenaed pursuant to this section shall be paid the same fees and mileage as are paid witnesses in the courts of the state of Oklahoma. Such fees shall be paid by the party requesting that the subpoena be issued ~~at the time within twenty (20) days after the witnesses' testimony is completed.~~

660:2-9-5. Representation

(a) **Right to counsel.** Any party shall have the right to appear in person and by counsel, provided, however, that such counsel representing the party must be duly licensed to practice law by the Supreme Court of Oklahoma. Such counsel may be present during the giving of evidence, ~~may~~ have a reasonable opportunity to examine and inspect all documentary evidence, ~~may~~ examine witnesses, and ~~may~~ present evidence ~~in his~~ on the client's behalf.

(b) **Notice of appearance.** An attorney representing a party shall promptly file a notice of appearance with the Administrator. The notice of appearance shall contain all of the following:

- (1) the attorney's name, address, email address, telephone number, and bar number;
- (2) the firm name, address, and telephone number if the attorney is a member of a firm; and
- (3) the name, address, email address, and telephone number of the person represented.

(c) **Service on attorney.** After a notice of appearance has been filed, service of all papers ~~may~~ shall be made upon the attorney ~~or firm~~ of record and shall be effective as service upon the person represented.

(d) **Withdrawal.** Any attorney who withdraws from representing a party must file a written notice of withdrawal with the Department and the Administrator or Hearing Officer and must serve the notice of withdrawal on all attorneys then of record and on all unrepresented parties. The notice must contain the effective date of the withdrawal, the current name, address, email address, and telephone number of each party who will no longer be represented, and, if known, the name of the person who will represent the party from that time forward. Withdrawal of a party's attorney after the service of a notice of hearing is not grounds for the continuance of the hearing unless good cause is shown.

660:2-9-6. Conduct of individual proceeding

(a) **Order of proceeding.** The hearing shall proceed as follows:

- (1) The Administrator; or the Hearing Officer; shall call the hearing to order;
- (2) the Administrator; or the Hearing Officer; shall briefly explain the purpose and nature of the hearing;
- (3) the Administrator; or the Hearing Officer; may allow the parties to present preliminary matters;
- (4) the Administrator; or the Hearing Officer; may allow the parties to make opening statements;
- (5) the Administrator; or the Hearing Officer; shall state the order of presentation of evidence;
- (6) witnesses shall be sworn or put under affirmation to tell the truth; and
- (7) the Administrator; or the Hearing Officer; may allow the parties to present summations and closing argument.

(b) **Rules of evidence.** The rules of evidence need not be strictly followed or observed by the Administrator; or the Hearing Officer; during the hearing in order to obtain a full and fair disclosure of facts relevant to the matters at issue. However, the admissibility of evidence shall be governed by

the provisions of Section 310 of the Administrative Procedures Act.

(c) **Official notice.** ~~Notice may be taken by the~~ The Administrator; or the Hearing Officer; may take official notice of judicially cognizable general, technical, or scientific facts. In addition, notice may be taken of generally recognized practices ~~and~~ procedures ~~and~~ facts relating to the ~~secu-~~ ri- ~~ties~~ applic- industry. Parties shall be notified either before or during the hearing of the material noticed and they shall be afforded an opportunity to contest the material so noticed. ~~The Administrator, Administrator's or the Hearing Officer, Of-~~ ficer's shall utilize his experience, technical competence, and specialized knowledge may be used in evaluating the evidence presented.

(d) **Examination of witnesses.**

(1) Witnesses shall testify under oath or affirmation. If the Administrator; or the Hearing Officer, determines that a witness is hostile or unresponsive, the Administrator; or the Hearing Officer; may authorize the party calling the witness to proceed as if the witness were under cross-examination.

(2) A party may conduct direct examination or cross-examination of a witness ~~without strict adher-~~ ence to formal rules of evidence, particularly, the rules on ~~hearsay,~~ in order to obtain a full and fair disclosure of facts relevant to the matters at issue.

(3) Upon request by any party, the Administrator; or the Hearing Officer; may exclude witnesses other than parties from the hearing room when those witnesses are not testifying. A party that is not a natural person may designate an individual as its representative to remain in the hearing room, even though the individual may also be a witness. An expert witness who is to render an opinion based on the testimony given at the hearing may remain in the hearing room during all testimony. The Administrator; or the Hearing Officer; may order the witnesses, parties, their counsel, and any person under their direction not to disclose to any sequestered witness the substance of the testimony, exhibits, or other evidence introduced during the absence of the witness.

(4) No witness shall testify by telephone or other electronic means unless by agreement of the parties or by order of the Administrator or the Hearing Officer.

(5) The Administrator or the Hearing Officer may question any witness provided that all parties shall have the right of cross-examination of those witnesses.

SUBCHAPTER 11. PROCEDURES FOR INSPECTING AND/OR COPYING PUBLIC RECORDS

660:2-11-4. Hours of inspection

All public records of the Department shall be available for inspection during the regular business hours of the Department. Such hours shall be 8:00 a.m. to ~~5:00 p.m.~~ 4:30 p.m., Monday through Friday, except legal holidays.

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660:2-11-5. Procedures for inspection of records

(a) **Requests for inspection.** To inspect a public record in the possession of the Department, the person requesting the record shall execute a Form OAD 25 - REQUEST FOR RECORD INSPECTION and deliver it to the Record Custodian responsible for the requested record designated in 660:2-11-3. ~~Such request shall be accompanied by the fees set forth in 660:2-11-7.~~ All record inspection forms must be completed by the person requesting the record and signed by the individual making the request. The Record Custodian may demand reasonable identification of any person requesting a record.

(b) **Place of inspection.** All inspections of public records shall be performed in the offices of the Department under the supervision of the Record Custodian or a designee.

(c) **Identification of records.** A written request for inspection of a record shall reasonably describe the record sought. In instances where the person requesting the record cannot provide sufficient information to identify a record, the Record Custodian shall assist in making such identification.

(d) **Delay or denial of requests for inspection.** If the record requested is not available for inspection at the time requested, ~~within three (3) business days following the day the request for inspection is received by the Record Custodian,~~ the Record Custodian shall, no later than seven (7) business days prior to the requested record inspection date, notify the person requesting the record:

- (1) that the record will be available for inspection at a later time by returning Form OAD 26 - RECORD INSPECTION DELAY NOTICE; or
- (2) that the record will not be available for inspection, by returning to the person requesting the record a copy of Form OAD 27 - RECORD INSPECTION DENIAL.

660:2-11-6. Procedures for copying records

(a) **Requests for copies.** To obtain a copy of a public record in the possession of the Department, the person requesting the copy shall execute a Form OAD 28 - REQUEST FOR RECORD COPY and deliver it to the Record Custodian responsible for the requested record designated in 660:2-11-3; except that no form shall be required for requests made for records which have been reproduced for free public distribution. Such request shall be accompanied by the fees set forth in ~~660:2-11-7~~ Section 1-612 of the Securities Act. All record copy forms must be completed by the person requesting the record and signed by the individual making the request. The Record Custodian, or a designee, may demand reasonable identification of any person requesting a record.

(b) **Responsibility for making copies.** All copies of public records shall be performed by the Record Custodian or a designee in the offices of the Department except where the Record Custodian or a designee determines that the size or the volume of records to be copied warrants sending the record outside the Department for copying, in which event the copies shall be made at a place selected by the Record Custodian or a designee and under the supervision of the Record Custodian or a designee.

(c) **Identification of records.** A written request for copies of a record shall reasonably describe the record sought. In instances where the person requesting the copies cannot provide sufficient information to identify a record, the Record Custodian or a designee shall assist in making such identification.

(d) **Delay or denial of requests for copies.** If the record requested is not available for copying at the time requested, ~~within three (3) business days following the day the request for copies is received by the Record Custodian,~~ the Record Custodian or a designee shall, no later than seven (7) business days prior to the requested copy date, notify the person requesting the copies:

- (1) that the record will be available for copying at a later time by returning Form OAD 29 - RECORD COPY DELAY NOTICE; or
- (2) that the record will not be available for copying, by returning to the person requesting the record a copy of Form OAD 30 - RECORD COPY DENIAL.

660:2-11-7. Fees

(a) **Amounts payable.** The following are the fees that shall be charged by the Department for copying and/or mechanical reproduction of public records and for the search for public records requested by the public pursuant to the Open Records Act and Section 1-612 of the Securities Act; provided, however, no record search and/or copying charge shall be assessed against officers or employees of the Department who make requests which are reasonably necessary to the performance of their official duties:

- (1) **Inspection fees.** No fee shall be charged for inspection of a public record in the offices of the Department.
- (2) **Copying Fees.** ~~The following fees shall be charged for copies of public records:~~

- (A) ~~8 1/2" by 14" or smaller \$.25 per page~~
 - (B) ~~Larger than 8 1/2" by 14" \$1.00 per page~~
 - (C) ~~Certified copy larger than 8 1/2" by 14" \$2.00 per page~~
- Any person requesting copies of public records shall pay the fees specified in Section 1-612 of the Securities Act prior to receipt of the records.

- (3) **Fee for mechanical reproduction.** For copying any public record which cannot be reproduced by photocopying, such as a computer printout or a blueprint, or where the size of the record to be copied warrants sending the record outside for copying, the person requesting the record shall be charged the actual cost to the Department of such copying, including the cost of labor, materials and equipment.

- (4) **Search fee.** If the person requesting a record is using the records solely for a commercial purpose, a search fee shall be charged ~~equal to \$20.00 per hour~~ as set forth in Section 1-612 of the Securities Act for the time spent by employees in retrieving the record

(b) **Prepayment of fees.** The Record Custodian may require prepayment of estimated fees for requests for public records and shall require prepayment of a fee whenever the estimated amount exceeds \$200.00. The prepayment amount shall be an estimate of the costs of copying, mechanical reproduction and/or searching for the record. Any overage or underage in

the prepayment amount shall be settled prior to producing the requested record or delivering the copy or mechanical reproduction of the record to the person requesting the record.

[OAR Docket #20-728; filed 7-27-20]

TITLE 660. DEPARTMENT OF SECURITIES CHAPTER 6. FORMS

[OAR Docket #20-711]

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RULES:

Subchapter 3. Forms for General Purposes

660:6-3-1. Forms to inspect or copy records [AMENDED]

660:6-3-2. Forms to file a complaint [AMENDED]

Subchapter 5. Forms Used Under the Securities Act

660:6-5-1. Forms for registration or exemption of securities [AMENDED]

660:6-5-2. ~~Licensing forms~~ Forms for securities industry registration [AMENDED]

Subchapter 9. Forms Used Under the Land Sales Act

660:6-9-1. Forms for registration of subdivided land [AMENDED]

AUTHORITY:

Administrator, Oklahoma Department of Securities; 71 O.S. §§1-605, 1-608; 71 O.S. §662; and 71 O.S. §816

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rule amendments update references to new, revised, or obsolete forms and correct the locations where the forms can be found.

CONTACT PERSON:

Faye Morton, General Counsel, Oklahoma Department of Securities, (405) 280-7727

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2020:

SUBCHAPTER 3. FORMS FOR GENERAL PURPOSES

660:6-3-1. Forms to inspect or copy records

(a) **Forms.** The following forms are required to obtain records of the Department under the Open Records Act:

- (1) OAD-25 -- Request for Record Inspection
- (2) OAD-26 -- Record Inspection Delay Notice
- (3) OAD-27 -- Record Inspection Denial
- (4) OAD-28 -- Request for Record Copy
- (5) OAD-29 -- Record Copy Delay Notice
- (6) OAD 30 -- Record Copy Denial

(b) **Obtaining forms.** The referenced forms are available on the Department's website at <http://www.securities.ok.gov/>.

660:6-3-2. Forms to file a complaint

(a) **Form.** The following form is used to file a complaint with the Department: ~~OEN-002~~ Complaint Form.

(b) **Obtaining form.** ~~The form listed in Subsection (a) of this Section may be obtained from the Department. The referenced form is available on the Department's website at <http://www.securities.ok.gov/>.~~

SUBCHAPTER 5. FORMS USED UNDER THE SECURITIES ACT

660:6-5-1. Forms for registration or exemption of securities

(a) **Forms.** The following is a list of forms accepted by the Department in connection with the registration or exemption of securities under the Securities Act:

- (1) U-1 -- Uniform Application to Register Securities
- (2) U-2 -- Uniform Consent to Service of Process
- (3) U-2A -- Uniform Form of Corporate Resolution
- (4) U-7 -- Small Company Offering Registration Form
- (5) NF -- Uniform Investment Company Notice Filing
- (6) Form D -- Notice of Exempt Offering of Securities
- (7) NASAA Model Accredited Investor Exemption Notice of Transaction Form
- (8) Oklahoma Accredited Investor Exemption Supplemental Information Form
- (89) Oklahoma Notice of Regulation A Tier 2 Offering form (or equivalent uniform form)
- (10) Part 1 of Federal Form 1-A

(b) **Obtaining forms.**

~~(1) Copies of forms listed in (a)(1) through (6) of this Section can be obtained from The North American Securities Administrators Association, Inc. at 10 G Street Northeast, Suite 710, Washington, D.C. 20002 or on the NASAA web site at <http://www.nasaa.org/>.~~

~~(2) Copies of Form D may be obtained from The Public Reference Branch of the main office of the SEC, 450 5th Street N.W., Washington, D.C. 20549, from any of the regional or branch offices of the SEC, or on the SEC web site at <http://www.sec.gov/>.~~

~~(3) Copies of the form listed in (a)(8) of this Section can be obtained from the Department.~~

~~(4) The referenced forms are also available from the Department's website at <http://www.securities.ok.gov/>.~~

Permanent Final Adoptions

660:6-5-2. ~~Licensing forms~~Forms for securities industry registration

(a) **Forms.** The following is a list of forms used by the Department in connection with ~~licensing~~ registering persons as broker-dealers, agents, ~~non-FINRA~~ principals, issuer agents, investment advisers or investment adviser representatives, under the Securities Act:

- (1) BD -- Uniform Application for ~~Broker-Dealers, Investment Advisers and Agents~~ Broker-Dealer Registration
- (2) BDW -- Uniform Request for Broker-Dealer Withdrawal
- (23) ADV -- Uniform Application for Investment Adviser Registration and Report by Exempt Reporting Advisers
- (4) ADV-W -- Uniform Application for Investment Adviser Withdrawal
- (35) U-2 -- Uniform Consent to Service of Process
- (46) U-2A -- Uniform Form of Corporate Resolution
- (57) ~~U-4~~U4 -- Uniform Application for Securities Industry Registration or Transfer
- (68) ~~U-5~~U5 -- Uniform Application for Termination of Registration Termination Notice for Securities Industry Registration
- (79) ~~U-10~~U10 -- Uniform Examination Request for ~~Non-NASD~~Non-FINRA Candidates
- (810) OBD-001 -- Applicant Management Certification for ~~Non-NASD~~Non-FINRA Principals
- (911) OBD-008 -- Application for Renewal of ~~Non-NASD~~Non-FINRA Broker-Dealer Registration
- (10) ~~OBD-015~~ -- Application for Renewal of Issuer Agent Registration
- (112) OBD-016 -- Application for Renewal of ~~Non-NASD~~Non-FINRA Broker-Dealer Principal Registration
- (1213) OBD-018 -- Applicant/Management Certification for Issuer Agents
- (1314) OBD-019 -- Application for Renewal of ~~Non-NASD~~Non-FINRA Broker-Dealer Agent Registration
- (14) ~~OBD-020~~ -- NonBranch Sales Office Form

(b) **Obtaining forms.**

- (1) Copies of the forms listed in (a)(1) and (2) of this Section, can be obtained from the SEC, 450 5th Street, N.W., Washington, D.C. 20549 or from any of the regional or branch offices of the SEC.
- (2) Copies of the forms listed in (a)(1), (5) and (6), of this Section, can be obtained by contacting the NADS, 9509 Key West Avenue, Rockville, Maryland 20850, 301-590-6500.
- (3) Copies of forms listed in (a)(3) through (7) of this Section, can be obtained from The North American Securities Administrators Association, Inc. at 10 G Street, Northeast, Suite 710, Washington, D.C. 20002.
- (4) Copies of forms listed in (a)(8) through (14) of this Section, can be obtained from the Department.
- (5) Many of the referenced forms are available from the Department's website at <http://www.securities.ok.gov/>. The

referenced forms are available on the Department's website at <http://www.securities.ok.gov/>.

SUBCHAPTER 9. FORMS USED UNDER THE LAND SALES ACT

660:6-9-1. Forms for registration of subdivided land

(a) **Forms.** The following is a list of forms required by the Department in connection with the registration of subdivided land under the Land Sales Act:

- (1) LRF-625 -- Application for Registration of Subdivided Lands
- (2) LRF-626A -- Public Offering Statement-Instruction Guide
- (3) LRF-626B -- Summary Disclosure Statement Guide
- (4) ~~LRF-627~~ -- Registrants Semi Annual Report

(b) **Obtaining forms.** ~~The forms listed above may be obtained from the Department. The referenced forms are available on the Department's website at <http://www.securities.ok.gov/>.~~

[OAR Docket #20-711; filed 7-27-20]

TITLE 660. DEPARTMENT OF SECURITIES CHAPTER 11. OKLAHOMA UNIFORM SECURITIES ACT OF 2004

[OAR Docket #20-712]

RULEMAKING ACTION:

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RULES:

- Subchapter 1. General Provisions
- 660:11-1-3. Definitions [AMENDED]
- Subchapter 5. Broker-Dealers and Agents
- Part 1. General Provisions
- 660:11-5-2. Definitions [AMENDED]
- Part 3. Licensing Procedures
- 660:11-5-14. Agent termination [AMENDED]
- 660:11-5-21. Supplemental disclosures [AMENDED]
- 660:11-5-26. Merger and acquisition broker exemption [NEW]
- Part 7. Record Keeping and Ethical Standards
- 660:11-5-42. Standards of ethical practices for broker-dealers and their agents [AMENDED]
- Subchapter 7. Investment Advisers and Investment Adviser Representatives
- Part 1. General Provisions
- 660:11-7-2. Definitions [AMENDED]
- Part 3. Licensing Procedures
- 660:11-7-11. Initial registration [AMENDED]
- 660:11-7-14. Investment adviser representative termination [NEW]
- 660:11-7-20. Supplemental disclosures [AMENDED]
- 660:11-7-21. Errors and omissions coverage [NEW]
- Part 5. Reporting Requirements
- 660: 11-7-31. Post-registration reporting requirements [AMENDED]
- Part 7. Record Keeping and Ethical Standards
- 660:11-7-41. Record keeping requirements [AMENDED]
- 660:11-7-42. Standards of ethical practices [AMENDED]
- 660:11-7-46. Information security and privacy [NEW]
- Subchapter 9. Registration of Securities
- Part 5. Guidelines and Policies Applicable to Offerings of Registered Securities
- 660:11-9-31. Prospectus delivery requirement [AMENDED]

660:11-9-33. Special requirements for promotional or ~~developmental~~ development stage companies [AMENDED]
 660:11-9-36. Promoters' and organizers' equity contributions [AMENDED]
 Subchapter 11. Exemptions from Securities Registration
 Part 1. General Provisions
 660:11-11-1. Definitions [AMENDED]
 Part 5. Exempt Transactions
 660:11-11-40. Manual exemption [AMENDED]
 660:11-11-52. Oklahoma Accredited Investor Exemption [AMENDED]
 660:11-11-53. Exemption for offers but not sales [AMENDED]
 Subchapter 15. Miscellaneous Provisions
 660:11-15-2. Protection from financial exploitation [NEW]

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GIST/ANALYSIS:

The proposed rule amendments conform requirements for similar registrant categories, add protection from financial exploitation, conform investment adviser regulations relating to errors and omissions coverage and information security to model rules and/or to other states and federal law, conform a registration exemption to a model rule and to federal law, correct statutory cites, and clarify changing regulatory procedure.

CONTACT PERSON:

Faye Morton, General Counsel, Oklahoma Department of Securities, (405) 280-7727

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

660:11-1-3. Definitions

Unless the context otherwise requires, or unless defined in this section or in 660:11-5-2, terms used in this chapter, if defined in the Securities Act, shall have the meaning as defined in the Securities Act. The following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Advisers Act**" means the Investment Advisers Act of 1940.

"**Authorized to do business in Oklahoma**" means authorized to do business in Oklahoma pursuant to the Oklahoma Uniform Securities Act of 2004.

"**Audited financial statements**" means "Certified financial statements."

"**Certified financial statements**" means financial statements prepared in accordance with generally accepted accounting principles and examined by Independent accountants in accordance with generally accepted auditing standards, accompanied by an opinion as described in 660:11-15-1.

"**CFR**" means the Code of Federal Regulations.

"**CRD**" means the NASAA/FINRA Central Registration Depository ~~System~~ system or WEBCRD.

"**Date of filing**" means the date on which a proper registration statement is filed for purposes of determining the dates of the statements of financial condition to be filed with a registration statement. If amendments to a registration statement are necessary to comply fully with the registration requirements, "date of filing" means the date on which the last amendment is filed.

"**FDIC**" means the Federal Deposit Insurance Corporation.

"**FINRA**" means the Financial Industry Regulatory Authority, Inc., the successor to the NASD and NASDR.

"**Financial statements**" means, but is not limited to, the statement of financial condition, statement of income, and statement of changes in stockholders' or owners' equity, as well as all related footnotes and supporting schedules applicable thereto, prepared in accordance with generally accepted accounting principles.

"**IARD**" means the FINRA-operated Investment Adviser Registration Depository.

"**Independent accountants**" means independent certified public accountants. The concept of independence shall be that promulgated by the American Institute of Certified Public Accountants.

"**Institutional account**" means the account of:

- (A) a bank, savings and loan association, insurance company or registered investment company;
- (B) an investment adviser registered under the Securities Act, with another state securities commission (or any agency or office performing like functions), or with the SEC under Section 203 of the Advisers Act; or
- (C) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million.

"**NASAA**" means the North American Securities Administrators Association.

"**NASD**" means the National Association of Securities Dealers, Inc.

"**NASDR**" means the National Association of Securities Dealers Regulation, Inc.

"**1933 Act**" means the Securities Act of 1933.

"**1934 Act**" means the Securities Exchange Act of 1934.

"**1940 Act**" means the Investment Company Act of 1940.

"**Predecessor of an issuer**" means:

(A) a person the major portion of whose assets have been acquired directly or indirectly by the issuer, or

(B) a person from which the issuer acquired directly or indirectly the major portion of its assets.

"Promotional or developmental stage company"

means an issuer for which any of the following conditions exist:

(A) the company and any predecessors were formed within the twelve-month period ending on the date of the filing of the application for registration;

(B) the company has no significant revenues from the line of business being undertaken with the offering proceeds;

(C) the principal operations to be conducted with offering proceeds have not commenced or have been commenced within the twelve-month period ending on the date of the filing of the application for registration; or

(D) the principal operations to be conducted with offering proceeds have commenced, but the issuer has not demonstrated profitable operations for two of the three fiscal years prior to registration, evidenced by net income determined in accordance with generally accepted accounting principles after taxes, and excluding extraordinary items.

"Prospectus" means a prospectus in a form and containing such information as may be required by the Administrator, including a prospectus filed under the 1933 Act or an offering circular used in connection with an exempt security or transaction regardless of the designation of the document (i.e., prospectus, offering circular, memorandum, etc.).

"Registration statement" means an application for registration of securities under Sections 1-303 and 1-304 of the Securities Act and all documents and exhibits related thereto, including a Prospectus.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act" means the most recent codification of the Oklahoma Uniform Securities Act of 2004 in Title 71 of the Oklahoma Statutes.

"SIPC" means the Securities Investor Protection Corporation.

SUBCHAPTER 5. BROKER-DEALERS AND AGENTS

PART 1. GENERAL PROVISIONS

660:11-5-2. Definitions

In addition to the terms defined in 660:11-1-3, the following words and terms when used in this subchapter shall have the following meaning, unless the context clearly indicates otherwise or the words or terms are defined in another Section:

"Branch office" means any business location of a broker-dealer identified to the public or customers by any means as a location at which a securities business is conducted on

behalf of the broker-dealer, excluding any location identified solely in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the office of the broker-dealer responsible for supervising the activities of the identified location.

"Complaint" means and includes any written statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of those persons under the control of the broker-dealer in connection with the solicitation or execution of any transaction or the disposition of securities or funds of that customer.

"Completion of the transaction" means:

(A) In the case of a customer who purchases a security through or from a broker-dealer, except as provided in (B), the time when such customer pays the broker-dealer any part of the purchase price, or, if payment is effected by bookkeeping entry, the time when such bookkeeping entry is made by the broker-dealer for any part of the purchase price;

(B) In the case of a customer who purchases a security through or from a broker-dealer and who makes payments therefor prior to the time when payment is requested or notification is given that payment is due, the time when such broker-dealer delivers the security to or into the account of such customer;

(C) In the case of a customer who sells a security through or to a broker-dealer, except as provided in (D), if any security is not in the custody of the broker-dealer at the time of sale, the time when the security is delivered to the broker-dealer, and if the security is in the custody of the broker-dealer at the time of sale, the time when the broker-dealer transfers the security from the account of such customer;

(D) In the case of a customer who sells a security through or to a broker-dealer and who delivers such security to such broker-dealer prior to the time when delivery is requested or notification is given that delivery is due, the time when such broker-dealer makes payment to or into the account of such customer.

"Control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person is presumed to control a company that:

(A) is a director, general partner or officer exercising executive responsibility or having similar status or functions;

(B) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or

(C) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital.

"Customer" means any person who, in the regular course of a broker-dealer's business, has cash or securities in the possession of such broker-dealer. "Customer" shall not include a broker-dealer.

"Direct participation programs" mean programs which provide for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof; excluded from this definition are real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code and individual retirement plans Section 408 of that code, tax sheltered annuities pursuant to the provisions of Section 403(b) of the Internal Revenue Code and any company including separate accounts registered pursuant to the 1940 Act.

"Independent investment adviser" means an investment adviser that is not controlled by, does not control, and is not under common control with a broker-dealer.

"Investment company and variable contracts products" means:

- (A) redeemable securities of companies registered pursuant to the 1940 Act;
- (B) securities of closed-end companies registered pursuant to the 1940 Act during the period of original distribution only; and
- (C) variable contracts and insurance premium funding programs and other contracts issued by an insurance company except contracts which are exempt securities pursuant to Section 3(a)(8) of the 1933 Act.

"Municipal securities" mean securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a state or any political subdivision thereof, or any agency or instrumentality of a state or any political subdivision thereof, or any municipal corporate instrumentality of one of more states, or any security which is an industrial development bond as defined in Section 3(a)(29) of the 1934 Act.

"Nonbranch sales office" means any business location of the broker-dealer identified to the public or customers by any means as a location at which a securities business is conducted on behalf of the broker-dealer which location is identified solely in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the office of the broker-dealer responsible for supervising the activities of the identified location.

"Office" means any location where a broker-dealer and/or one or more of its agents regularly conduct the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale, of any security.

"Option" means any put, call, straddle or other option or privilege, which is a "security" as defined in Section 2(1) of the 1933 Act, as amended, but shall not include any tender offer, registered warrant, right, convertible security or any other option in respect to which the writer is the issuer of the security which may be purchased or sold upon the exercise of the option.

"OSJ" or "Office of supervisory jurisdiction" means any office designated as directly responsible for the review of the activities of registered agents or associated persons in such office and/or in other offices of the broker-dealer. An office of supervisory jurisdiction would be any business location of a broker-dealer at which one or more of the following functions take place:

- (A) order execution and/or market making;
- (B) structuring of public offerings or private placements;
- (C) maintaining custody of customers' funds and/or securities;
- (D) final acceptance (approval) of new accounts on behalf of the broker-dealer;
- (E) review and endorsement of customer orders pursuant to 660:11-5-42;
- (F) final approval of advertising or sales literature for use by agents of the broker-dealer;
- (G) responsibility for supervising the activities of persons associated with the broker-dealer at one or more other offices of the broker-dealer.

"Principal" means:

- (A) any individual registered with a registered national securities association as a principal or branch manager of a member, broker or dealer, or any other person who has been delegated supervisory responsibility for the firm or its associated persons; or
- (B) any person associated with a non-FINRA applicant for registration as a broker-dealer who is or will be actively engaged in the management of the applicant's securities business, including supervision, solicitation, conduct of business or training of persons associated with an applicant for any of these functions, and is designated as a principal by the broker-dealer applicant.

"Public offering price" shall mean the price at which the security involved was offered to the public as set forth in the prospectus of the issuing company.

"Selling group" means any group formed in connection with a public offering, to distribute all or part of an issue of securities by sales made directly to the public by or through members of such selling group, under an agreement which imposes no financial commitment on the members of such group to purchase any such securities except as they may individually or collectively elect to do so.

"Selling syndicate" means any syndicate formed in connection with a public offering, to distribute all or part of an issue of securities by others or sales made directly to the public by or through participants in such syndicate under an agreement which imposes a financial commitment upon the participants in such syndicate to purchase any of such securities.

"Undertaking for Participation in the NASAA/CRD Temporary Agent Transfer Program" means the document entitled "Broker-Dealer Undertaking for Participation in the NASAA/CRD Temporary Agent Transfer Program" which the employing broker-dealer has executed and filed with the CRD.

PART 3. LICENSING PROCEDURES

660:11-5-14. Agent termination

(a) **Filing requirement.** Termination notice pursuant to the requirements of Section 1-408.A of the Securities Act shall be promptly given by filing within thirty ~~calendar~~ (30) days of termination, a completed Uniform Termination Notice ~~For~~ Securities Industry Registration, Form ~~U-5U5~~. The Form ~~U-5U5~~ for an agent terminating registration with a FINRA member shall be filed with the CRD. The Form ~~U-5U5~~ for agents terminating registration with a non-FINRA broker-dealer shall be filed with the Department.

(b) **Responsibility for filing.** A completed Form ~~U-5U5~~ signed by the employer will be accepted as fulfilling the statutory requirements of both parties. Upon verification that the Form ~~U-5U5~~ has not been filed by the broker-dealer, the agent shall notify the Department in writing of said termination.

(c) **Amendments.** If the information contained in a Form U5 becomes inaccurate or incomplete, the employer shall promptly file a correcting amendment after learning of the facts or circumstances giving rise to the amendment.

(ed) **Effect of failure to file.** In the event of termination, the filing of a future application for registration shall not be considered complete until compliance with the termination notice requirements of Section 1-408.A and this section.

660:11-5-21. Supplemental disclosures

Every broker-dealer and agent registered under the Securities Act must keep their application current at all times by promptly filing amendments supplementing their application after learning of the facts and circumstances giving rise to the amendments as required by Section 1-406.B of the Securities Act, ~~and the instructions to the Form U-5 and Form U-4.~~ "Promptly" ~~shall mean not later than thirty (30) days after learning of the facts and circumstances giving rise to the amendment.~~

660:11-5-26. Merger and acquisition broker exemption

(a) **Definitions.** For purposes of this Section:

(1) **"Control"** means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. There is a presumption of control for any person who:

(A) is a director, general partner, member, or manager of a limited liability company, or officer exercising executive responsibility (or has similar status or functions);

(B) has the right to vote 20 percent or more of a class of voting securities or the power to sell or direct the sale of 20 percent or more of a class of voting securities; or

(C) in the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 20 percent or more of the capital; or

(2) **"Eligible privately held company"** means a company meeting both of the following conditions:

(A) The company does not have any class of securities registered, or required to be registered with the SEC under Section 12 of the 1934 Act, 15 U.S.C. 781, or with respect to which the company files, or is required to file, periodic information, documents, and reports under subsection 15(d) of the 1934 Act, 15 U.S.C. 78o(d).

(B) In the fiscal year ending immediately before the fiscal year in which the services of the Merger and Acquisition Broker are initially engaged with respect to the securities transaction, the company meets either or both of the following conditions (determined in accordance with the historical financial accounting records of the company):

(i) The earnings of the company before interest, taxes, depreciation, and amortization are less than \$25,000,000.

(ii) The gross revenues of the company are less than \$250,000,000.

(3) **"Merger and Acquisition Broker"** means any broker-dealer and any person associated with a broker-dealer engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether that broker-dealer acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities, or assets of the eligible privately held company -

(A) if the broker-dealer reasonably believes that upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert, will control and, directly or indirectly, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company; and

(B) if any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, prior to becoming legally bound to consummate the transaction, receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by its management in the normal course of operations, and, if the financial statement of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant; a balance sheet dated not more than 120 days before the date of the exchange offer, an information pertaining to the management, business, results of operation for the period covered by the foregoing financial statements, and any material loss contingencies of the issuer.

(C) A merger and acquisition broker may receive transaction-based or other compensation, as agreed by the parties.

(4) **"Public shell company"** means a company that at the time of a transaction with an eligible privately held company:

- (A) has any class of securities registered, or required to be registered, with the SEC under Section 12 of the 1934 Act, 15 U.S.C. 781, or with respect to which the company files, or is required to file, periodic information, document, and reports under subsection 15(d) of the 1934 Act, 15 U.S.C. 78o(d); and
- (B) has no or nominal operations; and
- (C) has:
 - (i) no or nominal assets;
 - (ii) assets consisting solely of cash and cash equivalents; or
 - (iii) assets consisting of any amount of cash and cash equivalents and nominal other assets.

(b) **Inflation adjustment.** On the date that is five years after the date of the enactment of this Section, and every five years thereafter, each dollar amount in subparagraph (a)(2)(B) shall be adjusted by:

- (1) dividing the annual value of the Employment Cost Index for Wages and Salaries, Private Industry Workers (or any successor index), as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, 2020; and
- (2) multiplying such dollar amount by the quotient obtained under (i) of this subsection.
- (3) Rounding - Each dollar amount determined under (i) of this subsection shall be rounded to the nearest multiple of \$100,000.

(c) **Exemption.** Except as provided in paragraphs (d) and (e), a Merger and Acquisition Broker shall be exempt from registration as a broker-dealer under this Section.

(d) **Excluded Activities.** A merger and acquisition broker is not exempt from registration under this paragraph if such broker-dealer does any of the following:

- (1) Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction.
- (2) Engages on behalf of an issuer in a public offering of any class of securities that is registered, or required to be registered, with the SEC under Section 12 of the 1934 Act, 15 U.S.C. 781 or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under subsection 15(d) of the 1934 Act, 15 U.S.C. 78o(d).
- (3) Engages on behalf of any party in a transaction involving a public shell company.

(e) **Disqualifications.** A merger and acquisition broker is not exempt from registration under this paragraph if such broker-dealer is subject to:

- (1) Suspension or revocation of registration under paragraph 15(b)(4) of the 1934 Act, 15 U.S.C. 78o(b)(4);
- (2) A statutory disqualification described in paragraph 3(a)(39) of the 1934 Act, 15 U.S.C. 78c(a)(39);

- (3) A disqualification under the rules adopted by the SEC under Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d); or
- (4) A final order described in subparagraph (4)(H) of Section 15(b) of the 1934 Act, 15 U.S.C. 78o(b)(4)(H).

(f) **Rule of construction.** Nothing in this Section shall be construed to limit any other authority of the Administrator to exempt any person, or any class of persons, from any provision of the Securities Act or from any provisions of any rule or regulation thereunder.

PART 7. RECORD KEEPING AND ETHICAL STANDARDS

660:11-5-42. Standards of ethical practices for broker-dealers and their agents

(a) **Purpose.** This rule is intended to set forth the standards of ethical practices for broker-dealers and their agents. Any noncompliance with the standards of ethical practices specified in this section will constitute unethical practices in the securities business; however, the following is not intended to be a comprehensive listing of all specific events or conditions that may constitute such unethical practices. The standards shall be interpreted in such manner as will aid in effectuating the policy and provisions of the Securities Act, and so as to require that all practices of broker-dealers, and their agents, in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory.

(b) **Standards.**

- (1) A broker-dealer and his agents, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade. A broker-dealer and his agents shall not violate any federal securities statute or rule or any rule of a national securities exchange or national securities association of which it is a member with respect to any customer, transaction or business effected in this state.

(2) **Recommendations**

- (A) A broker-dealer and his agents shall have reasonable grounds for believing that a recommended transaction or investment strategy involving a security or securities is suitable for such customer based upon the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information disclosed by the customer or known to the broker-dealer or agent.
- (B) A broker-dealer and his agents fulfill the customer-specific suitability obligation for an institutional account, as defined in 660:11-1-3, if (i) the broker-dealer or agent has a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and

investment strategies involving a security or securities and (ii) the institutional customer affirmatively indicates that it is exercising independent judgment in evaluating the broker-dealer or agent's recommendations. Where an institutional customer has delegated decision-making authority to an agent, such as an investment adviser or a bank trust department, these factors shall be applied to the agent.

(3) Charges, if any, for services performed, including miscellaneous services such as collection of monies due for principal, dividends, or interest, exchange or transfer of securities, appraisals, safekeeping or custody of securities, and other services, shall be reasonable and not unfairly discriminatory between customers.

(4) In "over-the-counter" transactions, whether in "listed" or "unlisted" securities, if a broker-dealer or agent of a broker-dealer buys for his own account from his customer, or sells for his own account to his customer, he shall buy or sell at a price which is fair, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and the fact that he is entitled to a profit; and if he acts as agent for his customer in any such transaction, he shall not charge his customer more than a fair commission or service charge, taking into consideration all relevant circumstances including market conditions with respect to such security at the time of the transaction, the expense of executing the order and the value of any service he may have rendered by reason of his experience in and knowledge of such security and the market therefor.

(5) No broker-dealer or agent of a broker-dealer shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security. If nominal quotations are used or given, they shall be clearly stated or indicated to be only nominal quotations.

(6) No broker-dealer or agent of a broker-dealer shall make an offer to buy from or sell to any person any security at a stated price unless such broker-dealer or agent is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

(7) A broker-dealer, when a member of a selling syndicate or a selling group, shall purchase securities taken in trade at a fair market price at the time of purchase, or shall act as agent in the sale of such securities.

(8) A broker-dealer who in the capacity of paying agent, transfer agent, trustee, or any other similar capacity, has received information as to the ownership of securities,

shall under no circumstances make use of such information for the purpose of soliciting purchases, sales or exchanges except at the request and on behalf of the issuer.

(9) No broker-dealer or agent of a broker-dealer shall, directly or indirectly, give, permit to be given, or offer to give, anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any newspaper, investment service, or similar publication, of any matter which has, or is intended to have, an effect upon the market price of any security, provided that this rule shall not be construed to apply to matter which is clearly distinguishable as paid advertising.

(10) A broker-dealer at or before the completion of each transaction with a customer shall give or send to each customer written notification disclosing:

(A) whether such broker-dealer is acting as a broker for such customer and some other person; and

(B) in any case in which such broker-dealer is acting as a broker for such customer or for both such customer and some other person, either the name of the person from whom the security was purchased or to whom it was sold for such customer and the date and the time when such transaction took place or the fact that such information will be furnished upon the request of such customer, and the source and amount of any commission or other remuneration received or to be received by such broker-dealer in connection with the transaction.

(11) A broker-dealer or agent of a broker-dealer controlled by, controlling, or under common control with, the issuer of any security, shall, before entering into any contract with or for a customer for the purchase or sale of such security, disclose to such customer the existence of such control, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

(12) A broker-dealer or agent of a broker-dealer who is acting as a broker for a customer or for both such customer and some other person, or a broker-dealer who is acting as a dealer and who receives or has promise of receiving a fee from a customer for advising such customer with respect to securities, shall, at or before the completion of any transaction for or with such customer in any security in the primary or secondary distribution of which such broker-dealer is participating or is otherwise financially interested, give such customer written notification of the existence of such participation or interest.

(13) The following standards shall apply to discretionary accounts:

(A) No broker-dealer or agent of a broker-dealer shall effect with or for any customer's account in respect to which such broker-dealer or agent or employee is vested with any discretionary power any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources of such customer and character of such account.

(B) No broker-dealer or agent of a broker-dealer shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the broker-dealer, as evidenced in writing by the broker-dealer or the partner, officer, or manager duly designated by the broker-dealer, in accordance with (22) of this subsection.

(C) The broker-dealer or the person duly designated shall approve promptly, in writing, each discretionary order entered and shall review all discretionary accounts at frequent intervals in order to detect and prevent transactions which are excessive in size or frequency in view of the financial resources of the customer and the character of the account.

(D) This section shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed.

(14) A broker-dealer or agent of a broker-dealer who is participating or who is otherwise financially interested in the primary or secondary distribution of any security which is not admitted to trading on a national securities exchange, shall make no representation that such security is being offered to a customer "at the market" or at a price related to the market price unless such broker-dealer or agent knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by such broker-dealer or agent, or by any person for whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer or agent.

(15) No broker-dealer or agent of a broker-dealer shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device, practice, plan, program, design, or contrivance.

(16) The following standards shall apply to the use of customer funds:

(A) No broker-dealer or person associated with a broker-dealer shall make improper use of a customer's securities or funds.

(B) No broker-dealer or agent of a broker-dealer shall lend, either to himself or to others, securities carried for the account of any customer, unless such broker-dealer or agent shall first have obtained from the customer a separate written authorization permitting the lending of securities thus carried by such broker-dealer or agent; and, regardless of any agreement between the broker-dealer or agent and a customer authorizing the former to lend or pledge such securities, no broker-dealer or agent shall lend or pledge more of such securities than is fair and reasonable in view of the indebtedness of the customer, except such lending as may be specifically authorized under (C) of this paragraph.

(C) No broker-dealer or agent of a broker-dealer shall lend securities carried for the account of any customer which have been fully paid for or which are in excess of the amount which may be loaned in view of the indebtedness of the customer, unless such broker-dealer or agent shall first have obtained from such customer a separate written authorization designating the particular securities to be loaned.

(D) No broker-dealer or agent of a broker-dealer shall hold securities carried for the account of any customer which have been fully paid for or which are in excess of the amount which may be pledged in view of the indebtedness of the customer, unless such securities are segregated and identified by a method which clearly indicates the interest of such customer in those securities.

(E) No broker-dealer or agent of a broker-dealer shall guarantee a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer or agent with or for such customer.

(F) No broker-dealer or agent of a broker-dealer shall share directly or indirectly in the profits or losses in any account of a customer carried by the broker-dealer or agent or any other broker-dealer or agent, unless such broker-dealer or agent obtains written authorization from the broker-dealer carrying the account; and, a broker-dealer or agent shall share in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by the broker-dealer or agent. Exempt from the direct proportionate share limitation are accounts of the immediate family of such broker-dealer or agent. For purposes of this section, the term "immediate family" shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the broker-dealer or agent otherwise contributes directly or indirectly.

(17) The following standards shall apply to customer credit:

(A) No broker-dealer or agent of a broker-dealer shall take or carry any account or make a transaction for any customer under any arrangement which contemplates or provides for the purchase of any security for the account of the customer or for the sale of any security to the customer where payment for the security is to be made to the broker-dealer by the customer over a period of time in installments or by a series of partial payments, unless:

(i) in the event such broker-dealer acts as an agent or broker in such transaction, he shall immediately, in the regular course of his business, make an actual purchase of the security for the account of the customer, and shall immediately, in the regular course of his business, take possession or control of such security and shall maintain possession or

control thereof so long as he remains under obligation to delivery of the security to the customer;

(ii) in the event such broker-dealer acts as a principal in any such transaction, he shall, at the time of such transaction own such security and shall maintain possession or control thereof so long as he remains under obligation to deliver the security to the customer; and

(iii) the provisions of Regulation T of the Federal Reserve Board, if applicable to such broker-dealer, are satisfied.

(B) No broker-dealer, whether acting as a principal or agent, shall, in connection with any transaction referred to in this Standard, make any agreement with his customer under which such broker-dealer shall be allowed to pledge or hypothecate any security involved in such transaction for any amount in excess of the indebtedness of the customer to such broker-dealer.

(18) The following standards shall apply to books and records:

(A) Each broker-dealer shall keep and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations, and statements of policy promulgated by the Administrator and/or the Commission under the Securities Act.

(B) Each broker-dealer shall keep and preserve in each office of supervisory jurisdiction, as defined in 660:11-5-2, either a separate file of all written complaints of customers and action taken by the broker-dealer, if any, or a separate record of such complaints and clear reference to the files containing the correspondence connected with such complaints as maintained in such office.

(19) A broker-dealer shall make available to inspection by any bona fide regular customer, upon request, the information relative to such broker-dealer's financial condition as disclosed in its most recent balance sheet prepared either in accordance with such broker-dealer's usual practice or as required by the state or federal securities laws, or any rule or regulation promulgated thereunder.

(20) No broker-dealer or agent of a broker-dealer shall offer any security or confirm any purchase or sale of any security, from or to any person not actually engaged in the investment banking or securities business at any price which shows a concession, discount, or other allowance, but shall offer such security and confirm such purchase or sale at a net dollar or basis price.

(21) Selling concessions, discounts, or other allowances, as such, shall be allowed only as consideration for services rendered in distribution and in no event shall be allowed to anyone other than a broker-dealer registered under the Securities Act actually engaged in the investment banking or securities business; provided however, that nothing in this standard shall prevent any broker-dealer from selling any security owned by him to any person at any net price

which may be fixed by him unless prevented therefrom by agreement.

(22) The following standards shall apply to supervisory procedures:

(A) Each broker-dealer shall establish, maintain and enforce written procedures which will enable it to supervise properly the activities of each registered agent and associated person to assure compliance with applicable securities laws, rules, regulations and statements of policy promulgated by the Administrator and/or the Commission under the Securities Act.

(B) Final responsibility for proper supervision shall rest with the broker-dealer, the principal(s) of the broker-dealer registered in accordance with 660:11-5-11, and the principal(s) of the broker-dealer in each OSJ, including the main office, and the registered representatives in each non-OSJ branch office designated by the broker-dealer to carry out the supervisory responsibilities assigned to that office by the broker-dealer pursuant to the rules and regulations of the NASD. A copy of the written supervisory procedures shall be kept in each office of supervisory jurisdiction and each non-OSJ branch office.

(C) Each broker-dealer shall be responsible for keeping and preserving appropriate records for carrying out such broker-dealer's supervisory procedures. Each broker-dealer shall review and endorse in writing, on an internal record, all transactions and all correspondence of its registered agents pertaining to the solicitation or execution of any securities transaction.

(D) Each broker-dealer shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses and conduct at least an annual inspection of each office of supervisory jurisdiction.

(E) Each broker-dealer shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications and experience of any person prior to making such a certification in the application of such person for registration under the Securities Act.

(23) The following standards shall apply to financial information:

(A) Each broker-dealer offering or selling securities not listed on a registered national securities exchange recognized by the Administrator shall have and furnish to customers, on request, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, prepared in accordance with generally accepted accounting principles, the names of the issuer's proprietors, partners or officers, the nature of the enterprise of the issuer and any other available information reasonably necessary for evaluating the desirability or the lack of desirability of investing in the securities of the issuer.

(B) Each broker-dealer who, in computation of net capital includes securities not listed on a registered national securities exchange recognized by the Administrator shall also have the information provided for in (A) of this paragraph available and shall, upon request, furnish same to the Department.

(C) All transactions in such securities described in (A) and (B) of this paragraph shall comply with the provisions of Section 1-301 of the Securities Act.

(D) The provisions of (A) of this paragraph shall not be required in unsolicited transactions, except when numerous unsolicited transactions in a particular security are occurring, it shall be the duty and responsibility of the broker-dealer to make reasonable effort to secure and provide to customers upon their written request the information required by the provisions of (A) of this paragraph. Nothing contained in this Section shall be construed to limit the powers of the Administrator under Section 1-204 of the Securities Act.

(24) The following standards shall apply when a broker-dealer shares an office with an independent investment adviser that has an investment adviser representative who regularly conducts business in the office and is not registered as an agent of the broker-dealer.

(A) The broker-dealer and the independent investment adviser shall reduce any agreement between them to writing.

(B) The broker-dealer shall take appropriate measures, including, but not limited to, adequate disclosures to eliminate the appearance of an agency relationship between the broker-dealer and the independent investment adviser when one does not otherwise exist.

(C) The broker-dealer shall comply with all applicable Oklahoma and federal laws requiring the safeguarding of customer data from disclosure to the independent investment adviser and investment adviser representative.

SUBCHAPTER 7. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

PART 1. GENERAL PROVISIONS

660:11-7-2. Definitions

In addition to the terms defined in 660:11-1-3, the following words and terms when used in this subchapter shall have the following meaning, unless the context clearly indicates otherwise:

"Advisory affiliate" means an advisory affiliate as defined by the Glossary of Terms for the Form ADV.

"IARD" means the FINRA-operated Investment Adviser Registration Depository.

"Impersonal advisory services" means investment advisory services provided solely:

(A) by means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

(B) through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

(C) any combination of the foregoing services.

"Investment company contract" means a contract with an investment company registered under the 1940 Act that meets the requirements of Section 15(c) of that Act.

"Office" means any location where an investment adviser and/or one or more of its investment adviser representatives regularly conduct business relating to investment advisory services.

"Solicitor" means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.

PART 3. LICENSING PROCEDURES

660:11-7-11. Initial registration

(a) **Investment adviser.** Investment advisers applying for initial registration pursuant to Section 1-406 of the Securities Act:

(1) shall file with the IARD:

(A) a completed Form ADV; and

(B) the filing fee specified in Section 1-612 of the Securities Act;

(2) shall file with the Department:

(A) a list of the addresses, telephone numbers and resident representatives of all branch offices located within the state of Oklahoma, and if the principal office of the investment adviser is located in Oklahoma, all branch offices located elsewhere;

(B) audited financial statements as required by 660:11-7-44 unless exempt therefrom;

(C) a copy of each form of investment advisory contract to be executed by Oklahoma clients and if the principal office of the investment adviser is located in Oklahoma, a copy of each form of investment advisory contract to be executed by any other clients; ~~and~~

~~(D) any additional documentation, supplemental forms and information as the Administrator may deem necessary; prior to the effective date of registration, proof that the applicant maintains an errors and omissions insurance policy in the amount of at least \$1 million per claim form an insurer authorized to transact insurance in the state of Oklahoma or from any other insurer approved by the Administrator according to standards established by 660:11-7-21; and~~

~~(E) any additional documentation, supplemental forms, and information as the Administrator may deem necessary; and~~

(3) if a natural person, must have passed the applicable examinations specified in 660:11-7-13.

Permanent Final Adoptions

(b) **Investment adviser representative.** Investment adviser representatives applying for initial registration under the Securities Act:

- (1) shall file with the CRD:
 - (A) a completed or updated Form U-4;
 - (B) the filing fee specified in Section 1-612 of the Securities Act;
 - (C) proof of applicant's approved status of registration or licensure in a jurisdiction in which he has an office of employment where such registration is required; and
 - (D) any additional documentation, supplemental forms, and information as the Administrator may deem necessary;
- (2) must have passed the applicable examinations specified in 660:11-7-13.

660:11-7-14. Investment adviser representative termination

(a) **Filing requirement.** Termination notice pursuant to the requirements of Section 1-408.A of the Securities Act shall be promptly given by filing within thirty (30) days of termination, a completed Uniform Termination notice for Securities Industry Registration, Form U5. The Form U5 for an investment adviser shall be filed with IARD.

(b) **Responsibility for filing.** A completed Form U5 signed by the investment adviser will be accepted as fulfilling the statutory requirements of both parties. Upon verification that the Form U5 has not been filed by the investment adviser, the investment adviser representative shall notify the Department in writing of the termination.

(c) **Amendments.** If the information contained in a Form U5 becomes inaccurate or incomplete, the investment adviser shall promptly file a correcting amendment after learning of the facts and circumstance giving rise to the amendment.

(d) **Effect of failure to file.** In the event of termination, the filing of a future application for registration shall not be considered complete until compliance with the termination notice requirements of Section 1-408.A of the Securities Act.

660:11-7-20. Supplemental disclosures

Every investment adviser and investment adviser representative registered under the Securities Act must keep their application current at all times by promptly filing amendments supplementing their application after learning of the facts or circumstances giving rise to the amendment as required by Section 1-406.B of the Securities Act ~~and the instructions to the Form ADV, Form U-5 and Form U-4. "Promptly" shall mean not later than thirty (30) days after learning of the facts or circumstances giving rise to the amendment.~~

660:11-7-21. Errors and omissions coverage

(a) Every investment adviser who is required to maintain an errors and omissions insurance policy under 660:11-7-11 must submit proof of an errors and omissions insurance policy to the Department as condition of registration.

(b) Every investment adviser registered under Section 1-406 of the Securities Act must submit proof of an errors and omissions insurance policy annually as set forth in 660:11-7-31.

(c) If subject to 660:11-7-11, proof of insurance may be demonstrated by submitting to the Department an attestation of compliance on a form approved by the Administrator and a policy declaration page, or a certificate of liability coverage specifying errors and omissions coverage. For purposes of compliance with 660:11-7-31, proof of insurance may be demonstrated by submitting to the Department an attestation of compliance on a form available on the Department's website.

- (1) An attestation must include:
 - (A) The name of the insurer;
 - (B) The policy number;
 - (C) Name of the insured; licensee; and
 - (D) Date of the policy period.

(2) For purposes of compliance with this Section, 660:11-7-11, and 660:11-7-31, a policy may not contain exclusions for investment management and advisory services performed in this state on behalf of the investment adviser or for persons performing investment management and advisory services in this state on behalf of the investment adviser.

(3) The requirements for this insurance may be fulfilled by a policy provided through membership in a professional association so long as the requirements are otherwise met, or at the discretion of the Administrator.

(4) The requirements for this insurance may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(d) For purposes of this rule, policies written by admitted or authorized insurers, registered surplus lines insurers, and registered risk retention and purchasing groups will satisfy the errors and omissions requirement of 660:11-7-11 and 660:11-7-31.

(e) Every investment adviser registered under Section 1-406 of the Securities Act shall immediately notify the Department in writing if its errors and omissions insurance policy is cancelled, terminated, or substantially modified.

PART 5. REPORTING REQUIREMENTS

660:11-7-31. Post-registration reporting requirements

(a) **Form ADV Amendments.** Every investment adviser registered under Section 1-406 of the Securities Act must amend its Form ADV each year by filing an annual updating amendment within 90 days of the end of its fiscal year. In addition, every investment adviser registered under Section 1-406 of the Securities Act must amend its Form ADV by promptly filing additional amendments (other-than-annual amendments) if required by the written instructions to Form ADV. "Promptly" shall mean not later than 30 days after learning of the facts or circumstances giving rise to the amendment.

(b) **Proof of Errors and Omissions Coverage.** Every investment adviser registered under Section 1-406 of the Securities Act must submit proof of an errors and omissions insurance policy meeting the requirements of 660:11-7-11(a)(2)(D) to the Department each year within 90 days of the end of its fiscal year. The proof must be submitted in compliance with 660:11-7-21.

(bc) **Financial Reports.**

(1) **Filing requirement.** Pursuant to Section 1-410.B of the Securities Act, every investment adviser registered under Section 1-406 of the Securities Act who has custody, as that term is defined in 660:11-7-48, of clients' funds or securities or requires prepayment of advisory fees six (6) months or more in advance and in excess of \$1,200.00 per client shall file a post-registration financial report with the Department each fiscal year.

(2) **Report content.** ~~A financial report~~ Financial reports shall contain the financial or operating report filing fee specified in Section 1-612 of the Securities Act and an audited statement of financial condition as of the investment adviser's fiscal year end.

(3) **Report filing dates.** Financial reports become due on the last day of the fiscal year to which they apply; however, a grace period is provided before a filing becomes delinquent. The filing must be made within 90 days of the end of the registrant's fiscal year.

(4) **Amendment.** If the information contained in a financial report is or becomes inaccurate or incomplete in a material respect, the investment adviser shall promptly file a correcting amendment. ~~"Promptly" shall mean not later than 30 days after learning of the facts or circumstances giving rise to the amendment.~~

(ed) **Incomplete or Delinquent Filings.** The Department will not accept incomplete or piecemeal filings. Failure to make a required filing before it becomes delinquent may result in the suspension or revocation of registration.

PART 7. RECORD KEEPING AND ETHICAL STANDARDS

660:11-7-41. Record keeping requirements

(a) **General requirements.** Every investment adviser registered or required to be registered under the Securities Act shall make and keep true, accurate and current the following books and records:

(1) A journal or journals, including cash receipts and disbursements, records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts. In no event shall the general ledger be posted less than once a month.

(3) A record of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of

a particular security, and of any modification or cancellation of any such order or instruction. The record shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(4) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.

(5) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such.

(6) All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the business of such investment adviser. The trial balance shall be prepared no later than fifteen (15) business days after the end of the accounting period. The financial statements shall include a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement, and a net worth computation.

(7) Originals of all written communications received and copies of all written communications sent by the investment adviser relating to the business of the investment adviser, including, but not limited to:

(A) any recommendation made or proposed to be made and any advice given or proposed to be given,

(B) any receipt, disbursement or delivery of funds or securities, or

(C) the placing or execution of any order to purchase or sell any security; provided, however:

(i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and

(ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to 2 or more persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and the source thereof.

(8) A list or other record identifying all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

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(9) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

(10) A copy of all agreements entered into by the investment adviser with any client and all other agreements relating to the business of the investment adviser as such, including agreements which set forth the fees to be charged, the manner of computation and method of payment.

(11) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including any communication by electronic media, that the investment adviser circulates or distributes, directly or indirectly, to 2 or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including any communication by electronic media, recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

(12) When providing investment advice is the primary business of the investment adviser.

(A) A record of every transaction in a security in which the investment adviser or any advisory representative (as defined in (B) of this paragraph) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment adviser nor the advisory representative of the investment adviser has any direct or indirect influence or control, and (ii) transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded no later than ten (10) days after the end of the calendar quarter in which the transaction was effected.

(B) For purposes of this paragraph, the following definitions will apply:

(i) The term "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the

recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

(I) any person in a control relationship to the investment adviser,

(II) any affiliated person of a controlling person, and

(III) any affiliated person of an affiliated person.

(ii) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control such company.

(13) When providing investment advice is not the primary business of the investment adviser:

(A) Notwithstanding the provisions of (12) of this subsection, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as defined in (C) of this paragraph) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

(i) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

(ii) transactions in securities which are direct obligations of the United States.

(B) Each record required by (A) of this paragraph shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(C) For purposes of this paragraph, the following definitions will apply:

(i) The term "advisory representative", when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director or employee of the investment adviser who participates in any way in

the determination of which recommendations shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of such recommendations or of the information concerning the recommendations:

- (I) any person in a control relationship to the investment adviser,
 - (II) any affiliated person of a controlling person, and
 - (III) any affiliated person of an affiliated person.
- (ii) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control such company.
- (iii) An investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived from such other business or businesses, on an unconsolidated basis, more than 50% of:
- (I) its total sales and revenues, and
 - (II) its income (or loss) before income taxes and extraordinary items.

(14) A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser, and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(15) For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser:

- (A) evidence of a written agreement to which the adviser is a party related to the payment of such fee;
- (B) a signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and
- (C) a copy of the solicitor's written disclosure statement. The written agreement, acknowledgment, and solicitor disclosure statement will be considered to be in compliance with this paragraph if such documents are in compliance with Rule 275.206(4)-3 of the Advisers Act of 1940.

(16) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the

performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including, but not limited to, electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.

(17) A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

(18) Recommendations.

(A) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(B) A record evidencing that the account record of each client consisting of the information described in (A) of this paragraph has been furnished by the investment adviser to the client within thirty days of the signing of an investment advisory contract, and thereafter at intervals no greater than thirty-six months. The account record shall include or be accompanied by prominent statements that the client should mark any corrections and return the account record to the adviser and that the client should notify the advisor of any changes to information contained in the account record as they occur in the future.

(19) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations. The following standards shall apply to supervisory procedures:

(A) Regardless of its size or complexity, every investment adviser registered or required to be registered under the Securities Act must adopt and implement supervisory procedures that are tailored specifically to their business and must address the activities of all its investment adviser representatives and associated persons. Supervisory procedures must be in writing and must be reasonably designed to achieve compliance with applicable securities laws and the rules of the Oklahoma Department of Securities. Ultimate responsibility for supervision rests with the investment adviser.

(B) Written supervisory procedures must identify who has supervisory responsibilities, a record of each associated person who has supervisory responsibilities and the date assigned, and procedures for each

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business line and applicable securities laws for which each supervisor is responsible.

(C) All written supervisory procedures should specifically identify the individual to perform a supervisory function; what specifically the supervisor will review; when or how often the review will take place and how the supervisor's review will be documented.

(D) Every investment adviser must maintain a copy of each prior version of its written supervisory procedures for a minimum of five years.

(20) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

(21) Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

(22) Where the adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or has forwarded third party checks drawn by clients and made payable to third parties within three business days of receipt, the adviser shall keep a ledger or other listing of all securities or funds held or obtained including the following information:

- (A) issuer;
- (B) type of security and series;
- (C) date of issue;
- (D) for debt instruments, the denomination, interest rate and maturity date;
- (E) certificate number, including alphabetical prefix or suffix;
- (F) name in which registered;
- (G) ~~date given to~~ received by the adviser;
- (H) date sent to client or sender;
- (I) form of delivery to client or sender, or copy of the form of delivery to client or sender; and
- (J) mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return; and
- ~~(K) date each check was received by the adviser.~~

(23) If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody in (c)(2) of 660:11-7-48, the adviser shall keep the following records:

- (A) a record showing the issuer or current transfer agent's name, address, phone number and other applicable contact information pertaining to the party responsible for recording client interests in the securities; and

- (B) a copy of any legend, shareholder agreement or other agreement showing that those securities are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(24) A copy of the investment adviser's Physical Security and Cybersecurity Policies and Procedures and Privacy Policy required by 660:11-7-46. In addition to the investment adviser's recordkeeping requirements under subsections (e) and (g) of this Section, the investment adviser shall maintain:

- (A) A current copy of these policies and procedures either in hard copy in a separate location or stored on electronic storage media that is separate from and not dependent on access to the investment adviser's computers or a network;

- (B) All records documenting the investment adviser's compliance with 660:11-7-46, including, but not limited to, evidence of the annual review of the policies and procedures; and

- (C) A record of any violation of 660:11-7-46 and of any action taken as a result of the violation.

(25) Copies of the brochures required by 660:11-7-43 including a list of all clients or perspective clients to whom the brochures were provided and the date the brochures were provided.

(b) Special requirements due to type of custody.

(1) **Custody as defined in 660:11-7-48.** If an investment adviser has custody, as that term is defined in 660:11-7-48, the records required to be made and kept under (a) of this Section shall include:

- (A) a copy of any and all documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian.

- (B) a journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

- (C) a separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

- (D) copies of confirmations of all transactions effected by or for the account of any client.

- (E) a record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

- (F) a copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of such statements along with the date such statements were sent to the clients.

- (G) if applicable to the adviser's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.
- (H) a record of any finding by the independent certified public accountant of any material discrepancies found during the examination.
- (I) if applicable, evidence of the client's designation of an independent representative.
- (2) **Adviser to pooled investment vehicle.** If an investment adviser has custody because it advises a pooled investment vehicle, the adviser shall also keep the following records:
 - (A) true, accurate and current account statements;
 - (B) When the exception set forth in (c)(4) of 660:11-7-48 applies, the records required to be made and kept shall include:
 - (i) the date(s) of the audit;
 - (ii) a copy of the audited financial statements; and
 - (iii) evidence of the mailing of the audited financial to all limited partners, members or other beneficial owners within 120 days of the end of its fiscal year.
 - (C) When the description set forth in (b)(5) of 660:11-7-48 applies to an investment adviser, the investment adviser is required to make and keep records to include:
 - (i) a copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party.
 - (ii) copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.
- (c) **Managed accounts.** Every investment adviser subject to (b) of this Section who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:
 - (1) Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.
 - (2) For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each security held by the client, and the current amount or interest of the client.
- (d) **Client identity.** Any books or records required by this Section may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.
- (e) **Records retention.** Every investment adviser subject to (a) of this Section shall preserve the following records in the manner prescribed:
 - (1) All books and records required to be made under the provisions of (a) to (c)(1), inclusive, of this Section (except for books and records required to be made under the provisions of (a)(11) and (a)(16) of this Section), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years in the principal office of the investment adviser.
 - (2) Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.
 - (3) Books and records required to be made under the provisions of (a)(11) and (a)(16) of this Section shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.
 - (4) Books and records required to be made under the provisions of (a)(17)-(22), inclusive, of this Section shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.
 - (5) Notwithstanding other record preservation requirements of this Section, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services: (A) records required to be preserved under (a)(3), (a)(7)-(10), (a)(14)-(15), (a)(17)-(19), (b) and (c) inclusive, of this Section, and (B) the records or copies required under the provision of (a)(11) and (a)(16) of this Section which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the applicable period described in this Subsection.
 - (f) **Ceasing business.** An investment adviser subject to (a) of this Section, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this Section for the remainder of the period specified in this Section, and shall notify the Administrator in writing of the exact address where the books and records will be maintained during the period.

(g) **Format and storage of records.**

(1) The records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved as the records are kept in their regular form for the required time, by an investment adviser on:

(A) paper or hard copy form, ~~as those records are kept in their original form~~; or

(B) micrographic media, including microfilm, microfiche, or any similar medium; or

(C) electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) The investment adviser must:

(A) arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(B) provide promptly any of the following that the Administrator or his representatives may request:

(i) a legible, true, and complete copy of the record in the medium and format in which it is stored;

(ii) a legible, true, and complete printout of the record; and

(iii) means to access, view, and print the records; and

(C) separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(3) In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

(A) to maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(B) to limit access to the records to properly authorized personnel and the Administrator and his representatives; and

(C) to reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(h) **Investment supervisory services.** For purposes of this Section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

(i) **Compliance with federal law.** Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 [17 C.F.R. 240.17a-3] and 17a-4 [17 C.F.R. 240.17a-4] under the 1934 Act, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this Section, shall be deemed to be made, kept, maintained and preserved in compliance with this Section.

(j) **Compliance with other state requirements.** Every investment adviser registered or required to be registered under the Securities Act that has its principal place of business in a state other than Oklahoma shall be exempt from the requirements of this section, provided the investment adviser is licensed in the state in which it maintains its principal place of business and is in compliance with that state's books and records requirements.

660:11-7-42. Standards of ethical practices

(a) **Purpose.** This Section is intended to set forth the standards of ethical practices for investment advisers and investment adviser representatives. The standards set forth in this Section apply to federal covered investment advisers and investment adviser representatives only to the extent that application is permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). Any noncompliance with the standards set forth in this Section will constitute unethical practices in the securities business as the same is set forth in Section 1-411.D.13 of the Securities Act; however, the following is not intended to be a comprehensive listing of all specific events or conditions that may constitute such unethical practices. The standards shall be interpreted in such manner as will aid in effectuating the policy and provisions of the Securities Act, and so as to require that all practices of investment advisers and investment adviser representatives in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory. ~~The standards set forth in this Section and the disclosure delivery requirement set forth in 660:11-7-31 shall apply to all investment advisers and investment adviser representatives.~~

(b) **Standards.** An investment adviser or investment adviser representative shall not engage in dishonest or unethical practices including, although not limited to, the following:

(1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment profile.

(A) A client's investment profile includes, but is not limited to, the client's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information disclosed by the client or known to the investment adviser or investment adviser representative.

(B) Institutional clients.

(i) An investment adviser or an investment adviser representative fulfills the customer-specific suitability obligation for an institutional account, as defined in 660:11-1-3, if

(I) the investment adviser or investment adviser representative has a reasonable basis to believe that the institutional client is capable of evaluating investment risks independently, both

in general and with regard to particular transactions and investment strategies involving a security or securities and

(II) the institutional client affirmatively indicates that it is exercising independent judgment in evaluating the investment adviser or investment adviser representative's recommendations.

(ii) Where an institutional client has delegated decision-making authority to an agent, such as an investment adviser or a bank trust department, these factors shall be applied to the agent.

(2) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

(4) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser or investment adviser representative, or a financial institution engaged in the business of loaning funds.

(7) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser or investment adviser representative.

(8) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or an investment adviser representative or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(9) Providing a report or recommendation to any advisory client prepared by someone other than the investment adviser without disclosing the source.

(10) Charging a client an unreasonable advisory fee.

(11) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(A) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(B) Charging a client an advisory fee for rendering advice when a commission compensation for executing effecting securities transactions pursuant to such advice will be received by the investment adviser or its employees or affiliated persons.

(12) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

(13) Publishing, circulating and distributing any advertisement which does not comply with Reg. A § 275.206(4)-1 under the Advisers Act.

(14) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.

(15) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the investment adviser's action does not comply with the requirements of Reg. A § 275.206(4)-2 under the Advisers Act.

(16) Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment adviser or investment adviser representative and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

(17) Entering into, extending or renewing any investment advisory contract, if such contract contains any provision that limits or purports to limit any of the following:

(A) the liability of the investment adviser for conduct or omission arising from the advisory relationship that does not conform to the Securities Act, applicable federal statutes, or common law fiduciary standard of care;

(B) remedies available to the client at law or equity or the jurisdiction where any action shall be filed or heard; or

(C) applicability of the laws of Oklahoma with respect to the construction or interpretation of the provisions of the investment advisory contract.

(18) Failing to adopt, implement, and follow written supervisory procedures that are tailored specifically to their business and that:

(A) address the activities of all its investment adviser representatives and associated persons;

(B) identify who has supervisory responsibilities, including a record of each associated person who has supervisory responsibilities and the date assigned, and procedures for each business line and applicable securities laws for which each supervisor is responsible; and

(C) specifically identify the individual to perform a supervisory function; what specifically the supervisor will review; when or how often the review will take place and how the supervisor's review will be documented.

(19) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Securities Act or any section thereunder.

(20) Accessing a client's account by using the client's own unique identifying information such as username and password.

(21) Failing to establish, maintain, and enforce required policies and procedures.

(22) Knowingly selling any security to or purchasing any security from a client while acting as principal for its own advisory account, or knowingly effecting any sale or purchase of any security for the account of the client while acting as broker-dealer for a person other than the client, without disclosing to the client in writing before the completion of the transaction the capacity in which it is acting and obtaining the consent of the client to the transaction.

(A) The prohibitions of this paragraph (22) shall not apply to any transactions with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to the transaction.

(B) The prohibition of this paragraph (22) shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer acts as an investment adviser solely:

(i) by means of publicly distributed written materials or publicly made oral statements;

(ii) by means of written materials or oral statements not purporting to meet the objectives or needs of specific individuals or accounts;

(iii) through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or

(iv) any combination of the foregoing services.

(C) Publicly distributed written materials or publicly made oral statements shall disclose that, if the purchaser of the advisory communication uses the investment adviser's services in connection with the sale or purchase of a security which is a subject of the communication, the investment adviser may act as principal for its own account or as agent for another person. Compliance by the investment adviser with the foregoing disclosure requirement shall not relieve it of any other disclosure obligations under the Securities Act.

(D) The prohibition of this paragraph (22) shall not apply to an investment adviser effecting an agency cross transaction for an advisory client provided the following conditions are met:

(i) The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for such client;

(ii) Before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;

(iii) At or before the completion of each agency cross transaction, the investment adviser or any other person relying on this subparagraph sends the client a written confirmation. The written confirmation shall include:

(I) A statement of the nature of the transaction;

(II) The date the transaction took place;

(III) An offer to furnish, upon request, the time when the transaction took place; and

(IV) the source and amount of any other remuneration the investment adviser received or will receive in connection with the transaction. In the case of a purchase, if the investment adviser was not participating in a tender offer, the written confirmation shall state whether the investment adviser has been receiving or will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written consent.

(iv) At least annually, and with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on this subparagraph (D) send each client a written disclosure statement identifying:

(I) The total number of agency cross transactions during the period for the client since the date of the last such statement or summary; and

(II) The total amount of all commissions or other remuneration the investment adviser received or will receive in connection with agency cross transactions for the client during such period.

(v) Each written disclosure and confirmation required by this subparagraph (D) must include a conspicuous statement that the client may revoke the written consent required under (i) of this subparagraph (D) at any time by providing written notice to the investment adviser.

(vi) No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

(vii) Nothing in the subparagraph (D) shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling his duty with respect to the best price and execution

for the particular transaction for the client nor shall it relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the Securities Act.

(E) Definitions for purposes of this paragraph (22).

(i) "Agency cross transaction for an advisory client" means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. When acting in such capacity such person is required to be registered as a broker-dealer in this state unless excluded from the definition.

(ii) "Publicly distributed written materials" means written materials which are distributed to 35 or more persons who pay for those materials.

(iii) "Publicly made oral statements" means oral statements made simultaneously to 35 or more persons who pay for access to those statements.

(23) Sharing an office with a person who is not an advisory affiliate without:

(A) reducing any agreement with the unaffiliated person to writing;

(B) taking appropriate measures, including, but not limited to, adequate disclosures to eliminate the appearance of an agency relationship with the unaffiliated person when one does not otherwise exist; and

(C) complying with all applicable Oklahoma and federal laws requiring the safeguarding of customer data from the unaffiliated person.

660:11-7-46. Information security and privacy

(a) **Physical security and cybersecurity policies and procedures.** Every investment adviser registered or required to be registered shall establish, implement, update, and enforce written physical security and cybersecurity policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information. The policies and procedures must be tailored to the investment adviser's business model, taking into account the size of the firm, type(s) of services provided, and the number of locations of the investment adviser.

(1) The physical security and cybersecurity policies and procedures must:

(A) Protect against reasonably anticipated threats or hazards to the security or integrity of client records and information;

(B) Ensure that the investment adviser safeguards confidential client records and information; and

(C) Protect any records and information the release of which could result in harm or inconvenience to any client.

(2) The physical security and cybersecurity policies and procedures must cover at least five functions:

(A) **Identify.** Develop the organizational understanding to manage information security risk to systems, assets, data, and capabilities;

(B) **Protect.** Develop and implement the appropriate safeguards to ensure delivery of critical infrastructure services;

(C) **Detect.** Develop and implement the appropriate activities to identify the occurrence of an information security event;

(D) **Respond.** Develop and implement the appropriate activities to take action regarding a detected information and security event; and

(E) **Recover.** Develop and implement the appropriate activities to maintain plans for resilience and to restore any capabilities or services that are impaired due to an information security event.

(3) The investment adviser must review, no less frequently than annually, and modify, as needed, these policies and procedures to ensure the adequacy of the security measures and the effectiveness of their implementation.

(b) **Privacy policy.** The investment adviser must deliver upon the investment adviser's engagement by a client, and on an annual basis thereafter, a privacy policy to each client that is reasonably designed to aid in the client's understanding of how the investment adviser collects and shares, to the extent permitted by state and federal law, non-public personal information. The investment adviser must promptly update and deliver to each client an amended privacy policy if any of the information in the policy becomes inaccurate.

SUBCHAPTER 9. REGISTRATION OF SECURITIES

PART 5. GUIDELINES AND POLICIES APPLICABLE TO OFFERINGS OF REGISTERED SECURITIES

660:11-9-31. Prospectus delivery requirement

No offer or sale of any security registered under the Securities Act may be made unless concurrent with the initial solicitation or immediately thereafter there is furnished to the prospective purchaser, a prospectus, in such form and containing such information as may be required pursuant to the Securities Act or the rules and regulations promulgated thereunder or by order of the Administrator, which prospectus has been previously filed with and approved by the Administrator for use; provided, no prospectus shall be required in connection with offers or sales of securities or transactions exempted by Sections 1-201 through 1-203 of the Securities Act, except as may be specifically required by such Act or the rules and regulations promulgated thereunder or by order of the Administrator. In addition, after the effective date of the registration statement in the state of Oklahoma, all broker-dealers and agents effecting transactions in the securities registered under the Securities Act shall be required to deliver a prospectus prior to or concurrently with any transaction in said securities for the

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same time periods specified in Section ~~4(3)(a)(3)~~ of the 1933 Act and Rule 174 adopted by the SEC (~~17 C.F.R. 230.174~~) (17 CFR § 230.174) in its most currently amended form as of the date of the filing of the application. Nothing in this rule obviates the need for registrants to comply with the provisions of Section 1-501 of the Securities Act.

660:11-9-33. Special requirements for promotional or ~~developmental~~ development stage companies

(a) **Definition.** For purposes of this Section, a "promotional or development stage company" means any entity that meets the definition in 660:11-11-1.

(b) **Requirements.** Registration statements filed under Section 1-305 of the Securities Act or any exhibits filed therewith relating to securities of a promotional or ~~developmental~~ development stage company must demonstrate in addition to meeting any other requirements that may apply, the issuer's ability to meet the following requirements:

(1) Taking into consideration the minimum net proceeds of the offering, past earnings, and accounts receivable, of the issuer, the prospectus must demonstrate the issuer's ability to operate for a period of at least six months without additional capital; or based on a business plan filed supplementally, the issuer must demonstrate its ability to operate for a period of at least 12 months. Any registrant may request that such business plan not be deemed filed with the registration statement and may request that it be held in confidence. A prospectus relating to an offering of debt securities must demonstrate the issuer's ability to service the debt. This can be demonstrated by submission of a compilation.

(2) No more than 25% of the proceeds of the offering net of offering costs shall be paid as remuneration to promoters, executive officers, directors or shareholders owning 10% or more of any class of outstanding stock of the issuer.

(3) The prospectus must demonstrate compliance with 660:11-9-35 regarding limitations on offering expenses and remuneration and with the NASAA statement of policy regarding promotional shares.

(4) Issuers shall not have granted, and shall agree not to grant in the future, options to acquire securities of the same class as those being offered, at an exercise price that is less than 85% of the fair market value of the securities at the time of the grant of the option. The prospectus shall disclose the dilution that would result from the exercise of all outstanding warrants or options to acquire securities of the same class as those being offered.

(5) The use of offering proceeds must be disclosed with specificity in the prospectus.

(c) **Waiver provisions.** The Administrator in his or her discretion may waive any of the above requirements upon written request of the registrant, if the Administrator finds that the requirement is not necessary to protect the public interest under the circumstances. Any such request shall be filed with the registration statement and shall indicate the reasons why

the requirement is not necessary under the circumstances described in the registration statement.

660:11-9-36. Promoters' and organizers' equity contributions

(a) **Requirement.** Where an issuer is a promotional or ~~developmental~~ development stage company as defined in ~~660:11-3-36~~ 660:11-11-1, the ratio of equity investment by promoters or insiders must be determined as reasonable and equitable in light of the facts and circumstances presented in each particular case. Cases where the fair value of such equity investment is less than 10% of the total offering are discouraged, and in such instances, the proponents of the registration shall have the burden of establishing that the offering is being made without unfair or unreasonable amounts of promoters' profits or participation, as provided in Section 1-306.A.7.b of the Securities Act.

(b) **Presumption.** In those instances where only 5% or more has been contributed by promoters or organizers, but where they have entered into bona fide and binding subscription contracts exercisable within one year with the new enterprises for capital stock representing the difference between the amount contributed and 10%, then the burden of proof will be deemed to have been satisfied.

(c) **Determination of equity investment.** The fair value of equity investment shall be deemed to mean the total of all sums conveyed to the issuer in the form of paid-in or contributed cash or other assets with an established or determinable value. In those cases where the issuer has experienced losses from operations, the fair value of equity investment shall be the net worth of the issuer as of the date of the proposed offering determined in accordance with generally accepted accounting principles.

(d) **Burden of proof.** The burden of justifying as equitable the quantity of promotional securities to be issued for assets so conveyed, and of establishing reasonable or market value of said assets, shall rest with the applicant.

SUBCHAPTER 11. EXEMPTIONS FROM SECURITIES REGISTRATION

PART 1. GENERAL PROVISIONS

660:11-11-1. Definitions

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

"Affiliate" means a person who, directly or indirectly, controls, is controlled by, or is under common control with a person as defined in this Section.

"Associate" means, when used to indicate a relationship with a person, includes:

(A) corporations, legal entities, other than the issuer or majority-owned subsidiaries of the issuer, of

which a person is an officer, director, partner, or a direct or indirect, legal or beneficial owner of five percent (5%) or more of any class of equity securities.

(B) trusts or other estates in which a person has a substantial beneficial interest or for which a person serves as a trustee or in a similar capacity; and

(C) a person's spouse and relatives, by blood or by marriage, if that person is a promoter of the issuer, its subsidiaries, its affiliates, or its parent.

"Class" means the lowest level of subdivision of the securities offered by an issuer.

"Control" means the power to direct or influence the direction of the management or policies of a person, directly or indirectly, through the ownership of voting securities, by contract or otherwise. A presumption of control exists for any person who:

(A) is a director, general partner, member, manager, or officer exercising executive responsibility or has similar status or functions;

(B) has the right to vote twenty percent (20%) or more of a class of voting securities; or

(C) in the case of a partnership or limited liability company, has contributed or has the right to receive upon dissolution twenty percent (20%) or more of the capital.

"Enterprise" means a corporation, general partnership, limited partnership, joint venture and any other formal or informal entity, association or arrangement (other than a sponsor) in which the investors' rights, interests or participation constitute "securities" as defined by Section 1-102 of the Securities Act.

"Equity securities" means, including, but not limited to shares of common stock or similar securities, convertible securities, warrants, and options or rights that may be converted into or exercised to purchase shares of common stock or similar securities.

"Net earnings" means the issuer's after-tax earnings, excluding extraordinary and nonrecurring items, determined in accordance with generally accepted accounting principles.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, limited liability partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality; public corporation; or any legal or commercial entity.

"Promoter" means:

(A) a person, including, but not limited to, who:

(i) alone or in conjunction with one or more persons, directly, or indirectly, took the initiative in founding or organizing the issuer or controls the issuer;

(ii) directly, or indirectly, receives, as consideration for property or for services rendered, five percent (5%) or more of any class of the issuer's equity securities or five percent (5%) or more of the proceeds from the sale of any class of the issuer's equity securities.

(iii) is an officer or director for the issuer;

(iv) legally or beneficially owns, directly or indirectly, five percent (5%) or more of any class of the issuer's equity securities; or

(v) is an affiliate or an associate of a person specified in i through iv of this subparagraph.

(B) A promoter does not include

(i) a person who receives securities or proceeds solely as underwriting compensation unless that person otherwise comes with the terms;

(ii) an unaffiliated institutional investor, who purchased the issuer's equity securities more than one year prior to the filing date of the issuer's registration statement; or

(iii) at the Administrator's discretion, an unaffiliated institutional investor, who purchased the issuer's securities on an arm's-length basis within one year prior to the filing date of the issuer's registration statement.

"Promotional or development stage company" means an issuer:

(A) that is not listed, or authorized for listing, on the New York Stock Exchange, the American Stock Exchange, the NASDAQ Global Market, or a securities exchange that the SEC determines under Section 18(b)(1) of the 1933 Act has substantially similar listing standards;

(B) that has had annual net earnings for each of the last two (2) consecutive fiscal years before the public offering that have been less than five percent (5%) of the aggregate public offering; or

(C) that has had average, annual net earnings for the last five (5) fiscal years before the public offering that have been less than five (5%) of the aggregate public offering.

"Promotional shares" means equity securities that:

(A) A promotional or development stage company has issued within five (5) years before the filing of the registration statement or will issue to its promoters for cash or other consideration, including services rendered, patents, copyrights, and other intangibles; or

(B) An issuer that is not a promotional or development stage company has issued within three (3) years before the filing of the registration statement or will issue to promoters for cash or other consideration, including services rendered, patents, copyrights, and other intangibles.

"Sponsor" means any natural person, corporation, general partnership, limited partnership, joint venture or other entity which is directly or indirectly instrumental in organizing an enterprise or which will manage or participate in the management of an enterprise.

"Unaffiliated institutional investor" means the following investors if not affiliated with the issuer:

(A) an institutional investor as defined in 1-102(13) of the Securities Act; and

(B) a business development company as defined in Section 2(a)(48) of the 1940 Act.

PART 5. EXEMPT TRANSACTIONS

660:11-11-40. Manual exemption

(a) **Recognized securities manuals.** The publications which shall be recognized by the Administrator for purposes of the exemption from registration set forth in Section 1-202.2.d of the Securities Act shall be as follows:

- (1) Best's Insurance Reports, Life-Health
- (2) Mergent's Industrial Manual
- (3) Mergent's International Manual
- (4) OTC Markets Group Inc. with respect to securities included in the OTCQX and OTCQB markets.

(b) **Additional requirements.** To be eligible for the exemption from registration provided by Section 1-202.2.d of the Securities Act, the following additional conditions must be met:

(1) All information specified as required to be contained in the recognized securities manuals pursuant to Section 1-202.2.d of the Securities Act must be given to the purchaser with the confirmation by providing the purchaser with a copy of either:

- (A) the information contained in the manual listing; or
- (B) the information maintained by the broker-dealer effecting the transaction that is required to be kept by such broker-dealer pursuant to the requirements of SEC Rule 15c2-11 promulgated under the provisions of the 1934 Act.

(2) The information required under (1) of this subsection must be reasonably current in all material respects. The time for determining whether the information is current is at the date of the particular sale not the date the manual listing is published. For purposes of this paragraph, the term "reasonably current" shall have the meaning set forth in SEC Rule 15c2-11.

(3) The financial statements of the issuer required pursuant to Section 1-202.2.d of the Securities Act must be audited by an independent public accountant in accordance with generally accepted auditing standards, presenting fairly, in all material respects, the financial condition of the issuer; provided, if the issuer is an entity formed and operating under the laws of a foreign jurisdiction, the financial statements shall be audited in accordance with the auditing standards applicable in its jurisdiction of formation and operation.

(4) The issuer of the security, including any predecessors, has either:

- (A) been in continuous business or operations for at least two (2) years, unless the issuer is an insurance company in which event it shall have been in business for at least five (5) years; or
- (B) had a class of equity securities registered under Section 1-301 of the Securities Act within the past five (5) years.
- (C) As used in this paragraph, "business or operations" means actual activities related to its current business or operations and shall not include merely holding funds or assets for future use.

(5) Sales must be made by a broker-dealer, either as principal or agent, who is registered under the provisions of Section 1-401 of the Securities Act.

(6) The securities must be offered or sold at a price reasonably related to the current market price of such securities.

(7) The securities must be issued and outstanding. The exemption is not available for issuer transactions. For purposes of this paragraph, "issuer" shall include all officers, directors and controlling (5% or more) shareholders of the issuer.

(8) The security does not constitute the whole or any part of an unsold allotment to, or subscription or participation by, the broker-dealer as an underwriter of the security.

(c) **Restriction for promotional or developmental stage companies.** This exemption may not be used to evade the registration requirements of Section 1-301 of the Securities Act. Accordingly, transactions in reliance on this exemption for the securities of an issuer which is a promotional or ~~developmental~~ development stage company as defined in ~~660:11-1-3660:11-11-1~~, involving securities that have not been registered for offer or sale in the state of Oklahoma and which securities would not have met the requirements for registration set forth in Sections 1-303 or 1-304 of the Securities Act and the rules promulgated thereunder, had the securities been filed for registration pursuant to such sections of the Securities Act, may be deemed to have violated this requirement unless proven otherwise.

(d) **Exemption.** The requirements of (b)(1) of this Section, shall not apply to the sale of the securities of an issuer who has net tangible assets in excess of \$10,000,000.00 (U.S.) as determined by its most recent audited financial statements. For foreign issuers, the net tangible asset value may be determined by applying the exchange rate in effect as of the date of the financial statement relied upon unless there has been a material change in such exchange rate after the date of the financial statement that would reduce by greater than 20% the value in U.S. dollars. In that event, the exchange rate applied should be the rate effective as of the last day of the preceding month. Nothing in this Section shall release the broker-dealer effecting the transaction from its obligation to maintain the information required by SEC Rule 15c2-11 and to deliver any such information to any person involved in a transaction effected in the security, upon request by such person.

660:11-11-52. Oklahoma Accredited Investor Exemption

~~(a) **Preliminary statement.** On April 27, 1997, the NASAA adopted the Model Accredited Investor Exemption ("MAIE"). MAIE provides exemption from securities registration only for offers and sales to accredited investors. The MAIE rests on the premise that accredited investors are capable of fending for themselves in information gathering and conducting "due diligence" on potential investments in companies before making an investment. Under authority of Section 401(b)(22) of the Oklahoma Securities Act, 71 O.S. § 1-17, 101-103, 201-204, 301-307, 401-413, 501, 701-703~~

(Supp. 1998), repealed effective July 1, 2004, the Administrator issued an order granting such an exemption, effective March 8, 1999, that is known as the Oklahoma Accredited Investor Exemption.

(b) **Definitions.** The following terms, when used in this section, shall have the meanings as such terms are defined in the NASAA Statement of Policy Regarding Corporate Securities Definitions, adopted April 27, 1997.

- (1) "Issuer in the Development Stage"; and
- (2) "Promoters"

(c) **Exemption.** Under the authority of Section 2-4031-203 of the Securities Act, transactions meeting the following conditions are exempt from Sections 1-301 and 1-504 of the Securities Act:

- (1) **Sales only to accredited investors.** Sales of securities shall be made only to persons who are or the issuer reasonably believes are accredited investors. For purposes of this orderSection, an "accredited investor" is a person who meets the definition set forth in 17 CFR § 230.501(a).
- (2) **Investment intent.** The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under Sections 1-303 or 1-304 of the Securities Act or to an accredited investor pursuant to an exemption from securities registration under the Securities Act.

(3) **When exemption is unavailable.**

(A) The exemption is not available to ~~an issuer that is in the promotional or Developmentdevelopment Stagestage company~~ that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(B) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, any ~~of the issuer's Promoterspromoters~~ of the issuer presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

- (i) within the last five years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the SEC;
- (ii) within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;
- (iii) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or

deceit in connection with the purchase or sale of any security; or

(iv) is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(C) Subparagraph (3)(B) shall not apply if:

- (i) the party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party;
- (ii) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or
- (iii) the issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph.

(4) **General announcement.**

(A) A general announcement of the proposed offering may be made by any means.

(B) The general announcement shall include only the following information, unless additional information is specifically permitted by the Administrator:

- (i) The name, address and telephone number of the issuer of the securities;
- (ii) The name, a brief description and price (if known) of any security to be issued;
- (iii) A brief description of the business of the issuer in 25 words or less;
- (iv) The type, number and aggregate amount of securities being offered;
- (v) The name, address and telephone number of the person to contact for additional information; and
- (vi) A statement that:
 - (I) sales will only be made to accredited investors;
 - (II) no money or other consideration is being solicited or will be accepted by way of this general announcement; and
 - (III) the securities have not been registered with or approved by any state securities agency or the SEC and are being offered and sold pursuant to an exemption from registration.

(5) **Additional information.** The issuer, in connection with an offer, may provide information in addition to the general announcement under ~~(5)(4)~~, if such information:

- (A) is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

(B) is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(6) **Telephone solicitation.**

(A) No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(B) Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this order.

(7) **Notice filing.** The issuer shall file a notice of the transaction with the Department within 15 days after the first sale of securities subject to the Act. The notice must include the following: an executed copy of the NASAA Model Accredited Investor Exemption Uniform Notice of Transaction; the Oklahoma Accredited Investor Exemption Supplemental Information Form; a consent to service of process on Form U-2 and (if applicable) Form U-2A; a copy of the general announcement; and a fee as set forth in Section 1-612 of the Securities Act.

(8) **Disqualifying provision.** Failure to comply with (7) of this section shall not result in the loss of availability of the subject exemption unless the issuer, any of its predecessors or affiliates have been subject to a cease and desist order of the Administrator or any order, judgment, or decree by another state securities agency, the SEC or any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person for failure to comply with a notice filing requirement for a comparable exemption. This provision shall not apply if the Administrator determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied. Requests for waivers of the disqualifying provision of this subsection shall be in writing setting forth the reasons therefor.

660:11-11-53. Exemptions for offers but not sales

Terms of the exemption. By authority delegated to the Administrator in Sections ~~1-202~~ 1-202.18 and 1-203 of the Securities Act, the following transactions are determined to be classes of transactions for which registration is not necessary or appropriate for the protection of investors and are exempt from Sections 1-301 and 1-504 of the Securities Act: an offer to sell, but not a sale, of a security exempt from registration under the 1933 Act if:

- (1) a registration statement has been filed under this act, but is not effective,
- (2) the offeror is not aware of a stop order that has been issued by the Administrator under this act and does not know of an audit, inspection, or proceeding by the Department that may culminate in a stop order is by the offeror to be pending; and
- (3) the offer consists only of:

(A) publication or distribution of a solicitation of interest document that complies with the requirements of ~~17 CFR § 230.254~~ 17 CFR § 230.555 and

any subsequent oral communications with prospective investors and other broadcasts, also permitted by said section;

(B) a preliminary offering circular that complies with the requirements of ~~17 CFR § 230.255~~ 17 CFR § 230.254; or

(C) an offering document that contains the information required to be furnished in ~~17 CFR § 30.502(b)(2)~~ 17 CFR § 230.502(b)(2).

SUBCHAPTER 15. MISCELLANEOUS PROVISIONS

660:11-15-2. Protection from financial exploitation

(a) **Definitions.** The following words and terms, when used in this Section shall have the following meanings, unless the context clearly indicates otherwise:

(1) **"Account"** means any account of a broker-dealer or investment adviser for which a Protected Adult has the authority to transact business.

(2) **"Agencies"** means the one or more of the following: the Oklahoma Department of Human Services, the office of the district attorney in the county in which the suspected exploitation occurred, or the local municipal police or sheriff's department.

(3) **"Financial exploitation"** means:

(A) the wrongful or unauthorized taking, withholding, appropriation or use of money, assets, or property of a protected adult; or

(B) any act or omission taken by a person, including through the use of a power of attorney, guardianship, conservatorship or any other authority, regarding a protected adult, to:

(i) obtain control, through the use of intimidation, undue influence, coercion, harassment, duress, deception, false representation or false pretense, over the protected adult's money, assets or property; or

(ii) convert money, assets, or property of the protected adult.

(4) **"Protected adult"** means

(A) an individual 62 years of age or older; or

(B) an incapacitated person or a vulnerable adult as such terms are defined in the Protective Services for Vulnerable Adults Act in Title 43A of the Oklahoma Statutes.

(b) **Agency disclosure.** As required by the Protective Services for Vulnerable Adults Act in Title 43A of the Oklahoma Statutes, if a broker-dealer or investment adviser reasonably believes that financial exploitation of a protected adult in this state has occurred, is occurring, may have been attempted, is being attempted, or will be attempted, the broker-dealer or investment adviser shall promptly notify one or more of the Agencies.

(c) **Third-party disclosures.** If a broker-dealer or investment adviser reasonably believes that financial exploitation relating to a protected adult has occurred, is occurring, may have

been attempted, is being attempted, or will be attempted, in and/or from this state, the broker-dealer or investment adviser may notify any third-party previously designated by the protected adult or any other third party that is reasonably associated with the protected adult.

(d) Temporary holds.

(1) A broker-dealer or investment adviser transacting business in and/or from this state with a protected adult may place a temporary hold on a transaction in and/or a disbursement of funds or securities from an account of such protected adult or an account on which such protected adult is a beneficiary if:

(A) the broker-dealer or investment adviser reasonably believes that financial exploitation of a protected adult has occurred, is occurring, has been attempted, or will be attempted; and

(B) the broker-dealer or investment adviser:

(i) immediately, but in no event more than two business days after the date the temporary hold is first placed provides oral or written notification, which may be electronic, of the temporary hold and the reason therefor to all parties authorized to transact business in the account; any third party previously designated by the protected adult to be contacted; and the Oklahoma Department of Securities; and

(ii) immediately initiates an internal review of the suspected or attempted financial exploitation of the protected adult, as necessary.

(2) Any temporary hold of a transaction or disbursement of funds or securities as authorized by this subsection will expire upon the earlier of:

(A) a determination by the broker-dealer or investment adviser that the transaction or disbursement of funds or securities will not result in financial exploitation of the protected adult; or

(B) not later than fifteen business days after the date on which the broker-dealer or investment adviser first placed the temporary hold on the transaction or disbursement of funds or securities, unless the broker-dealer or investment adviser's internal review of the facts and circumstances supports its reasonable belief that financial exploitation of the protected adult has occurred, is occurring, has been attempted, or will be attempted, in which case the broker-dealer or investment adviser may extend the temporary hold to not later than twenty-five business days after the date the broker-dealer or investment adviser first placed the temporary hold on the transaction or disbursement of the funds or securities; or

(C) at any time, an agency of competent jurisdiction or a court of competent jurisdiction may terminate or extend a temporary hold authorized by this subsection.

(e) Disclosure exceptions. Notwithstanding subsections (c) and (d) above, a notification permitted or required by this section shall not be made to any person the broker-dealer or investment adviser reasonably believes has engaged, is

engaged, or will engage, in suspected or attempted financial exploitation of the protected adult.

(f) Immunity from administrative liability. A broker-dealer or investment adviser that, in good faith and exercising reasonable care, complies with this section shall be immune from any administrative liability imposed through an action by the Department that might otherwise arise from a disclosure, placing a temporary hold on a transaction or disbursement of funds or securities, or providing access to records in accordance with this section.

(g) Records. A broker-dealer or investment adviser shall retain and provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of a protected adult to the Oklahoma Department of Human Services and to law enforcement, either as part of a referral to, or upon request of, the Oklahoma Department of Human Services or law enforcement. The records may include historical records as well as records relating to the most recent transaction or transactions that may comprise financial exploitation of a protected adult. Nothing in this provision shall limit or otherwise impede the authority of the Administrator of the Oklahoma Department of Securities to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

[OAR Docket #20-712; filed 7-27-20]

TITLE 660. DEPARTMENT OF SECURITIES CHAPTER 20. OKLAHOMA SUBDIVIDED LAND SALES CODE

[OAR Docket #20-713]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
660:20-1-3. Definitions [AMENDED]
Subchapter 3. Registration of Subdivided Land
660:20-3-4. Renewal procedures [AMENDED]

AUTHORITY:

Administrator, Oklahoma Department of Securities; 71 O.S. §1-662

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n/a

INCORPORATIONS BY REFERENCE:

n/a

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GIST/ANALYSIS:

The proposed rule amendments provide for the elimination of language relating to fees and costs not authorized by statute and reference the Oklahoma Subdivided Land Sales Code for certain definitions.

CONTACT PERSON:

Faye Morton, General Counsel, Oklahoma Department of Securities, (405) 280-7727

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

660:20-1-3. Definitions

Unless the context otherwise requires, or unless defined in this Section, terms used in this Chapter, if defined in the Land Sales Code shall have the meaning as defined in the Land Sales Code. The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Department" means the Oklahoma Department of Securities.

"Land Sales Act" means the most recent codification of the Oklahoma Subdivided Land Sales Code, 71 O.S., Sections 601 through 667.

"OILSR" means the Office of Interstate Land Sales Registration of the United States Department of Housing and Urban Development.

"Vacation certificates" means any material associated with a plan whereby a prospective purchaser would be entitled to lodging, food or other amenities and that is used by subdividers or their agents or distributors or any other person to induce prospective purchasers to visit the subdivision or attend or submit to a sales presentation by a subdivider or its agents or its distributors or any other person.

SUBCHAPTER 3. REGISTRATION OF SUBDIVIDED LAND

660:20-3-4. Renewal procedures

Upon the expiration of an effective registration the Administrator may renew the registration for an additional period of one (1) year provided the registrant is in compliance with the Land Sales Act, has filed all reports required by the Administrator, including periodic and supplemental updates and sales reports, ~~has paid all proper costs of examinations of the subdivider conducted by the Administrator or his representatives,~~ pays an ~~annual renewal fee~~ examination fee of Two Hundred Fifty Dollars (\$250.00), and renewal is requested by a letter signed by the registrant. ~~The annual renewal fee shall be Two Hundred Fifty Dollars (\$250.00 plus Ten Dollars (\$10.00)~~

~~for each 100 lots or fraction thereof previously registered remaining to be offered in the state of Oklahoma at renewal.~~

[OAR Docket #20-713; filed 7-27-20]

TITLE 660. DEPARTMENT OF SECURITIES CHAPTER 25. OKLAHOMA BUSINESS OPPORTUNITY SALES ACT

[OAR Docket #20-714]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

660:25-1-3. Definitions [AMENDED]

Subchapter 5. Sales Literature or Advertising

660:25-5-1. Filing of sales literature [AMENDED]

AUTHORITY:

Administrator, Oklahoma Department of Securities; 71 O.S. §816

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n/a

GIST/ANALYSIS:

The proposed rule amendments correct an error and reference the Oklahoma Business Opportunity Sales Act for certain definitions.

CONTACT PERSON:

Faye Morton, General Counsel, Oklahoma Department of Securities, (405) 280-7727

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

660:25-1-3. Definitions

Unless the context otherwise requires, or unless defined in this Section, terms used in this Chapter, if defined in the Business Opportunity Act, shall have the meaning as defined in the Business Opportunity Act. The following words and terms, when used in this Chapter or the Business Opportunity Act, shall have the following meaning, unless the context clearly

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

"Business Opportunity Act" means the most recent codification of the Oklahoma Business Opportunity Sales Act in Title 71 of the Oklahoma Statutes.

"Sales literature and advertising" means material published in, or designed for use in, a newspaper, magazine, or other periodical, radio, television, telephone solicitation or tape recording, videotape display, signs, billboards, motion pictures, telephone directories (other than standard listings), other public media or any other written communication distributed or made generally available to customers or the public including but not limited to pamphlets, circulars, form letters, seminar texts, research reports, surveys, performance reports or summaries and reprints or excerpts of other sales literature or advertising to include publications in electronic format.

"Sales literature or advertising package" means all submissions to the Administrator under one posting or delivery relating to a specific business opportunity.

SUBCHAPTER 5. SALES LITERATURE OR ADVERTISING

660:25-5-1. Filing of sales literature

(a) **Filing requirement.** All sales literature and advertising must be filed with and responded to by the Administrator prior to use. A filing shall include the sales literature or advertising package, the review fee specified in Section 807.F of the Business Opportunity Act and a representation by the seller that reads substantially as follows: "I hereby attest and affirm that the enclosed sales literature or advertising package contains no false or misleading statements or misrepresentations of material facts, and that all information contained therein is in conformity with the most recent disclosure document relating to the particular business opportunity offered thereby on file with the Administrator."

(b) **Exemption.** The disclosure document filed with the Administrator as part of the registration process pursuant to Section 806 of the Business Opportunity Act is exempted from the filing requirement specified in subsection (a) of this Section.

(c) **Content.** Sales literature and advertising used in any manner in connection with the offer and sale of ~~securities~~ business opportunities is subject to the provisions of Section 819 whether or not such sales literature and advertising is required to be filed pursuant to this rule. Furthermore, sales literature and advertising filed with the Administrator is subject to the provisions of Section 820 of the Business Opportunity Act.

(d) **Prohibited disclosure.** No sales literature or advertising shall contain a reference to the Oklahoma Securities Commission, the Oklahoma Department of Securities or the Administrator unless so requested by the Administrator.

[OAR Docket #20-714; filed 7-27-20]

TITLE 690. BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #20-499]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Board Organization and Proceedings
690:1-3-11. Executive Secretary and staff [AMENDED]

AUTHORITY:

59 O.S., 2011 § 1613; Board of Examiners for Speech-Language Pathology and Audiology.

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NA

INCORPORATIONS BY REFERENCE:

NA

GIST/ANALYSIS:

The amendments to Chapter 1 clarify that the position of Executive Secretary is considered the Agency Head or Executive Director for purposes of the OMES agency head salary schedule and the statutorily designated unclassified positions in the Oklahoma Personnel Act.

CONTACT PERSON:

Amy Hall, Executive Secretary, 3700 N Classen Blvd. Ste. 248, Oklahoma City, OK 73118, 405-524-4955, amy.hall@obespa.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 3. BOARD ORGANIZATION AND PROCEEDINGS

690:1-3-11. Executive Secretary and staff

The Board may retain an Executive Secretary and other office staff as required to carry out its functions. Such individual(s) shall serve at the discretion of the Board and their continued service shall be subject to its annual review. The Executive Secretary is considered the Chief Executive Officer or Agency Director for purposes of the salary requirements set forth in 74 O.S. § 3601.2 and the head of the agency for

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purposes of unclassified positions as set forth in 74 O.S. § 840-5.5.

[OAR Docket #20-499; filed 6-29-20]

TITLE 690. BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY CHAPTER 10. LICENSURE AND FEES

[OAR Docket #20-500]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Licensure of Speech-Language Pathologists and Audiologists

690:10-3-3. Criteria considered for licensure [AMENDED]

690:10-3-7. Examination requirement and exceptions [AMENDED]

Subchapter 5. Licensure of Speech-Language Pathology Clinical Fellows Completing Post-Graduate Clinical Fellowship

690:10-5-1. License to practice as a speech-language pathology clinical fellow [AMENDED]

690:10-5-4. Application form for clinical fellows [AMENDED]

690:10-5-5. ~~Authorization~~ Licensure period and extensions for clinical fellows [AMENDED]

690:10-5-6. Requirements for supervision of clinical fellows [AMENDED]

Subchapter 7. Licensure of Speech-Language Pathology Assistants and Audiology Assistants

690:10-7-3. Supervision required [AMENDED]

Subchapter 9. Fees

690:10-9-9. Criminal history initial determination fee [NEW]

AUTHORITY:

59 O.S., 2011 § 1613; Board of Examiners for Speech-Language Pathology and Audiology.

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GIST/ ANALYSIS:

The amendments to subchapter 3 of Chapter 10 implement HB 1373 regarding license applicants with a criminal history, and SB 670 regarding licensing procedures for military members and their spouses.

The amendments to subchapters 5 and 7 of Chapter 10 clarify the scope of the supervision of a clinical fellow and speech-language pathology assistant. A new section will be added to the fee schedule in subchapter 9 to establish the \$95 fee authorized by HB 1373 to cover the cost of the criminal history initial determination.

CONTACT PERSON:

Amy Hall, Executive Secretary, 3700 N Classen Blvd. Ste. 248, Oklahoma City, OK 73118, 405-524-4955, amy.hall@obespa.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 3. LICENSURE OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

690:10-3-3. Criteria considered for licensure

(a) The Board shall consider on an individual basis the request of each applicant for licensure under Section 1605 of the Speech-Language Pathology and Audiology Act, 59 O.S. 1605, as amended, using the criteria contained in the following Sections of these rules. Written notification from the chair or program director of an academic institution accredited by the Council on Academic Accreditation, or equivalent accrediting agency as determined by the Board, verifying that applicant attended the academic institution and completed the academic course work requirement and clinical practicum requirement, shall serve as presumptive proof of completion of the requirements. The Board retains the power to determine whether applicant has completed all requirements.

(b) Licensing of Military Service Members and Spouses

(1) The Board shall consider the equivalent education, training and experience completed by an applicant while the applicant was a member of the United States Armed Forces or Reserves, National Guard of any state, the Military Reserves of any state, or the Naval militias of any state, and apply it in the manner most favorable toward satisfying the qualifications for licensure.

(2) To determine whether education, training and experience completed by an applicant while the applicant was a member of the military as described in the preceding paragraph, the Board may consider, but is not limited to, determinations made by institutions of higher education based on the Guide to the Evaluation of Educational Experiences in the Armed Services, published by the American Council on Education.

(c) Criminal history.

(1) The Board shall maintain and make available to the public a list of criminal offenses that would disqualify an individual from obtaining or holding a license. The list shall be reviewed annually, and updated, if necessary, by the Board.

(2) A person with a criminal history record may at any time, including before obtaining any required education or training, request an initial determination of whether the person's criminal history would potentially disqualify the person from obtaining a license. The request must be in writing and include the applicable fee set forth in the Board's fee schedule. The request shall include either a copy of the person's criminal history record with explanation of each conviction mentioned in the criminal history record or a statement describing each criminal conviction.

including the date of each conviction, the court of jurisdiction and the sentence imposed. The person may include a statement with his or her request describing additional information for consideration by the Board including, but not limited to, information about his or her current circumstances, the length of time since conviction, what has changed since the conviction, evidence of rehabilitation, testimonials or personal reference statements.

(3) The Board shall issue an initial determination within sixty days of receipt of the items described in subsection (2) of this section. If the Board determines that the criminal history is disqualifying, the determination shall include the following:

(A) the crime that is disqualifying and the length of time for which it is disqualifying;

(B) any remedial action the applicant can take to become qualified;

(C) the earliest date the person may submit another request for consideration; and

(D) A statement that the notice of initial determination is only an initial determination for eligibility for licensure or certification based upon the information provided by the requestor.

690:10-3-7. Examination requirement and exceptions

(a) **Examination.** All applicants for licensure as a speech-language pathologist and/or audiologist must present evidence of successful completion of the examination approved by the Board. The examination must be passed within two (2) years after board approval of the applicant's first application for a license as a clinical fellow. Failure to pass the examination within this time period shall result in revocation of authorization to practice as a clinical fellow under supervision as defined in Subchapter 5 of this Chapter.

(1) The Board designates as its approved examinations the most current versions of the Educational Testing Service (ETS) Praxis II Audiology Exam and the Praxis II Speech-Language Pathology Exam, or any other national examination recognized by the Board to have similar standards equal to or higher than the ETS Praxis II exams. It shall be the responsibility of the applicant to assure that the testing vendor forwards the examination score to the Board.

(2) An applicant who fails an examination may retake it upon payment of another examination fee to the testing vendor and at any time the testing vendor regularly administers the ETS Praxis II Audiology and Speech-Language Pathology exams. Arrangements and fees are the responsibility of the applicant.

(3) Exceptions to the two year requirement may be granted by the Board under extenuating circumstances.

(b) **Waiver of examination.** The Board shall waive the examination and grant a license to any applicant who holds the Certification of Competence of the American Speech-Language-Hearing Association or its current equivalent in the area for which he is applying for licensure, provided that the current requirements for such certification are equivalent to or

greater than those for licensure under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601, et. seq., as amended. The current requirements for the Certification of Clinical Competence of the American Speech-Language-Hearing Association are deemed the equivalent of those for licensure under the Act. Evidence of such certification shall be received by the Board directly from the American Speech-Language-Hearing Association. All fees associated with obtaining such evidence shall be borne by the applicant.

(c) **Reciprocity.** The Board may issue a license without examination to a person who holds a current license in another state or country in speech-language pathology or audiology according to the following conditions:

(1) the other state or country maintains a system and standard of qualifications and examinations for speech-language pathologists and audiologists which meet or exceed the current requirements for licensure in Oklahoma;

(2) payment of the Board's current fee for licensure; and

(3) submission of evidence satisfactory to the Board of proof of licensure in good-standing in another state or country.

(d) The Board shall expedite the process of licensure by reciprocity for applicants ~~who are~~^{whose spouse is an} active duty ~~member of the armed forces of the United States if: military personnel and their spouses.~~ The Board will issue a license within thirty (30) days of receipt of a completed application ~~if the conditions set forth in 10-3-7(c)(1) and (3) are met. The application fee for the military member and spouse are waived.~~

~~(4) the military service member is on active duty within Oklahoma or claims permanent residency within Oklahoma for the six (6) months prior to assignment to active duty or during the period of the active duty and~~

~~(2) the applicant left employment in another state to accompany the military service member spouse to Oklahoma.~~

SUBCHAPTER 5. LICENSURE OF SPEECH-LANGUAGE PATHOLOGY CLINICAL FELLOWS COMPLETING POST-GRADUATE CLINICAL FELLOWSHIP

690:10-5-1. License to practice as a speech-language pathology clinical fellow

Persons in the process of fulfilling the supervised clinical experience required by paragraph 3 of Subsection A of Section 1605 of the Speech-Language Pathology and Audiology Licensing Act, as amended, for licensure as a speech-language pathologist must obtain a clinical fellow license and practice as a clinical fellow under the supervision of a licensed speech-language pathologist until the Board issues the clinical fellow a speech-language pathologist license. ~~Upon completion of the clinical fellowship requirement, the applicant may apply for independent licensure and pay the required fee.~~

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690:10-5-4. Application form for clinical fellows

Application for ~~authorization~~ license to practice as a clinical fellow ~~under supervision~~ shall be made in the same manner and on the same forms that are used to apply for licensure as a speech-language pathologist. Each application shall include a letter of agreement shall be provided with each application. The letter of agreement must be signed by both the applicant and the proposed supervisor, and must be submitted with the application. Said letter of agreement shall explicitly indicate that the supervisor agrees to supervise the clinical fellow's practice of speech-language pathology and that the supervisor accepts complete and full responsibility for the clinical fellow's activities and services. The supervising speech-language pathologist remains responsible for the clinical fellow's practice until one of the following occurs:

- (1) the Board issues the clinical fellow a speech-language pathologist license;
- (2) the supervisor give the Board and the clinical fellow written notice that supervision is terminated, or
- (3) the clinical fellow license expires.

690:10-5-5. ~~Authorization~~ Licensure period and extensions for clinical fellows

~~Authorization for practice as a~~ The clinical fellow license is valid under this Subchapter shall be for a period of one (1) calendar year from the date of approved by the Board's approval of the application for practice under supervision. The Board may grant the clinical fellow a full one (1) year extension of this authorization the license shall be considered only on upon written request of the clinical fellow and such request must be received prior to the end expiration of the one (1) year period of previous authorization licensure. Failure to apply for extension shall result in an automatic revocation of authorization to practice. A clinical fellow whose license expires prior to the Board's issuance of the speech-language pathologist license may not practice speech-language pathology unless exempt from licensure pursuant to 59 O.S. § 1604. Such revocation shall not jeopardize later application for authorization. If, during the completion of the clinical fellowship, it is necessary for a change of supervisors ~~supervisors to occur is necessary, it is the responsibility of the applicant the clinical fellow is responsible for notifying notify the Board of the change and to must submit revised paperwork a new letter of agreement for Board approval prior to the change in supervision.~~

690:10-5-6. Requirements for supervision of clinical fellows

(a) Clinical fellows must be supervised by a speech-language pathologist who has been licensed for a minimum of two years. Licensure as a clinical fellow does not count toward the two-year license requirement.

(b) Each supervising speech-language pathologist shall accept no more than two clinical fellows. Each supervisor holding licenses in both speech-language pathology and audiology is restricted to no more than two persons to supervise, in aggregate.

(c) ~~Beginning January 2017, the~~ The supervising speech-language pathologist must have successfully completed at least six hours of Board approved training in clinical supervision within ten years prior to requesting approval to supervise. At least three hours must include instruction in the knowledge and skills areas necessary for clinical fellow supervisors as identified by the American Speech-Language Hearing Association (ASHA), other organizations, or entities the Board deems acceptable. The remaining three hours may consist of other topics related to clinical supervision, including instruction specific to the supervision of speech-language pathology assistants.

(d) A speech-language pathologist who has completed six hours of training is eligible to supervise both clinical fellows and speech-language pathology assistants, provided that the six hour training includes three hours specific to supervision of clinical fellows and three hours specific to supervision of assistants.

SUBCHAPTER 7. LICENSURE OF SPEECH-LANGUAGE PATHOLOGY ASSISTANTS AND AUDIOLOGY ASSISTANTS

690:10-7-3. Supervision required

(a) The speech-language pathology assistant must be supervised by a speech-language pathologist who has been licensed for two years. Each supervisor shall accept no more than two assistants. Licensure as a clinical fellow does not count toward the two-year license requirement. Each practitioner licensed in both speech-language pathology and audiology is likewise restricted to two assistants in aggregate. Further, the total number of licensees supervised by a single supervisor shall not exceed two.

(b) ~~Beginning January 2017, the~~ The supervising speech-language pathologist must have successfully completed at least six hours of Board approved training in clinical supervision within ten years prior to requesting approval to supervise. Three hours must include instruction in the knowledge and skills areas necessary for speech-language pathology assistant's supervisors as identified by the American Speech-Language Hearing Association (ASHA), other organization or entity the Board deems acceptable. The remaining three hours may consist of other topics related to clinical supervision, including instruction specific to the supervision of clinical fellows. A speech-language pathologist who has completed six hours of training is eligible to supervise both clinical fellows and speech-language pathology assistants, provided that the six hour training includes three hours specific to supervision of clinical fellows and three hours specific to supervision of assistants.

(c) For the first 90 ~~workdays~~ calendar days following licensure, a speech-language pathology assistant shall practice under a minimum of 30% ~~supervision weekly, of which 20% is direct and 10% is indirect supervision with a minimum of 8 indirect supervising activities per month. For those speech-language pathology assistants working less than 20 hours per week, a minimum of 4 indirect supervisory activities are required per month.~~ After successful completion

of the first 90 ~~workdays~~ calendar days, a minimum of 10% of direct supervision is required with ~~20% indirect supervision~~ a minimum of 8 indirect supervisory activities per month. For those speech-language pathology assistants working less than 20 hours per week, a minimum of 4 indirect supervisory activities are required per month. The ~~Supervisor~~ supervisor for a speech-language pathology assistant who regularly practices twenty hours or less per week may request that the number of hours of supervision be calculated based on the assistant's total number of hours of practice in each month, rather than each week. The supervising speech-language pathologist must be available by electronic means at all times when the speech-language pathology assistant is performing clinical activities. The supervision must be documented on a supervision log signed by the supervisor and the assistant. Direct supervision must also be documented on the client/patient session note. Records of supervision are subject to inspection by the Board.

(1) Direct supervision: in-view observation and guidance by a speech-language pathologist while the speech-language pathology assistant is providing an assigned clinical service to a patient. While directly supervising, the speech-language pathologist may not perform any clinical services unrelated to the client/patient receiving services from the speech-language pathology assistant.

(2) Indirect supervision means the supervising speech-language pathologist is engaged in supervisory activities other than direct supervision, observation and guidance of the assistant while the assistant is providing an assigned clinical service to a patient. Indirect supervision activities performed by the supervising speech-language pathologist may include but are not limited to demonstration, record review, review and evaluation of audio or videotaped sessions, and interactive television and supervising conferences that may be conducted by telephone, email or live webcam.

(d) The supervising speech-language pathologist is responsible for exercising his or her professional judgment to determine the appropriate level of supervision at or above the required minimum necessary to ensure that each client/patient receives competent services. The supervising speech-language pathologist should consider:

- (1) the individual speech-language pathology assistant's knowledge, experience and competence;
- (2) the treatment setting;
- (3) the client/patient's diagnosis/prognosis; and
- (4) the nature of the assigned clinical service.

(e) For audiology assistants, direct supervision is required when the assistant is performing activities involving direct patient care. Direct supervision requires the supervising audiologist to be present on-site for supervision and guidance of the assistant. Indirect supervision of the audiology assistant is permissible when the audiology assistant is performing duties or activities that do not involve direct patient care. Indirect supervision requires the supervising audiologist to be available for instruction or guidance but does not require the supervising audiologist to be present on-site. The audiology assistant must be supervised by an audiologist who has been licensed

for two years. Each supervisor shall accept no more than two assistants.

SUBCHAPTER 9. FEES

690:10-9-9. Criminal history initial determination fee

A fee of ninety-five (\$95.00) dollars shall be submitted with the written request.

[OAR Docket #20-500; filed 6-29-20]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 10. AD VALOREM

[OAR Docket #20-578]

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RULES:

Subchapter 3. Equalization Study

Part 1. General Provisions

710:10-3-18 [AMENDED]

Part 3. Data Collection

710:10-3-25 [AMENDED]

AUTHORITY:

Oklahoma Tax Commission; 68 O.S. §§ 203 and 2825

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GIST/ANALYSIS:

Sections 710:10-3-18 and 710:10-3-25 have been amended to clarify existing policy.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 3. EQUALIZATION STUDY

PART 1. GENERAL PROVISIONS

710:10-3-18. Equalization study finding; submission to State Board of Equalization

(a) **Compliance with equalization study requirements.** Upon completion of the equalization study, the Oklahoma Tax Commission Ad Valorem Division shall report median audited assessment percentages for each property classification. Counties found to be within the Constitutional assessment percentage range of 11 to 13.5 percent, with all three classes of real property within the deviation range of 1.5 percent from the highest to the lowest ratio, shall be certified to the State Board, as being in compliance with equalization audit requirements.

(1) **Class deviations.** All counties must have all three classes of real property within the deviation range of 1.5 percent range, from the highest to the lowest ratio, in order to be in compliance, regardless of overall median ratio. [See: Art. 10, Section 8(A)(2), Okla. Const.]

(2) **Annual valuation.** The county must annually value all taxable real and personal property within the county, as required by 68 O.S. §§ 2817; 2829; and 2830, regardless of overall median ratio.

(3) **Constitutional compliance.** The county must be in compliance with Article 10, Section 8, of the Oklahoma Constitution, concerning assessment percentage limitation for real and personal property; with Section 8B, concerning the applicable valuation limitation on increases in fair cash value; and Section 8C, concerning limitations on fair cash value on certain homestead property, regardless of the overall median ratio.

(b) **Categories of noncompliance.** As specified in 68 O.S. §2830, the findings of the equalization study shall constitute the monitoring responsibilities specified in that statute. For purposes of that statute, the following three categories specified are defined:

(1) **Category One noncompliance.** If a county is found out of compliance on its annual equalization study in December, the county would be classed in Category One noncompliance. The county would have until the following June 15 meeting of the State Board of Equalization to correct the deficiencies noted in the equalization study. [See: 68 O.S. § 2830]

(2) **Category Two noncompliance.** If the county did not correct the problems noted in the equalization study by the June 15 date, ~~this will be noted in it~~ it shall be included in the Oklahoma Tax Commission's report to the State Board of Equalization with a recommendation to re-classify the county to Category Two noncompliance. At the next State Board of Equalization meeting in December, if all compliance criteria have been achieved, the State Board of Equalization would determine the county in compliance. If the county was found not in compliance at the December meeting, the county would then have until the following June 15 meeting to achieve compliance. If compliance was not achieved, the State Board of Equalization would

have the option not to certify the county abstract until all compliance criteria had been achieved and to reclassify the county Category Three noncompliance.

(3) **Category Three noncompliance.** If a county which has been previously classified Category Two and has failed to meet compliance criteria set forth by the State Board, the county would be classified Category Three noncompliance. The State Board of Equalization may elect not to certify the abstract.

(c) **Right of appeal.** Under 68 O.S. § 2882, a district attorney, acting under the direction of the board of county commissioners, can appeal a decision of the State Board of Equalization. Pursuant to 68 O.S. § 2883, a county assessor may appeal the decision of the Oklahoma Tax Commission of Category Two or Three noncompliance.

PART 3. DATA COLLECTION

710:10-3-25. Collection of assessment data

The Oklahoma Tax Commission staff will collect assessment data for the prior year and current year in the following manner:

(1) The prior year assessments will be collected immediately upon completion of the data collection process.

(2) The current year assessments will be collected after ~~submission of the county abstract to the Oklahoma Tax Commission June 1st.~~

(3) The current and previous years' assessments to be included in the equalization study will be submitted to the ~~County~~ county assessors for their review pursuant to 710:10-3-36.

(4) The book and page number of the sales to be included in the equalization study may be submitted as soon as available.

[OAR Docket #20-578; filed 7-9-20]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 22. BOATS AND MOTORS

[OAR Docket #20-579]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

710:22-1-3 [AMENDED]

710:22-1-22 [AMENDED]

AUTHORITY:

Oklahoma Tax Commission; 63 O.S. § 4004; 68 O.S. § 203

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 20, 2019

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Approved by Governor's Declaration on June 25, 2020

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EFFECTIVE:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Section 710:22-1-3 has been amended to implement the provisions of HB 1156 which amends definitions and provides that canoes, kayaks or paddleboats when powered by any means other than human power, must be titled and registered. [63:4002, 4005]

Section 710:22-1-22 has been amended to update a reference to the Grand River Dam Authority.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

710:22-1-3. Registration generally required

- (a) **General application.** With the exception of subsections (b) and (c) of this section, boats used for transportation on the waters of this State and motors in excess of 10 horsepower are required to be annually registered in the State of Oklahoma.
- (b) **Exclusions.** Certain craft as outlined below are not subject to the registration requirements for boats set forth in (a) of this Section:

(1) Light narrow ~~boats~~ vessels with both ends typically tapered to a sharp point which are propelled solely by paddling such as canoes and kayaks its occupants using a single-bladed paddle as a lever without the aid of a fulcrum provided by oarlocks, thole pins, crutches or similar arrangements.

(2) Paddleboats less than eight (8) feet in length designed to be propelled solely by human power through a belt, chain or gears.

(3) Seaplanes on the water.

- (c) **Exemptions.** The following boats and/or motors are specifically exempted from the registration requirements of the Oklahoma Vessel and Motor Registration Act.

(1) Boats or motors owned by the United States, a state other than the State of Oklahoma, any agency thereof, or any subdivision of the state unless the boat is used for recreational or rental purposes on Oklahoma waters.

(2) Boats or motors owned by visiting nonresidents which are currently registered in another state and remain in Oklahoma sixty calendar days or less.

(3) Boats or motors from a country other than the United States which remains in Oklahoma sixty calendar days or less.

(4) Boats used exclusively and solely as lifeboats.

(5) Boats used exclusively and solely for racing purposes.

(6) Boats that constitute commercial floatation devices when issued a ~~permit~~ license by the ~~Oklahoma Scenic Grand River Commission~~ Dam Authority pursuant to the provision of ~~Section 1461 et seq. of Title 82 of the Oklahoma Statutes~~ the Scenic Rivers Act.

(7) Canoes, kayaks or paddleboats as defined in 63 O.S. Section 4002, provided such vessels are powered only by human power.

(d) Any vessel exempt from the title and registration provisions shall be titled and registered for the purposes of proof of ownership or vessel identification, upon request of the owner. All title and registration fees shall be paid by the owner of the vessel.

710:22-1-22. Commercial canoes

Commercial canoes registered through the ~~Oklahoma Scenic Grand River Commission~~ Dam Authority must be titled only, but need not be registered at a motor license agency.

[OAR Docket #20-579; filed 7-9-20]

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME**

[OAR Docket #20-580]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 15. Oklahoma Taxable Income

Part 3. Exemptions

710:50-15-32 [AMENDED]

Part 5. Other Adjustments to Income

710:50-15-51 [AMENDED]

710:50-15-69 [NEW]

Part 7. Credits Against Tax

710:50-15-81 [AMENDED]

710:50-15-116 [AMENDED]

710:50-15-117 [NEW]

Subchapter 17. Oklahoma Taxable Income for Corporations

Part 1. General Provisions

710:50-17-1 [AMENDED]

Subchapter 19. Oklahoma Taxable Income for Partnerships

710:50-19-1 [AMENDED]

AUTHORITY:

Oklahoma Tax Commission; 68 O.S. §§ 203 and 2357.22; 74 O.S. §§ 5075 and 5078

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Section 710:50-15-32 has been amended to implement the provisions of SB 485 which eliminates the small business incubator sponsor income tax exemption and amends the small business incubator tenant income tax exemption by eliminating the 75% requirement. [(74:5072, 5075 and 5078)]

Section 710:50-15-51 has been amended in accordance with the Veterans Benefits and Transition Act of 2018; a spouse may elect to use the same residence for tax purposes as the servicemember for tax years beginning on or after January 1, 2018. New Section 710:50-15-69 has been added to implement the provisions of SB 893 which reinstates the income tax deduction for expenses incurred to provide care for a foster child. [68:2358.5-1]

Section 710:50-15-81, which relates to the income tax credit for qualified clean-burning motor vehicle fuel property, has been amended to implement the provisions of HB 2095 which extended the sunset date from tax year 2019 to tax year 2027 and imposed a state wide cap of \$20,000,000 effective for tax year 2020. [68:2357.22]

Section 710:50-15-116, which relates to income tax credits for qualified employers and engineers in the vehicle manufacturing industry, has been amended to implement the provisions of HB 1884; automotive parts manufacturing entities are either eligible for the tax credit or as a qualifying industry for the tax credit, provided that the entity is first placed in service on or after November 1, 2019. Additionally, the definition of "motor vehicle" is expanded to include buses and truck-tractors. [68:2357.404]

New Section 710:50-15-117 has been added to implement the provisions of HB 2759 which enacted a non-refundable income tax credit for individuals employed as qualified software or cybersecurity employees effective for tax years 2020 through 2029. [68:2357.405]

Sections 710:50-17-1 and 710:50-19-1 have been amended to require the electronic filing of Oklahoma corporate income tax returns and partnership income tax returns. [68:203]

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

PART 3. EXEMPTIONS

710:50-15-32. Small business incubators incentive

(a) **General provisions.** Certain exemptions for the levy of Oklahoma income tax may be allowed for income earned by qualifying sponsors and tenants pursuant to the provisions of the Small Business Incubators Incentive Act (74 O.S. ~~1991~~, §5071 et seq.)

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Act"** means the Small Business Incubators Incentives Act (74 O.S. ~~1991~~, §5071 et seq.).

(2) **"~~Arms-length~~Arm's-length basis"** means that standard under which unrelated parties, each acting in his or her own best interest, would carry out a particular transaction.

(c) **Exemption for sponsors.** For tax years ending before January 1, 2020, income earned by a sponsor from rental fees, service fees or any other form of payment for services provided to a tenant as an operator of an incubator, or for providing funding for such a facility, shall be exempt from state income tax for a period not to exceed ten (10) years from the date of the tenant's occupancy in an incubator. Procedures applicable to sponsors under the Act are as follows:

(1) An approved copy of the Small Business Incubator Incentives Program application must be submitted with the Oklahoma Income Tax Return when it is filed with the Oklahoma Tax Commission.

(2) The amount of exemption will be limited to the net income. If the sponsor is involved in other operations, allocations of overhead applicable to the income must be made on an ~~arms-length~~arm's-length basis.

(3) An audit may be made to verify the income received and expenses relating to the business.

(4) An allowable Oklahoma NOL carryback or carry-over shall not include any income or loss attributable to this Section.

(5) Income exempt from income tax is limited to that listed in the Act.

(d) **Exemption for tenants.** Procedures applicable to tenants under the Act are as follows:

(1) The amount of exemption will be limited to the net income. If the tenant is involved in other operations, allocations of overhead applicable to the income must be made on an ~~arms-length~~arm's-length basis.

(2) An audit may be made to verify the income received and expenses relating to the business. If the tenant is organized as either a Subchapter S Corporation or a partnership, the exemption ~~will~~may flow through to the shareholder or partner, as applicable.

(3) An allowable Oklahoma NOL carryback or carry-over shall not include any income or loss attributable to this Section which is the result of such operation. [See: 74 O.S. ~~1991~~, §§5075(B), 5078(B)]

(4) ~~Effective November 1, 2001, the~~The period of income exemption for income earned as a result of activities conducted as an occupant, for tenants of incubators is ten (10) years from the date of occupancy in the incubator. The tenant is not required to be an occupant of the incubator for the full ten (10) years to receive the exemption, however, the exemption period cannot exceed a total of ten (10) years for any tenant. ~~The~~

(5) For tax years ending before January 1, 2020, the exemption is applicable in years six (6) through ten (10) only if the tenant makes at least seventy-five percent (75%)

of its gross sales to buyers located outside of Oklahoma, to buyers whose principal business activity is located outside of Oklahoma, to the federal government, or to buyers in this state if the product or service is resold to an out-of-state customer or buyer for ultimate use. In years six (6) through ten (10), failure of a tenant to achieve the qualifying percentage for the exemption in any single year will not result in disqualification for subsequent years. [See: 74 O.S. § 5078]

PART 5. OTHER ADJUSTMENTS TO INCOME

710:50-15-51. Military pay of nonresidents and income earned by spouse of nonresident servicemember

(a) Military pay earned in Oklahoma by nonresident personnel, stationed in Oklahoma while on active duty, shall be exempt from Oklahoma ~~Income Tax~~ income tax. These earnings are treated as "out-of-state" out-of-state income. This exemption applies only to military pay earned in Oklahoma; and, any other income from the performance of a service other than military duty is subject to Oklahoma ~~Income Tax~~ income tax.

(b) Beginning with tax year 2009, a nonresident spouse of a nonresident servicemember may be exempt from Oklahoma income tax on income from services performed in Oklahoma if all of the following conditions are met:

- (1) The ~~service member~~ servicemember is in Oklahoma in compliance with military orders;
- (2) The spouse is in Oklahoma to be with the ~~service member~~ servicemember; and
- (3) The spouse maintains the same domicile as the ~~service member~~ servicemember or, for tax years beginning on or after January 1, 2018, elects to use the same residence for tax purposes as the servicemember in accordance with the Veterans Benefits and Transition Act of 2018.

(c) The following types of income of a nonresident spouse of a nonresident ~~service member~~ servicemember are not exempt from Oklahoma income tax:

- (1) Income from an unincorporated business activity conducted in Oklahoma.
- (2) The distributive share of the Oklahoma part of partnership income, gains, losses or deductions.
- (3) The distributive share from Subchapter S Corporations doing business in Oklahoma.
- (4) Net rents and royalties from real and tangible personal property located in Oklahoma.
- (5) Gains from the sales or exchanges of real property, located in Oklahoma.

710:50-15-69. Deduction for foster care expenses

(a) **General provisions.** In taxable years beginning after December 31, 2018, an income tax deduction is allowed to individual taxpayers who contract with a child-placing agency to provide care for a foster child.

(b) **Deduction.** The deduction is for expenses incurred to provide care for a foster child not to exceed Five Thousand

Dollars (\$5,000.00) or Two Thousand Five Hundred Dollars (\$2,500.00) for married persons filing separately.

(c) **Qualification.** A taxpayer must be under contract with a child-placing agency, as defined in Section 402 of Title 10, for at least six (6) continuous months regardless of the tax year during which the care occurs. If a taxpayer is under contract with a child-placing agency and providing care for a foster child for at least six (6) continuous months, but less than six (6) months of the tax year, taxpayer may claim only a pro rata share of the credit. For example, if a qualifying taxpayer contracts with a child-placing agency and begins providing care for a foster child on May 1, 2018 and ending on March 31, 2019, taxpayer may deduct up to \$2,500 (3/6 x \$5,000.00) for expenses incurred in 2019 on their 2019 income tax return.

PART 7. CREDITS AGAINST TAX

710:50-15-81. Credit for qualified clean-burning motor vehicle fuel property

(a) **Definitions.** For purposes of the clean-burning motor vehicle fuel property credit, "**motor vehicle**" means a motor vehicle originally designed by the manufacturer to operate lawfully and principally on streets and highways. [See: 68 O.S. § 2357.22(C)] "**Vehicle**" shall not mean conveyor belts, forklifts, riding mowers, tractors, or other similar items. An entity that converts property to qualified clean-burning motor vehicle fuel property may lease such property and retain the right to claim the credit. Property on which the credit has previously been claimed is ineligible for the credit.

(b) **Limitations of eligibility.** No qualified establishment, nor its contractors or subcontractors, that has received or is receiving an incentive payment pursuant to Section 3601 et seq. of the Oklahoma Statutes, (Oklahoma Quality Jobs Program Act), or Section 3901 et seq. of the Oklahoma Statutes, (Small Employer Quality Jobs Incentive Act), shall be eligible to receive the credit for qualified clean-burning motor vehicle fuel property provided by 68 O.S. §2357.22, in connection with the activity and establishment for which incentive payments have been, or are being received. [See: 68 O.S. §§3607, 3909]

(c) **Hydrogen fuel cell.** The credit for equipment installed on a vehicle propelled by a hydrogen fuel cell shall only be eligible for tax year 2010.

(d) **Sunset date.** This credit will only be available through tax years beginning before January 1, 2020 December 31, 2027.

(d) **Tax credit limitation.** For tax years beginning on or after January 1, 2020, the total amount of credits used to offset tax shall be adjusted annually to limit the annual amount of credits to Twenty Million Dollars (\$20,000,000.00). The Tax Commission shall annually calculate and publish by the first day of the affected taxable year a percentage by which the credits shall be reduced so the total amount of credits used to offset tax does not exceed Twenty Million Dollars (\$20,000,000.00) per year.

Permanent Final Adoptions

710:50-15-116. Credit for qualified employers and employees in the vehicle manufacturing industry

(a) **General provisions.** For tax years beginning after December 31, 2018, and ending before January 1, 2026, three (3) credits are allowed against the tax imposed by Section 2355 of Title 68 for the employment of qualified employees ~~in the vehicle manufacturing industry:~~

- (1) Credit for qualified employers for tuition reimbursement to qualified employees.
- (2) Credit for qualified employers for compensation paid to qualified employees.
- (3) Credit for qualified employees.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Qualified employee".**

(A) A qualified employee is any person newly employed in Oklahoma by a qualified employer on or after January 1, 2018. A qualified employee may include a person whose prior employment was not as a full-time engineer, or whose employment was not in the state of Oklahoma, even though employed by the same qualified employer.

(B) The qualified employee must have been awarded an undergraduate or graduate degree from a qualified program by an institution.

(C) Qualified employee may include a person who has been awarded an undergraduate or graduate degree from a qualified program by an institution and is employed by a professional staffing company and assigned to work in vehicle manufacturing in this state.

(D) Qualified employee may include a person who was employed in vehicle manufacturing in the state of Oklahoma prior to January 1, 2018, but not as a full-time engineer, prior to being awarded an undergraduate or graduate degree from a qualified program by an institution.

(E) Qualified employee does not include a person employed in vehicle manufacturing in this state immediately preceding employment or contracting with a qualified employer.

(F) Qualified employee does not include any person employed in vehicle manufacturing in the state of Oklahoma as a full-time engineer prior to January 1, 2018.

(2) **"Vehicle manufacturing", which includes vehicle manufacturing and automotive parts manufacturing,** means a private or public company first placed in operation in this state after November 1, 2018, for vehicle manufacturing and November 1, 2019, for automotive parts manufacturing which is engaged in the research, development, design and manufacture of motor vehicles which may be driven on the avenues of public access or in automotive parts manufacturing. For purposes of this Section, "motor vehicle" does not include ~~buses, low-speed electric vehicles, truck-tractors~~ or motor vehicles manufactured primarily, but not exclusively, for off-road use,

such as primarily for use on a golf course. For operations placed in service after November 1, 2018, and before November 2, 2019, "motor vehicle" also does not include buses or truck-tractors.

(3) **"Compensation", "institution", "qualified employer", "qualified program", and "tuition"** shall be defined as in Section 2357.404 of Title 68 of the Oklahoma Statutes.

(c) **Credit for tuition reimbursement.**

(1) Qualified employers are allowed a credit against the tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma Statutes based on the amount of tuition reimbursed to a qualified employee.

(2) The credit for tuition reimbursement may only be claimed if the qualified employee has been awarded an undergraduate or graduate degree within one (1) year of starting employment with the qualified employer.

(3) The credit for tuition reimbursement is equal to fifty percent (50%) of the tuition reimbursed to a qualified employee and may be claimed for the first through fourth years of employment with the qualified employer. The credit is only allowed to be claimed in the tax year that the tuition was reimbursed to the qualified employee and may not exceed in any taxable year fifty percent (50%) of the average annual amount paid by a qualified employee for enrollment and instruction in a qualified program at a public institution in Oklahoma.

(4) The credit for tuition reimbursement may not be used to reduce the tax liability of the qualified employer to less than zero (0), is not transferable and may not be carried over.

(5) The credit for tuition reimbursement may not be claimed after the fourth year of employment of the qualified employee.

(d) **Credit for compensation paid.**

(1) Qualified employers are allowed a credit against the tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma Statutes for compensation paid to a qualified employee.

(2) The credit for compensation paid equals:

(A) Ten percent (10%) of the compensation paid for the first through fifth years of employment in vehicle manufacturing if the qualified employee graduated from an institution located in this state.

(B) Five percent (5%) of the compensation paid for the first through fifth years of employment in vehicle manufacturing if the qualified employee graduated from an institution located outside this state.

(3) The credit for compensation paid cannot exceed Twelve Thousand Five Hundred Dollars (\$12,500.00) for each qualified employee annually.

(4) The credit for compensation paid may not be used to reduce the tax liability of the qualified employer to less than zero (0), is not transferable and may not be carried over.

(5) The credit for compensation paid may not be claimed after the fifth year of employment.

(e) **Credit for qualified employees.**

(1) A qualified employee shall be allowed a credit against the tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma Statutes of up to Five Thousand Dollars (\$5,000.00) per year for a period of time not to exceed five (5) years.

(2) The credit authorized by this Section shall not be used to reduce the tax liability of the taxpayer to less than zero (0).

(3) Any credit claimed, but not used, may be carried over, in order, to each of the five (5) subsequent taxable years.

(f) **Limitation of credit.**

(1) Effective for tax years beginning on or after January 1, 2019, no more than Three Million Dollars (\$3,000,000.00) of credits authorized by (c) and (d) of this Section may be allowed as an offset in a taxable year. The Tax Commission shall determine the percentage which may be claimed as a credit no later than September 1 of each calendar year. In the event the total tax credits authorized by (c) and (d) of this Section exceed Three Million Dollars (\$3,000,000.00) in any tax year, the Tax Commission shall permit any excess over Three Million Dollars (\$3,000,000.00), but shall factor such excess into the percentage adjustment formula for subsequent years.

(2) Effective for tax years beginning on or after January 1, 2019, no more than Two Million Dollars (\$2,000,000.00) of credits authorized by (e) of this Section may be allowed as an offset in a taxable year. The Tax Commission shall determine the percentage which may be claimed as a credit no later than September 1 of each calendar year. In the event the total tax credits authorized by (e) of this Section exceed Two Million Dollars (\$2,000,000.00) in any tax year, the Tax Commission shall permit any excess over Two Million Dollars (\$2,000,000.00), but shall factor such excess into the percentage adjustment formula for subsequent years.

710:50-15-117. Credit for qualified software or cybersecurity employee

(a) **General provisions.** For tax years beginning on or after January 1, 2020, and ending before January 1, 2030, a qualified software or cybersecurity employee shall be allowed a credit against the tax imposed pursuant to Section 2355 of Title 68, subject to the provisions of (d) of this Section.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Qualified software or cybersecurity employee".**

(A) A qualified employee is any person newly employed in Oklahoma by a qualified employer in a qualifying industry on or after November 1, 2019.

(B) The qualified employee must have been awarded a degree in an accredited program from a degree-producing institution as defined in 68 O.S. § 2357.405(A)(1), or has been awarded a certificate or credential in an accredited program from a technology center.

(C) The qualified employee must be employed in a qualifying industry by a qualified employer who pays its qualified employees a qualifying compensation for the county in which the qualified employer has its primary Oklahoma address.

(2) **"Accredited program", "Degree-producing institution", "Qualified employer", "Qualified industry", "Qualifying compensation", and "Technology center"** shall have the same meaning as the terms are defined in Section 2357.405 of Title 68 of the Oklahoma Statutes.

(c) **Credit.**

(1) The credit is Two Thousand Two Hundred Dollars (\$2,200.00) for a qualified software or cybersecurity employee who has been awarded a bachelor's or higher degree from an accredited program at a degree-producing institution, and One Thousand Eight Hundred Dollars (\$1,800.00) for a qualified software or cybersecurity employee who has been awarded an associate's degree from an accredited program at a degree-producing institution or a credential or certificate from an accredited program at a technology center.

(2) The credit may be claimed for a period of time not to exceed seven (7) years.

(3) The credit authorized by this Section shall not be used to reduce the tax liability of the taxpayer to less than zero (0).

(d) **Limitation of credit.** Effective for tax years beginning on or after January 1, 2022, no more than Five Million Dollars (\$5,000,000.00) of credits may be allowed as an offset in a taxable year. The Tax Commission shall annually determine by the first day of the affected year a percentage by which the credits authorized shall be reduced so the total amount of credits used to offset tax does not exceed Five Million Dollars (\$5,000,000.00) per year.

(e) **Letter ruling.** An employer may request a letter ruling to determine whether an employer meets the definition of a "qualified employer". The requesting party must provide sufficient information to demonstrate that the employer meets the following requirements for a qualified employer:

(1) Employer is a sole proprietor, general partnership, limited partnership, limited liability company, corporation or other legally recognized business entity, or governmental entity;

(2) Employer has at least fifteen full-time employees;

(3) Employer's activities are in a "qualified industry", defined or classified in the most recent North American Industry Classification System (NAICS) manual under U.S. Sector Nos. 21, 22, 31-33, 48, 51, 52, 54, 55, 62 and 92;

(4) Employer pays its employees a qualifying compensation for the county in which the qualified employer has its primary Oklahoma address.

(5) Employer is either not participating in the Oklahoma Quality Jobs Program Act, the Small Employer Quality Jobs Incentive Act or the 21st Century Quality Jobs Incentive Act or, if employer is participating in one of these programs, the qualified software or cybersecurity employees are included in baseline employment for the

purposes of the Oklahoma Quality Jobs Program Act, the Small Employer Quality Jobs Incentive Act and the 21st Century Quality Jobs Incentive Act.

SUBCHAPTER 17. OKLAHOMA TAXABLE INCOME FOR CORPORATIONS

PART 1. GENERAL PROVISIONS

710:50-17-1. Corporate returns

(a) Any corporation doing business within or deriving income from sources within Oklahoma is required to file an Oklahoma Corporation Income Tax Return, whether or not a tax is due. All Oklahoma corporate income tax returns, beginning with tax year 2020 returns, must be filed electronically in the format prescribed by the Commission.

(b) Any corporation is subject to Oklahoma income taxes if it has "nexus" with Oklahoma. The purpose of this Subchapter is to provide guidelines for determining what constitutes "nexus", that is, what business activities are needed for any corporation to be subject to Oklahoma ~~Income Taxes~~income taxes.

SUBCHAPTER 19. OKLAHOMA TAXABLE INCOME FOR PARTNERSHIPS

710:50-19-1. Partnership return

(a) **General provisions.** The Oklahoma distributive share of partnership income shall be the same portion of that reported for Federal Income Tax purposes. OTC Form 514 is used to report income. [See: 68 O.S. §§2358, 2362, 2363]

(1) **Oklahoma source income or loss.** When a partnership has source income or loss then that partnership must file a return showing the income or loss applicable to Oklahoma. The partnership shall also furnish a detailed schedule stating the amount of income distributable to each partner from Oklahoma sources.

(2) **Duty to file and report; determination of shares.** All resident partners must file individual income tax returns with Oklahoma if they are required to file individual Federal Income Tax Returns. All nonresident partners that have gross income of \$1,000.00 must file an Oklahoma Return even though their net may actually be a loss. The partnership income for Oklahoma may be apportioned using the three factor formula unless its operations are from real and tangible personal property, such as rents, oil and mining production or royalties, and gains or losses from sales of such property; then the income or loss shall be allocated in accordance with the situs of such property. The partner's distributive share of Oklahoma income or loss shall be the same proportion to the partner's distributive share of income or loss shown on the Federal Partnership Return.

(3) **No credit for income taxes paid other jurisdictions.** Neither residents nor nonresidents are allowed a credit for income taxes paid to other jurisdictions on partnership income.

(4) **Composite returns.** For tax years beginning on or after January 1, 2013, Oklahoma will allow partnerships with two or more partners to file composite returns for nonresident partners as set forth in (A) through (D) of this paragraph.

(A) **Individual partners and trust partners.** Compute each nonresident individual or trust partner's share of Oklahoma distributive income and income tax as follows:

(i) Calculate the Oklahoma distributive share of each nonresident individual and trust partner's income as if all of the partnership income was earned in Oklahoma. In determining taxable income of individual partners filing a composite return, no deductions for the standard deduction, personal exemptions, federal income tax paid, or dependents is permitted.

(ii) Using the Oklahoma individual income tax rates for the applicable tax year, compute a **base tax** for each partner using the highest marginal tax rate, based on the taxable income from (i) of this subparagraph.

(iii) Calculate the actual Oklahoma distributive share of income of each partner.

(iv) The base tax determined from (ii) of this subparagraph is to be prorated to determine the Oklahoma income tax of each partner. Divide each partner's actual Oklahoma distributive share as determined in (iii) of this subparagraph, by each partner's distributive income from all sources as determined by (i) of this subparagraph. Multiply this percentage times the base tax to calculate the actual Oklahoma income tax of each partner. Nothing in this section shall be construed to allow for more than one hundred percent (100%) of a nonresident partner's income to be taxed.

(B) **Corporate partners, S Corporation partners and Partnership partners.** Compute each nonresident corporate, S corp or partnership partner's share of Oklahoma distributive income, using the partner's share of Oklahoma distributive income and the Oklahoma corporate income tax rates, to compute each partner's Oklahoma tax.

(C) **Form.** The income and tax of all partners included in the composite return must be combined on Oklahoma Tax Commission Form 514.

(D) **Schedule to be provided.** Oklahoma Tax Commission Form 514 PT must be enclosed with the Form 514 to show the computation of each nonresident partner's Oklahoma distributive income and Oklahoma tax. The schedule of nonresident partner's information may be provided on magnetic media, electronically, or in another format which meets Tax Commission guidelines.

(b) **When electronic filing is required.**

(1) **Schedule K-1.** For tax years beginning on or after December 31, 2004, partnerships with more than one hundred (100) partners are required to electronically file their Schedule K-1's with the Oklahoma Tax Commission. The format for filing electronically will be in either a spreadsheet format, such as Lotus 1-2-3 or Excel; or a database format, such as DBF or Access. A partnership is deemed to have "more than one hundred (100) partners" if, over the course of the partnership's tax year, the partnership had more than one hundred (100) partners at any time.

(2) **Oklahoma partnership income tax return.** For tax years beginning on or after January 1, 2020, all Oklahoma partnership income tax returns must be filed electronically in the format prescribed by the Commission.

(c) ~~When electronic filing is not permitted.~~ Partnerships filing the following types of returns are not required to file Schedule K-1's electronically:

- (1) ~~A non-calendar year return;~~
- (2) ~~Returns with a non-U.S. address; or,~~
- (3) ~~Amended returns.~~

(d) **Waiver of electronic filing requirement for hardship.** Partnerships may also obtain a waiver from the electronic filing requirement if the partnership demonstrates that a hardship would result if it were required to file electronically.

[OAR Docket #20-580; filed 7-9-20]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 60. MOTOR VEHICLES

[OAR Docket #20-581]

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PERMANENT final adoption

RULES:

Subchapter 5. Motor Vehicle Titles
Part 5. Certificates of Title
710:60-5-62 [AMENDED]
Subchapter 9. Motor Vehicle License Agents/Agencies
Part 1. General Requirements, Duties and Responsibilities of Motor License Agents
710:60-9-2 [AMENDED]
Part 13. Provisions for Motor License Agent Application and Appointment
710:60-9-134 [AMENDED]

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n/a

GIST/ANALYSIS:

Section 710:60-5-62 has been amended to implement the provisions of SB 125; any branding of a motor vehicle's certificate of title as a "Lemon Law Buyback" must remain permanently on the title. [15:901.1]

Sections 710:60-9-2 and 710:60-9-134 have been amended to implement the provisions of HB 2098, the 21st Century Motor Tag Agent Act. [47:1140]

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 5. MOTOR VEHICLE TITLES

PART 5. CERTIFICATES OF TITLE

710:60-5-62. Lemon law buyback title brand

Any manufacturer reacquiring or assisting a dealer or lienholder in reacquiring a motor vehicle registered in this state shall, prior to any sale, lease or transfer of the vehicle in this state, or prior to exporting the vehicle to another state, shall retitle the vehicle in the name of the manufacturer and the certificate of title shall be branded with the notation "Lemon Law Buyback". Any branding of a title as a "Lemon Law Buyback" shall remain permanently on the title.

SUBCHAPTER 9. MOTOR VEHICLE LICENSE AGENTS/AGENCIES

PART 1. GENERAL REQUIREMENTS, DUTIES AND RESPONSIBILITIES OF MOTOR LICENSE AGENTS

710:60-9-2. Consanguinity; residency

(a) No person shall be appointed as a motor license agent that is related by consanguinity (by blood relation) or affinity (by marriage) within the third degree to any member of the Oklahoma Legislature, ~~to any person who has served as a member of the Oklahoma Legislature within the two year period preceding the date of appointment as a motor license agent~~ Tax Commission or to any employee of the Oklahoma Tax Commission.

(b) Any motor license agent appointed according to the provisions of 47 O.S. §1114.2 shall have been a resident of the county in which his/her agency is located for a period of six (6) months prior to his/her appointment. Provided, that if a

motor license agent moves his residence to a place outside the county, he/she shall forfeit his/her appointment. It shall be the duty of any motor license agent who establishes, or plans to establish, his/her residence in a county other than that in which his/her motor license agency is located to immediately notify the Oklahoma Tax Commission.

(c) A motor license agent may relocate the agency to a county in which the agent does not reside, provided that the agency remains within the same municipality. Such relocation must be approved by the Oklahoma Tax Commission.

PART 13. PROVISIONS FOR MOTOR LICENSE AGENT APPLICATION AND APPOINTMENT

710:60-9-134. Motor license agency location, staffing, equipment, office space, parking, and hours

(a) The location of the applicant's agency shall not be within a three (3) mile radius of an existing agency unless the applicant assumes the location of an existing agency. If the applicant assumes the location of an existing agency, the current agent may submit a letter of resignation contingent upon the appointment of the applicant regardless of the population of the municipality in which the agency is located. The Oklahoma Tax Commission may, at its discretion, approve the relocation of an existing agency within a three (3) mile radius of another existing agency only if a naturally intervening geographic barrier within that radius causes the locations to be separated by not less than three (3) miles of roadway by the most direct route.

(b) No motor license agent shall select a location owned by a member of the Oklahoma ~~Legislature Tax Commission or an employee of the Oklahoma Tax Commission~~ or to any person related to a member of the Oklahoma ~~Legislature Tax Commission or an employee of the Oklahoma Tax Commission~~ within the third degree of consanguinity (by blood relation) or affinity (by marriage).

(c) The number of agency employees is to be determined by the motor license agent subject to the Oklahoma Tax Commission's approval.

(d) The motor license agent shall maintain adequate equipment to accommodate the employees of the agency and sufficient seating arrangements for the taxpayers as determined by the Oklahoma Tax Commission.

(e) The Oklahoma Tax Commission shall determine the amount of office space the motor license agent shall maintain to provide a working area for the employees which is separate from the waiting area of the public. However, the amount of such office space shall not be less than Eight Hundred (800) square feet.

(f) The Oklahoma Tax Commission shall determine the amount of public parking the motor license agent shall maintain. However, the number of parking spaces shall not be less than five (5) with at least one (1) space reserved for disabled persons. It shall be the responsibility of the motor license agent to ensure compliance with all applicable local and ADA

(Americans with Disabilities Act) parking and customer access requirements.

(g) In addition to the payment of costs required by *OAC* 710:60-9-131(f) for new agents, existing motor license agents shall be responsible for all costs incurred by the Tax Commission when relocating an existing agency. Such payment may be waived by the Tax Commission in case of emergency or unforeseen business conditions beyond the control of the agent.

(h) The motor license agent shall provide and maintain, within the agency, a personal computer with internet access for use during normal business hours. The personal computer equipment provided by the motor license agent must satisfy the technical requirements established for such equipment by the Commission. Should those technical requirements change, it shall be the responsibility of the motor license agent to upgrade or replace their personal computer equipment as necessary to remain in continuous compliance.

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TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 65. SALES AND USE TAX

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Subchapter 7. Duties and Liabilities

710:65-7-15 [AMENDED]

Subchapter 13. Sales and Use Tax Exemptions

Part 29. Manufacturing

710:65-13-158 [AMENDED]

Part 31. Medicine, Medical Appliances, and Health Care Entities and Activities

710:65-13-169 [AMENDED]

710:65-13-170 [AMENDED]

710:65-13-171 [AMENDED]

710:65-13-173 [AMENDED]

Part 43. Social, Charitable, and Civic Organizations and Activities

710:65-13-366 [NEW]

710:65-13-367 [NEW]

Subchapter 19. Specific Applications and Examples

Part 37. "S"

710:65-19-316 [NEW]

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GIST/ANALYSIS:

Section 710:65-7-15 has been amended to update references to entities which receive certification of a specific statutory sales tax exemption for purposes of documenting a vendor's relief from liability to collect sales tax.

Section 710:65-13-158 has been amended to implement the provisions of SB 18 which expanded the meaning of sales and leases for purposes of the sales tax exemption for rolling stock sales. [68:1357(41)]

Sections 710:65-13-169, 710:65-13-170, 710:65-13-171, 710:65-13-173 have been amended and new Section 710:65-19-316 has been added to implement the provisions of HB 1262 which exempted from the sales tax levy, sales of medical equipment including prosthetic devices, durable medical equipment and mobility enhancing equipment when administered, distributed or prescribed by a practitioner, who is authorized by law to administer distribute or prescribe such items. [68:1357.6]

New Section 710:65-13-366 has been adopted to implement the provisions of HB 2530 which affords a sales tax exemption to organizations which are exempt from taxation pursuant 26 U.S.C., Section 501(c)(3), who are official members of the Fab Lab Network in compliance with the Fab Charter as verified by a letter from the MIT Fab Foundation and whose primary and principal purpose is to provide community access to advanced 21st century manufacturing and digital fabrication tools for science, technology, engineering, art and math ("STEAM") learning skills, developing inventions, creating and sustaining businesses and producing personalized products. [68:1356(80)]

New Section 710:65-13-367 has been adopted to implement the provisions of HB 1003 which granted a sales tax exemption to the American Legion. [68:1356(79)]

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 7. DUTIES AND LIABILITIES

710:65-7-15. Vendors' responsibility - sales to entities with other specific statutory exemptions

(a) **Sales to entities with other specific statutory exemptions.** In the case of sales to purchasers claiming exemption based upon specific statutory authority, the vendor must obtain the information described in this subsection:

- (1) A **copy** of the letter or card from the Oklahoma Tax Commission recognizing the entity as one which is statutorily exempt from sales tax on its purchases; and
- (2) A signed statement that the purchase is **authorized by, and being made by**, the exempt entity, with funds of the exempt entity, and **not** by the individual; and,
- (3) In the case of sales to **fire departments organized for unincorporated areas**, as defined in 18 O.S. § 592, certification on the face of the invoice or sales ticket is also required.
- (4) In the case of purchases made by the federal government, charged pursuant to the GSA SmartCard program,

no letter or card from the Commission is required, and 710:65-13-130 should be consulted to determine the taxability of the transaction.

(b) **Examples and applications.** Types of entities which may receive letters or cards, certifying or confirming a specific statutory exemption include:

- (1) **Churches**; [See: 710:65-13-40]
- (2) **Youth camps, supported or sponsored by one or more churches**, members of which serve as trustees of the organization; [See: 710:65-13-33]
- (3) **Children's homes** where church members are trustees or where the home is on church-owned land or where 50% of the juveniles are court-adjudicated and the home receives less than 10% of its funding from state funds; [See: 710:65-13-33]
- (4) **Council organizations** of the Boy Scouts and Girl Scouts of America or Camp Fire USA; [See: 710:65-13-341]
- (5) **Public schools**; [See: 710:65-13-210]
- (6) Oklahoma System of **Higher Education**; [See: 710:65-13-210]
- (7) **Private schools** registered with the State Department of Education and private institutions of higher education accredited by the Oklahoma State Board of Regents for Higher Education; [See: 710:65-13-210]
- (8) **Federal governmental** units, institutions, and instrumentalities; [See: 710:65-13-130]
- (9) **Governmental entities** of the State of Oklahoma, including county and local units; [See: 710:65-13-130]
- (10) City and county **trust authorities**; [See: 710:65-13-550]
- (11) Federally chartered **credit unions**;
- (12) **Rural water districts**;
- (13) Facilities engaged in the remediation or processing to ameliorate **hazardous wastes**; [See: 710-65-13-80]
- (14) **Disabled American Veterans** Department of Oklahoma and its subordinate chapters; [See: 710:65-13-336]
- (15) **Museums** which are members of the American Alliance of Museums formally the American Museum Association; [See: 710:65-13-334]
- (16) **Rural Electric Cooperatives**;
- (17) Federally qualified **health care** facilities;
- (18) **Health care** facilities receiving reimbursement from the Indigent Care Revolving Fund;
- (19) **Community based health centers** providing primary care services at no cost to the patient;
- (20) **Cultural organizations** established to sponsor and promote educational, charitable, and **cultural events for disadvantaged children**; [See: 710:65-13-335]
- (21) Federally recognized **Indian Tribes**;
- (22) Leases or lease-purchases of tangible personal property or services to **municipalities, counties, or school districts**; [See: 710:65-13-210]
- (23) Sales of tangible personal property or services **to, or by**, a tax-exempt [26 U.S.C. § 501(c)(3)] organization, which is organized primarily to provide education and to conduct events related to **teacher training in robotics**,

and affiliated with a comprehensive University within the Oklahoma System of Higher Education;

(24) Sales of tangible personal property or services by an organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), in the course of conducting a **national championship sports event**, but only if all or a portion of the payment in exchange therefor would qualify as the receipt of a qualified sponsorship payment described in Internal Revenue Code, 26 U.S.C., Section 513(i);

(25) Volunteer fire departments organized pursuant to 18 O.S. § 592; [See: 710:65-13-340]

(26) Parent-teacher associations and parent-teacher organizations that are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code; [See: 710:65-13-210]

(27) The non-profit organization which operates the Oklahoma City National Memorial and Museum; [See: 710:65-13-330]

(28) The first Fifteen Thousand Dollars (\$15,000.00) of sales of tangible personal property sold for fund raising purposes to or by a youth athletic team which is part of an athletic organization exempt from federal taxation pursuant to 26 U.S.C. § 501(c)(4); [See: 710:65-13-343]

(29) Tax exempt, nonprofit organizations which provide services during the day to homeless persons; [See: 710:65-13-344]

(30) Motion picture or television production companies for certain eligible productions; [See: 710:65-13-194]

(31) Child care centers providing on site universal pre-kindergarten education; [See: 710:65-13-220]

(32) Tax exempt organizations which are shelters for abused, neglected, or abandoned children; [See: 710:65-13-355]

(33) Tax exempt organizations providing funding for medical scholarships; [See: 710:65-13-357]

(34) Nonprofit local public or private school foundations; [See: 710:65-13-210(m)]

(35) Nonprofit foundations in support of NRA and other like organizations; [See: 710:65-13-359]

(36) Grassroots fundraising programs in support of NRA; [See: 710:65-13-360]

(37) Construction projects for organizations providing end of life care and hospice service. [See: 710:65-13-178]

(38) Meals on Wheels, Mobile Meals; [See: 710:65-13-337]

(39) Organizations which received federal funding pursuant to the Older Americans Act of 1965, for purposes of providing nutrition programs for the care and benefit of elderly persons; [See: 710:65-13-338]

(40) Collection and Distribution Organization; [See: 710:65-13-339]

(41) Council organizations or similar state supervisory organizations of Boy Scouts of America, Girl Scouts of U.S.A., and Camp Fire USA; [See: 710:65-13-341]

(42) Organizations which take court-adjudicated juveniles for purposes of rehabilitation; [See: 710:65-13-342]

(43) Tax exempt organizations which provide funding for the preservation and conservation of wild turkeys or preservation of wetlands or habitats for wild ducks; [See: 710:65-13-345]

(44) Tax exempt organizations which are part of a network of community-based, autonomous member organizations providing job training and employment services; [See 710:65-13-346]

(45) Qualified neighborhood watch organizations; [See: 710:65-13-348]

(46) Specialized facilities, which provide services for physically and mentally handicapped persons; [See: 710:65-13-347]

(47) Daughters of the American Revolution; [See: 710:65-13-350]

(48) Veterans of Foreign Wars of United States, Oklahoma Chapters; [See: 710:65-13-351]

(49) YWCA or YMCA organizations; [See: 710:65-13-352]

(50) Organizations primarily engaged in providing education services and programs concerning health-related diseases and conditions; [See 710:65-13-353]

(51) Organizations whose purpose is to provide training and education to developmentally disabled persons; [See: 710:65-13-354]

(52) Nonprofit Boys & Girl Clubs of America affiliates not affiliated with the Salvation Army; [See: 710:65-13-362]

(53) National Guard Association of Oklahoma exempt from federal taxation pursuant to 26 U.S.C. 501(c)(19); [See: 710:65-13-363]

(54) Marine Corps League of Oklahoma exempt from federal taxation pursuant to 26 U.S.C. 501(c)(4); [See: 710:65-364]

(55) Nonprofit collaborative model organization connecting agencies to serve persons affected by violence; [See: 710:65-13-365]

(56) Tax exempt organization who is an official member of the Fab Lab Network; [See: 710:65-13-366]

(57) The American Legion; [See: 710:65-13-367]

SUBCHAPTER 13. SALES AND USE TAX EXEMPTIONS

PART 29. MANUFACTURING

710:65-13-158. Sales of rolling stock

Sales of rolling stock locomotives, autocars, and railroad cars when sold or leased by the manufacturer are exempt from sales tax. 68 O.S. § 1357(41) On or after July 1, 2019, and prior to July 1, 2024, sales or leases of rolling stock when sold or leased by the manufacturer, regardless of whether the purchaser is a public services corporation engaged in business as a common carrier of property or passengers by railway, for use or consumption by a common carrier directly in the rendition of public service are exempt from sales tax. For purposes of

this Section, "rolling stock" means locomotives, autocars and railroad cars and "sales or leases" includes railroad car maintenance and retrofitting of railroad cars for their further use only on the railways.

PART 31. MEDICINE, MEDICAL APPLIANCES, AND HEALTH CARE ENTITIES AND ACTIVITIES

710:65-13-169. Definitions

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

"Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation:

- (A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;
- (B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or,
- (C) Intended to affect the structure or any function of the body. [68 O.S. § 1352(8)]

"Durable medical equipment" means equipment, including repair and replacement parts for same, which is used in the home; can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, and is not worn in or on the body; ~~and is appropriate for use in the home.~~ **"Durable medical equipment"** does not include "mobility enhancing equipment". [68 O.S. Supp. 2003, § 1357.6(D) 1357.6(E)]

"Medical appliance, device, or equipment" includes corrective eyeglasses, hearing aids, contact lenses, prosthetic devices, durable medical equipment, and ~~mobility enhancing equipment~~.

~~**"Mobility enhancing equipment"**~~ **"Mobility-enhancing equipment"** means equipment, including repair and replacement parts for same, which:

- (A) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;
- (B) Is not generally used by persons with normal mobility; and,
- (C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

~~**"Mobility enhancing equipment"**~~ **"Mobility-enhancing equipment"** does not include "durable medical equipment" as defined in this Section. [68 O.S. Supp. 2003, § 1357.6(E)]

"Over-the-counter drug" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R., Section 201.66. The over-the-counter-drug label includes:

- (A) A "Drug Facts" panel, or

- (B) A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance or preparation. [68 O.S. § 1352(17)]

"Practitioner" means a physician, osteopathic physician, allopathic physician, surgeon, podiatrist, chiropractor, optometrist, pharmacist, psychologist, ophthalmologist, nurse practitioner, clinical nurse specialist, audiologist or hearing aid dealer or fitter who is licensed by the state as required by law.

"Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed "practitioner", as defined by 68 O.S. § 1357.6. [68 O.S. § 1352(19)]

"Prosthetic device" means a replacement, corrective or supportive device, including repair and replacement parts for same, worn on or in the body to:

- (A) Artificially replace a missing portion of the body;
- (B) Prevent or correct physical deformity or malfunction; or,
- (C) Support a weak or deformed portion of the body.

"Prosthetic device" shall not include corrective eyeglasses, contact lenses, or hearing aids. [68 O.S. §§ 1357(22), ~~1357.6(C)~~ 1357.6(D)]

710:65-13-170. Medicines, drugs, hospitals, nursing homes, practitioners, and medical equipment and appliances, generally

(a) **Drugs.** Sales of drugs, except for over-the-counter drugs, prescribed for the treatment of human beings by a person licensed to prescribe the drugs are exempt from sales tax. Ocular lenses, if permanently implanted through medical surgery, and sales of insulin and medical oxygen are also exempt from sales tax. [68 O.S. § 1357(9)]

(b) **Prosthetic devices.** Sales of prosthetic devices as defined in 710:65-13-169 for use by an individual are exempt from sales tax.

(c) **Medical equipment, appliance, or device.** Except as set forth in 710:65-13-171 and 710:65-13-173, the sale or rental of medical equipment, appliances or devices is taxable. Examples of these taxable items are: syringes, replacement joints, bandages, oxygen regulators and tanks, crutches and wheelchairs.

(d) **Sales to hospitals, nursing homes and practitioners.** Notwithstanding the provisions outlined in subsection (b), sales of medical appliances, medical devices and other medical equipment to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, and practitioners are taxable when such items are furnished to their patients as part of the services provided. The institutions, companies and practitioners are considered to be the users or consumers. In-state vendors collect and remit the tax on sales of such property to the institutions, and use tax is due on out-of-state purchases. These institutions and practitioners primarily render services and are not liable for sales tax on receipts from meals, bandages, dressings, x-ray photographs, and other tangible personal property when used in rendering medical service to

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patients, regardless of whether the tangible items are billed separately.

(e) **Sales to medical benefits recipients, generally.** Unless otherwise prohibited by federal or state law, if a vendor of medical equipment and devices makes a sale to an individual, the sale is not considered to be made to a governmental agency or insurance company, even if the individual assigns the proceeds of an insurance policy to the vendor and the vendor receives payment directly from the insurance company or the governmental agency via the assignment.

(f) **Sales tax refund claims.** Under circumstances where hospitals, nursing homes, similar institutions and practitioners dispense or provide medical appliances, medical devices or medical equipment to Medicare or Medicaid patients, a refund may be claimed by the institution or practitioner for the sales taxes previously paid by the institution or practitioner on such items.

(g) **Direct payment permits (DPP).** Health care providers may qualify for a direct payment permit, valid for three (3) years, pursuant to the provisions of Section 710:65-9-10 of this Chapter.

710:65-13-171. Sales of prosthetic devices, durable medical equipment and mobility-enhancing equipment to individuals

(a) **General provisions.** Sales of prosthetic devices, durable medical equipment and mobility-enhancing equipment when administered, distributed or prescribed by a practitioner who is authorized by law to administer, distribute or prescribe such items, for use by an individual are exempt from sales tax.

(b) **Applicable definitions.** For purposes of this Section:

(1) **"Prosthetic device"** means a replacement, corrective or supportive device, including repair and replacement parts for same, worn on or in the body to:

(A) Artificially replace a missing portion of the body;

(B) Prevent or correct physical deformity or malfunction; or,

(C) Support a weak or deformed portion of the body.

(2) **"Prosthetic device"** does **not** include corrective eye glasses, contact lenses, or hearing aids. A non-exhaustive list of prosthetic devices is set forth in 710:65-13-173(e).

(3) **"Use by that individual"** means usage for the purposes and in a manner for which the device was designed and intended.

(c) **Medicare and Medicaid recipients.** Documentation required to be maintained by the vendor. Eye glasses, contact lenses, and hearing aids are considered items of "medical equipment", and if their cost will be reimbursed by Medicare or Medicaid pursuant to the terms set out in 710:65-13-173, the sale is tax exempt. The documentation set out in (1) and (2) of this subsection must be obtained by the vendor and maintained as part of the vendor's records to substantiate the exemption claimed:

(1) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;

(2) A copy of the prescription or work order.

710:65-13-173. Exemption for medical appliances, medical devices and other medical equipment furnished to Medicare/Medicaid program recipients

(a) **General provisions.** Sales of medical appliances, medical devices and other medical equipment are exempt if all of the following requirements are met:

(1) The item is a drug, medical appliance, medical device, or medical equipment as defined in 710:65-13-169.

(2) The item is administered or distributed by a "practitioner" or purchased or leased, by or on behalf of an individual, pursuant to a prescription or work order of a practitioner; and

(3) The item is furnished to a Medicare or Medicaid program recipient and the cost of said item will be reimbursed by Medicare or Medicaid.

(b) **Documentation required when reimbursement is made to vendor.** The documentation set out in (1) through (3) of this subsection must be obtained by the vendor and maintained as part of the vendor's records to substantiate the exemption claimed:

(1) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;

(2) A copy of the prescription or work order; and

(3) A copy of the document which shows that the person on whose behalf the item is being purchased or leased is a Medicare or Medicaid patient.

(c) **Documentation required when reimbursement is made directly to the Medicare recipient.** The documentation set out in this subsection must be maintained as part of the claimant's records to substantiate the exemption claimed:

(1) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;

(2) A copy of the prescription or work order;

(3) A copy of the eligible recipient's Medicare card; and

(4) A copy of the receipt or invoice issued by the vendor at the time of purchase, with a notation stating that the cost of the item is reimbursable by Medicare, but that Medicare will not be billed by the vendor.

(d) **Sales tax refund claims.** Under circumstances where hospitals, nursing homes, similar institutions and practitioners dispense or provide medical appliances, medical devices or medical equipment to Medicare or Medicaid patients, a refund may be claimed by the institution or practitioner for the sales taxes previously paid by the institution or practitioner on such items. The documentation set out in (1) through (3) of this subsection must be obtained as part of the claimant's records to substantiate the exemption claimed:

(1) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;

(2) A copy of the prescription or work order; and

(3) A copy of the document which shows that the person on whose behalf the item is being purchased or leased is a Medicare or Medicaid patient.

(e) **Medical equipment purchased pursuant to a direct payment permit.** To substantiate the sales tax exemption for certain medical equipment pursuant to subsection (a) of this Section, a healthcare provider holding a direct pay permit must maintain separate from confidential patient records the following information:

- (1) Patient case number or account number;
- (2) Type of insurance and
- (3) Item description or product number.

(f) **Medicare and Medicaid recipients.** Eyeglasses, contact lenses, and hearing aids are considered items of "medical equipment", and if their cost will be reimbursed by Medicare or Medicaid pursuant to the terms and conditions set out in this Section, the sale is tax exempt.

(g) **Examples of medical appliances, medical devices, and medical equipment.** A nonexclusive list of **medical appliances, medical devices, and medical equipment** is as follows:

- (1) **IPPB, circuits, devices and supplies.**
 - (A) Air oxygen mixers
 - (B) Emergency oxygen delivery units
 - (C) Manual resuscitators
 - (D) Nebulizers, tubing
- (2) **Oxygen equipment.**
 - (A) Cylinder stands, support devices
 - (B) Cylinder transport devices (sheaths, carts)
 - (C) Face masks
 - (D) Liquid oxygen base dispenser
 - (E) Liquid oxygen portable dispenser
 - (F) Nasal cannulas
 - (G) Oxygen concentrators
 - (H) Oxygen cylinders
 - (I) Oxygen fittings, accessories
 - (J) Oxygen humidifiers
 - (K) Oxygen tubing
 - (L) Regulators, flowmeters
 - (M) Tank wrench
- (3) **Respiratory therapy equipment.**
 - (A) Aerosol compressors (stationary and portable)
 - (B) Aspirators
 - (C) Percussors, vibrators
 - (D) Room humidifiers (with script)
 - (E) Ultrasonic nebulizers
 - (F) Volume ventilators, respirators and related device supplies

(gh) **Other examples.** The following nonexclusive list contains other examples of **medical appliances, medical devices, and medical equipment** that qualify for the exemption described herein:

- (1) Adhesive bandages
- (2) Alternating pressure mattresses
- (3) Alternating pressure pads
- (4) Alternating pressure pads
- (5) Anesthesia trays
- (6) Aneurysm clips

- (7) Arterial bloodsets
- (8) Artificial sheepskin
- (9) Aspirators
- (10) Atomizers
- (11) Autolit
- (12) Back cushions
- (13) Bathing aids
- (14) Bathing caps
- (15) Bathtub grab bars
- (16) Bathtub lifts
- (17) Bathtub seats
- (18) Bed pans
- (19) Bed rails
- (20) Bedside commodes
- (21) Bedside rails
- (22) Bedside tables
- (23) Bedside trays
- (24) Bedwetting prevention devices
- (25) Belt vibrators
- (26) Biopsy needles
- (27) Biopsy trays
- (28) Blood administering sets
- (29) Blood cell washing equipment
- (30) Blood pack holders
- (31) Blood pack trays
- (32) Blood pack units
- (33) Blood pressure meters
- (34) Blood processing supplies
- (35) Blood tubing
- (36) Blood warmers
- (37) Bone fracture therapy devices
- (38) Breast pumps
- (39) Breathing machines
- (40) Canes
- (41) Cannula systems
- (42) Cardiac electrodes
- (43) Cardiac pacemakers
- (44) Cardiopulmonary equipment
- (45) Catheter trays
- (46) Cervical pillows
- (47) Chair lifts
- (48) Clamps
- (49) Commode chairs
- (50) Communication aids for physically impaired
- (51) Connectors
- (52) Contact lens cases
- (53) Contact lenses
- (54) Contact solution
- (55) Convuluted pads
- (56) Corrective eyeglasses
- (57) Cotton balls
- (58) Crawlers
- (59) Crutch cushions
- (60) Crutch handgrips
- (61) Crutch tips
- (62) Crutches
- (63) Crutches
- (64) Crutches, crutch pads, tips

Permanent Final Adoptions

- | | |
|---|--|
| (65) Decubitus prevention devices | (122) Hydro-collators |
| (66) Decubitus seating pads, bed pads | (123) Hydro-therm heating pads |
| (67) Dialysis chairs | (124) Hypodermic syringes and needles |
| (68) Dialysis machines | (125) I.V. administering sets |
| (69) Dialysis supplies | (126) I.V. connectors |
| (70) Dialyzers | (127) I.V. stands |
| (71) Dietetic scales | (128) I.V. tubing |
| (72) Disposable diapers | (129) Ice bags |
| (73) Disposable gloves | (130) Ident-a-bands |
| (74) Disposable underpads | (131) Incontinent garments |
| (75) Donor chairs | (132) Incubators |
| (76) Drainage bags | (133) Infrared lamps |
| (77) Dressing aids, button loops, zipper aids, etc. | (134) Inhalators |
| (78) Dressings | (135) Insulin infusion devices |
| (79) Drug infusion devices | (136) Invalid rings |
| (80) Dry aid kits for ears | (137) Iron lungs |
| (81) Earmolds | (138) Irrigation apparatus |
| (82) Eating and drinking aids | (139) Irrigation solutions |
| (83) EKG paper | (140) Karaya paste |
| (84) Elastic bandages | (141) Karaya seals |
| (85) Elastic supports | (142) Kidney dialysis machines |
| (86) Electrodes | (143) Knee immobilizers |
| (87) Emesis basins | (144) Laminar flow equipment |
| (88) Endo trach tubes | (145) Latex gloves |
| (89) Enema units | (146) Leg weights (rehab. related) |
| (90) Enteral and parenteral feeding equipment and supplies (tubes, pumps, containers) | (147) Leukopheresis pumps |
| (91) Exercise devices | (148) Lift recliners |
| (92) Eyeglasses | (149) Lithotripter |
| (93) First-aid kits | (150) Lumbosacral supports |
| (94) Fistula sets | (151) Lymphedema pumps |
| (95) Fitted stroller | (152) Manometer trays |
| (96) Foam seating pads | (153) Massagers |
| (97) Foam slant pillows | (154) Maternity belts |
| (98) Foam wedges | (155) Medigraide tubing |
| (99) Gauze bandages | (156) Modulung oxygenators |
| (100) Gauze packings | (157) Moist heat pads |
| (101) Gavage containers | (158) Muscle stimulators |
| (102) Geriatric chairs | (159) Muscle stimulators |
| (103) Geriatric chairs | (160) Myelogram trays |
| (104) Grooming aids | (161) Myringotomy tubes |
| (105) Grooming aids, dental aids | (162) Nebulizers |
| (106) Hand exercise equipment putty | (163) Needles |
| (107) Hand sealers | (164) Nerve stimulators |
| (108) Head halters | (165) Neuromuscular electrical stimulators [when not worn on the body] |
| (109) Hearing aid carriers | (166) Overbed tables |
| (110) Hearing aid repair kits | (167) Oxygen equipment |
| (111) Hearing aids | (168) Page turning devices |
| (112) Heart stimulators | (169) Pap smear kits |
| (113) Heat lamps | (170) Paraffin baths |
| (114) Heat pads | (171) Patient lifts |
| (115) Hemodialysis devices | (172) Patient lifts slings |
| (116) Hemolators | (173) Patient safety vests |
| (117) Hospital beds | (174) Patient transport devices, boards |
| (118) Hospital beds | (175) Physicians instruments |
| (119) Hot water bottles | (176) Pigskin |
| (120) Household aids for the impaired | (177) Plasma extractors |
| (121) Hydraulic lifts | (178) Plasmapheresis units |

- (179) Plaster (surgical)
- (180) Plastic heat sealers
- (181) Post-surgical bust forms
- (182) Posture back supports
- (183) Posture back supports for seating
- (184) Prescribed device repair kits
- (185) Pressure pads
- (186) Raised toilet seats
- (187) Reaching aids
- (188) Respirators
- (189) Restraints
- (190) Resuscitators
- (191) Sauna baths
- (192) Security pouches
- (193) Servipak dialysis supplies
- (194) Shampoo trays
- (195) Shelf trays
- (196) Shoulder immobilizers
- (197) Shower chairs
- (198) Shower grip bars
- (199) Shower seating
- (200) Side rails
- (201) Sitting and sleeping cushions
- (202) Sitz bath kit
- (203) Small-vein infusion kits
- (204) Specialized seating, desks, work stations
- (205) Specially built hospital beds
- (206) Specially designed hand utensils
- (207) Specimen containers
- (208) Spinal puncture trays
- (209) Sponges (surgical)
- (210) Stairglides, lifts in home
- (211) Stairway elevators
- (212) Standing frames, devices and accessories
- (213) Steri-peel
- (214) Stethoscope
- (215) Stools
- (216) Stopcocks
- (217) Strap-on urinals
- (218) Suction equipment
- (219) Sun lamps
- (220) Surgical bandages
- (221) Surgical equipment
- (222) Suspensories
- (223) Sutures
- (224) Thermometers
- (225) Toilet aids
- (226) Toilet safety frames
- (227) Toilet seat rails
- (228) Toilet seat risers
- (229) Tourniquets
- (230) Trach tubes
- (231) Traction equipment
- (232) Traction stands, pulleys, etc.
- (233) Transcutaneous electrical nerve stimulators (tens unit) [when not worn on the body]
- (234) Transcutaneous nerve stimulators
- (235) Transfer boards

- (236) Transfusion sets
- (237) Trapeze bars-bar stand
- (238) Trapezes
- (239) Tub sealers
- (240) Underpads
- (241) Urinals
- (242) Vacutainers
- (243) Vacuum units
- (244) Vaporizers
- (245) Venous blood sets
- (246) Vibrators
- (247) Walker accessories
- (248) Walkers
- (249) Walkers, including walker chairs
- (250) Walking bars
- (251) Walking canes, quad canes, accessories
- (252) Water beds
- (253) Wheel walkers
- (254) Wheelchairs
- (255) Whirlpools
- (256) Writing and speech aids for the impaired
- (257) X-ray film

(h) **Prosthetic devices.** A nonexclusive list of **prosthetic devices** is as follows:

- (1) Abdominal belts
- (2) Anti-embolism stockings
- (3) Arch supports
- (4) Arm slings
- (5) Artificial arteries
- (6) Artificial breasts
- (7) Artificial ears
- (8) Artificial eyes
- (9) Artificial heart valves
- (10) Artificial implants
- (11) Artificial larynx
- (12) Artificial limbs
- (13) Artificial noses
- (14) Athletic supporters
- (15) Bone cement
- (16) Bone nails
- (17) Bone pins
- (18) Bone plates
- (19) Bone screws
- (20) Bone wax
- (21) Braces
- (22) Cast heels
- (23) Casts
- (24) Catheter devices and supplies
- (25) Catheters
- (26) Cervical braces
- (27) Cervical collars
- (28) Clavicle splints
- (29) Colostomy devices
- (30) Colostomy supplies and devices
- (31) Corrective braces
- (32) Corrective pessaries
- (33) Corrective shoes
- (34) Cosmetic gloves

- (35) Dental prosthesis
- (36) Dorsolumbar belts
- (37) Dorsolumbar supports
- (38) Eyelid load prosthesis
- (39) Heart valves
- (40) Hernia belts
- (41) Ileostomy devices
- (42) Iliac belts
- (43) Mastectomy pads
- (44) Neuromuscular electrical stimulators [when worn on the body]
- (45) Organ implants
- (46) Orthopedic implants
- (47) Orthopedic shoes
- (48) Orthotic supports (Bandages, belts, and similar supplies)
- (49) Ostomy devices
- (50) Pacemaker equipment
- (51) Pacemakers
- (52) Penile implants
- (53) Rib belts
- (54) Rupture belts
- (55) Sacroiliac supports
- (56) Sacrolumbar belts
- (57) Sacrolumbar supports
- (58) Space shoes
- (59) Splints
- (60) Splints, holders
- (61) Stoma appliances (colostomy, ileostomy, ureteros-tomy, catheters)
- (62) Stoma bags
- (63) Transcutaneous electrical nerve stimulators (tens unit) [when worn on the body]
- (64) Trusses
- (65) Ureostomy devices

PART 43. SOCIAL, CHARITABLE, AND CIVIC ORGANIZATIONS AND ACTIVITIES

710:65-13-366. Exemption for tax exempt organization who is an official member of the Fab Lab Network

(a) **Qualifications for exemption.** Effective November, 1, 2019, sales of tangible personal property or services are exempt from sales tax when made to, or by, an organization which is exempt from taxation pursuant to 26 U.S.C., Section 501(c)(3), who is an official member of the Fab Lab Network in compliance with the Fab Charter as verified by a letter from the MIT Fab Foundation and whose primary and principal purpose is to provide community access to advanced 21st century manufacturing and digital fabrication tools for science, technology, engineering, art and math ("STEAM") learning skills, developing inventions, creating and sustaining businesses and producing personalized products.

(b) **Application process.** Application for exemption is made by submitting to the Taxpayer Assistance Division,

Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available online at www.tax.ok.gov along with supporting documentation as follows:

(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. Section 501(c)(3).

(2) A written description stating the activities of the organization which shows the applicant meets the criteria set out in subsection (a) above as evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure;

(D) Letter from the MIT Fab Foundation verifying the organization is an official member of the Fab Lab Network and in compliance with the Fab Charter.

(c) **Exemption limited to eligible, properly documented transactions.** Only sales of tangible personal property or services, purchased by the organization, invoiced to the organization, and paid for by funds or checks directly from the organization, will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of tangible personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

710:65-13-367. Exemption for the American Legion

(a) **Qualifications for exemption.** Sales of tangible personal property or services are exempt from sales tax when made to the American Legion, whether the purchase is made by the entity chartered by the United States Congress or is an entity organized under the laws of this or another state pursuant to the authority of the national American Legion organization.

(b) **Application process.** Application for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available online at www.tax.ok.gov along with supporting documentation as follows:

(1) Documentation that the applicant is the entity chartered as the American Legion by the U.S. Congress;

(2) Proof the applicant is organized under the laws of Oklahoma or another state pursuant to the authority of the national American Legion organization;

(3) Written confirmation the applicant is currently recognized as an organization of the American Legion.

(c) **Exemption limited to eligible, properly documented transactions.** Only sales of tangible personal property or services, purchased by the organization, invoiced to the organization, and paid for by funds or checks directly from the organization, will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of tangible personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

SUBCHAPTER 19. SPECIFIC APPLICATIONS AND EXAMPLES

PART 37. "S"

710:65-19-316. Eyeglasses, contact lenses, and hearing aids

Sales of eyeglasses, contact lenses, and hearing aids are subject to sales tax unless their cost will be reimbursed by Medicare or Medicaid pursuant to the terms and conditions outlined in 710:65-13-173.

[OAR Docket #20-582; filed 7-9-20]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 90. WITHHOLDING

[OAR Docket #20-583]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

710:90-1-2 [AMENDED]

710:90-1-3 [AMENDED]

710:90-1-8 [AMENDED]

710:90-1-13 [AMENDED]

Subchapter 5. Liability and Penalties

710:90-5-1 [AMENDED]

710:90-5-2 [AMENDED]

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Oklahoma Tax Commission; 68 O.S. §203

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Sections 710:90-1-2, 710:90-1-3, 710:90-1-8, 710:90-1-13, 710:90-5-1 and 710:90-5-2 have been amended to update statutory citations.

CONTACT PERSON:

Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 1. GENERAL PROVISIONS

710:90-1-2. Definitions

Oklahoma Statutes provide that any term used in the Oklahoma Income Tax Code shall have the same meaning as when used in a comparable context in the Internal Revenue Code, unless a different meaning is clearly required. The terms used in this Chapter are subject to control by the Oklahoma Statutes, and therefore subject to the interpretation and application provided by the Internal Revenue Code. [See: 68 O.S. Sections 2353, 2385.1(b)] In addition, the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Employee**", as described in this Section, means a "resident individual," performing services for an employer whether such services are performed within or without the State of Oklahoma, or both, and any "nonresident individual" performing services within the State of Oklahoma.

(A) The term "**employee**" includes every individual performing services if the relationship between him and the person for whom services are performed is the legal relationship of employer and employee, as follows:

(i) Generally, the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished.

(ii) An employee is subject to the will and control of the employer, not only as to what shall be done, but how it shall be done. It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. In general, if the individual is subject to the control or direction of another merely as to the result to be accomplished by the work, and not as to the means and methods for accomplishing the result, he is not an employee.

(iii) The existence of an employer-employee relationship shall be determined, when in doubt, by an examination of the particular facts of each case.

(iv) If an employer-employee relationship exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial.

(v) It is of no consequence that an employee is designated as a partner, coadventurer, agent, independent contractor, contract labor, or the like. It also does not matter how payments are made, what they are called or whether the service is performed full or part-time.

(B) Generally, persons who follow an independent trade, business, or profession, in which they offer their services to the public, such as physicians, attorneys, dentists, veterinarians, contractors and others, are not **"employees."**

(C) Generally, an officer of a corporation is an employee of the corporation. However, an officer of a corporation who performs no services in this capacity or only minor services, and who neither receives nor is entitled to receive, directly or indirectly, any remuneration, is not considered to be an employee of the corporation.

(D) All classifications or grades of employees are included within the employer-employee relationship. Superintendents, managers and other supervisory personnel are employees. A director of a corporation in his capacity as such, is not an employee of the corporation. Officers of a Subchapter S Corporation are subject to these same provisions.

(E) An officer, employee or elected official of the United States, a state, a territory, the District of Columbia, or any agency, instrumentality, or political subdivision is considered an employee subject to Withholding Tax.

(F) Although an individual may be an employee, the services performed may be of such a nature or be performed under such circumstance that the remuneration paid does not constitute wages within the meaning of 68 O.S. Section 2385.1(e) or the Internal Revenue Code.

"Employer" means any person transacting business or deriving any income from sources within the State of Oklahoma for whom an individual performs or performed any services, of whatever nature, as the employee of such person. **"Employer"** does not include nonresident employers who have no place of business in Oklahoma and whose transactions are limited to the solicitation of orders for merchandise filled outside Oklahoma and shipped directly to a purchaser in Oklahoma.

(A) An **"employer"** may be an individual, a corporation, a partnership, a trust, a joint-stock company, an association; or a syndicate, group, pool, joint venture, or other unincorporated organization, group or entity.

(B) The term **"employer"** means not only individuals and organizations engaged in trade or business, but also organizations exempt from Income Tax, such as religious and charitable organizations, educational institutions, clubs, social organizations and societies.

(C) The term **"employer"** includes the governments of the United States, the States, the Territories, the District of Columbia, their agencies, instrumentalities and political subdivisions.

(D) If the person for whom the services are or were performed does not have legal control of the payment of wages for such services, the term **"employer"** means the person having such control.

(E) The term **"employer"** includes an officer or employee of a partnership who is under a duty to act for a corporation or partnership to withhold and remit.

(F) The word **"employer"** also means any person paying wages on behalf of a nonresident alien individual as defined by the Internal Revenue Code.

"Nonresident individual" means any individual other than a resident individual as defined by this Section. This includes "nonresident aliens" as defined by the Internal Revenue Code.

"Resident individual" means a natural person domiciled in Oklahoma who spends a total of more than seven (7) months of the taxable year within Oklahoma. Such person is presumed to be a resident in absence of proof to the contrary.

"Wages" means all remuneration (other than fees to public officials) for services performed by an employee for his employer unless specifically exempted.

(A) Generally, the medium in which remuneration is paid is immaterial. The term **"wages"** includes the cash value of all remuneration paid in any medium other than cash, such as stocks, bonds, or tangible property.

(B) The name by which remuneration is designated is also immaterial. Remuneration such as salaries, tips, fees, bonuses, commission on sales or on insurance premiums, pensions, and retired pay are considered wages if paid as compensation for services performed by the employee for his employer, unless specifically exempted as wages not subject to Withholding Tax by Oklahoma Statutes or the Internal Revenue Code.

(C) The basis upon which the remuneration is paid is immaterial. It may be paid on the basis of piecework, or as a percentage of profits, and may be paid hourly, daily, weekly, monthly, or annually.

(D) Remuneration for services performed constitutes wages subject to Income Tax Withholding, even though paid at a time after the employer-employee relationship no longer exists.

(E) Authorized fees to public officials such as notaries public, clerks of courts, sheriffs, etc., for services rendered in the performance of their official duties are not subject to Withholding Tax. However salaries paid such officials by the government or by a

government agency or instrumentality are subject to withholding.

(F) The term "**wages**" does not include any remuneration for services performed by an employee for his employer which is specifically exempt from wages under 68 O.S. Section 2385.1(e) or the Internal Revenue Code. Any exception attaches to the remuneration for services performed by an employee and not to the employee as an individual. Remuneration for services performed which is specifically excepted from the definition of wages to which a voluntary withholding agreement is in effect are deemed to be wages for purposes of administering the provisions of the Oklahoma Income Tax Withholding Act.

(G) Oklahoma Statutes provide that any term used in the Oklahoma Income Tax Code shall have the same meaning as when used in a comparable context in the Internal Revenue Code, unless a different meaning is clearly required. The terms used in this Chapter are subject to control by the Oklahoma Statutes, and therefore subject to the interpretation and application provided by the Internal Revenue Code. Therefore, any remuneration paid for services performed by an employee for his employer not specifically exempted by Oklahoma Statute or specifically named in this Section as wages shall be subject to Oklahoma Income Tax Withholding if subject to Income Tax Withholding as required by the Internal Revenue Code. [See: 68 O.S. Section 2353]

710:90-1-3. Registration of employers

(a) Every employer required to deduct and withhold tax as required under 68 O.S. ~~§2355(B)~~2355(C) and 68 O.S. § 2385.2 shall register with the Commission for purposes of withholding, reporting, and remitting such tax. An employer must register on the prescribed Commission Business Registration Form and shall furnish such information as required by said form to include the following:

- (1) How the business is owned;
- (2) Federal Employer Identification Number;
- (3) Business phone;
- (4) Ownership information consisting of:
 - (A) Name of legal owner, social security number, if applicable, and mailing address;
 - (B) Name of partners or corporate officers, social security numbers, titles, and residential mailing address;
- (5) Withholding Tax information:
 - (A) Is tax withheld;
 - (B) Date Withholding Tax was or is expected to commence;
 - (C) Is the amount withheld greater than \$500.00 per quarter;
- (6) Name of officer, partner, employee, or agent responsible for the remittance of Withholding Tax, social security number, title, and residential mailing address;

(7) Other information required to include but not limited to: Location information, previous owner information, etc.;

(8) Signature of sole owner, partner, officer or agent and the date thereof.

(b) All taxes withheld must be reported and paid when due.

710:90-1-8. Nonresident aliens

Every employer or payer of Oklahoma taxable income to nonresident aliens shall deduct and withhold tax equal to eight percent (8%) of such amounts paid. [See: 68 O.S. §2355(B)]

710:90-1-13. Pensions, annuities, and certain other deferred income

(a) **Treatment of designated distributions.** Designated distributions, as defined by the Internal Revenue Code (IRC), Section 3405, whether periodic or non-periodic, should be treated as if they were a payment of wages for Oklahoma Income Tax Withholding purposes. The payor of any periodic or non-periodic payment should inform recipients who are or become Oklahoma residents of the need to withhold if:

- (1) The recipient has not chosen the election of "no federal withholding," provided by ~~Sections 3405(a)(2) and (b)(3)~~Section 3405 of the Internal Revenue Code, or
- (2) The recipient elects to have Oklahoma Income Tax withheld irrespective of any election to not withhold federal income tax.

(b) **Treatment of periodic payments.** The amount to be withheld from a periodic payment is determined as if it were a payment of wages. The marital status and number of withholding allowances an employee may claim in determining the tax to be withheld shall be the same as that claimed on Form W-4P, Withholding Certificate for Pension or Annuity Payments, or a similar form provided by the payer.

- (1) If the recipient has not provided a withholding certificate, tax will be withheld as if the recipient were married and claiming three (3) withholding allowances.
- (2) The recipient can choose not to have tax withheld, regardless of how much tax is owed for the previous year, or is expected to be owed in the current year.

(c) **Treatment of non-periodic payments.** Tax will be withheld at a five percent (5%) rate on any non-periodic payments.

- (1) The recipient cannot use Form W-4P to determine the amount to be withheld, since withholding allowances or marital status are not taken into consideration.
- (2) The recipient can use Form W-4P to specify an additional amount to be withheld.
- (3) The recipient can also use Form W-4P to choose not to have tax withheld.

(d) **Employer contributions.** Employer contributions to qualified cash or deferred arrangements are not subject to Oklahoma Withholding Tax.

SUBCHAPTER 5. LIABILITY AND PENALTIES

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710:90-5-1. Liability for tax withheld

Any Oklahoma Income Tax withheld in accordance with Oklahoma Statutes or the provisions of this Chapter shall be deemed to be held in trust for the State of Oklahoma and as trustee, the employer is liable for the payment of such trust fund and is subject to the trust laws of this state. [See: 68 O.S. §2385.3(~~d~~)]

710:90-5-2. Failure to withhold

In the event that an employer fails to withhold the tax required and thereafter the tax is paid by the employee, the tax required to have been withheld shall not be collected from the employer. Such payment does not relieve the employer of the liability for penalties or interest otherwise applicable because of such failure to withhold the tax. The employer will not be relieved of his liability for payment of the tax required to be withheld unless the employer can show that the tax of each employee in question has been paid. [See: 68 O.S. §2385.3(~~e~~)]

[OAR Docket #20-583; filed 7-9-20]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 95. MISCELLANEOUS AREAS OF REGULATORY AND ADMINISTRATIVE AUTHORITY

[OAR Docket #20-584]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Used Tire Recycling

710:95-5-2 [AMENDED]

710:95-5-3 [AMENDED]

710:95-5-9 [AMENDED]

AUTHORITY:

Oklahoma Tax Commission; 68 O.S. § 203; 27A O.S. § 2-11-401.6

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Sections 710:95-5-2 and 710:95-5-3 have been revised consistent with the passage of SB 878 which amended 27A O.S. § 2-11-401.1, providing a definition of automobile for purposes of the Oklahoma Used Tire Recycling

Act and set, regardless of tire rim size, the applicable used tire fee for automobiles.

Section 710:95-5-9 has been amended to implement the provisions of SB 426 [2017] which imposed additional used tire fees on the first titling in Oklahoma of certain vehicles including trailers, semitrailers and motor vehicles to be registered under the International Registration Plan.[27A:2-11-401.2]

CONTACT PERSON:

Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, OK 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 5. USED TIRE RECYCLING

710:95-5-2. Definitions

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

"Automobile" means every motor vehicle of the type constructed and used for the transportation of ten persons or less, including the driver, or used for the transportation of property. Provided, however, that the automobile's gross vehicle weight rating does not exceed sixteen thousand (16,000) pounds.

"Commission" means the Oklahoma Tax Commission.

"DEQ" means the Oklahoma Department of Environmental Quality.

"ODH" means the Oklahoma Department of Health.

"Reusable tire" means a tire that has been previously used on a vehicle, not currently mounted on a vehicle, but can be legally placed into service for vehicle use in Oklahoma.

"Semitrailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle. [47 O.S. § 1-162]

"Tire" means any solid or air-filled covering for vehicle wheels.

"Tire-derived fuel facility" or **"TDF facility"** means a facility that uses processed tires or whole used tires for energy or fuel recovery.

"Trailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle, provided however, the definition of trailer herein shall not include implements of husbandry as defined in Section 47-1-125 of Title 47. [47 O.S. § 1-180]

"Used tire" means an unprocessed whole tire or tire part that can no longer be used for its originally intended purpose but can be beneficially reused as approved by the DEQ. Any used tire collected in accordance with the requirements of the Oklahoma Used Tire Recycling Act is not considered to be discarded. A tire that can be used, reused or legally modified

to be reused for its original intended purpose shall not be a used tire.

"Used tire facility" means any place which is permitted as a solid waste disposal site, in accordance with the Oklahoma Solid Waste Management Act, at which used tires are processed.

"Used tire processing" means altering the form of whole used tires by shredding, chipping, or other method approved by the department, except baling. [27A O.S. §2-11-401.1]

"Vehicle" means any device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks. [47 O.S. § 1-186]. The term **"vehicle"** does not include:

(A) Implements of husbandry which means every device, whether it is self-propelled, designed and adapted so as to be used exclusively for agricultural, horticultural or livestock-raising operations or for lifting or carrying an implement of husbandry and, in either case, not subject to registration if operated upon the highways. [47 O.S. § 1-125]. Examples of implements of husbandry are described in 47 O.S. § 1-125(1)-(3).

(B) Electric personal assistive mobility devices, which means a self-balancing, two nontandem-wheeled device, designed to transport only one person, having an electric propulsion system with an average of seven hundred fifty (750) watts (1 h.p.), and a maximum speed of less than twenty (20) miles per hour on a paved level surface when powered solely by such a propulsion system while ridden by an operator who weighs one hundred seventy (170) pounds. [47 O.S. § 1-114A]

(C) Motorized wheelchairs which means any self-propelled vehicle designed for and used by a person with a disability that is incapable of a speed in excess of eight (8) miles per hour. [47 O.S. § 1-136.3]

- (3) School buses and automobiles owned by schools.
- (4) Tires sold to governmental agencies.
- (5) Tires sold for farm tagged motor vehicles.
- (6) Tires sold for commercial trucks, truck-tractor (semi-trucks), and trailers.
- (7) First registration in Oklahoma of automobiles, motorcycles, mopeds, or trucks, including farm tagged motor vehicles and commercial motor vehicles which are not registered under the International Registration Plan.
- (8) Tires sold for implements of husbandry and agricultural equipment.
- (9) First titling of a semitrailer or trailer including travel trailers.
- (10) First titling of motor vehicles to be registered under the International Registration Plan.

(b) **Transactions to which fee is not applicable.** The used tire recycling fee does not apply to the transactions and vehicles indicated in (1) through (10) of this subsection:

- (1) Airplanes.
- (2) Bicycles.
- (3) Riding lawn mowers.
- (4) Wheelbarrows.
- (5) Push mowers.
- (6) Forklifts.
- (7) Tires sold for backhoe, grader, and other construction machinery.
- (8) ~~First registration in Oklahoma of vehicles registered under the International Registration Plan.~~
- (9) All-terrain vehicles.
- (49) Off-road motorcycles.

[OAR Docket #20-584; filed 7-9-20]

TITLE 715. TEACHERS' RETIREMENT SYSTEM

CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #20-487]

710:95-5-3. Used tire recycling fee

(a) **Applicability and amount of the fee.** ~~The~~ With the exception of tires for automobiles as defined in 710:95-5-2, the amount of the fee levied by the Oklahoma Used Tire Recycling Act is determined based upon the size of the tire rim and/or use of the tire. [See: 27A O.S. § 2-11-401.2]

(b) **Report.** The Commission shall provide a report, on a monthly basis, to the DEQ of the fees remitted by each tire dealer and motor license agent.

(c) **Payments.** Upon receipt of monthly reports from the DEQ, the Commission will issue payments from the Fund to qualified applicants.

710:95-5-9. Examples

(a) **Transactions to which fee is applicable.** The used tire recycling fee applies to the transactions and vehicles indicated in (1) through ~~(8)~~(10) of this subsection:

- (1) Cars and light trucks.
- (2) Motorcycles and mopeds.

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

715:1-1-5. Executive Director [AMENDED]

AUTHORITY:

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

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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n/a

GIST/ANALYSIS:

715:1-1-5 is being amended per 2019 legislation (SB 772) which removed the position of "Secretary-Treasurer" from the System and to update current position title for Teachers' Retirement System Staff.

CONTACT PERSON:

Phyllis Bennett, Rules Liaison, Teachers' Retirement System of Oklahoma, 2500 N. Lincoln Blvd., Oklahoma City, OK, 73105, 405-521-4745.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

715:1-1-5. Executive Director

The Executive Director shall be the administrative officer for the Board of Trustees and shall be responsible for the general administration of the Teachers' Retirement System.

(1) All employees shall be under the direct supervision of the Executive Director, ~~and shall be recommended by the Executive Director with approval by the Board of Trustees.~~

(2) ~~The Secretary Treasurer shall be an employee of TRS.~~

(3) All vouchers drawn against TRS shall be signed by two members of the administrative staff: the Executive Director, the ~~Assistant Deputy Executive Director of Operations, Chief Financial Officer, the Secretary Treasurer, or the Comptroller Assistant Chief Financial Officer.~~

(4) The Executive Director shall make reports to the Board of Trustees at its ~~regular monthly~~ regularly scheduled meetings in regard to ~~regarding~~ administrative matters, funds and budgetary matters, and present statements showing the general condition of the System's finances.

[OAR Docket #20-487; filed 6-29-20]

TITLE 715. TEACHERS' RETIREMENT SYSTEM CHAPTER 10. GENERAL OPERATIONS

[OAR Docket #20-488]

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RULES:

Subchapter 1. Membership provisions

715:10-1-6. Date of membership [AMENDED]

Subchapter 5. Establishing Other Service Credits

715:10-5-7. Credit for service in other Oklahoma public retirement systems [AMENDED]

Subchapter 9. Survivor Benefits

715:10-9-3. Monthly annuity in lieu of death benefit [AMENDED]

Subchapter 13. Contributions for Membership Service

715:10-13-15. ~~Board waiver~~ Waiver of employer late fees [AMENDED]

Subchapter 15. Service Retirement

715:10-15-3. Date of retirement; making application [AMENDED]

Subchapter 17. Post-Retirement Employment

715:10-17-5. Permissible employment [AMENDED]

715:10-17-16. Post retirement employment with the State Department of Education [NEW]

AUTHORITY:

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

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n/a

GIST/ANALYSIS:

715:10-1-6 is being amended to clarify that only members who join the System prior to July 1, 1996, may be considered an "eligible participant" under OAC 715:10-15-27.

715:10-5-7 is being amended to clarify that only members who join the System prior to July 1, 1996, may be considered an "eligible participant" under OAC 715:10-15-27.

715:10-9-3 is being amended pursuant to amendments to 70 O.S. §17-105 in the 2016 legislative session (HB 2263) providing that a member's spouse, another person, or the beneficiary of a Special Needs Trust may select Option 2 retirement in lieu of death benefits under certain specific circumstances.

715:10-13-15 is being amended pursuant to amendments to 70 O.S. §17-120 in the 2019 legislative session (SB 772) which now allows the System, rather than the Board of Trustees, to waive employer late fees for good cause shown.

715:10-15-3 is being amended to reflect the first retirement benefit payment is to be made on the first day of the month following the effective retirement date to be consistent with all companion rules and statutes.

715:10-17-5 is being amended to reflect an exception to post retirement earnings limitations for retired members who become State Department of Education employees on or after November 1, 2019, granted by an amendment to 70 O.S. § 17-103 in the 2019 legislative session (HB 1246).

715:10-17-16 is being implemented to establish guidelines for the application of the exception to post retirement earnings limitations for retired members who become State Department of Education employees on or after November 1, 2019, granted by an amendment to 70 O.S. § 17-103 in the 2019 legislative session (HB 1246).

CONTACT PERSON:

Phyllis Bennett, Rules Liaison, Teachers' Retirement System of Oklahoma, 2500 N. Lincoln Blvd., Oklahoma City, OK, 73105, 405-521-4745.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. MEMBERSHIP PROVISIONS

715:10-1-6. Date of Membership

Date of membership is the date the initial contribution is made to TRS under the current membership account. Any former member of TRS who has previously withdrawn contributions and who redeposits said withdrawn contributions as permitted by law shall have his or her initial date of membership reinstated. Any person who transfers service from the Oklahoma Public Employees Retirement System in accordance with 70 O.S., Section 17-116.2(L), shall be eligible to use his or her initial entry date into the Oklahoma Public Employees Retirement System as his or her date of membership in TRS for all purposes except the member shall not be considered an "eligible participant" under OAC 715:10-15-27 unless the member first joined TRS prior to July 1, 1996. If a current member purchases non-contributory service for those years of qualified employment prior to the current date of membership, the official date of membership will remain the date the member's current membership account was opened. If a member purchases adjunct service that was performed prior to current date of membership, such purchased service shall be considered contributing service for purposes of vesting and membership date.

SUBCHAPTER 5. ESTABLISHING OTHER SERVICE CREDITS

715:10-5-7. Credit for service in other Oklahoma public retirement systems

A member of the Teachers' Retirement System of Oklahoma may receive credit for employment covered by the following Oklahoma public retirement systems: the Oklahoma Firefighters Pension and Retirement System, the Oklahoma Police Pension and Retirement System, the Uniform Retirement System for Justices and Judges, the Oklahoma Law Enforcement Retirement System, Oklahoma Department of Wildlife, and the Oklahoma Public Employees Retirement System (OPERS). Such service must meet the minimum Teachers' Retirement System membership requirements. (See Subchapter 3)

- (1) After one full year (twelve calendar months) of ~~Teachers' Retirement System~~ TRS contributory service, a member is eligible to purchase service credited in another State retirement system. A certification of service form must be completed by the member's former State retirement system. The certification must show: the date of withdrawal, the salary by fiscal school year, and the total amount of credited service. It shall be the responsibility of the member to notify TRS of intent to claim such service and obtain proper documentation from the member's former State retirement system.
- (2) Employment which did not qualify for membership in the former State retirement system shall not qualify for credit in TRS.
- (3) Employment performed prior to the establishment of the State retirement system for the employment class shall not cause membership in TRS to be denied, however,

the type of service rendered must be accepted by the appropriate State retirement system if the member were now enrolled in that retirement system.

- (4) The purchase price for each year of such service shall be based on the actuarial cost of the incremental projected benefits being purchased (see OAC 715:10-5-4).
- (5) Under no circumstances can the purchased creditable service exceed the total service verified or the amount of credit given by the former retirement system.
- (6) Once purchased, the other State service counts towards vesting, eligibility for retirement, and final average salary. Notwithstanding, the Internal Revenue Code Section 401(a)(17) limits shall apply and the member shall not be considered an "eligible participant" under OAC 715:10-15-27 unless the member first joined TRS prior to July 1, 1996. However, the last year in the member's account immediately preceding retirement must be with a public education employer that participates in ~~Teachers' Retirement System~~ TRS.
- (7) The member shall not be receiving, or be eligible to receive, retirement credit or benefits from said service in any other public retirement system.

SUBCHAPTER 9. SURVIVOR BENEFITS

715:10-9-3. Monthly annuity in lieu of death benefit

The designated beneficiary of an ~~active contributing in-service~~ member, who qualified for service retirement, may elect to receive in lieu of the return of contributions and the \$18,000 death benefit the retirement benefit to which the deceased member would have been entitled at the time of death under the Option 2 retirement plan. To qualify for this option, the designated beneficiary must have been named as the primary beneficiary at the time of the member's death (see OAC 715:10-15-1 and 10-15-2). This option is only available when the member has designated one individual as the designated beneficiary, and the beneficiary is the member's spouse, another person, or the beneficiary of a Discretionary and Special Needs Trust ~~or someone who is not more than 10 years younger than the member.~~ If the designated beneficiary is not the member's spouse, IRS Regulations require that the adjusted member/beneficiary age difference cannot be more than ten (10) years. [See OAC 715:10-15-10, to determine the adjusted member/beneficiary age difference]. [See also OAC 715:10-9-7, if the member and beneficiary were divorced before death].

SUBCHAPTER 13. CONTRIBUTIONS FOR MEMBERSHIP SERVICE

715:10-13-15. ~~Board waiver~~ Waiver of employer late fees

- (a) TRS statutes provide that all employer and employee contributions must be remitted to TRS within 30 days after the end of the month in which the work was performed. If they are remitted after the deadline they are assessed a 1 $\frac{1}{2}$ % late charge,

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compounding monthly. The Board of Trustees may waive the late fee for good cause shown but may delegate this authority to staff. The Executive Director is authorized to waive these late fees. Good cause is generally shown in cases of an unforeseen circumstance such as a death or illness, acts of nature, or other unforeseen and unavoidable circumstance rendering the timely payment of ~~late fees~~ contributions impossible.

(b) ~~The Board of Trustees~~ System will automatically waive, ~~without presentation to the Board,~~ late fees assessed for any contributions received late due to the late receipt of federal funds or workers' compensation payments.

(c) ~~The Board of Trustees~~ System will automatically waive, ~~without presentation to the Board,~~ any late fees assessed in the amount of \$50 or less, provided the requesting employer has had one or less late remittances in the past 12 months.

(d) All other requests for waiver of late fees shall be presented to the ~~Board~~ System for review and determination of good cause shown for waiver at their next regularly scheduled meeting, provided that the waiver request is received by TRS at least 7 days in advance of the Board meeting. All waiver requests must be made on district/employer letterhead and signed by the Superintendent, CEO, or CFO.

SUBCHAPTER 15. SERVICE RETIREMENT

715:10-15-3. Date of retirement; making application

The earliest effective date of retirement for any eligible member is the first day of the month following the one in which employment ceases, with the first annuity payment ~~due the last day of that month to be paid on the first day of the month following the effective date of retirement.~~

(1) It is the member's responsibility to notify, by filing a retirement contract as outlined in paragraphs 4 and 5 of this section, the TRS Board of Trustees of the date on which retirement is to begin.

(2) Payments for all years of service, for which a member wants to receive credit, must be made no less than 90 days prior to the date of retirement.

(3) State law does not permit TRS to make retroactive retirement payments. Members should ensure that their creditable service record is up-to-date and accurate before they retire.

(4) Not less than ninety (90) days prior to retirement, the member must submit to TRS a Pre-Retirement Information Verification, copy of the member's proof of birth, copy of marriage certificate or license if married to joint annuitant, and verification of 120 days of accrued/unused sick leave for calculation of sick leave credit. The Pre-Retirement Information Verification and support pre-retirement documentation must be on file with TRS to enable TRS to prepare a complete Application to Retire.

(5) After submitting all required pre-retirement documentation, the member will receive an Application to Retire. This form must be returned to TRS no less than sixty (60) days prior to the effective date of retirement. Upon receipt of the completed Application to Retire the member will receive a final contract for retirement.

(6) The Final Contract for Retirement, properly executed before a notary, is required by statutes to be filed with TRS no less than thirty (30) days before the date of retirement. Therefore, the final contract for retirement must be completed and on file with TRS by the first day of the month immediately preceding the retirement date. The first retirement benefit payment will be made on the first day of the month following the effective date of retirement.

(7) For example, a retirement contract must be on file by May 1, for a retirement date of June 1, in order to process the first retirement benefit payment on July 1.

SUBCHAPTER 17. POST-RETIREMENT EMPLOYMENT

715:10-17-5. Permissible employment

Post-retirement employment in the public schools, institutions, and agencies covered by TRS is allowed after the break in employment outlined in OAC 715:10-17-2 has been met. Employment subject to this section shall include any services performed by a retired member, as defined in this subchapter, except for payments received as an employee of the State Department of Education pursuant to 70 O.S. § 17-103(7) or as an independent contractor or consultant, pursuant to a lawful contract that complies with the requirements of 70 O.S. § 6-101.2(B). ~~The Teachers' Retirement System~~ TRS will follow guidelines in subsection B of Section 6-101.2 of Title 70 and federal guidelines from the Department of Labor and the Internal Revenue Service in determining when a retired person qualifies as an independent contractor or consultant.

715:10-17-16. Post retirement employment with the State Department of Education

A retired member of TRS who becomes employed by the State Department of Education (SDE) for the first time on or after November 1, 2019 ("eligible employee"), shall have the option to remain a member of TRS subject to any applicable post retirement limitations placed on retired members returning to work or may choose to participate in the Oklahoma Public Employees Retirement System (OPERS) as an active member with such eligible employee's participation in OPERS being subject to the laws governing OPERS.

(1) An eligible employee shall have thirty (30) days from such eligible employee's initial date of hire with SDE to make a one-time irrevocable written election to remain a member of TRS subject to post retirement limitations or to participate in OPERS as an active member. If an eligible employee fails to make an election within the thirty-day period such eligible employee shall be subject to post retirement earnings limitations prescribed by laws governing TRS. If an eligible employee elects to participate in TRS, then SDE shall pay both the employee and employer contributions to TRS as required by law.

(2) If an eligible employee makes the election to participate in OPERS such eligible employee shall not participate in TRS as an active member nor make employee

contributions to TRS. In addition, SDE shall not make employer contributions to TRS. The eligible employee and SDE shall pay the applicable contribution rates as provided by the laws governing OPERS.

(3) An eligible employee who elects to participate in OPERS shall be ineligible for participation in TRS so long as such eligible employee remains employed by SDE. If such eligible employee assumes a different position, which is governed by a state retirement system other than OPERS or TRS, the eligible employee shall be subject to the retirement system rules applicable to that new position. However, such eligible employee shall not be eligible for service credit in TRS for service performed while participating in OPERS.

[OAR Docket #20-488; filed 6-29-20]

TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT CHAPTER 15. FISCAL, PERSONNEL AND GENERAL OPERATIONS

[OAR Docket #20-699]

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RULES:

Subchapter 33. Oklahoma Tourism Development Act Tax Credit Program
725:15-33-8. Necessity, function, and conformity [AMENDED]
725:15-33-9. Definitions [AMENDED]
725:15-33-11. Oklahoma Tourism Development Act Tax Credit Program application [AMENDED]
725:15-33-12. Final Approval [AMENDED]
725:15-33-13. Application form [AMENDED]
725:15-33-14. Appeals [AMENDED]

AUTHORITY:

68 O.S. § 2395, 74 O.S. § 2204; Powers, Rights and Duties of the Executive Director of Oklahoma Tourism and Recreation Department;

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Subchapter 33. Oklahoma Tourism Development Act Tax Credit Program
725:15-33-8. Necessity, function, and conformity [AMENDED]
725:15-33-9. Definitions [AMENDED]
725:15-33-11. Oklahoma Tourism Development Act Tax Credit Program application [AMENDED]
725:15-33-12. Final Approval [AMENDED]
725:15-33-13. Application form [AMENDED]
725:15-33-14. Appeals [AMENDED]

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INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The purpose of the proposed permanent rules amend the rules which facilitate the Oklahoma Tourism Development Act. The proposed rule amendments provide correct citations to applicable statutes, remove language that may be misleading to the public as to the applications of the types of projects covered by the Act, and reflect changes to the law regarding the addition of Entertainment Districts as a Tourism Attraction Project, Oklahoma Tourism and Recreation Department, Executive Director of the Oklahoma Tourism and Recreation Department, and the expansion of the Act to include Entertainment Districts as a Tourism Attraction Project.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 33. OKLAHOMA TOURISM DEVELOPMENT ACT TAX CREDIT PROGRAM

725:15-33-8. Necessity, function, and conformity

68 O.S. § 2394 requires that the Director, ~~with approval of the Oklahoma Tourism and Recreation Commission,~~ shall establish standards for the making of applications for inducements to eligible companies and their tourism attraction projects production and development facility project by the promulgation of rules in accordance with the Administrative Procedures Act.

725:15-33-9. Definitions

The following words and terms, when used in this ~~(Chapter, Subchapter, Part)~~ shall have the following meaning, unless the context clearly indicated otherwise:

"Act" or "this act" means the Oklahoma Tourism Development Act found in 68 O.S. § 2391- § 2397;

"Agreement" means an agreement entered into pursuant to Section ~~2357.39~~ 2396 of Title 68 of the Oklahoma Statutes, by and between the Director of the Oklahoma Tourism and Recreation Department and an approved company, with respect to a tourism attraction project ~~or and development facility project~~.

"Approved company" means any eligible company ~~or companies that~~ is seeking to undertake a tourism attraction development facility project and is approved by the Director pursuant to Sections ~~2357.38 and 2357.39~~ of Title 68 of the Oklahoma Statutes ~~the Act~~.

"Approved costs" means

(A) obligations incurred for labor and to vendors, contractors, subcontractors, builders and suppliers in

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connection with the acquisition, construction, equipping and installation of a tourism attraction project ~~or development facility project~~,

(B) the costs of acquiring real property or rights in real property in connection with a tourism attraction project ~~or development facility project~~, and any costs incidental thereto,

(C) the costs of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping and installation of a tourism attraction project ~~or development facility project~~ which is not paid by the vendor, supplier, contractor, or otherwise provided,

(D) all costs of architectural and engineering services including, but not limited to, estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping and installation of a tourism attraction project ~~or development facility project~~,

(E) all costs required to be paid under the terms of any contract for the acquisition, construction, equipping and installation of a tourism attraction project ~~or development facility project~~,

(F) all costs required for the installation of utilities in connection with a tourism attraction project ~~or development facility project~~ including, but not limited to, water, sewer, sewage treatment, gas, electricity and communications, and including off-site construction of utility extensions paid for by the approved company, and

(G) all other costs comparable with those described in this paragraph.

"Director" means ~~The~~ the Executive Director of the Oklahoma Tourism and Recreation Department or the Director's designated representative.

"Eligible company" means any corporation, limited liability company, partnership, sole proprietorship, business trust or any other entity, operating or intending to operate a tourism attraction project ~~or undertake a development facility project~~, whether owned or leased, within this state that meets the standards promulgated by the Director pursuant to ~~Section 2357.37 of Title 68 of the Oklahoma Statutes, this Act and, with respect to an Entertainment District, includes any such entity that will acquire, construct, develop, equip, install, expand or operate all or any portion of the Entertainment District, whether owned or leased.~~

"Entertainment District" means a mixed-use planned development project, with approved costs of one million dollars (\$1,000,000.00) or more in the aggregate, encompassing more than one hundred thousand (100,000) square feet and including an entertainment or recreational component and at least three of the following categories, which may or may not be anticipated to be completed in multiple phases:

- (A) retail;
- (B) housing;
- (C) office;

(D) restaurants;

(E) hotel, regardless of whether the hotel is a destination hotel;

(F) grocery;

(G) brewery facilities for a small brewer (as defined in the Oklahoma Alcoholic Beverage Control Act, Section 1-103 of Title 37A of the Oklahoma Statutes);

or

(H) structured parking.

"Entertainment District Tenant Party" means any corporation, limited liability company, partnership, sole proprietorship, business trust or any other entity operating within a tourism attraction project that is an Entertainment District pursuant to a lease or similar agreement with an approved company or otherwise.

"Final approval" means the action taken by the Director authorizing the eligible company to receive inducements under ~~Section 2357.40 of Title 68 of the Oklahoma Statutes, this Act.~~

"Increased state sales tax liability" means that portion of an approved company's reported state sales tax liability resulting from taxable sales of goods and services to its customers at the tourism attraction which exceeds the reported state sales tax liability for sales to its customers for the same month in the calendar year immediately preceding the certification as an approved company or an Entertainment District Tenant Party, as applicable;

"Inducements" means the ~~income tax credit or sales tax credit or incentive payment as prescribed in Section 2357.40 of Title 68 of the Oklahoma Statutes, this Act.~~

"Preliminary approval" means the action taken by the Director conditioned upon final approval by the Director upon satisfaction by the eligible company of the requirements of the ~~Oklahoma Tourism Development Act.~~

"Tourism Attraction" means a cultural or historical site; a recreational or entertainment facility; an area of natural phenomenon or scenic beauty; a theme park; an amusement or entertainment park; an indoor or outdoor play or music show; a botanical garden, or a cultural or educational center, a destination hotel whose location and amenities, including but not limited to upscale dining, recreation and entertainment, make the hotel itself a destination for tourists, or an Entertainment District. A tourism attraction shall not include:

(A) lodging facilities, unless the facilities constitute a portion of a tourism attraction project and represent less than fifty percent (50%) of the total approved costs of the tourism attraction project, or the lodging facilities are a part of a destination hotel or an Entertainment District,

(B) facilities that are primarily devoted to the retail sale of goods, unless the goods are created at the site of the tourism attraction project, ~~or if the sale of goods is incidental to the tourism attraction project, or such facilities are a part of an Entertainment District.~~

(C) facilities that are not open to the general public, unless such facilities are a part of an Entertainment District wherein a substantial portion of the Entertainment District is open to the general public, as determined by the Executive Director,

(D) facilities that do not serve as a likely destination where individuals who are not residents of this state would remain overnight in commercial lodging at or near the tourism attraction project, unless such facilities are a part of an Entertainment District,

(E) facilities owned by the State of Oklahoma or a political subdivision of this state, or ~~(6)~~

(F) facilities established for the purpose of conducting legalized gambling. However, a facility regulated under Section 200 et seq. of Title 3A of the Oklahoma Statutes shall be a tourism attraction for purposes of the Oklahoma Tourism Development Act for any approved project ~~as outlined in subparagraph a of this paragraph~~ meeting the definition of a Tourism Attraction or for an approved project relating to pari-mutuel racing at the facility and not for establishing a casino or for offering casino-style gambling; ~~and.~~

"Tourism attraction project" or "project;" "project" means the acquisition, including the acquisition of real estate by leasehold interest with a minimum term of ten (10) years, construction, and equipping of a tourism attraction ~~or film or music production and development facility,~~ and the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction ~~and development facility,~~ including, but not limited to: surveys, and installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities, and off-site construction of utility; extensions to the boundaries of the real estate on which the facilities are located, all of which shall be used to improve the economic situation of the approved company in a manner that shall allow the approved company to attract tourists.

725:15-33-11. Oklahoma Tourism Development Act Tax Credit Program-application-Application

(a) An eligible company wishing to participate in the Oklahoma Tourism Development Act ~~Tax Credit~~ Program shall file ~~three (3) copies of~~ an application with the Director as prescribed by the Department either through digital upload or through a digital file delivered on a thumb drive to the Office of the Department located in Oklahoma City, Oklahoma. If the application does not contain all information and materials identified below ~~it shall be returned to the applicant and will not be considered.~~ Director may request supplemental information. Failure by an eligible company to supply requested supplemental information within sixty (60) days of request, shall result in denial of the application. If the application is denied under this Part, then the Eligible Company may not submit another application under the Act within one (1) year following the denial.

(b) The following information and materials shall be submitted as a part of the application:

(1) ~~Eligible company name, address, phone and telefax numbers, contact person and federal employer tax identification number;~~ The following information pertaining to the Eligible Company:

(A) Name;

(B) Address;

(C) Phone;

(D) Email;

(E) Contact Person;

(F) Federal Employer Tax Identification Number;

(G) Form of organization;

(H) Previous participation of eligible company in all Oklahoma tax incentive programs;

(I) Ownership and business structure;

(J) Bankruptcy history; and

(K) Governmental denial, suspension, or revocation of licenses;

(2) The following information pertaining to the Tourism Attraction Project:

(A) Location of tourism attraction project ~~or film or music production and development facility project,~~ including a description and boundary of the area encompassing the Entertainment District, if applicable;

(B) Description of the Tourism Attraction Project;

(C) Estimated Project Costs;

(D) Proposed sources of financing;

(E) The total number of jobs projected upon completion of and within two (2) years after completion of the Tourism Attraction Project, which may include the number of jobs by the eligible company and any tenants of the Tourism Attraction Project;

(F) Five (5) year history of attendance at Tourism Attraction Project, if an expansion;

(G) Ten (10) year attendance projections, both in-state and out-of-state visitors;

(H) Months of operation of the Tourism Attraction Project or components thereof;

(I) Proposed marketing plans and budget to be used during the first five (5) year period that the Tourism Attraction Project is operating, including specific information regarding out-of-state visitor advertising;

(J) Value of Oklahoma tangible property, which includes both real and personal property, before and after completion of the Tourism Attraction Project;

(K) Ten (10) year estimated payroll of the Tourism Attraction Project, which may include any tenants of the Tourism Attraction Project;

(L) Estimated State sales tax liability of Tourism Attraction Project for the first ten (10) fiscal years of operation; and

(M) Estimated ten (10) year additional revenue generation for the community;

(3) Provide the name, phone number, email address, and contact person for the following service providers to the Tourism Attraction Project:

(A) Contractor;

(B) Attorney;

(C) Bank; and

(D) Accountant.

(3) Form of organization of eligible company;

(4) Previous participation of eligible company in Oklahoma tax incentive programs;

- (5) Ownership of eligible company;
- (6) Bankruptcy history of eligible company;
- (7) Governmental denial, suspension or revocation of licenses of eligible company;
- (8) Attorney for eligible company, including address, phone and telefax numbers;
- (9) Contact person of bank for eligible company, including address, phone, and telefax numbers and contact person;
- (10) Accountant for eligible company, including address, phone and telefax numbers;
- (11) Tourism attraction project and development facility project description;
- (12) Eligible company ownership or leasing of tourism attraction project and development facility project;
- (13) Estimated tourism attraction project and development facility, project costs;
- (14) Proposed sources of financing tourism attraction project and development facility project;
- (15) Contractor for tourism attraction project and development facility project, including address, phone and telefax numbers and contact person;
- (16) The total number of jobs projected upon completion of and within two (2) years after completion of the tourism attraction project and development facility project;
- (17) Five (5) year history of attendance at tourism attraction project and development facility project for an expansion;
- (18) Five (5) year attendance projections for tourism attraction project and development facility project;
- (19) Months of the year during which the tourism attraction project and development facility project is open;
- (20) Marketing plans and media type to be used for the tourism attraction project and development facility project, including five (5) year proposed advertising budget;
- (21) Value of Oklahoma tangible property before and after completion of the tourism attraction project and development facility project;
- (22) Ten (10) year estimate of tourism attraction project and development facility project payroll;
- (23) Estimated federal and state income tax liability of eligible company for first ten (10) fiscal years of the eligible company after commencement of operations of the tourism attraction project and development facility project;
- (24) Estimated state sales tax liability of eligible company for first ten (10) fiscal years of the eligible company after commencement of operations of the tourism attraction project or film or music production and development facility project;
- (25) If the tourism attraction project or film or music production and development facility project is an expansion, federal and state income tax liability of eligible company for the past three (3) fiscal years;
- (26) Ten (10) year estimated revenue of eligible company subject to Oklahoma income tax from the tourism attraction project and development facility project; and

- (27) Ten (10) year estimated additional revenue the tourism attraction project and development facility project will generate to the community.
- (28) Type of tax credit desired.
- (29) A signed and dated Certification of Application.

725:15-33-12. Final Approval

The Director shall provide his/her final approval required by Title 68 O.S. Supp. 2005, § 2357.38 the Act based upon:

- (1) The eligible company's satisfaction of statutory requirements of Title 68 O.S. Supp. 2005, § 2357.34 to 2357.40 the Act;
- (2) The findings of the consultant's report required by paragraph C of Title 68 O.S. Supp. 2005, § 2357.37 the Act; and
- (3) The application submitted to the Director under Section 311 of this administrative regulation, and written and oral communications with the eligible company.

725:15-33-13. Application form

- (a) The "Application for the Oklahoma Tourism Development Act Income Tax Credit Program (11/2000)" is incorporated by reference. The Oklahoma Tourism and Recreation Department shall make an application form in accordance with the Act and Administrative Rules contained in Subchapter 33.
- (b) A copy of the form of application may be inspected, copied or obtained at the Oklahoma Tourism and Recreation Department, 120 N. Robinson, Suite 600, Oklahoma City, Oklahoma, between 8 a.m. and 4:30 p.m., Monday through Friday Office during regular business hours and is available at <https://otr.travelok.com>.

725:15-33-14. Appeals

An applicant may appeal the denial of final approval by the Executive Director to the Oklahoma Tourism and Recreation Commission. Director's designee to the Executive Director. The decision by the Executive Director shall be a Final Agency Decision, which the applicant may further appeal pursuant to provisions of 75 O.S., Section 309 et seq.

- (1) **Applicant notification.** An applicant shall submit a written appeal to the Chairman of the Oklahoma Tourism and Recreation Commission within ten (10) days of the date of denial. The appeal shall state all facts and reasons for the appeal.
- (2) **Director actions and determination.** The Chairman of the Commission shall assign the appeal to an administrative law judge retained by the Commission. The administrative law judge shall conduct an administrative hearing pursuant to the provisions of 75 O.S., Section 309 et seq. The administrative law judge shall establish necessary procedures for the administrative hearing. The administrative law judge shall provide proposed findings of fact and conclusions of law to the Commission. The Commission shall sustain or deny the applicant's appeal.
- (3) **Applicant appeal of Commission denial.** If the Commission denies an applicant's appeal, the applicant

may further appeal pursuant to provisions of 75 O.S., Section 309 et seq.

[OAR Docket #20-699; filed 7-24-20]

TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT CHAPTER 30. DIVISION OF STATE PARKS

[OAR Docket #20-700]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 22. Concession Leases and Commercial Use
725:30-22-1. Purpose and authority [AMENDED]
725:30-22-1.1. ~~Examination~~Definitions [AMENDED]
725:30-22-1.2. Examination [NEW]
725:30-22-2. Bidding process [AMENDED]
725:30-22-3. Evaluation of ~~proposals~~ bids and award of contracts [AMENDED]
725:30-22-4. General lease ~~agreement~~ requirements [AMENDED]
725:30-22-5. Lease ~~agreement~~ modifications [AMENDED]
725:30-22-6. ~~Commercial use, Concessions and permits~~Permits [AMENDED]
725:30-22-7. ~~Capital improvements~~Repairs and improvements in lieu of royalties [AMENDED]
725:30-22-8. Grievance process [AMENDED]

AUTHORITY:

Powers, Rights and Duties of Commission; 74 O.S. § 2204.

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725:30-22-1.1. ~~Examination~~Definitions [AMENDED]
725:30-22-1.2. Examination [NEW]
725:30-22-2. Bidding process [AMENDED]
725:30-22-3. Evaluation of ~~proposals~~ bids and award of contracts [AMENDED]
725:30-22-4. General lease ~~agreement~~ requirements [AMENDED]
725:30-22-5. Lease ~~agreement~~ modifications [AMENDED]
725:30-22-6. ~~Commercial use, Concessions and permits~~Permits [AMENDED]
725:30-22-7. ~~Capital improvements~~Repairs and improvements in lieu of royalties [AMENDED]
725:30-22-8. Grievance process [AMENDED]

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N/A

GIST/ANALYSIS:

The rules modify and update the rules regarding the manner in which the Department solicits and awards Concession Leases. The proposed revisions also update the rules to reflect statutory changes regarding the powers and duties of the Oklahoma Tourism and Recreation Commission and the Executive Director of the Department.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 22. CONCESSION LEASES AND COMMERCIAL USE

725:30-22-1. Purpose and authority

(a) The purpose of this subchapter shall be to define the process in which ~~concession leases~~Concession Leases located upon Department property are examined, competitively bid, awarded and ultimately leased.

(b) In accordance with state law, the Oklahoma Tourism and Recreation ~~Commission~~ (Commission)Department is authorized to lease lands and facilities for the promoting of the public use of parks.

~~(c) Authority concerning concession leases may be delegated to the Executive Director of the Oklahoma Tourism and Recreation Department (Department) pursuant to law.~~

725:30-22-1.1. Examination Definitions

(a) Prior to issuing an invitation to bid (ITB), for a concession lease, a determination will be made whether the proposed operation would be a desirable addition to the Department. Department staff shall make this determination after an analysis of the following considerations:

- (1) Economic viability,
- (2) Environmental impact,
- (3) Impact on the property infrastructure,
- (4) Compatibility with the overall property and its nature,
- (5) Benefits to the park visitor and the citizens of Oklahoma, and
- (6) Impact on and compatibility with other concession leases.

(b) The Department will consult with the owner of the property, if other than the state, to assure that the proposed concession operation is agreed to by the property owner.

~~(c) If the concession operation has been proposed by other than Department staff, the Department may require that the proposing party provide a feasibility study or other analysis for the proposed concession lease, which study or analysis is prepared by a reputable and experienced firm or organization agreeable to the Department. The feasibility study or other~~

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analysis may be used to aid the Department in making its determination regarding the proposed concession lease. The expense for preparing the feasibility study or other analysis will be borne by the proposing party. The content of the feasibility study shall be kept confidential to the extent allowable by Oklahoma law.

(d) ~~The party who proposes a concession lease or provides a feasibility study or other analysis acquires no right or preference to be awarded any concession lease resulting from the proposal, study or analysis.~~

(e) ~~The determination of the Department whether to proceed with bidding an ITB for a proposed concession lease shall rest solely with the Department. Such decision shall not be subject to the Administrative Procedures Act.~~

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

"Bid" means the official response by a third party to ITB that shall be a binding formal offer to do business as a Concession with the Department.

"Bid opening" means the time when Bids are opened by the Department employees after the deadline for Bids being due.

"Concession" means the operator of a business on Department owned properties that operates under a Concession Lease.

"Concession commission" or "Concession royalty" or "Royalty" means the payments made to the Department under the terms of the Concession Lease.

"Concession lease" or "Lease" means the agreement executed by the Department and a third party for the operation of business or service upon properties operated by the Department.

"Concession lessee" or "Lessee" means the party leasing a Concession from the Department under the terms of a Concession Lease.

"Department" means the Oklahoma Tourism and Recreation Department.

"Executive Director" means the Executive Director of the Department.

"Grievance" means letter or email to the Department documenting a complaint by a Concession customer.

"ITB" means invitation to bid on a concession lease whereby the Department invites members of the public to bid in response to specifications determined by the Department.

"Permit" means a grant from the Department to hold an event and/or operate a short-term (less than one hundred eighty (180) days) business on property operated by the Department.

725:30-22-1.2. Examination

(a) Prior to issuing an ITB, for a Concession Lease, a determination will be made whether the proposed operation would be a desirable addition to the Department. Department staff shall make this determination after an analysis of the following considerations:

- (1) Economic viability.
- (2) Environmental impact.
- (3) Impact on the property infrastructure.

(4) Compatibility with the overall property and its nature.

(5) Benefits to the park visitor and the citizens of Oklahoma, and

(6) Impact on and compatibility with other concession leases.

(b) The Department will consult with any owner or federal agency as required by either law or contract.

(c) The Department may require a feasibility study or other information in the event that the concession is being proposed by a third party, which shall be done at the expense of the proposing party. Any party proposing a new concession shall receive no preference or special consideration and such new concession shall be put out to bid if pursued by the Department.

(d) The determination of the Department whether to proceed with bidding an ITB for a proposed Concession Lease shall rest solely with the Department. Such decision shall not be subject to the Administrative Procedures Act.

725:30-22-2. Bidding process

The Department shall competitively bid a property or facilities for a concession lease as follows:

(1) A bid package shall be prepared by the Department which shall include the following:

(A) ~~Instructions to bidders which define the important times and dates of the bidding process.~~Instructions, which include all deadlines;

(B) ~~A statement of the process by which bids shall be awarded, including the method of evaluation.~~The process and method of bid evaluation;

(C) ~~Explanation of the reasons for automatic bid disqualification-rejection;~~

(D) ~~An invitation to bid (ITB) form, which includes space for the prospective bidder to propose what rents will be paid; what services will be provided; and a place for the bidder's signature, date and notary public all of which shall be mandatory requirements.~~must be fully completed;

(E) ~~A required financial statement, listing experience and background;~~

(F) ~~Section(s) describing An operation and management proposal;~~

(G) ~~General terms applicable to the ITB-;~~

(H) ~~Section(s) listing the bidder's experience and background; and~~

(I) ~~Other sections deemed necessary by the Department.~~

(2) ~~Concession leases shall be advertised in a minimum of two (2) major newspapers or other publications for a minimum of one ad in each of two consecutive weeks in the region where the property or facility is located.~~ITB shall be posted on the Department website for not less than fifteen days and shall contain all of the necessary information, as determined by the Department.

(3) ~~Interested parties may request a bid package from parties defined in the list provided in the concession lease advertisement. Requests for bid packages shall be made~~

~~between the hours of 8:00 a.m. and 4:00 p.m. on regular workdays excluding weekends and holidays. Requests for bid packages shall be mailed by the Department within three (3) days of receipt of the request, may request a bid package by either emailing solicitations@travelok.com or by downloading it from the Department website.~~

~~(4) Fully executed bid packages shall be received, either by mail or in person at the location stated in the ITB no later than the date and time of the public bid opening, in accordance with the instructions and format required in the ITB.~~

~~(5) Bid packages shall be opened and reviewed at the time of the bid opening. The name of the bidder and amount of proposed rent shall be publicly announced and documented by at least two Department employees, at the time of the bid opening. Bid Opening. Bids shall not be opened prior to Bid Opening.~~

~~(6) No award shall be made at the bid opening. The Department reserves the right to reject all or part of all bids within thirty (30) calendar days from the bid opening. Bid Opening. Such notice of rejection, stating the reasons for rejection, shall be provided in writing within ten (10) calendar days of the rejection to all parties who submitted a Bid.~~

~~(7) The following includes are reasons for rejection, but the Department is not limited solely to these reasons:~~

~~(A) The bid was not submitted in accordance with the deadline set forth in the ITB.~~

~~(B) The information or signatures requested in the ITB concerning proposed rents, bidders' signature and notary were was not completed complete or fully executed.~~

~~(C) The bid did not meet the requirements set forth in (1) (D) (E) and (F) of this section.~~

~~(D) The bid included inaccurate, false or inauthentic information or inaccurate, false or inauthentic documentation.~~

~~(E) The Department has withdrawn the ITB.~~

~~(F) Unfavorable results of criminal background check.~~

~~(F) Agricultural leases may, at the Department's discretion, be exempt from the requirements set forth in (1) (E) and (F) of this subsection.~~

725:30-22-3. Evaluation of proposals bids and award of contracts

(a) The rejection of the bid or award of the contract shall occur within thirty (30) days from the date of the bid opening, Bid Opening, unless otherwise extended by the Department in its sole discretion.

(b) The award of the contract shall not be based upon the proposed ~~rents~~ Royalties alone and shall include managerial competence, quality of proposed services and improvements, and financial capability to operate and manage the proposed property or facility. The Department reserves the right to verify all documents submitted for evaluation purposes.

(c) A recommendation of award shall be made to the Executive Director of the Department based upon a complete evaluation by the state park director, regional manager, park manager and lease coordinator reviewers appointed by the Executive Director or their designee.

(d) The ~~Commission~~ Executive Director shall make the final decision regarding the awarding of a ~~concession lease~~ Concession Lease to a prospective the successful bidder.

(e) The Department lease coordinator or designee shall coordinate the execution of the awarded contract within twenty (20) working days of award. The Director of the Division of State Parks, shall coordinate the execution and negotiation of the Concession Lease with the successful bidder.

725:30-22-4. General lease agreement requirements

(a) The ~~lease agreement~~ Lease shall be prepared reflecting the terms and conditions of the ITB and the response of the successful bidder.

~~(b) The lessee shall be required to comply with all provision of the lease.~~

~~(c) Specific attention must be paid to providing complete construction documents for Department review prior to the initiation of any construction. Plans and specifications shall comply with all state codes and shall be sealed by the appropriate architectural and engineering professions as is required by state law for public buildings and facilities.~~

~~(1) The Department shall approve all construction proposed by a lessee.~~

~~(2) For state park land owned by the Corps of Engineers or the Bureau of Reclamation, the respective owner must also approve all proposed lessee construction.~~

~~(3) For state park land owned by the Grand River Dam Authority or another entity, approval of the land owner shall be sought as appropriate and required.~~

~~(d) The lessee must comply with the Americans with Disability Act and all other laws applicable to development of public facilities. The Department shall coordinate the review of facilities to determine compliance.~~

~~(e) Any violation of the lease may be grounds for Department action, which may include but is not limited to, termination of the lease agreement. The means for providing notice of violations and an opportunity to remedy the violation shall be prescribed in the lease agreement.~~

~~(f) Any subsequent purchaser, owner or assignee shall be required to meet all requirements set forth in (1) of 725:30-22-3.~~

~~(g) Any subsequent purchase, assignment or other conveyance is subject to rejection for the reasons set forth in 725:30-22-7.~~

~~(h) Any subsequent purchase or assignment or other conveyance must be approved by the Commission.~~

~~(b) The following issues shall be included in all Concession Leases:~~

~~(1) Providing all final and as-built construction documents to the Department;~~

~~(2) Required owner approval for all construction;~~

~~(3) Compliance with all applicable Federal and Oklahoma laws;~~

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- (4) Conditions on which the Department may terminate the Concession Lease;
- (5) Calculation of all Concession Commission or Royalty Payments due to Department; and
- (6) Assignment, purchase or conveyance of any right under the Concession Lease must be approved by the Department in writing and any owner of the property as may be required by contract.

725:30-22-5. Lease-agreement modifications

- (a) The Department shall have the authority at any time to substitute a new lease agreement in exchange for an existing lease with the consent of the existing lessee. Any modification to Concession Leases may be done upon written approval of both the Lessee and the Executive Director of the Department or their designee.
- (b) The Department shall have the authority to modify any lease agreement, at the request of the lessee, as it deems in the best interest of the Department. Such modifications may include, but are not limited to:
 - (1) Extensions of terms of the lease agreement.
 - (2) Addition of services to the lease agreement.
 - (3) Assignments of the lease agreement.
 - (4) Approval of options in the lease agreement.

725:30-22-6. Commercial use, Concessions and permits

- (a) Pursuant to state law, the Department may grant and impose charges for Permits, permits and for all commercial uses or purposes to which any of the properties of the Commission or any structures or buildings located on property of the Commission may be used. Examples of commercial uses Permit uses include, but are not limited to, events, ATV gatherings, and fishing tournaments. Commercial use of Department property is prohibited except by Permit or Concession Lease.
- (b) An application for commercial use Permit shall be submitted to the park manager and shall be reviewed by Department staff pursuant to the general requirements contained in 725:30-16-1.
- (c) Permits for concession use of Department properties shall be allowed on a short term basis. A permit for a concession may be issued for a period of thirty (30) days with no more than four (4) consecutive use permits being issued in succession for the same concession. Concessions are grants from the Department for a desired service such as, but not limited to, a food truck, kayak rentals or other services or activities. will define the period of time for which they are valid, the number of times they may be renewed (if any), and the services/activities allowed.
- (d) Charges for concession permits Permits shall be based on the average commission paid by existing concession leases within state parks, that provide similar uses. If no comparable concession leases exist within state parks then comparable charges for similar commercial uses within the region and the state will be sought to establish the charges for the permit. a reasonable rate set by the Department. The Department

may take the following into account when determining a Permit Royalty:

- (1) Rates charges for similar Permits throughout the state or region;
 - (2) Applicable business model;
 - (3) Desirability of Permit; and
 - (4) Any relevant facts or circumstances.
- (e) The terms contained in the permit Permit document shall guide the its operation and oversight of this short term concession activity.

725:30-22-7. Capital improvements Repairs and improvements in lieu of royalties

- (a) At the discretion of the Commission, the Department may accept repairs or improvements made to Department assets by concession lessees in lieu of rents/commissions paid to the Department by Concession Lessees to assets owned or leased by the State in lieu of Royalties. All such repairs or improvements:
 - (1) All repairs or improvements must be made on or to property or facilities owned or leased from a third party by the State and cannot be made to assets that are subject to depreciation or serve to secure a mortgage or other security interest of the concession lessee. All repairs or improvements made under this section immediately become the property of the Department and must be documented as to actual cost of the improvement. All documentation submitted must be acceptable to the Department and all repairs or improvements shall comply with the requirements of 725:30-22-5(c) and (d) and the concession lease. All or a portion of the cost of the repairs or improvements may be used to reduce the payment of any lease or rental agreement. Immediately become property of the Department;
 - (2) All such repairs or improvements must be made at, or adjacent to, the concession site and must be beneficial to the Department and the concession lessee. Must be documented by addendum or amendment to the Lease; and
 - (3) Must be approved in advance by the Department and accompanied by the appropriate documentation.
- (b) All repairs or capital improvements made by the lessee in lieu of rents/commissions paid to the Department must be documented by addendum or amendment to the concession lease agreement and approved by the Commission. The Department may allow all or a portion of the cost of such repairs or improvements to reduce Royalties due under the Lease or Permit.

725:30-22-8. Grievance process

- (a) Any customer of a contracted concessionaire may file a grievance with the Oklahoma Tourism and Recreation Department when he/she feels that the concessionaire has acted outside the bounds of standard business practices for that type of business. Any customer of a Concession may file a Grievance when he/she feels that the Concession has acted outside the bounds of standard practices for that type of business. The written grievance must be noted as "OFFICIAL GRIEVANCE REQUIRING INVESTIGATION" within the document must be used in the Grievance and must include the circumstances

or actions by the Concession resulting in the Grievance, which may include pricing, customer service or business policy. The grievance letter must state the circumstances or what action by the contracted concessionaire led to the grievance.

(b) The grieved party may submit the grievance in writing to the Director for review. The Grievance must be submitted to the Executive Director, either directly or through Park Management.

(c) Grievances may be filed in regard to, but not limited to, pricing, customer service, or business policy. The Executive Director will investigate Grievance, both for validity and potential resolutions.

(d) Upon receipt of the written grievance, the Director will investigate the validity and whether or not the grievance falls within an area of contract non-compliance. After the investigation is concluded, the Executive Director shall provide a written response to the party who filed the Grievance with their findings and any action taken by the Department.

(e) After an investigation the Director shall draft a written response to the grieved party with his/her findings and any action, if needed, taken by the department regarding the concessionaire's business transaction with the grieved party. The Executive Director's written response shall represent the Department's final determination and the grievance process will be closed upon its completion.

(f) If the grieved party is not satisfied with the Director's response then the grieved party may make a written request that the grievance be forwarded to the Executive Director of the Oklahoma Tourism and Recreation Department.

(g) The Executive Director of the Oklahoma Tourism and Recreation Department will follow the same procedure as required of the Director and draft a final written directive of actions, if any, the department will take regarding the contracted concessionaire.

(h) The findings of the Executive Director shall represent the final determination and the grievance process will be considered closed upon completion of the response by the Executive Director.

[OAR Docket #20-700; filed 7-24-20]

TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT CHAPTER 35. THE OKLAHOMA FILM AND MUSIC OFFICE

[OAR Docket #20-701]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Oklahoma Film Enhancement Rebate Program

725:35-1-1. Purpose [AMENDED]

725:35-1-2. Definitions [AMENDED]

725:35-1-3. Program requirements and qualification [AMENDED]

725:35-1-4. ~~Items not eligible for rebate~~Qualifying Oklahoma Expenditures [AMENDED]

725:35-1-5. ~~Procedures for submission and review of rebate claims~~Oklahoma Expatriate Crew Program [AMENDED]

AUTHORITY:

68 O.S. § 2395, 74 O.S. § 2204; Powers, Rights and Duties of the Executive Director of Oklahoma Tourism and Recreation Department;

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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June 25, 2020

EFFECTIVE:

September 11, 2020

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 1. Oklahoma Film Enhancement Rebate Program

725:35-1-1. Purpose [AMENDED]

725:35-1-2. Definitions [AMENDED]

725:35-1-3. Program requirements and qualification [AMENDED]

725:35-1-4. ~~Items not Eligible for rebate~~Qualifying Oklahoma expenditures [AMENDED]

725:35-1-5. Procedures for Submission and review of rebate claims
Oklahoma expatriate crew program [AMENDED]

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N/A

GIST/ANALYSIS:

The proposed revisions amend the rules to account for High-Impact Production designation under revisions to the Statutes done in the 2019 legislative session. The proposed revisions provide for a streamlined review process for the Oklahoma Film and Music Office by having a more thorough review done by a Certified Public Accountant and clarify language.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. OKLAHOMA FILM ENHANCEMENT REBATE PROGRAM

725:35-1-1. Purpose

The purpose of the Oklahoma Film Enhancement Rebate Program (Program) is to ~~create a new~~an incentive program to ~~attract film and television production to the state~~ build a film industry in the state. In accordance with 68 O.S. § 3624, this Program shall be administered by the Oklahoma Tax Commission and Office of the Oklahoma Film and Music Commission (OFMO), ~~which is created within the Oklahoma Tourism and Recreation Department pursuant to 74 O.S. § 2236.~~

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725:35-1-2. Definitions

(a) "Application" refers to the Application of Eligibility for Rebate Programs.

(b) "Director" refers to the Director of the Oklahoma Film and Music Office.

(c) "Rebate" is defined as a certain percentage (defined in 68 O.S. § 3624) of production costs incurred in Oklahoma directly attributable to the production of a film in this state if the OFMO determines that the proposed project has a reasonable chance of economic success.

(d) "Principal photography" is defined by the filming of major or significant components of a movie which involve lead actors.

(e) "Production board" is a scheduling device that breaks every scene by location, by day and night, and by interior or exterior.

(f) "Rebate claim" is defined as the documentation of production costs incurred in Oklahoma and submitted in compliance with the requirement of this Program.

In addition to the definitions in the statute (68 O.S. § 3623), the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Above the Line Personnel (ATL)" means, as defined in 68 O.S. § 3623, namely individuals hired or credited on screen for the Production as producers (all levels), principal cast (SAG Schedule F/Run of Show or equivalent), screenwriters and the Film director(s).

"Application estimate" means, the estimated QOE submitted to OFMO 60 calendar days before the start of Principal Photography.

"ATL Limitation" means up to twenty-five percent (25%) of total Qualifying Oklahoma Expenditures (QOE), see Section 725:35-1-4).

"Crew" means, as defined in 68 O.S. § 3623, namely persons who work on the Production who are not ATL (also known in the industry as "below-the-line" personnel).

"Documented expenditures" means, referred to in 68 O.S. § 3624(A), shall mean QOE as described in Section 725:35-1-4 below.

"Eligibility application" means the application of eligibility for the Program. If the application is approved by OFMO, a Film is "Pre-Qualified."

"Final application" means the package submitted to OFMO documenting all requirements have been completed and the Production Company is requesting payment of a Rebate Claim.

"Fiscal earmark year" means the fiscal year to which payment of potential Rebate Claims is assigned.

"High-impact production" means a Production that meets the requirements of 68 O.S. § 3623 and is so designated by the Oklahoma Tourism and Recreation Department (OTRD) Executive Director.

"Loan out company" means a legal entity (i.e., corporation, partnership or limited liability company) used by ATL and Crew to contract their services to the Production.

"Loan-out limitation" means up to twenty-five percent (25%) of Salary Costs for Oklahoma-Based Crew [as found in

Section 725:35-1-4(a)]. The OTRD Executive Director may, in their discretion, specify a different percentage for High Impact Productions.

"Oklahoma-based" means a natural person that files, or is legally claimed as a dependent on, an Oklahoma resident tax return, or a business entity registered and in good standing as a Domestic entity with the Oklahoma Secretary of State and that files an Oklahoma income tax return.

"Oklahoma expatriate" means a person who previously resided for at least one year, but does not currently reside, in the state of Oklahoma.

"Oklahoma loan out company" means a Loan-Out Company with an active registration to do business in the state of Oklahoma as a domestic or foreign entity and that either reports payments received for the Production as Oklahoma earnings for the artist on an IRS Form W-2 or is considered a disregarded entity for federal income tax purposes.

"Oklahoma resident" means a person who is a resident under the Oklahoma Tax Code at the time of hire.

"Oklahoma vendor" means a seller, renter or lessor of goods or services who charges Oklahoma sales tax under an Oklahoma Sales Tax Permit on taxable transactions and is either (1) Oklahoma-Based or (2) a foreign business entity with an active registration to do business in Oklahoma and a physical Oklahoma location for transacting business.

"Payroll burden" means employer-paid taxes (e.g., FICA, Medicare and unemployment insurance) and payroll-associated payments made on a specific employee's behalf by law or collective labor bargaining agreement (e.g., union dues and union fringes). Payroll Burden also includes the employer-paid portion of health insurance for an employee, provided such insurance was paid to an Oklahoma-Based insurance company or obtained through a licensed Oklahoma insurance broker.

"Per diem" means fixed payments made to Crew and ATL in lieu of reimbursement for lodging/housing, meals and incidentals, up to a maximum of the Per Diem Rate allowed for the applicable location and date in the U.S. General Services Administration Per Diem Rates.

"Pre-qualified" or "Pre-qualification" means the status or act of approval being granted to a Production's Eligibility Application by OFMO.

"Principal photography" means the filming of significant components of a Film which involve principal cast or, in the case of Films that do not involve live actors, the beginning of substantive work on the animation or graphics that form the Film's primary visual story.

"Production" means a project to make a Film.

"Production budget" means the total budgeted cost of the Production.

"Production company" means, as defined in 68 O.S. § 3623, more specifically the legal entity responsible for the Production. Eligibility and Final Applications will be filed by the Production Company and, unless previously agreed to in writing by OFMO, payment of approved Rebate Claims will be made to the Production Company.

"Proof of funding" means demonstration in a form acceptable to OFMO that a Production has or will have funding

in place to cover the Production's budget. Acceptable forms will be specifically approved by OFMO, but could include a letter of intent from a recognized industry financier, written verification of dedicated deposits in a recognized financial institution or a letter of credit from an acceptable guarantor.

"Rebate" means the percentage defined in 68 O.S. § 3624 of QOE.

"Rebate claim" means the formal request for OFMO to issue a Rebate under the Program. Only one Rebate Claim shall be processed per Production.

"Rebate schedule" means a schedule of dates, deadlines and submittals the Production must achieve to submit the Final Application and have its Rebate Claim approved.

"Salary costs" means those salaries and wages designated as Oklahoma earnings on payroll records, along with the associated Payroll Burden, Per Diem and Housing Allowance;

"Scouting expenses" means costs incurred to identify locations, Crew, facilities, services and equipment to be used in the Production.

"Start of pre-production" means the opening of an Oklahoma office for the Production, or incurring QOE other than Scouting Expenses, or otherwise commencing business on the Production in Oklahoma other than scouting.

725:35-1-3. Program requirements and qualification

(a) Production companies cannot use this Program in addition to the sales tax rebate provided in Title 68, Section 3624 of the Oklahoma Statutes.

(b) Production companies shall provide an affidavit as required by law.

(c) The following is a list of qualifying Oklahoma expenditures:

- (1) Above and below the line wages or salaries paid to Oklahoma residents
- (2) Wages or salaries paid to Oklahoma Expatriates (as described in item (d) below)
- (3) Salaries for resident and non resident above the line personnel paid to loan out corporations or limited liability companies registered to do business with the Oklahoma Secretary of State's Office. No more than Twenty-five percent (25%) of total rebated amount can be comprised of qualifying above the line salaries
- (4) Underlying rights for screenplay and novels paid to an Oklahoma entity or individuals with an Oklahoma tax liability (also subject to the 25% cap detailed above)
- (5) The cost of construction and operations, wardrobe, accessories and related services procured in Oklahoma or paid to an Oklahoma company
- (6) The cost of photography, sound synchronization, lighting and related services
- (7) Rental of facilities and equipment paid to an Oklahoma company
- (8) Other direct costs of pre production, production and post production of a film to include:
 - (A) Location scouting expenditures made in Oklahoma

(B) Employer paid payroll taxes for Oklahoma employees, including SUI, FUI, FICA, and Workers Comp

(C) Union fringe paid to Oklahoma crew

(D) Shipping and postage for packages originating within Oklahoma

(E) Hotel costs

(F) Completion bonding if utilizing an Oklahoma-based company

(G) Production insurance if utilizing an Oklahoma-based company

(H) The purchase of airline tickets for the purposes of location scouting and production of the film if utilizing an Oklahoma-based travel agency

(I) Per Diem paid to cast and crew for Oklahoma filming dates

(J) Third party audits conducted by pre-certified Oklahoma accounting firms

(d) Oklahoma Expatriate Program: Included in the definition of qualifying "crew" are wages and salaries paid to an individual registered as an Oklahoma Expatriate by the Oklahoma Film & Music Office. The Expatriate roster consists of Oklahoma below the line crew not currently residing in Oklahoma, who have pre-registered with the Oklahoma Film & Music Office, by first meeting all requirements. That roster will be made available to producers in an effort to supplement Oklahoma's existing crew base.

(1) If a producer chooses to hire one of the qualifying crew members whose name appears on that roster, wages and salaries paid to that person will qualify as an Expenditure or Production Cost and count towards the minimum requirement of Twenty-five Thousand (\$25,000) in Oklahoma expenditures.

(2) Before rebate payment can be made, producer must provide proof to the Oklahoma Film & Music Office that the individual has filed (or has agreed in writing to file) an Oklahoma income tax return for the year services were rendered on the production to the Oklahoma Film & Music Office.

(3) A further requirement is that in exchange for utilizing a crew member from the Expatriate Roster as a qualifying local expenditure, the production must accept assignment of an intern provided by an Oklahoma institution of higher education or Career Tech for an agreed upon length of time during the course of the production (to be assigned to the expatriate or other appropriate personnel).

(e) Third Party Audit Requirement: In order to be eligible to receive rebate monies, the production must retain the services of an independent certified public accountant to serve as a Third Party Auditor. In order for this to be a rebatable expenditure, the production must appoint a Third Party Auditor who is licensed to do business in the state of Oklahoma and who shall not be related to the producer. The Director of the Oklahoma Film & Music Office must be provided with the name, address and telephone number of the independent auditor proposed by the producer in order to make contact with the auditor prior to beginning the audit. The audit shall be performed in accordance with auditing standards generally accepted in the United

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States of America and the auditor shall have sufficient knowledge of accounting principles and practices generally recognized in the film and television industries. The auditor shall present a final report based upon agreed-upon procedures:

- (1) Only actual paid expenditures clearly and demonstrably in Oklahoma for the qualified production may be recorded and certified as direct production expenses or qualified personnel expenditures.
- (2) The costs to be recorded are actual costs and shall not include any mark-ups or profit additions. These costs must be made in Oklahoma; must be directly attributable to the production or distribution of the qualified production which is the subject of the Oklahoma Film Enhancement Rebate Program; and must be subject to taxation in Oklahoma.
- (3) The cost report must be in US dollars and the period during which the expenditures were incurred must be disclosed.
- (4) It is the eligible production company's responsibility to ensure that all of the required information is provided.
- (5) For payments made to loan-out companies or limited liability companies, the auditor must verify that the loan-out or LLC is registered with the Oklahoma Secretary of State's Office to do business in the state of Oklahoma.
- (6) Auditor must ensure that salaries for both resident and non-resident above the line personnel paid to loan-out corporations or limited liability companies registered to do business in Oklahoma do not comprise more than Twenty-five percent (25%) of the total amount being submitted for rebate.
- (f) ~~End Credit Requirement: The following screen credit and the current Oklahoma Film and Music Office logo or written confirmation thereof must be included in the end credit crawl of all release prints of a completed short or long form film: "Filmed in Oklahoma utilizing the Oklahoma Film Enhancement Rebate Program."~~
- (g) ~~Rebate Payout Timeline: For expenditures made in FY10 (July 1, 2009 – June 30, 2010) the rebate is payable on or after July 1, 2010 pursuant to the production meeting all requirements of the Oklahoma Film Enhancement Rebate Program. Thereafter, rebates will be paid out immediately after all requirements have been met with no fiscal year delay. Beginning July 1, 2010, and pending receipt of results and supporting documentation of Third Party Audit described in 2D, the Oklahoma Film & Music Office will approve or disapprove of all claims within a period of thirty (30) days. The Oklahoma Tax Commission shall, upon notification of approval from the Oklahoma Film & Music Office, issue payment for all approved claims.~~
- (h) ~~When, Where and How to Apply for the Rebate:~~
 - (1) Applications must be submitted at least sixty (60) calendar days but no more than one hundred eighty (180) calendar days prior to the start of production. Applications submitted more than 180 calendar days or less than 60 days prior to the scheduled start of production will not be accepted.

(2) Applications must be submitted to The Oklahoma Film & Music Office, 120 N. Robinson Avenue, Suite 600, Oklahoma City, OK 73102. Phone: (405) 230-8440 Web site: www.oklahomafilm.org

(3) Applicants must complete, sign and submit hard copies of all required forms, which are available from the Oklahoma Film and Music Office at the above address, or on line at www.oklahomafilm.org, and provide the latest version of the shooting script and production budget. Required forms are: Form A—Project Information; Form B—Application of Eligibility; Form C—Filming Permit; Form D—Statement of Budget; Form E—Expatriate Program Registration; Form F—Summary of Local Expenditures; Form G—Certification of Information; Form H—Confirmation of End Credit Inclusion; and Form I—Final Rebate Application.

(4) Applicants must schedule an interview to discuss their application with the Oklahoma Film & Music Office by calling (405) 230-8440. The meeting must be attended by a producer or a line producer, unit production manager or production accountant or their designee, subject to the approval of the Director of the Oklahoma Film & Music Office.

(i) ~~Notice of Pre-Approval/Disapproval of Eligibility Application:~~

(1) If the Eligibility Application is approved, applicant will receive a letter of eligibility signed by the Director of the Oklahoma Film & Music Office listing the items provided on the application and any supporting documentation currently on file with the office along with the projected amount of rebate pending the production meeting all requirements under the Oklahoma Film Enhancement Rebate Program. At that point, the projected rebate amount, and only that specific amount, will be earmarked for the production, providing applicant meets all benchmarks in the application process.

(2) Receipt of the eligibility letter does not guarantee receipt of rebate monies. Final eligibility and the amount of the rebate will be determined after submission and review of the final application, the results of a Third Party Audit, and all required supporting documentation.

(3) If the Eligibility Application is not approved, the Oklahoma Film & Music Office shall provide applicant with a notice of disapproval which shall state the reasons therefore.

(4) As specified in Oklahoma statute, no more than one (1) application per fiscal year per specific production (based on production title, script and budget) will be accepted.

(j) ~~Requirements after Principal Photography:~~

(1) No more than Ninety (90) calendar days after the payment of all Oklahoma expenditures, the production must submit the following to the Oklahoma Film & Music Office:

- (A) Final Rebate Application (Form I)
- (B) Final budget and signed statement of budget (Form D)
- (C) Amount of wages and qualifying expenditures

- (D) Final payroll report provided directly to the Oklahoma Film & Music Office from production payroll company
 - (E) Final cast and crew lists
 - (F) Daily production reports for all Oklahoma filming days
 - (G) Completed Summary of Local Expenditures (Form F)
 - (H) Final accounting ledger (all supporting documentation and receipts must be kept by the production company of record for a period of three (3) years)
 - (I) The production company has filed or will file any Oklahoma tax return or tax document which may be required by law
 - (J) Final production shooting schedule
 - (K) Results of Third Party Audit conducted by an accounting firm that has been mutually agreed upon in advance. Third Party Audit will be at the expense of the production. This is deemed a qualifying expenditure if certified Oklahoma accounting firm is used.
 - (L) Certification of Information, signed by producers and notarized before submission, stating among other things, that all information provided to the Oklahoma Film & Music Office for the purposes of qualifying for the Oklahoma Film Enhancement Rebate program are true and correct and that there are no unpaid salaries, invoices, reimbursements for damages or liens against the production entity in the State of Oklahoma. No rebate money will be released until this notarized documentation is on file with the Oklahoma Film & Music Office (Form G)
 - (M) End Credit Requirement as described in Item 2E
- (2) Failure to provide the final information according to the time frame provided above may result in a loss of the credit. Within Thirty (30) days of all requirements being met, the Oklahoma Film & Music Office will issue a letter to Oklahoma Tax Commission, requesting rebate payment, copying production company contact.
- (k) Requesting Exemptions to Open Records Act:
- (1) The Oklahoma Film & Music Office is subject to the State of Oklahoma Open Records Act, which governs public access to the records of government agencies. Under Title 74 O.S. § 2231 of Oklahoma State Law, certain information provided to the Oklahoma Film & Music Office as a Division of the Oklahoma Tourism & Recreation Department, by a person or entity seeking economic advice from the Oklahoma Film & Music Office and any information compiled by us in response to submissions, may be kept confidential.
 - (2) In order to protect confidentiality of the above referenced items, rebate applicants must submit a request in writing to the Oklahoma Film & Music Office along with the Eligibility Application requesting that the information be withheld from disclosure on the grounds that it constitutes trade secrets, proprietary information or that the information, if disclosed, would cause substantial injury to the competitive position of the applicant. Applicants must specify the information for which they are seeking protection along with clearly stated reasons for the requested exception.
- (3) The Oklahoma Film & Music Office reserves the right to determine whether the information submitted by the applicant will be withheld from disclosure. The Oklahoma Film & Music Office will notify the applicant of any requests for disclosure and notify the applicant as to whether the information will be disclosed.
- (4) Required Benchmarks for Rebate Eligibility Process:
- (1) 180 Calendar Days (and no sooner) Prior to Production you may submit an Eligibility Application for the Oklahoma Film Enhancement Rebate Program signed by authorized production personnel along with all other required documentation.
 - (2) 60 Calendar Days (minimum) Prior to Production, a production must show proof that fifty percent (50%) of the production budget is in place in the form of a signed and certified letter of intent from a recognized financier or by written verification of the amount of the production's balance from a recognized financial institution. Letter must include name, address, phone number and contact name and account number for financier/bank for verification purposes. Note: Sixty (60) days prior to production is the last point at which a production may revise their Eligibility Application to increase their projected rebate amount and have monies earmarked in advance, subject to availability of funds.
 - (3) 30 Calendar Days (minimum) Prior to Production (via the same methods described for Fifty percent (50%) verification above), production must show proof of ability to cash flow the production on previously established date of commencement of Production. Also required at Thirty (30) days:
 - (A) Copy of the shooting schedule and inclusion on revisions distribution list (or as soon as available prior to principal photography).
 - (B) Latest version of production budget and signed Statement of Budget (Form D)
 - (C) Latest version of the script and inclusion in revisions distribution list
 - (D) Latest version of Crew List tagged as resident and non resident hires
 - (E) Copy of the completion bond (where applicable, see Guidelines, Item 6A, D3)
 - (F) Copy of the Certificate of General Liability, carrying a minimum of One Million Dollars (\$1,000,000) (USD) in coverage
 - (G) Proof of Workers Compensation Policy pursuant to Oklahoma State law
 - (H) Legal Counsel name and contact information for producers and financiers
 - (I) Additional documents as may be requested by the Oklahoma Film & Music Office
 - (4) If a production delays the start of Production as provided in the eligibility application process, its rebate eligibility will be pushed the same length of time between its initial start date and its newly revised start date. Any

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productions behind it in the eligibility cue with start dates within this window of time will move ahead, thereby having first claim to rebate funds. Should a production push the start of production a second time, it will move to the back of the eligibility cue. Should a production push its start of production a third time, its Eligibility Application becomes null and void. A subsequent re-application will be delayed until the next fiscal year.

(5) Eligibility is non-transferable. Each Eligibility Application shall be filed under the title of the screenplay submitted to the Oklahoma Film & Music Office. Projects deemed eligible for the rebate under each application shall only be eligible to the extent that project is substantially based on the screenplay previously submitted and on file with the Oklahoma Film & Music Office and supporting budget submitted for said project title.

(a) Applying for Rebate Eligibility:

(1) Applications and all necessary forms will be submitted through the OFMO website (okfilmmusic.org) or as otherwise specified by OFMO.

(2) Unless otherwise agreed to by OFMO, Eligibility Applications will be submitted at least 60 calendar days prior to the Start of Principal Photography. The exact requirements of the Eligibility Application are shown on the OFMO website, but generally include:

- (A) General information about the Production;
- (B) Contact information;
- (C) Preliminary Production milestone dates;
- (D) A copy of the screenplay;
- (E) The Production Budget top sheet and estimated headcount;
- (F) Various acknowledgements of Program and OFMO requirements and agreements to abide by them.

(3) Applicants may track the status of their Eligibility Application on the OFMO website.

(4) Application does not guarantee acceptance. OFMO considers each Eligibility Application individually based upon many factors, including compliance with these Rules, the benefits of the project to Oklahoma (such as jobs, tourism, branding, image and follow-on work), funds available, anticipated future Program needs and other projects applying for a Rebate.

(5) If the Eligibility Application is approved, the Production Company will be Pre-Qualified and OFMO will work with the Production to establish a Rebate Schedule.

(6) At the time of Pre-Qualification, Productions are assigned to a Fiscal Earmark Year based upon the start of Principal Photography.

(7) Pre-Qualification does not guarantee ultimate approval of a Rebate Claim. The Production Company must meet the requirements of the Rebate Schedule and their Final Application must be approved in order for the Rebate Claim to be approved.

(8) If the Eligibility Application is denied, OFMO will provide the applicant with the reason(s) it was denied.

(9) Only one Eligibility Application per fiscal year per Production will be accepted.

(b) Application Estimate: If the Eligibility Application is approved, the Application Estimate will be multiplied by the appropriate rebate percentage to determine the estimated amount to be paid in the Rebate Claim (the "Potential Rebate Claim").

(c) If the Final Application and actual Rebate Claim are approved:

(1) If the actual QOE are less than or equal to the Application Estimate, the Rebate Claim will be paid in full.

(2) If the actual QOE are more than the Application Estimate, the Potential Rebate Claim amount will be paid within the normal payment timeframe and the remainder will be considered an additional claim and may, depending upon OFMO's discretion and budget, be paid at a later date outside the normal timeframe.

(d) Rebate Schedule: After Pre-Qualification, OFMO and the Production Company will establish a schedule of dates based upon the following benchmarks:

(1) 60 calendar days prior to Principal Photography - submit Application Estimate and Proof of Funding for at least fifty percent (50%) of the Production Budget.

(2) Prior to paying salaries or wages to a Production Company's employee in Oklahoma - submit a certificate of workers' compensation insurance with limits pursuant to Oklahoma law.

(3) 30 calendar days prior to Principal Photography - submit the following:

- (A) Proof of Funding for the Production Budget;
- (B) Updated shooting schedule;
- (C) Updated screenplay;
- (D) Copy of the Completion Bond (defined in (e) below), if applicable;
- (E) Additional documents as may be reasonably requested by OFMO.

(4) 10 calendar days prior to Principal Photography
(A) Submit a certificate of general liability insurance with a minimum limit of \$1,000,000 in coverage (or a binder for such with a start date no later than the estimated Start of Pre-Production);

(B) Submit a certificate of automobile liability insurance with minimums of \$250,000/500,000/250,000 coverage (or a binder for such with a start date no later than the estimated Start of Pre-Production) or certification that no employee of the Production will drive an automobile as part of the Production;

(C) Work with OFMO to draft and distribute a press release about the Production to relevant media.

(5) During Principal Photography - submit the following (preferably in advance, if practical):

- (A) Updates to the shooting schedule;
- (B) Updates to the screenplay.

(6) Within 90 calendar days of completion of the Production (or payment date of last QOE, if later):

(A) Upload through the OFMO website the list of Oklahoma Crew, Oklahoma Expatriates and Oklahoma Vendors used on the Production;

(B) Submit the Final Application.

(e) Completion Bond: Unless a Production is backed by a major studio or other financing source acceptable to OFMO, the Production will post a Completion Bond from a guarantor acceptable to OFMO guaranteeing the completion of the Production and payment of all Oklahoma liabilities. In lieu of a Completion Bond, a Production may produce evidence acceptable to OFMO that all Crew, vendors and taxes have been paid and there are no outstanding or potential liens in Oklahoma against the Production Company.

(f) Incremental Music Rebate: To qualify for the additional rebate for Oklahoma music described in 68 O.S. § 3624(B), QOE described in Section 725:35-1-4(g)(9) must be \$20,000 or more.

(g) End of Production Requirements:

(1) Unless otherwise approved by OFMO, the end credit crawl of all release prints of a completed short or long-form film shall include "Filmed in Oklahoma utilizing the Oklahoma Film Enhancement Rebate Program" and a logo provided by OFMO.

(2) The Production Company shall provide to OFMO

(A) A film poster, final release copy of the Film on DVD and digital link to a copy of the Film if available.

(B) Production stills, behind-the-scenes footage or other images OFMO can use to promote the Program.

(h) Certified Public Accountant's Report: Final Rebate Applications will be accompanied by a CPA's Report, prepared at the expense of the Applicant, attesting that the amounts in the application are QOE that comply with the requirements of these rules.

(1) Reports will be prepared by a CPA currently licensed by the State of Oklahoma and who is independent under the American Institute of certified Public Accountants' (AICPA) Independence Rule.

(2) CPAs will carry professional liability insurance, in a form and from a carrier acceptable to OFMO, for at least \$500,000.

(3) The CPA's examination will be conducted according to the AICPA's Attestation Standards.

(4) Reports will use a materiality threshold set by OFMO and published on its website.

(5) CPAs will work with the Production Company to resolve exceptions or discrepancies prior to submitting the Final Application, such that the CPA's Report attests to the validity and accuracy of the amounts on the Application without exception.

(6) The CPA's Report will attest:

(A) Actual Production expenditures were at least \$50,000 and QOE at least \$25,000, or if a High-Impact Production, actual expenditures were at least \$50,000,000 and QOE at least \$16,666,667.

(B) All amounts on the Application are properly calculated and materially accurate.

(C) All Oklahoma payroll tax returns due from the Production Company (or its payroll processor) have been filed.

(D) All Oklahoma income tax returns for the Production Company due as of the review date have been filed.

(7) The CPA will retain all workpapers for the CPA's Report for seven years, during which they may be subject to audit by the OFMO or its agents, upon a request by OFMO.

(i) Final Application:

(1) Upon completion of the Production and requirements herein, the Production Company will submit a Final Application.

(2) Submitting a Final Application does not guarantee approval. OFMO will approve or disapprove of all claims within 60 calendar days of receipt of a properly completed Final Application.

(3) If a Final Application or Rebate Claim is denied, the Production Company may attempt to correct any discrepancies or problems and resubmit within thirty (30) days of denial.

(4) Once a Final Application is approved by OFMO,

(A) Amendments are not allowed;

(B) The Production Company will work with OFMO to establish a vendor ID with the State.

(5) The Oklahoma Tax Commission will, upon notification of approval from the OFMO, issue payment for all approved Rebate Claims, subject to any Fiscal Year Maximum imposed by statute and any other agreements that the Production Company and OFMO have agreed to in writing in the case that the Production is a High-Impact Production.

(j) Fiscal Year Maximum: The Program has a rolling cap, which adds a new amount to the fund available to pay Rebate Claims each fiscal year. In order to ensure funds are available to pay all Pre-Qualified Productions, OFMO assigns each Pre-Qualification to a Fiscal Earmark Year, which may be one or more fiscal years in the future. If the total amount available to pay claims in any one fiscal year is restricted by statute, claim approval priority will be determined using the Fiscal Earmark Year and some Productions might have to wait until the first day of a future Fiscal Earmark Year in order to receive payment. This statutory maximum would not affect the amount of the Rebate Claim or its ultimate payment, but could affect the timing of when it is paid.

(k) Delays, Transferability and Expiration:

(1) A Pre-Qualified Production may delay the start of Principal Photography two times as described below. If the start is delayed a third time, or a Production does not start by the date specified in their latest update to the Production Schedule submitted to OFMO, Pre-Qualification is revoked, the Eligibility Application is denied and the Production cannot apply again until the following fiscal year.

(A) The first time a Pre-Qualified Production delays the start of Principal Photography, it moves to the end of the queue for the Fiscal Earmark Year of the new start date. Subsequent Pre-Qualifications with the same Fiscal Earmark Year are placed after it in the queue.

(B) The second time a Pre-Qualified Production delays the start of Principal Photography, it is placed last in the queue for the Fiscal Earmark Year of the

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- new start date. Subsequent Pre-Qualifications with the same Fiscal Earmark Year are placed ahead of it in the queue.
- (2) Pre-Qualification is specific to the Production and Production Company, and is non-transferable. Productions, screenplays and budgets may evolve but must remain substantially similar to those submitted in the Eligibility Application.
- (3) Unless otherwise approved by OFMO, Pre-Qualification expires:
- (A) Two years after the approval date of the Eligibility Application, if Principal Photography has not started, OR
- (B) Two years from the start of Principal Photography.
- (l) Open Records Act Exemptions:
- (1) OFMO is subject to the State of Oklahoma Open Records Act, which governs public access to the records of government agencies. Under 74 O.S. § 2231, certain information provided to OFMO by a person or entity seeking economic advice from OFMO and any information compiled by OFMO in response to submissions, may be kept confidential.
- (2) In order to protect confidentiality of such items, applicants must submit a written request to OFMO at the time of the Eligibility Application to withhold its information from disclosure on the grounds that it constitutes trade secrets, proprietary information or that the information, if disclosed, would cause substantial injury to the competitive position of the applicant. Applicants must specify the information for which they are seeking protection along with clearly stated reasons for the requested exception.
- (3) OFMO reserves the right to determine whether the information submitted by the applicant will be withheld from disclosure. OFMO will notify the applicant of any requests for disclosure and notify the applicant as to whether the information will be disclosed.
- (m) High Impact Production Requirements: Due to the size of potential rebates and considerable number of variables in High Impact Productions, the Executive Director is authorized to negotiate and finalize High Impact Production Requirements as part of the High Impact Production Eligibility Application process. High Impact Production Requirements can be tailored to the type and scope of the Production, and may carry additional incentives, provided these requirements and incentives do not contradict statutory provisions of the ACT. Applicants would be required to meet the High Impact Production Requirements in order for the Final Application to be approved.
- 725:35-1-4. Items not eligible for rebate-Qualifying Oklahoma Expenditures**
- (a) ~~Dollars spent out of state renting or buying goods and services and bringing them into Oklahoma to work.~~
- (b) ~~Raw stock purchased outside of Oklahoma.~~
- (c) ~~Salaries and computer/kit/box rentals made to non-Oklahoma residents.~~
- (d) ~~Shipping and postage costs.~~
- (e) ~~Airfares, unless they are purchased through an Oklahoma-based travel agent.~~
- (f) ~~Insurance, unless it is purchased through an Oklahoma-based insurance agent.~~
- (a) Salary Costs for Oklahoma-Based Crew;
- (b) Salary Costs for Oklahoma Expatriate Crew (as described in Section 725:35-1-5);
- (c) Payments to Oklahoma Loan-Out Companies for Oklahoma-Based Crew;
- (d) Payments to Oklahoma Loan-Out Companies for Crew that is not Oklahoma-Based, subject to the Loan-Out Limitation;
- (e) Subject to the twenty-five percent limitation, the sum of:
- (1) payments to Oklahoma-Based ATL;
- (2) payments to Oklahoma Loan-Out Companies for ATL; and (3) payments to an Oklahoma-Based entity for using the Film's underlying creative work (e.g., screenplay or novel).
- (f) Permits and fees paid to an Oklahoma state, county, or municipal governmental or quasi-governmental entity;
- (g) Payments to an Oklahoma Vendor for the following:
- (1) Studio, stage or set construction and dismantling;
- (2) Production scheduling, management, administration and operations;
- (3) Casting and security services;
- (4) Wardrobe and make-up materials, consumables and services;
- (5) Set props and accessories (individual props costing in excess of fifty thousand dollars (\$50,000) require prior approval by OFMO to be included as a QOE);
- (6) Cameras, film, microphones, tape, digital storage media and other materials and equipment used to record sound and images;
- (7) Photography, visual image editing, animation, computer graphics and effects, and related visual services;
- (8) Sound (other than music) recording, editing, synchronization and related services;
- (9) Licensing or use rights for music, or recording of songs or musical score, used in the Film;
- (10) Lighting and electrical materials, equipment and services;
- (11) Location, building, facility, equipment, prop and wardrobe rental;
- (12) Stunts, special effects, pyrotechnics, firefighting, safety, handling/wrangling, security and other specialty services;
- (13) Lodging and accommodations (whether paid for directly by the Production Company or provided as an allowance in the amount of actual costs of housing) for ATL and Crew;
- (14) Food, restaurants and catering;
- (15) Transportation of ATL, Crew, equipment and supplies;
- (16) Travel costs to and from Oklahoma paid to or through a travel agent;
- (17) Completion bonds and insurance (either guarantor or broker must be an Oklahoma Vendor);

- (18) Shipping and postage for packages originating or terminating within Oklahoma;
- (19) Fees, interest and financing charges paid to Oklahoma-Based financial institutions;
- (20) Other materials, supplies and contracted services approved in advance by OFMO;
- (21) CPA Report.
- (h) Payments to an Oklahoma Vendor for the following valid Scouting Expenses of the Production:
 - (1) Location scouting, planning and packaging services;
 - (2) Travel costs to and from Oklahoma paid to a travel agent;
 - (3) Lodging and accommodations within Oklahoma;
 - (4) Transportation within Oklahoma;
 - (5) Meals purchased within Oklahoma.
- (i) Payments made in accordance with the High Impact Production Requirements.
- (j) Reimbursements made to individuals for goods and services that would have been QOE if paid directly by the Production, provided the individual provides a receipt for such goods and services.

725:35-1-5. Procedures for submission and review of rebate claimsOklahoma Expatriate Crew Program

- (a) To qualify for the rebate program, the production company must provide the following to the OFMO prior to the beginning of principal photography:
 - (1) Application of eligibility for rebate programs;
 - (2) Copy of the proposed budget;
 - (3) Copy of the script and the inclusion of the OFMO on the project's revisions distribution list;
 - (4) Copy of the production board or equivalent documentation;
- (b) After a production company meets all requirements, the Director will issue a formal letter of acknowledgement of qualification.
- (c) At the completion of principal photography, the production company must provide the following information before the claim can be reviewed by the Film Rebate Committee:
 - (1) Submit verifiable documentation to the OFMO of the amount of wages paid for employment in Oklahoma to residents of Oklahoma directly related to the production;
 - (2) File an Oklahoma income tax return;
 - (3) Complete the OFMO expenditure form;
 - (4) Provide the following screen credit, "Filmed in Oklahoma under the Auspices of the Oklahoma Film Enhancement Rebate Program"; and
 - (5) To provide evidence of a recognizable domestic or foreign distribution agreement within one (1) year from the end of principal photography.
- (d) Review and approval of rebate claims.
 - (1) The Film Rebate Committee will be comprised of volunteers with expertise in the film industry, accounting or other related areas, enlisted by the Director. This committee shall review applications for rebates and make recommendations to the Director.

- (2) The Director shall approve or disapprove each completed rebate claim within sixty (60) days of submission of the rebate claim. The Oklahoma Tax Commission shall issue payment for all approved rebate claims, providing funds are available.
- (3) Rebate claims shall be paid in the order in which the rebate claims are approved by the Director.
- (4) If an approved rebate claim is not paid in whole or in part, the unpaid rebate claim or unpaid portion may be paid in the following fiscal year as allowed in 68 O.S. § 3624.D (F), providing funds are available.
- (5) Only one rebate claim shall be processed per film. Once the production company has been paid for that rebate claim, no amendments for that rebate claim are allowable.
- (6) Rebate claims that are disapproved by the Director may be corrected and resubmitted to the Director for reconsideration within ten (10) business days after the date of disapproval. Only one resubmission per rebate claim is allowed.
- (a) OFMO will maintain a roster of Oklahoma Expatriate Crew and make such roster available to a Production Company upon request.
- (b) The Expatriate roster will consist of Oklahoma Expatriates who:
 - (1) Have registered as an Oklahoma Expatriate with OFMO;
 - (2) Have completed a Declaration of Expatriate Status satisfactory to OFMO;
 - (3) At the request of OFMO, agree to be accompanied by an intern provided by an Oklahoma educational institution for a period of time acceptable to OFMO during the Production.

[OAR Docket #20-701; filed 7-24-20]

**TITLE 730. DEPARTMENT OF
TRANSPORTATION
CHAPTER 1. ADMINISTRATIVE
OPERATIONS**

[OAR Docket #20-507]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Transportation Commission
730: 1-3-6. Election of Director [REVOKED]

AUTHORITY:

Oklahoma Transportation Commission; 51 O.S., §24A.1 et seq.; 66 O.S., § 304; 69 O.S., §§ 302, 303, 304, 305, 306, 310, 311, 501, 704, 4002, 4006, and 4007; 74 O.S., §§ 85.58A through 85.58P, 500.6a, and 840-1-1 et seq.

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

October 24, 2019

COMMENT PERIOD:

November 15, 2019 through December 16, 2019

PUBLIC HEARING:

A public hearing was not held.

ADOPTION:

February 3, 2020

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SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

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APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 11, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Due to the passing of SB 457, the election of the Director is no longer under the Transportation Commission's authority. 61 O.S., § 305 places the authority with the Governor. It is necessary to revoke the rule that is located under Transportation Commission authority so that there is not a conflict with statute.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 3. TRANSPORTATION COMMISSION

730:1-3-6. Election of Director [REVOKED]

~~The Commission shall, by a majority vote of its total membership, appoint the Director of the Department of Transportation who shall be the administrative head and chief executive officer of the Department. The Director shall serve at the pleasure of the Commission. Upon appointment, the Director shall assume the duties and responsibilities imposed by statute and as set forth in this Title.~~

[OAR Docket #20-507; filed 7-1-20]

TITLE 730. DEPARTMENT OF TRANSPORTATION CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #20-508]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Department of Transportation

730: 1-5-1. Powers and duties of Director [AMENDED]

AUTHORITY:

Oklahoma Transportation Commission; 51 O.S., §24A.1 et seq.; 66 O.S., § 304; 69 O.S., §§ 302, 303, 304, 305, 306, 310, 311, 501, 704, 4002, 4006, and 4007; 74 O.S., §§ 85.58A through 85.58P, 500.6a, and 840-1-1 et seq.

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APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 11, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendments would modify the Director's delegation to field division engineers' authority to approve and execute change orders and supplemental agreements in a total amount of not to exceed Seventy Five Thousand Dollars (\$75,000.00) on a contract to One Hundred Fifty Thousand Dollars (\$150,000.00).

CONTACT PERSON:

Tara Moore, Coordinator of Executive Administration, Office of the Director, ODOT, 200 N.E. 21st Street, Oklahoma City, OK 73105, 405-522-8151, tmoore@odot.org

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 5. DEPARTMENT OF TRANSPORTATION

730:1-5-1. Powers and duties of Director

The Director is hereby granted all the powers and the authority necessary for the orderly operation of the Department of Transportation, (B) not in conflict herewith or prohibited by law, including, but not limited to the following:

(1) General duties.

(A) To approve and pay claims for all lawful expenses of the Department.

(B) To act as the claims and request officer for the Transportation Commission and the Department.

(C) To appoint Deputy Directors and Assistant Directors as he may deem necessary, and to delegate to them appropriate authority and responsibility.

(D) To effect changes in the Department's organizational structure and personnel, with any change at the division level and above being subject to approval by the Commission.

(E) To keep the Commission informed on the Department's operations and official actions.

(F) To appoint and employ, supervise, and discharge in accordance with the Oklahoma Personnel Act and the Merit Rules for Employment all such professional, clerical, skilled and semi-skilled help, labor

and other employees as may be deemed necessary for the proper and lawful discharge of the duties of the Department.

(G) To establish and maintain training and educational programs.

(H) To keep a journal and to record therein such matters as he may deem necessary or advisable, or which the Commission may direct.

(I) To be the keeper of the official seal of the Commission and the Department.

(J) To make Department budgetary transfers within statutory limitations and Commission authorization.

(K) To cooperate with governing bodies of cities and towns and the boards of county commissioners of the various counties on the basis prescribed by state and federal law, to the end that joint efforts will be coordinated to attain a maximum of transportation development and service.

(L) To execute releases on behalf of the Commission in compromise of claims pursuant to 69 O.S. Section 1002.

(M) To approve claims for returning to local units of government any surplus funds deposited by the local unit of government to match federal or state funds used for federal aid or state aid projects, after completion of the project and final payment has been made.

(N) To act on requests by boards of county commissioners for the transfer of old bridges or sections thereof removed from the state highway system by new construction projects, and to execute agreements setting out the terms of such transfers.

(O) To use consulting engineers' services in the preparation of functional and construction plans where such services are necessary due to special technical nature of contemplated construction or when the Director determines that such consulting services are necessary in the best interest of the Department in order to accommodate a construction programs approved by the Transportation Commission. Contracts with consulting engineers will contain a provision binding the consultants' employees and officers to the same rules and regulations as Department employees insofar as conflict of interest is concerned. The requirements for determining the need for such consulting engineers; services are set forth in OAC 730:30-5-1.

(P) To authorize Department personnel to initiate legal proceedings to take enforcement actions authorized by statute or regulation on behalf of the State and to recover for damages to state property under the care, custody, or control of the Department or to initiate criminal prosecution.

(Q) To, in person or by designee, appear and participate with full authority at settlement conferences as directed by federal or state courts.

(R) To issue more detailed instructions by appropriate orders, policies, or memoranda, not inconsistent with this Title for the general guidance and administration of the Department.

(2) **Contracts and agreements.**

(A) To execute or cause to be executed all contracts and agreements on behalf of the Commission and Department, unless otherwise provided by law.

(B) To issue work orders to commence work on construction contracts.

(C) To approve contract extensions or modifications made necessary by developments arising subsequent to award and execution of construction contracts, except where prior Commission approval is required by law.

(D) To approve and execute change orders and supplemental agreements in a total amount of not to exceed Five Hundred Thousand Dollars (\$500,000.00) on a contract. The Director may further delegate to field division engineers authority to approve and execute change orders and supplemental agreements in a total amount of not to exceed ~~Seventy Five One Hundred Fifty~~ 150,000.00 Thousand Dollars (\$~~75,000.00~~) on a contract. In no event shall the total amount of such change orders exceed the limits set forth in 61 O.S. §121. Change orders approved by the Director or field division engineer shall be presented to the Commission at its next regular or special business meeting stating the reasons for the change order and supplemental agreement with such other information as the Commission may require.

(E) To execute and process contractual awards to the individual counties on county sponsored federal aid projects to be constructed by county forces with county and federal funds, subject to applicable regulations of the United States Department of Transportation.

(F) To execute and process contractual awards to railroad companies for railroad crossing protection projects to be constructed on a force account basis by the railroad company with railroad and/or federal funds, subject to the concurrence of the United States Department of Transportation.

(G) To approve or disapprove requests by utility companies and municipalities for permits to attach pipe lines, telephone cables, and other authorized utility lines to bridges on the state highway system, and to change permit fees in accordance with the schedule of fees provided in OAC 730:30-7-1.

(3) **Federal aid.**

(A) To act for and represent the Department in all official matters involving the United States Department of Transportation or any other agency of the United States government, for the purpose of executing federal aid programs.

(B) To make or withhold commitments, execute contracts and agreements, and to bind the Department by any other action which the Department may

lawfully do relating to programmed items or projects previously approved by the Commission; provided, however, that whenever the United States Department of Transportation requires a commitment to program an item in the future, such requirement shall be submitted to the Commission for approval, before any action is taken.

(C) To execute the Federal Highway Administration's revision forms to provide for changes in termini, cost, length, and character of proposed work; provided that such changes in county programs shall be made only in accordance with plans, specifications and estimates officially submitted by the board of county commissioners of the county in which the programmed project is located or as requested by resolution of the board. On federal aid projects such changes shall be made only when the detailed information obtained after the approval of the programmed project shows a necessity to change from those features that were provided in the approved programming item. Significant changes such as cost or length will require prior approval of the Transportation Commission before execution by the Director.

(4) **Emergency contracts.**

(A) To declare the existence of an emergency situation, provided that:

(i) As used in this subparagraph, the term "emergency" shall be limited to conditions resulting from a sudden unexpected happening or unforeseen conditions and wherein the public health or safety is endangered; and

(ii) The Director notifies the Commission of such action within ten (10) days from the date thereof by written notification containing a statement of the reason therefore, which statement shall be recorded in the official minutes of the next regular meeting of the Commission.

(B) Upon the declaration of an emergency situation as above-defined, the Director shall be authorized to enter into any contract not exceeding Seven Hundred and Fifty Thousand Dollars (\$750,000.00) in amount, without complying with those provisions of the Public Competitive Bidding Act of 1974, as amended, for construction or repair of any highway, bridge or other structure or facility under the jurisdiction of the Department for the protection and preservation of the public health and safety and elimination of the danger thereto.

(C) To accept bids, award, and execute emergency contracts on projects where the Commission has, pursuant to 61 O.S. Section 130, declared that an emergency exists.

(5) **Traffic control.**

(A) To place and maintain traffic signs, markings, and other traffic control devices required under Oklahoma Law to make effective the provisions of said law, and to place and maintain such additional traffic

control devices not in conformance with the "Manual on Uniform Traffic Control Devices for Streets and Highways" as prepared by the National Joint Committee on Uniform Traffic Control Devices. To maintain an official listing or record of:

(i) Through highways and stop or yield intersections.

(ii) Speed zones.

(iii) One-way roadways.

(iv) Turn restrictions.

(v) Additional parking restrictions or prohibitions.

(vi) Traffic control signals.

(B) To take actions necessary to effectuate the provisions of the traffic laws of the State of Oklahoma and to make temporary or experimental regulations to cover emergencies or special conditions. No experimental regulations shall remain in effect for more than 90 days. Emergency, temporary, and experimental regulations shall have the same force and effect as regulations adopted by the Commission and must be submitted to the Commission at its first regular meeting after the regulation is put into effect.

(6) **Right-of-way.**

(A) To make a determination that the establishment of a right-of-way line is a technical matter, and delegate to the Right-of-Way Division the authority to make such decisions; and further that the Chief, Right-of-Way Division be authorized and empowered to appear in court to justify the necessity of right-of-way takings.

(B) To execute all deeds, releases, and other instruments pertaining to the disposal of surplus real property and to delegate such authority to others.

[OAR Docket #20-508; filed 7-1-20]

TITLE 730. DEPARTMENT OF TRANSPORTATION CHAPTER 45. PUBLIC TRANSPORTATION PROJECT DEVELOPMENT ASSISTANCE

[OAR Docket #20-509]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

730:45-1-2. Authority [AMENDED]

AUTHORITY:

Oklahoma Transportation Commission; 69 O.S., §§ 303, 4002, and 4031 through 4035; P.L. 105-178

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendments would modify and bring up to date the Governor's delegation of the annual appropriations for the Urbanized Area Formula Program by removing the University of Oklahoma and replacing with the City of Norman.

CONTACT PERSON:

Tara Moore, Coordinator of Executive Administration, Office of the Director, ODOT, 200 N.E. 21st Street, Oklahoma City, OK 73105, 405-522-8151, tmoore@odot.org

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

730:45-1-2. Authority

These policies are promulgated in accordance with the provisions of 69 O.S. §§ 4002 and 4005. The Department is the Governor's designee to apply for, receive and administer federal public transportation financial assistance programs. These federal programs shall include, but not limited to, capital grants, metropolitan and state planning funds, and urbanized and non-urbanized formula grants for areas fewer than 200,000 population. The Governor's delegation of authority shall not apply to the federal apportionments under the Urbanized Area Formula Program for the cities of Lawton and Norman, Oklahoma. The designee for these annual apportionments shall be the Lawton Transit Trust and the University of Oklahoma City of Norman, respectively. With these exceptions only, this designation shall include all Federal funding provided by the Transportation Equity Act for the 21st Century (TEA-21) and any Federal legislation supplementing or supplanting TEA-21. The Department is also responsible for the administration of the funds appropriated to the State's Public Transit Revolving Fund.

[OAR Docket #20-509; filed 7-1-20]

**TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION
CHAPTER 15. USED MOTOR VEHICLE SALESPERSONS**

[OAR Docket #20-510]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. LicensingCertificate of Registration Qualifications, Procedures, and Fees
765:15-1-1 [AMENDED]

765:15-1-2 [AMENDED]

765:15-1-3 [AMENDED]

765:15-1-5 [AMENDED]

765:15-1-6 [AMENDED]

765:15-1-7 [AMENDED]

Subchapter 3. Authority of Salespersons

765:15-3-1 [AMENDED]

Subchapter 5. Assessment of Fine or Denial, Suspension, or Revocation of LicenseCertificate of Registration

765:15-5-1 [AMENDED]

765:15-5-2 [AMENDED]

AUTHORITY:

Oklahoma Used Motor Vehicle and Parts Commission

47 O.S. Section 582(E)(1)

75 O.S. Section 583 B.3.

75 O.S. Section 302 et.seq

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Subchapter 1. LicensingCertificate of Registration Qualifications, Procedures and Fees

765:15-1-1 [AMENDED]

765:15-1-2 [AMENDED]

765:15-1-3 [AMENDED]

765:15-1-5 [AMENDED]

765:15-1-6 [AMENDED]

765:15-1-7 [AMENDED]

Subchapter 3. Authority of Salespersons

765:15-3-1 [AMENDED]

Subchapter 5. Assessment of Fine or Denial, Suspension or Revocation of LicenseCertificate of Registration

765:15-5-1 [AMENDED]

765:15-5-2 [AMENDED]

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37 Ok Reg 142

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rules adopt a regulatory scheme for salespersons consist with HB 1094 and the protection of the public from unqualified applicants or certificate holders.

CONTACT PERSON:

John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 421 N.W. 13th Street, Suite 330, Oklahoma City, OK 73103, 405-521-3600, John.W.Maile@umvpc.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. LICENSING CERTIFICATE OF REGISTRATION QUALIFICATIONS, PROCEDURES AND FEES

765:15-1-1. Purpose

The rules of this Chapter have been adopted for the purpose of complying with the provisions of 75 O.S. Section 250 et seq., and 47 O.S. Section 582 (E), and 47 O.S. 583.1 A (2019 Supp). This Chapter will provide a description of the qualifications for obtaining a used motor vehicle salesperson's license certificate of registration, authority of a salesperson, and the grounds and procedure for assessment of a fine or denial, suspension, or revocation of a used motor vehicle salesperson's license certificate of registration.

765:15-1-2. Fees

The fees required for an application or renewal of used motor vehicle salesperson's license certificate of registration are recited in 47 O.S. Section 583.1. A fee will be returned to the applicant in the event the license certificate of registration is denied.

765:15-1-3. Applicant

(a) Activities requiring license certificate of registration.

A used motor vehicle salesperson is anyone who:

- (1) receives gain or compensation of any kind, directly or indirectly, regularly or occasionally for, or negotiates for, sale or trade of a specified used motor vehicle for a specified used motor vehicle dealer, or
- (2) operates as a broker only for a specified used motor vehicle dealer, or
- (3) receives compensation for referral of a prospective buyer to his employer or acts on behalf of the dealer in the purchase or sale of a used motor vehicle, or
- (4) is authorized to transfer and/or sign titles for the dealership, or
- (5) displays or offers used motor vehicles for sale for the dealership at a licensed location,
- (6) acts in the capacity of sales manager or finance and insurance manager or acts in any capacity as part of the sales process,
- (7) does not otherwise come under the definition of a wholesale used motor vehicle dealer and/or is not required to obtain a license as a wholesale used motor vehicle dealer, but is authorized by a person licensed by the Oklahoma Motor Vehicle Commission to sell new or unused motor vehicles, (franchise dealer) to purchase and sell used motor vehicles without direct supervision by the "franchise dealer," whether at auction or otherwise, to-wit: a "wholesaler" or individual who pays the "franchise dealer" a draft or check fee for vehicles purchased using the "franchise dealer's" used motor vehicle dealer's license; or who is required to compensate the "franchise dealer" for any loss arising from the sale of a vehicle; or who in any manner operates independently of the ordinary business of the "franchise dealer."

(b) **Information required.** An applicant shall provide sufficient information on the application or otherwise to enable the Commission to determine whether the applicant should be granted a license certificate of registration. The information shall include:

- (1) information relating to the applicant's business integrity, the applicant's experience in the same or similar businesses, and his business history,
- (2) whether the applicant will devote full or part time to the business, and
- (3) any other pertinent information consistent with the safeguarding of the public interest and welfare.

(c) **Application required.** Applications for license certificate of registration shall be verified by the oath or affirmation of the applicant and shall be on forms prescribed by the Commission and furnished to such applicants. The applications shall contain such information as the Commission deems necessary to enable it to fully determine the qualifications and eligibility of the applicant for the license applied for certificate of registration.

(d) **Activity not requiring a license certificate of registration.** A dealer, by written instrument, may authorize another licensed individual or dealer to purchase vehicles for the dealer. Said authorization shall not authorize the individual to conduct any other business for the dealer or represent the dealer in any other manner.

(e) **Activity not authorized.** A salesperson's ~~license~~ license certificate of registration shall not authorize the person to refer a prospective customer or consumer to another used motor vehicle dealer and obtain compensation therefor without an employment relationship with the other used motor vehicle dealer.

765:15-1-5. Issuance of license certificate of registration

(a) **Prerequisite.** A license certificate of registration for a used motor vehicle salesperson will not be issued, renewed, or endorsed until the employing dealer is licensed and has certified that the applicant for said license certificate is in his employ. Dealers' payrolls and other evidence will be checked to ascertain that all salespersons for such dealers are licensed registered. ~~It is not intended that the~~ The dealer shall be required to pay for licenses certificates of registration for its salespersons. ~~However, the dealer but~~ may do so on a reimbursable basis, or any other plan satisfactory to its dealership organization. All salespersons license certificates of registration will be sent to the dealer for distribution to the respective applicants, and the dealer will determine that all its personnel required to obtain license certificates of registration have done so.

(b) Temporary license certificate of registration.

(1) A temporary salesperson's license certificate of registration, salesperson's renewal, or reissue of a salesperson's license certificate shall be deemed to have been issued when the appropriate application and fee have been properly addressed and mailed to the Commission, except as follows:

- (A) in the case of incomplete application,

- (B) in the case of proper fee not being submitted,
- (C) in the case of applicant's having been previously denied a license or certificate of registration with this Commission, or
- (D) in the case of applicant's having been convicted of a crime involving moral turpitude (act or behavior that gravely violates accepted moral standards of community), committed any unlawful act which resulted in revocation of similar license in another state, or committed a fraudulent act in selling or purchasing motor vehicles in such a manner as to cause injury to the public.

(2) All temporary salesperson licensecertificate of registration applications shall be submitted for approval to issue a permanent licensecertificate of registration at the first monthly Commission meeting following receipt of a completed application.

(c) **Permanent licensecertificate of registration.** A permanent salesperson's licensecertificate shall be issued after approval of the applicant by the Commission. A salesperson's licensecertificate shall consist of an identification card bearing the name, ~~signature of the salesperson, driver's license number,~~ name of employer, address, signature of the Executive Director, and the dealer's license number prefixed with UD (UD-0000). The card shall be carried upon his person at all times when acting as a used motor vehicle salesperson—~~at licensee location.~~

(d) **Reciprocity.** ~~A salesperson's license issued by the Oklahoma Motor Vehicle Commission shall be valid as a used motor vehicle salesperson's license for the dealer's franchised location.~~

765:15-1-6. **Renewal of licensecertificate of registration**

All licensecertificates shall expire on the 31st day of December of ~~the odd-numbered~~ each year following the date of issue and shall be nontransferable.

765:15-1-7. **Changes**

(a) **Employer.** If the salesperson changes employer, the licensecertificate holder shall immediately mail the licensecertificate of registration to the Commission for its endorsement of the change of employer. ~~There shall be no charge for such endorsement.~~ The licenseholder shall keep his licensecertificate on his person while engaged in his business and shall display it upon request; however, there shall be no penalty for not having the licensecertificate upon his person when he has submitted it to the Commission for its endorsement of a change of employer.

(b) **Notice.** The dealer will notify the Commission in writing when a salesperson's employment is terminated. The dealer may be liable for actions of the salesperson until proper notice is filed with the Commission.

(c) **Salesperson's card.** Each salesperson shall surrender his identification card to the Commission for endorsement of change of employer, before again engaging in the business as a

salesperson for another used motor vehicle dealer or as a used motor vehicle dealer.

SUBCHAPTER 3. AUTHORITY OF SALESPERSONS

765:15-3-1. **Authority**

(a) **Salesperson only.** A used motor vehicle salesperson's licensecertificate of registration shall permit the licenseholder to engage in the activities of a used motor vehicle salesperson. A salesperson's licensecertificate does not entitle the licenseholder to perform as a dealer as defined in 47 O.S. Section 581 (4). A used motor vehicle salesperson's license does not entitle a person to separately own vehicles for sale or any interest in the vehicles or dealer business without first qualifying as a partner, corporate member, or part owner of the dealership and meeting the qualifications of a dealer as prescribed in 47 O.S. Sections 581-583.

(b) **One card only.** A salesperson may not hold more than one used motor vehicle salesperson's licensecertificate at any one time or be employed by or sell for any dealer other than the dealer and at the address designated on the salesperson's licensecertificate, with the exception that the licensed dealer has more than one location. Then the licensed dealer and ~~licensed~~ salesperson may sell on each location properly licensed as additional locations.

(c) **Restrictions.** A salesperson's licensecertificate shall not be issued for an individual who is not actively engaged in the activities of a used motor vehicle salesperson, nor shall it be issued for the purpose of allowing an individual to operate a vehicle with a used motor vehicle dealer's plate for any use not benefitting the dealer's business.

SUBCHAPTER 5. ASSESSMENT OF FINE OR DENIAL, SUSPENSION, OR REVOCATION OF LICENSECERTIFICATE OF REGISTRATION

765:15-5-1. **Grounds**

(a) The Commission may deny an application for license, certificate of registration, or suspend or revoke a licensecertificate of registration after it has been granted ~~for any of the reasons listed in 47 O.S. Sections 584 (1) through (9)~~ for violation of any statute or regulation relating to the purchase, sale, display for sale, or transfer of a used motor vehicle; or if it is determined that the licensecertificate of registration is being or has been issued for the benefit of a person who would not or could not qualify for the licensecertificate in his or her own right; ~~and;~~

(b) On satisfactory proof of unfitness of the applicant or the holder of the certificate of registration under the standards established under Title 47 Oklahoma Statutes § 581 et. seq. or the Rules of the Commission.

(c) For fraudulent or material misstatements made by the applicant in any application for license or certificate of registration.

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(d) For any willful failure to comply with, or continued or flagrant violation of, any provision of Title 47 Oklahoma Statutes § 581 et. seq. or with any rule promulgated by the Commission,

(e) A change of condition after a certificate is issued resulting in failure to maintain the qualifications for license.

(f) Conviction of a crime involving moral turpitude or any felony which in the opinion of the Commission may have a direct bearing on the ability of the applicant or holder to act as a used motor vehicle salesperson without endangering those with whom the applicant or holder may deal in the conducting of the duties of a used motor vehicle salesperson.

(g) Committing any act within the preceding ten (10) years, which resulted in the revocation of a similar license in another state.

(h) Engaging in business under a past or present license or certificate of registration in such a manner as to cause injury to the public or those with whom the holder is dealing.

(i) For violation of any statute or regulation relating to the purchase, sale, display for sale, or transfer of a used motor vehicle; or if it is determined that the certificate is being or has been issued for the benefit of a person who would not or could not qualify for the certificate in his or her own right.

(b-j) The Commission may in addition to any other sanction or penalty assessed, impose a fine as authorized by law

765:15-5-2. Prohibitions

A person whose ~~license~~ certificate of registration has been revoked or denied or whose ~~license~~ certificate was surrendered in lieu of revocation or under circumstances such that said ~~license~~ certificate could have been revoked, shall not have a financial interest of any kind in a used motor vehicle business, nor shall that person participate in any way, including in an advisory position, in the operation of a used motor vehicle business.

[OAR Docket #20-510; filed 7-1-20]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 36. MANUFACTURED HOME MANUFACTURERS

[OAR Docket #20-511]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 6. Manufactured Home Inspection Fees [NEW]
765:36-6-1 [NEW]

AUTHORITY:

Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)(1)
75 O.S. Section 583 B.3.
75 O.S. Section 302 et. seq

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Subchapter 6. Manufactured Home Inspection Fees [NEW]
765:36-6-1 [NEW]

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n/a

GIST/ANALYSIS:

The rules state when inspection fees will be due, how the fees are paid and the purpose of the fees.

CONTACT PERSON:

John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 421 N.W. 13th Street, Suite 330, Oklahoma City, OK 73103, 405-521-3600, John.W.Maile@umvpc.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 6. MANUFACTURED HOME INSPECTION FEES

765:36-6-1. Manufacturer's Fees

(a) Any manufactured home manufacturer who sells a new manufactured home to be shipped into or sited in the State of Oklahoma shall pay an installation inspection fee to The Commission of Seventy-Five Dollars (\$75.00) for each new single wide manufactured home and One Hundred Twenty Five Dollars (\$125.00) for each new multi floor manufactured home.

(b) The fees to be paid by a manufactured home manufacturer shall be due on the fifteenth (15th) day of the month subsequent to the month in which a home is shipped to a manufactured home dealer, or sited in, the State of Oklahoma, whichever comes first.

(c) The fees paid shall be used for the purpose of inspecting installations of new manufactured homes. The inspection may be conducted by a representative of the Used Motor Vehicle and Parts Commission or its designee. The decision to inspect an installation shall be made by Commission staff. The decision to inspect an installation may be made by random selection, pursuant to a complaint as part of an audit or review of a particular installer or as part of an investigation.

- (d) A manufactured home manufacturer, dealer, or installer shall co-operate with the Commission's employee or designee as needed to conduct an inspection of an installation for which the manufacturer, dealer, or installer may bear some responsibility for assuring that the installation was properly performed.
- (e) Any fees not used for inspection of installations may be used for any other purposes of the Commission, but primarily for the education of manufactured home dealers and installers, investigation of manufactured home complaints and administration of the regulatory laws relating to the manufactured home industry.
- (f) The Commission may assess a fine not to exceed One Thousand Dollars (\$1,000.00) per violation for violations of this section.

[OAR Docket #20-511; filed 7-1-20]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 37. MANUFACTURED HOME INSTALLERS

[OAR Docket #20-512]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Operation

765:37-5-6 [NEW]

AUTHORITY:

Oklahoma Used Motor Vehicle and Parts Commission

47 O.S. Section 582(E)(1)

75 O.S. Section 583 B.3.

75 O.S. Section 302 et.seq

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Subchapter 5. Operation

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n/a

GIST/ANALYSIS:

The rules state when inspection fees will be due, how the fees are paid and the purpose of the fees.

CONTACT PERSON:

John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 421 N.W. 13th Street, Suite 330, Oklahoma City, OK 73103, 405-521-3600, John.W.Maile@umvpc.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 5. OPERATION

765:37-5-6. Installer's fees

(a) A used manufactured home inspection fee of Seventy-Five Dollars (\$75.00) shall be paid by the installer at or before the time of installation of any used manufactured home sited and installed in the State of Oklahoma, but no later than that fifteenth (15th) day of the month subsequent to the month in which the installation is performed.

(b) The fees paid shall be used for the purpose of inspecting installations of used manufactured homes. The inspection may be conducted by a representative of the Used Motor Vehicle and Parts Commission or its designee. The decision to inspect an installation shall be made by Commission staff. The decision to inspect an installation may be made by random selection, pursuant to a complaint as part of an audit or review of a particular installer or as part of an investigation.

(c) A manufactured home dealer or installer shall co-operate with the Commission's employee or designee as needed to conduct an inspection of an installation for which the dealer or installer may bear some responsibility for assuring that the installation was properly performed.

(d) Any fees not used for inspection of installations may be used for any other purposes of the Commission but primarily for the education of manufactured home dealers and installers, investigation of manufactured home complaints and administration of the regulatory laws relating to the manufactured home industry.

(e) The Commission may assess a fine not to exceed One Thousand Dollars (\$1,000.00) per violation for violation of this section.

[OAR Docket #20-512; filed 7-1-20]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 38. MANUFACTURED HOME SALESPERSONS

[OAR Docket #20-513]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Licensing Registration Qualifications, Procedures and Fees
765:38-1-1 [AMENDED]

Permanent Final Adoptions

765:38-1-2 [AMENDED]

765:38-1-3 [AMENDED]

765:38-1-4 [AMENDED]

765:38-1-5 [AMENDED]

765:38-1-6 [AMENDED]

Subchapter 3. Authority of Salespersons

765:38-3-1 [AMENDED]

Subchapter 5. Assessment of Fine or Denial, Suspension, or Revocation of

License Certificate of Registration

765:38-5-1 [AMENDED]

765:38-5-2 [AMENDED]

AUTHORITY:

Oklahoma Used Motor Vehicle and Parts Commission

47 O.S. Section 582(E)(1)

75 O.S. Section 583 B.3.

75 O.S. Section 302 et. seq.

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Subchapter 1. Licensing Registration Qualifications, Procedures and Fees

765:38-1-1 [AMENDED]

765:38-1-2 [AMENDED]

765:38-1-3 [AMENDED]

765:38-1-4 [AMENDED]

765:38-1-5 [AMENDED]

765:38-1-6 [AMENDED]

Subchapter 3. Authority of Salespersons

765:38-3-1 [AMENDED]

Subchapter 5. Assessment of Fine or Denial, Suspension, or Revocation of

License Certificate of Registration

765:38-5-1 [AMENDED]

765:38-5-2 [AMENDED]

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Docket number:

19-790

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n/a

GIST/ANALYSIS:

The Rules adopt a regulatory scheme for salespersons consist with HB 1094 and the protection of the public from unqualified applicants or certificate holders.

CONTACT PERSON:

John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 421 N.W. 13th Street, Suite 330, Oklahoma City, OK 73103, 405-521-3600, John.W.Maile@umvpc.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. LICENSING REGISTRATION QUALIFICATIONS, PROCEDURES AND FEES

765:38-1-1. Purpose

The rules of this Chapter have been adopted for the purpose of complying with the provisions of 75 O.S. Section 250 et seq., and 47 O.S. Section 582 (E) and 47 O.S. Section 583.1B (2019 Supp.) This Chapter will provide a description of the qualifications for obtaining a manufactured home salesperson's license certificate of registration, authority of a salesperson, and the grounds and procedure for assessment of a fine or denial, suspension, or revocation of a manufactured home salesperson's license certificate of registration.

765:38-1-2. Fees

The fees required for an application or renewal of manufactured home salesperson's license certificate of registration are recited in 47 O.S. Section 583.1.

765:38-1-3. Applicant

(a) **Activities requiring license certificate of registration.** A manufactured home salesperson is anyone who has been engaged by a manufactured home dealer to buy, sell, exchange, negotiate or act as an agent for the purchase, sale or exchange of an interest in a manufactured home on behalf of the dealer for whom the salesperson is employed. A salesperson shall include anyone employed by the manufactured home dealer who is involved in any part of the sales process, including but not limited to the sales manager and finance and/or insurance manager.

(b) **Information required.** An applicant shall provide sufficient information on the application or otherwise to enable the Commission to determine whether the applicant should be granted a license certificate of registration. The information shall include:

- (1) information relating to the applicant's business integrity, the applicant's experience in the same or similar businesses, and his business history,
- (2) whether the applicant will devote full or part time to the business, and
- (3) any other pertinent information consistent with the safeguarding of the public interest and welfare.

(c) **Application required.** Applications for license certificate of registration shall be verified by the oath or affirmation of the applicant and shall be on forms prescribed by the Commission and furnished to such applicants. The applications shall contain such information as the Commission deems necessary to enable it to fully determine the qualifications and eligibility of the applicant for the license certificate of registration applied for.

(d) **Activity not authorized.** A salesperson's license certificate of registration shall not authorize the person to refer a prospective customer or consumer to another manufactured home dealer and obtain compensation therefor without an employment relationship with the other manufactured home dealer.

765:38-1-4. Issuance of licensecertificate of registration

(a) **Prerequisite.** A licensecertificate of registration for a manufactured home salesperson will not be issued, renewed, or endorsed until the employing dealer is licensed and has certified that the applicant for said licensecertificate is in his employ. Dealers' payrolls and other evidence will be checked to ascertain that all salespersons for such dealers are licensedregistered. ~~It is not intended that the dealer be required to pay for licenses for its salespersons. However, the~~ The dealer shall pay for the certificate of registration, but may do so on a reimbursable basis, or any other plan satisfactory to its dealership organization. All salesperson's licensescertificates of registration will be sent to the dealer for distribution to the respective applicants, and the dealer will determine that all its personnel required to obtain licensescertificates have done so.

(b) **Permanent licensecertificate of registration.** A permanent salesperson's licensecertificate of registration shall be issued after approval of the applicant by the Commission. A salesperson's licensecertificate shall consist of an identification card bearing the name, ~~signature of the salesperson, social security number,~~ name of employer, address, signature of the Executive Director, the dealer's license number prefixed with MH, (MH-0000). The card shall be carried upon his person at all times when acting as a manufactured home salesperson at licensee location.

765:38-1-5. Renewal of licensecertificate of registration

All licensescertificates shall expire on the 31st day of December, of ~~the odd numbered~~ each year following the date of issue and shall be nontransferable.

765:38-1-6. Changes

(a) **Employer.** If the salesperson changes employer, the licenseholder of the certificate of issue shall ~~within thirty (30) days of~~ immediately upon employment by another manufactured home dealer, apply for a salesperson's licensecertificate of registration with the new employer. The salesperson shall surrender his salesperson's licensecertificate of registration upon termination of the employment relationship.

(b) **Notice.** The dealer will notify the Commission in writing when a salesperson's employment is terminated. The dealer may be liable for actions of the salesperson until proper notice is filed with the Commission.

SUBCHAPTER 3. AUTHORITY OF SALESPERSONS

765:38-3-1. Authority

(a) **Salesperson only.** A manufactured home salesperson's licensecertificate of registration shall permit the licenseholder to engage in the activities of a manufactured home salesperson. A salesperson's licensecertificate of registration does not entitle the licenseholder to perform as a dealer as

defined in 47 O.S. Section 581. A manufactured home salesperson's licensecertificate of registration does not entitle a person to separately own manufactured homes for sale or any interest in the manufactured homes or dealer business without first qualifying as a partner, corporate member, or part owner of the dealership and meeting the qualifications of a dealer as prescribed in 47 O.S. Sections 581-583.

(b) **One card only.** A salesperson may not hold more than one manufactured home salesperson's licensecertificate of registration at any one time or be employed by or sell for any dealer other than the dealer and at the address designated on the salesperson's licensecertificate, with the exception that the licensed dealer has more than one location. Then the licensed dealer and ~~licensed~~ salesperson may sell on each location properly licensed as additional locations.

(c) **Restrictions.** A salesperson's licensecertificate of registration shall not be issued for an individual who is not actively engaged in the activities of a manufactured home salesperson.

SUBCHAPTER 5. ASSESSMENT OF FINE OR DENIAL, SUSPENSION, OR REVOCATION OF LICENSECERTIFICATE OF REGISTRATION

765:38-5-1. Grounds

(a) The Commission may deny an application for licensecertificate of registration, or suspend or revoke a licensecertificate after it has been granted ~~for any of the reasons listed in 47 O.S. Sections 584 (1) through (6);~~ for violation of any statute or regulation relating to the purchase, sale, display for sale, or transfer of a manufactured home; or if it is determined that the license is being or has been issued for the benefit of a person who would not or could not qualify for the license in his or her own right ~~and;~~

(b) On satisfactory proof of unfitness of the applicant or the holder of the certificate of registration under the standards established under Title 47 Oklahoma Statutes § 581 et seq. or the Rules of the Commission.

(c) For fraudulent or material misstatements made by the applicant in any application for license or certificate of registration.

(d) For any willful failure to comply with, or continued or flagrant violation of, any provision of Title 47 Oklahoma Statutes § 581 et. seq. or with any rule promulgated by the Commission.

(e) A change of condition after a certificate issued resulting in failure to maintain the qualifications for license.

(f) Conviction of a crime involving moral turpitude or any felony which in the opinion of the Commission may have a direct bearing on the ability of the applicant or holder to act as a used motor vehicle salesperson without endangering those with whom the applicant or holder may deal in the conducting of the duties of a manufactured home salesperson.

(g) Committing any act within the preceding ten (10) years, which resulted in the revocation of a similar license in another state.

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- (h) Engaging in business under a past or present license or certificate of registration in such a manner as to cause injury to the public or those with whom the holder is dealing, or;
- (i) For violation of any statute or regulation relating the purchase, sale, display for sale, or transfer of a manufactured home; or if it is determined that the certificate is being or has been issued for the benefit of a person who would not or could not qualify for the certificate in his or her own right.
- (j) The Commission may in addition to any other sanction or penalty assessed, impose a fine as authorized by law.

765:38-5-2. Prohibitions

A person whose license/certificate of registration has been revoked or denied or whose license/certificate was surrendered in lieu of revocation or under circumstances such that said license/certificate of registration could have been revoked, shall not have a financial interest of any kind in a manufactured home sales business, nor shall that person participate in any way, including in an advisory position, in the operation of a manufactured home sales business.

[OAR Docket #20-513; filed 7-1-20]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 10. ADMINISTRATION AND SUPERVISION

[OAR Docket #20-655]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. Service Contracts and Equipment Guidelines
780:10-9-2 [AMENDED]

AUTHORITY:

Oklahoma State Board of Career and Technology Education; 70 O.S. 2011, § 14-103, §§ 14-104, as amended.

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GIST/ANALYSIS:

This proposed rule amendment clarifies the process for identification of purchased equipment and who the responsible party is for verification

of annual inventory requirements. The school superintendent and their inventory control designee(s) would be the responsible parties for verification of inventoried equipment.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 9. SERVICE CONTRACTS AND EQUIPMENT GUIDELINES

780:10-9-2. Equipment

(a) Tangible assets (equipment).

(1) **State-owned equipment.** An item shall be classified as an equipment inventory item or fixed asset if it has a useful life of one year or more with an acquisition cost of \$2500 or more and is a complete and independent item which does not lose its identity or become a component part of another item. [74 O.S., Section 110.1(D)].

(2) **State-owned telecom and electronic information technology.** To meet the requirements specified in Title 62, §34.12, Subsection 6, the fixed asset system will be used to track applications to "include but are not limited to the use of mainframe computers, minicomputers, or microcomputers, word processing equipment, office automation systems, Internet, eGovernment, broadband, Wi-Fi or wireless networking, radio, including the interoperable radio communications system for state agencies, or Global Positioning Systems (GPS)' costing \$500 or more.

(3) **Donated or purchased equipment.** Equipment donated to or purchased by the Department through re-imbursement shall be considered the property of the Department.

(4) **Special funding.** Equipment purchased through special funding, which require that the equipment be used in specific programs, shall be placed in those programs and shall be subject to appropriate state and federal laws, rules and regulations.

(5) **Maintenance.** The receiving institution shall be responsible for maintaining equipment supplied by the Department.

(6) **Closing program.** The Program Administrator of the training program shall notify the Department inventory personnel, in writing, when a program or class is to be terminated or completed.

(b) **Loaning of equipment.** Equipment purchased for use by the Business and Industry Development Division may be loaned to other eligible training sites. The equipment shall be subject to any restrictions and is subject to recall on notice by the Department when needed for industrial training.

- (1) The local education authority (LEA) agrees to maintain all equipment covered under loan in the same condition when received from the ODCTE.
 - (2) It is understood that all equipment is to be insured and maintained in operating condition at the expense of the local education agency (LEA) and that equipment lost or stolen will be replaced at the expense of the local education agency (LEA).
 - (3) The ODCTE reserves the right to withdraw this equipment at any time after giving a notification of five (5) workdays.
 - (4) All equipment will be picked up at the close of the training program unless the equipment is used in another Business and Industry training program.
 - (5) Business and Industry Services equipment is only to be used for approved training. Use for other reasons is against state statutes and shall be cause for immediate removal of the equipment from the training site.
- (c) **Identification.**
- (1) **Department Purchased.** Equipment as defined in 780:10-9-2(a)(1) and (2) purchased by the Department shall be affixed with an appropriate tag.
 - (2) **Department Reimbursement.**
 - (A) Equipment as defined in 780:10-9-2(a)(1) purchased by local education agencies (LEA) and reimbursed by the Department with state funds for Business and Industry Development Programs shall be affixed with an appropriate Department asset tag. The equipment will be subject to a five day recall by the Business and Industry Development Division.
 - (B) Equipment as defined in 780:10-9-2(a)(1) purchased by local education agencies (LEA) and reimbursed by the Department for non-Business and Industry Development Programs with state funds shall be affixed with an appropriate Department asset tag.
 - (C) Equipment as defined in 780:10-9-2(a)(1) purchased by local education agencies (LEA) and reimbursed by the Department based on grant awards, shall be tagged by (LEA) and maintained in accordance with grant requirements.
 - (3) **Inventory records.** The Department shall maintain inventory records on all tagged equipment. Identification tags will be assigned by the Department and sent to the local education agency or to the appropriate Department personnel to be affixed to the equipment.
- (d) **Accountability.**
- (1) **Tagged equipment.** ~~Equipment~~ A list of equipment to be inventoried annually will be sent to the mailed to Superintendent and/or their designee, by the Department, with a request to verify and update the list, sign and return within 60 days, unless a physical inventory is conducted by Department inventory personnel.
 - (2) **Adjustments.** The Department, after review of requests, will make necessary adjustments to the inventory.
- (e) **Disposal.** Schools requesting items to be removed due to lost, stolen, salvage, or surplus must submit an inventory

adjustment form for approval. Department personnel will inspect and/or make recommendations on the request.

(f) **Transfer of Ownership.** In no case shall an equipment transfer be made without advanced approval from Department inventory personnel. The ownership of state-owned equipment may be transferred upon approval of the Division Manager, appropriate Senior Staff, and Oklahoma Management and Enterprise Services (OMES), to the local education agency (LEA) in possession of equipment unless said equipment is essential for operation of industry specific or new industry training programs. Department inventory personnel will provide requests to accept and notification of transfers.

(g) **Guidelines.** Equipment procedures and guidelines, and the inventory adjustment forms can be found on the Department Website and will be utilized to enforce these rules.

[OAR Docket #20-655; filed 7-21-20]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 20. PROGRAMS AND SERVICES

[OAR Docket #20-656]

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Subchapter 3. Secondary, Full-Time and Short-Term Adult CareerTech Programs

780:20-3-2 [AMENDED]

780:20-3-3 [AMENDED]

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Oklahoma State Board of Career and Technology Education; 70 O.S. 2011, § 14-103, §§ 14-104, as amended.

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GIST/ANALYSIS:

The first proposed change is the minimum grade level that students can enroll in a Business, Marketing and Information Technology Education (BMIT) course from seventh grade to sixth grade. The second proposed change is in the language used for internship courses in comprehensive schools. This change provides consistency with other CareerTech programs. The third proposed change is to clarify the rules for the courses within Science, Technology, Engineering and Math Education (STEM) programs and in which CareerTech student organizations the students may be members. The fourth proposed amendment removes the requirement for the instructor of a BMIT Education program to have access to a school furnished landline telephone

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for private conversations about students regarding coordination activities and career guidance.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 3. SECONDARY, FULL-TIME AND SHORT-TERM ADULT CAREERTECH PROGRAMS

780:20-3-2. Programs: admissions, operations, enrollment, and length

(a) **Nondiscrimination; admission guidelines.** Students shall be provided access to CareerTech programs and facilities without regard to race, color, national origin, sex, or disability.

(1) **Agricultural Education.** Agricultural Education programs are designed for junior high and high school grades eight through twelve and shall be provided by comprehensive school districts. Technology center school districts shall be prohibited from operating Agricultural Education programs or FFA chapters in any location. Each student enrolled in an agricultural education program shall participate in a supervised agricultural experience project. For each agricultural education program which is funded by the Oklahoma Department of Career and Technology Education, the local school district shall provide transportation services, for the agricultural education program and FFA program related duties and activities. (FFA is an integral part of the agricultural education program.)

(2) **Business, Marketing and Information Technology Education.** Business, Marketing and Information Technology Education programs are designed to prepare ~~junior high and high school students (grades 7 through 12)~~ students in grades 6 through 12 and adults for pathways to careers in business, marketing and information technology.

(3) **Family and Consumer Sciences Education.**

(A) **Comprehensive Family and Consumer Sciences Education.** Family and Consumer Sciences programs are designed for students grades 6 through 12 to experience hands-on experiential and problem based learning to explore opportunities for careers, post-secondary transitions and pathways in family and consumer sciences related areas.

(B) **Occupational Family and Consumer Sciences Education.** Occupational Family and Consumer Sciences programs are designed to prepare students in grades 11 and 12 and/or adults for careers in specific family and consumer sciences occupations.

(4) **Health Careers Education.**

(A) **CareerTech health careers.** Health Careers Education programs are designed to prepare junior high students, high school students and adults for employment in a health career of their choice.

(B) **Requirements for applicants.** Applicants for admission to Health Careers Education programs must meet requirements as set by the individual program, state statutes, and any other requirements of the appropriate licensing or accrediting agency.

(5) **Science Technology Engineering and Mathematics (STEM).** Science Technology Engineering and Mathematics programs are designed to prepare students grades 6-12 for hands-on and problem based curriculum that allows students to explore opportunities for careers, post-secondary transitions and pathways in Science, Technology, Engineering and Mathematics (STEM).

(6) **Trade and Industrial Education/TechConnect.** Trade and Industrial Education programs in comprehensive schools are designed for students in grades 6 through 12 for hands-on experience and problem based learning that allows students to explore opportunities for careers, post-secondary transitions and pathways in Trade and Industrial Education. The state program administrator must approve exceptions. Trade and Industrial Education programs in technology centers are designed for students in grades 11 and 12 and/or adults. In technology center programs, tenth-grade students, or over-age students in a grade lower than the eleventh, may be enrolled upon approval of the sending school.

(b) **Program operations.**

(1) **Recommendation for program approval.** The appropriate CareerTech program administrator shall recommend approval of a program when criteria for the approval of new programs are met and funds are available.

(2) **Program composition.** Programs shall offer hands-on experience or supervised occupational experiences in the laboratory or clinical setting as well as classroom instruction to provide opportunities for students to achieve career objectives.

(3) **Course titles.** CareerTech course offerings must be in agreement with the course titles listed in the current *Standards for Accreditation of Oklahoma Schools*, published by the State Department of Education. These same course titles (or abbreviated titles) should be the class titles entered on the student's transcript.

(4) **Units of credit.** The units of credit shall be determined by the number of periods the student is in class plus on-the-job training, clinical training, or internship served. (Refer to the *Standards for Accreditation of Oklahoma Schools*.)

(5) **Full-time programs.** A full-time program in a comprehensive school shall consist of five CareerTech instruction class periods and one planning period for a six-period day, and six CareerTech instruction class periods and one planning period for a seven-period day. Exceptions to this rule shall include the following:

(A) **Two planning periods.** Teachers who supervise students' agricultural experience programs shall have a minimum of two periods to plan, supervise, and coordinate the activities of student learners (see 780:20-3-1(e) and 780:20-3-2(b)(7)(A)). For schools on non-traditional schedules, teachers shall have the equivalent of a minimum of 90 minutes per day for planning and supervision of students. It is recommended that the last hour of the school day be utilized as one of the planning periods. Schools offering Agricultural Education courses the final period of the day must provide a written explanation to the program administrator.

(B) **Teaching of related courses.** Full-time program teachers of Marketing Education, Career Transitions Education, and TechConnect may be allowed to teach one related course, subject to the approval of the appropriate ODCTE state program administrator.

(C) **Trade and Industrial Education/TechConnect.** Two three-hour block courses shall constitute a full-time program in Trade and Industrial Education in a Technology Center.

(D) **Health Careers Education.** Teachers of Health Careers may be allowed to teach one or two related courses with at least one conference period (if the school is on a standard six or seven-period teaching day), subject to the approval of the Health Careers Education program administrator.

(E) **Science Technology Engineering and Mathematics.** Teachers of Science Technology Engineering and Mathematics may be allowed to teach one related course, subject to approval of the appropriate cluster administrator. Science and math courses listed in the STEM program can be counted as a STEM course, not a related course, with the approval of the cluster administrator.

(6) **Adult Training and Development.** Adult Training and Development (short-term adult) programs in comprehensive schools may be organized under the supervision of the CareerTech teacher and must be occupationally specific. These programs are organized on request or as the need indicates. They may vary in length.

(7) **Program operations by occupational division.**

(A) **Agricultural Education.**

(i) **Secondary programs.** The agricultural education instructor is a full-time, 12-month employee and shall teach only approved agricultural education courses. Agricultural education instructor shall have no other extra curricular duties or responsibilities other than those required through the FFA student organization and normal school supervisory duties. Coaching, administration, or other similar full-time duties will not be approved. In the case of a non-funded agriculture education program, the program must follow state policy and guidelines to remain in good standing and be able to utilize the CareerTech student organization, FFA.

(ii) **Summer program.** The agricultural education instructor shall formulate a summer program of work and a calendar of activities, which are to be submitted to the local education agency at the completion of the school year.

(iii) **Activities.** Summer activities shall include supervision of students' activities; educational field days and tours; in-service and professional development activities; and, working with adults, agricultural organizations, and industries.

(iv) **Summer leave.** Agricultural Education teachers are entitled to two weeks of summer leave. In lieu of these two weeks of vacation, three weeks each year may be allowed for professional improvement. Summer leave should be coordinated with the local administration. If there is a question in regard to summer leave, the program administrator should be contacted for approval.

(v) **Full-time adult programs.** Full-time adult Agricultural Business Management programs vary in length and are designated for and intended to meet the needs of adults engaged in agriculture and agricultural business operations.

(B) **Business, Marketing and Information Technology Education.**

(i) **Full-time programs in comprehensive schools.** A full-time program in comprehensive school shall consist of five instructional class periods (five credits) and one planning period for a six-period day or six instructional class periods (six credits) and one planning period for a seven-period day that is offered to students in grades 7 through 12. Block schedules, including trimesters, will be approved if they provide one full unit/credit per course and offer a full schedule of approved courses with one planning period. Instructors shall teach only approved business, marketing and information technology education courses that are aligned with an approved occupational outcome. State-approved syllabi identify the required length of courses - one-half or full unit of credit. Business, Marketing and Information Technology Education instructors shall have no other extracurricular duties or responsibilities other than those required through the BPA or DECA student organizations and normal school supervisory duties.

(ii) **Full-time programs in technology centers.** A full-time program in a technology center shall consist of two three-hour block periods of instruction for students in grades 10 through 12 and adults and should have an occupational outcome that includes a work-based learning component. Any exceptions must be approved in writing by the state program administrator.

(iii) **Technology/equipment.** Business, Marketing and Information Technology Education

programs shall provide technology that is appropriate for the defined occupational objectives and is reflective of a modern business environment. A written program plan integrating curriculum, training materials, and technology shall be maintained to guide program development and maintain relevance to the marketplace.

(iv) **Part-time comprehensive school programs.** Comprehensive school Business, Marketing and Information Technology Education programs that are less than full-time will be funded as a half-time program and will be approved only through the permission of the state program administrator. A part-time program shall include a minimum of three approved business, marketing or information technology education courses with one planning period.

(v) **Unfunded programs.** Non-funded Business, Marketing and Information Technology Education programs must follow state policies and guidelines and maintain an active BPA or DECA student organization chapter in order to remain in good standing.

(C) Comprehensive Family and Consumer Sciences Education.

(i) **Full-time programs.** A full-time program shall consist of only approved family and consumer sciences classes with one planning period in the daily schedule. Family and consumer sciences instructors shall have no other extra curricular duties or responsibilities other than those required through the FCCLA student organization and normal school supervisory duties. Each single teacher program shall offer at least two complete programs of study in a three-year period. A multi-teacher district shall offer one more program of study than the number of teachers per building. Coaching, administration, or other similar full-time duties must be approved by the state program manager in writing prior to implementation.

(ii) **Part-time programs.** Programs that are less than full-time will be funded as a half-time program and will be approved only through permission of the program administrator. A part-time program shall include a minimum of two family and consumer sciences classes and a conference period for a six period day and three family and consumer sciences classes and a conference period for a seven or eight period day.

(iii) **Unfunded programs.** In the case of an approved unfunded family and consumer sciences program, the program must follow state policy and guidelines to remain in good standing. Only approved programs shall have a Family, Career and Community Leaders of America chapter.

(D) Occupational Family and Consumer Sciences Education.

(i) **Full-time occupational programs in comprehensive schools.** A full-time occupational family and consumer sciences education program in the comprehensive school will include two or more classes, two to three periods in length for 11th- and 12th-grade students.

(ii) **Full-time occupational programs in technology centers.** A full-time occupational family and consumer sciences education program in a technology center will include two classes, three periods in length for 11th- and 12th-grade students and adults.

(iii) **Length; order.** Two years of occupational training may be offered.

(E) Health Careers Education.

(i) **Comprehensive Schools.** Programs in 7th, 8th, and 9th grade or high schools vary in length and may be offered in one, two or three blocks of time. Secondary programs in technology centers may be one or two academic years in length and vary in hours per day.

(ii) **Technology Centers.** Programs vary in length and in hours per day according to accrediting bodies and program requirements.

(F) Science, Technology, Engineering and Mathematics.

(i) **Full-time program.** In a six period day, instructor shall teach five approved CareerTech STEM courses and/or one approved related course. In a seven period day, instructor shall teach six approved CareerTech STEM courses and/or one approved related course. In an eight period day, instructor shall teach seven approved CareerTech STEM courses and/or one approved related course. Block schedules, including trimesters, will be approved if they provide one full unit/credit per course and offer a full schedule of approved courses with one planning period.

(ii) **Part-time comprehensive school programs.** Comprehensive school Science, Technology, Engineering and Math Education programs that are less than full-time will be funded as a half-time program and will be approved only through the permission of the state program administrator. A part-time program shall include a minimum of three approved science, technology, engineering and math education courses with one planning period.

(iii) **Unfunded programs.** Non-funded Science, Technology, Engineering and Math Education programs must follow state policies and guidelines and maintain an active ~~CareerTech~~~~TSA~~~~HOSA~~ or ~~SkillsUSA~~ student organization chapter in order to remain in good standing.

(G) Trade and Industrial Education. Tech-Connect (grades 6-10): The appropriate approved courses need to be taught from one of the following career pathways: Tech Connect Agriculture, Food

and Natural Resources; Tech Connect Architecture & Construction; Tech Connect Arts; A/V Technology and Communications; Tech Connect Information Technology; Tech Connect Law, Public Safety and Security; Tech Connect Manufacturing; Tech Connect Transportation, Distribution and Logistics; Tech Connect Diversified Programs.

(H) **Integrated Academics.** Academics taught in the technology center shall be delivered in the context of the program in which each student is enrolled. If academic instruction is offered for credit through the sending school, it shall be structured so as to meet current legislation and State Department of Education guidelines. Students must meet, within the structure of the academic class, the attendance requirements of their comprehensive schools in order to receive academic credit. Further, the legislated limit of 10 days of absence from the academic class for school-related activities applies.

(c) **Enrollment for full-time programs.**

(1) **Guidelines compliance.** Program enrollments shall comply with the established guidelines of the appropriate occupational division. Exceptions must have written approval by the appropriate program administrator prior to the second week of class. Consideration shall be given to the availability of work stations, clinical experiences and individual student needs.

(2) **Enrollments specific to occupational divisions and programs.**

(A) **Agricultural Education.**

(i) **Student enrollment limits.** If a department has adequate space, equipment, and laboratory sites, a maximum of 25 students may be enrolled in each agricultural education class with the exception of lab classes, such as Horticulture and Ag Mechanics, and they shall be limited to 15 per class. Exceptions to these numbers must have written approval by the appropriate program administrator.

(ii) **Maximum class enrollment.** The maximum enrollment in each agricultural mechanics and horticulture class shall be 15 students per class period.

(iii) **Course prerequisite.** Introduction to Agricultural Science is the prerequisite for all other agricultural education courses with the exception of eighth-grade Agricultural Orientation.

(iv) **Employment in Agribusiness.** The Agricultural Education course, Employment in Agribusiness, is considered a Cooperative Program in which students can earn scholastic credit if the course meets all requirements listed under section (780:20-3-1 section e). It must be taught and supervised by the agricultural education instructor. Note: The work-site experience must be directly related to the curriculum offered in the program.

(B) **Business, Marketing and Information Technology Education.**

(i) **Programs in comprehensive schools.** Business, Marketing and Information Technology Education courses may enroll a maximum of 25 students at a ratio of one work station per student. A maximum of 25 students per teacher-coordinator shall be enrolled in a capstone course or ~~cooperative learning~~ internship course. Only two sections of ~~cooperative learning~~ internship will be allowed per program. Students enrolling in a ~~cooperative learning~~ internship program must have completed a minimum of 120 hours of approved business, marketing, and information technology education coursework.

(ii) **Programs in technology centers.** Business, Marketing and Information Technology Education courses may enroll a maximum of 25 students at a ratio of one work station per student.

(C) **Family and Consumer Sciences Education.**

(i) **Comprehensive Family and Consumer Sciences programs.** If a department has adequate space, equipment and laboratory sites, maximum enrollment for the following courses shall be:

- (I) Non-laboratory courses-30 students
- (II) Laboratory courses-24 students
- (III) Work-based learning - The School and Community Partnership course is a work-based course in which students gain work-site experience and elective credit. The work-site experience must relate directly to an Oklahoma family and consumer sciences career cluster. Enrollment in this course is limited to 24 students. Additional rules in 780:20-3-1(e) and (h) may apply.

(ii) **Occupational Family and Consumer Sciences Education.** A minimum of 10 and a maximum of 20 students shall be enrolled in each section of occupational family and consumer sciences education.

(D) **Health Careers Education.**

(i) **Comprehensive Schools.** A minimum of ten and a maximum of eighteen students shall be enrolled in each course/section of a comprehensive school health careers education program.

(ii) **Technology Centers.**

(I) **Full time high school health careers programs.** A minimum of ten and a maximum of eighteen students per instructor shall be enrolled in a Health Careers Education program. Those programs utilizing student-centered learning as the primary method of instruction shall have a maximum of fifteen students per instructor. Program enrollment may also be limited by national and/or state accrediting bodies, by equipment, classroom and/or laboratory facilities and by clinical site availability.

(II) **Full-time adult-only health careers programs.** A minimum of eight and a maximum of twelve students per instructor shall be

enrolled in a full-time adult-only Health Careers Education program. Program enrollment may also be limited by national and/or state accrediting bodies, by equipment, classroom and/or laboratory facilities and by clinical site availability.

(E) **Science, Technology, Engineering and Mathematics. Student Enrollment Limits.** The maximum enrollment for each period of a STEM program shall be 24 students. Consideration should be given to the size of the facility.

(F) **Trade and Industrial Education and TechConnect.**

(i) **Maximum enrollment.** The maximum enrollment for each Trade and Industrial Education, TechConnect program section shall be 20 students, with the exceptions of cosmetology, which may have a maximum of 22 students, and career transitions programs, which may have 50 students per career transitions teacher. Consideration should be given to the size of the facility.

(ii) **Alternate program enrollment.** The Trade and Industrial Education Division shall establish a reduced maximum enrollment for any program not meeting adequate size or layout of teaching facilities, number of training stations, appropriate quality and quantity of tools, and equipment and supplies. Individual student needs, student safety and supervision shall also be considered when determining maximum student enrollment.

(iii) **Inclusion of on-the-job students.** Students involved in on-the-job training shall be included in the maximum enrollment for the program unless each school has an on-the-job training coordinator.

(d) **Length of programs.** CareerTech programs shall be 10 or 12 calendar months as approved by the appropriate program administrator. Exceptions must be approved by the Department.

780:20-3-3. Materials and facilities

(a) **Approved materials.** CareerTech teachers in all CareerTech programs shall use instructional materials developed by the Department or materials approved by the appropriate program administrator.

(b) **Equipment.**

(1) **Responsibility.** The local education agency is responsible for providing equipment and supplies to support the CareerTech program in order to assure quality training. Equipment must meet or exceed all appropriate safety standards.

(2) **Modern equipment.** Equipment shall be indicative of that currently used in business and industry and in conformity with modern technology.

(3) **Maintenance; replacement.** A policy for maintenance and replacement shall be developed by the local education agency.

(4) **Inventory of state-owned equipment.** It is the responsibility of the local education agency to provide appropriate maintenance and repair of state-owned equipment and to maintain an accurate accountability of state-owned equipment tagged in accordance with rule 780:10-9-2(c).

(c) **Facilities.**

(1) **CareerTech programs facilities.** The local education agency shall provide CareerTech programs with facilities to assure safe and orderly, quality instruction to meet each program's objectives. The guidelines used shall be from the Oklahoma Department of Education "Planning for Education: Space Guidelines for Planning/Educational Facilities" booklet 70 O.S. 3-104. The appropriate program administrator shall be consulted regarding plans for new and remodeled facilities.

(2) **Health Careers Education.** Clinical facilities shall be adequate in number and quality to provide the experiences necessary to meet the requirements of the respective accrediting agency and program requirements. Clinical facilities should have adequate staff to provide safe patient care and student should not be used as paid or unpaid facility staff during clinical hours.

~~(3) **Business, Marketing, and Information Technology Education.** The local education agency shall provide access to a telephone for the business, marketing, and information technology program instructor for private conversations regarding student coordination activities and career guidance.~~

[OAR Docket #20-656; filed 7-21-20]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 5. FEES

[OAR Docket #20-692]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

785:5-1-6. Stream water permit application and administration fees
[AMENDED]

785:5-1-10. Groundwater application and administration fees
[AMENDED]

785:5-1-11. Well driller and pump installer licensing fees [AMENDED]

785:5-1-16. Fees required in other matters [AMENDED]

785:5-1-21. Documentation reviews related water trapped in producing mines [NEW]

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S. § 1085.2; 82 O.S. § 1085.4.

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The Oklahoma Water Resources Board ("Board") has amended the following provisions:

OAC 785:5-1-6(d) to increase existing annual maintenance fees for surface water permits. The \$25 increase will help offset rising costs to Information Technology the agency has experienced over the last several years.

OAC 785:5-1-10 to increase existing amounts for filing fees of groundwater applications over sensitive sole-source groundwater basins. Groundwater applications over sensitive sole-source groundwater basins require a higher level of analyses and scrutiny, which increases the amount of time required to process the application.

OAC 785:5-1-11 to streamline filing fees in the Well Driller and Pump Installer Licensing Program. The amendment also increases some fees. The Well Driller Program has increasingly relied on General Revenue funding since the last fee increase in 2010. The proposed fee increases would generate revenue for the program to be approximately 75% self-funded. In addition, HB2933 was passed in 2019 that allowed a waiver for low-income individuals. The proposed addition (785:5-1-11(q)) implements statutorily-required language in the Board's rules.

Remove the fee in OAC 785:5-1-16(a), which is a fee to make a streamflow measurement. The Board no longer provides these services or historically has not needed to implement this fee.

Add OAC 785:5-1-21, to add fees for review of documentation submitted to the Board related to water trapped in producing mines in sensitive sole-source groundwater basins. Such documents include requests for de minimis determination, annual mine reports, Augmentation and Management Plans, and requests to determine if a mine is within a sensitive sole-source groundwater basin. In 2011, SB597 was passed requiring the Board to develop rules relating to the management of water trapped in producing mines in sensitive sole-source groundwater basins. However the amount of staff time required reviewing documents was unknown and has been at a significant cost since formalizing those rules. The proposed fees would cover staff time reviewing documents and would allow for a dedicated employee to focus a portion of their work to this task.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

785:5-1-6. Stream water permit application and administration fees

(a) A filing fee based on amount requested in the application must be submitted with each application for a permit to appropriate stream water as follows:

- (1) 1 through 320 acre-feet - \$250.00

- (2) 321 through 640 acre-feet - \$350.00
- (3) 641 through 1,500 acre-feet - \$450.00
- (4) More than 1,500 acre-feet - \$450.00, plus an additional \$150.00 for each increment of 500 acre-feet above 1,500 acre-feet requested, provided that no person shall be charged a total amount in excess of Four Thousand Dollars (\$4,000.00) per application.
- (5) If the applicant proposes to divert or use stream water from a scenic river or an area designated as an outstanding water resource by the State, the applicant must submit an additional fee of \$250.00 (see also Chapter 45 of this Title).
- (b) Applications for provisional temporary permits to appropriate stream water except expedited applications require a fee of \$200.00.
- (c) Expedited applications for provisional temporary permits to appropriate stream water require a fee of \$250.00.
- (d) Annual water right administration fee for the submittal of water use reports shall be ~~\$50.00~~\$75.00 for each permit or vested right, provided that the cumulative maximum water right administration fees imposed on any one permit or vested right holder shall not be more than \$500.00 per year.
- (e) If the annual water use report is filed later than 30 days after the due date as set forth in the report form mailed to the water right holder, an additional amount of \$50.00 for each permit shall be due (see also 785:20-9-5).

785:5-1-10. Groundwater application and administration fees

- (a) A filing and application fee based on amount requested must be submitted with each application for a permit for the withdrawal of groundwater as follows:
- (1) 1 through 320 acre-feet - \$250.00
 - (2) 321 through 640 acre-feet - \$350.00
 - (3) 641 through 1,500 acre-feet - \$450.00
 - (4) More than 1,500 acre-feet - \$450.00, plus an additional \$150.00 for each increment of 500 acre-feet above 1,500 acre-feet requested, provided that no person shall be charged a total amount in excess of Four Thousand Dollars (\$4,000.00) per application.
 - (b) Applications for provisional temporary permits except expedited applications require a fee of 200.00.
 - (c) Expedited applications for provisional temporary permits require a fee of \$250.00.
 - (d) Annual water right administration fee for the submittal of water use reports shall be \$50.00 for each permit or prior right, provided that the cumulative maximum water right administration fees imposed on any one permit or prior right holder shall not be more than \$500.00 per year.
 - (e) If the annual water use report is filed later than thirty (30) days after the due date as set forth in the report form mailed to the water right holder, an additional amount of \$50.00 for each permit shall be due.
 - (f) Applications for groundwater use that overlie a sensitive sole-source basin shall require an additional \$250.00 fee.

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785:5-1-11. Well driller and pump installer licensing fees

- (a) The filing application and license fee for issuance of individual, partnership, or corporation well driller licenses for one activity to be certified under 785:35-3-1 which shall include the operator certification for the individual license or, in the case of a partnership or corporation, one operator certification for such activity shall be ~~\$300.00~~ \$400.00 for two years.
- (b) ~~The license application fee for each additional activity shall be \$40.00 for two years. The license fee for a nonresident shall be the amount charged in the state of the nonresident but in no case less than \$1,000.00 for two years.~~
- (c) ~~The application fee for each additional operator certificate which includes certification to conduct one activity shall be \$60.00 for two years. The initial fee for the Indemnity Fund for one activity certified under 785:35-3-1 shall be \$250.00 for residents and \$400.00 for nonresidents.~~
- (d) ~~The license application and indemnity fund fee for each additional activity shall be \$200.00. The application fee for each additional activity under an operator certificate shall be \$30.00.~~
- (e) ~~The renewal fee for each license for one certified activity, which shall include the operator certification shall be \$250.00 if the application to renew is filed by May 31; provided that a late fee of \$150.00 shall be due for the completed license renewal application if received by the Board after May 31 of the year to be renewed, but before the end of the applicable grace period. The application fee for each additional operator certificate shall be \$100.00 for a two (2) year period.~~
- (f) ~~The license renewal fee for each additional activity shall be \$40.00 for a two (2) year period. The renewal fee, which shall include the operator certification shall be \$350.00 if the application to renew is filed by May 31; provided that a late fee of \$250.00 shall be due for the completed license renewal application if received by the Board after May 31 of the year to be renewed, but before the end of the applicable grace period.~~
- (g) ~~The fee for each additional operator certification renewal which includes certification to conduct the authorized activities shall be \$40.00~~ \$100.00 for a two (2) year period.
- (h) ~~The fee for examination of any operator shall be \$50.00. The renewal fee for the Indemnity Fund for each operator shall be \$100.00 for residents of Oklahoma and \$200.00 for nonresidents for a two (2) year period.~~
- (i) ~~The fee for transfer of individual licensee designation to partnership, corporation or other entity or certified operator from one firm or corporation to another shall be \$50.00. The fee for examination of any operator shall be \$50.00.~~
- (j) ~~The license fee for a nonresident shall be the amount charged in the state of the nonresident but in no case less than \$500.00 for two years. The fee for transfer of individual licensee designation to partnership, corporation or other entity or certified operator from one firm or corporation to another shall be \$50.00.~~
- (k) ~~The initial fee for the Indemnity Fund for one activity certified under 785:35-3-1 shall be \$200.00 for a two (2) year period. The fee to file a request for a variance or exception from any construction, completion, plugging or other requirement set forth for groundwater wells, fresh water observation wells,~~

heat exchange wells or test holes in Chapter 35 in this Title shall be \$75.00.

- (l) ~~The initial fee for the Indemnity Fund for each additional activity certified under 785:35-3-1 shall be \$75.00 for a two (2) year period. The fee to file a request for a variance or exception from any construction, completion, plugging or other requirement set forth for monitoring wells or geotechnical borings in Chapter 35 shall be \$200.00.~~
- (m) ~~The renewal fee for the Indemnity Fund for each activity certified under 785:35-3-1 shall be \$75.00 for a two (2) year period. The fee to file an intent to drill for marginal water well construction shall be \$500.00.~~
- (n) ~~The fee to file a request for a variance or exception from any construction, completion, plugging or other requirement set forth for groundwater wells, fresh water observation wells, heat exchange wells or test holes in Chapter 35 in this Title shall be \$50.00. Upon presentation of satisfactory evidence that an applicant for licensure or certification is a low-income individual, shall grant a one-time one-year waiver of any fees associated with such licensure or certification. For purposes of the section, "low-income individual" means an individual who is enrolled in a state or federal public assistance program, including, but not limited to, the Temporary Assistance for Needy Families, Medicaid or the Supplemental Nutrition Assistance Program, or whose household adjusted gross income is below one hundred forty percent (140%) of the federal poverty line or a higher threshold to be set by the executive branch department that oversees business regulation.~~
- (o) ~~The fee to file a request for a variance or exception from any construction, completion, plugging or other requirement set forth for monitoring wells or geotechnical borings in Chapter 35 shall be \$150.00.~~
- (p) ~~The fee to file an intent to drill for marginal water well construction shall be \$500.00.~~

785:5-1-16. Fees required in other matters

- (a) ~~The fee for making and certifying a measurement of the flow in any stream shall be \$50.00 per measurement.~~
- (b) ~~The fee for computer services shall be as follows:~~
- (1) Copying documents to electronic media - \$1.00 per document or file plus actual cost of Board provided electronic media.
 - (2) Direct labor cost to convert raw data in data bases to machine-readable format, including but not limited to preparation of table and field descriptions.
 - (3) Actual cost of medium supplied by Board used in copying data from data base.
- (c) ~~The fee for a document search shall be \$10.00 per hour.~~
- (d) ~~The filing fee for Information Sheets regarding domestic use of stream water from federal reservoirs shall be \$50.00.~~
- (e) ~~For transcripts prepared by certified court reporter, stenographer or Board staff under the provisions of 785:4-3-6, the fee shall be the actual cost of the transcription. Prior to such transcription being made, the person requesting the transcription (or appealing the Board's order) shall pre-pay to the Board the estimated cost of the transcribing the audio, with such estimate to be prepared by the Board. Upon completion of the transcription, the person requesting the same shall deposit the~~

balance, if any, necessary for full payment of the transcription. The Board shall refund or credit any excess amount previously deposited.

(~~fe~~) If unavailable from local floodplain administrators, flood zone and flood map information on file with the Board for each tract or description of land requested will be provided for a fee of \$25.00.

(~~gf~~) The fee for preparation and compilation of the administrative record for transmittal to a court pursuant to the Administrative Procedures Act shall be \$1.00 per page for written documents, plus the cost of copying the audio recording and the electronic media as provided in this Chapter, plus actual cost of duplication of other exhibits, all payable prior to the transmittal of the record in the court. If the party appealing an order of the Board requests a written transcription of the hearing, or if the district court orders a written transcription as authorized by 75 O.S. § 309, the provisions in subsection (f) above, including prepayment of the cost of transcribing cassette tapes of the hearing, shall apply to the party appealing the Board's order. The full cost of transcribing the tapes must be paid before the Board shall transmit the transcription to the court. The Board shall review any such transcription for accuracy before transmitting the same to court.

(~~gj~~) In addition to any other applicable fee, and subject to review by the State Governmental Internet Applications Review Board and approval by the Office of Management and Enterprise Services ("OMES"), unless otherwise waived by the Board a person who undertakes an electronic/on-line transaction with the Board shall pay a convenience fee approved by OMES which includes, but is not necessarily limited to, the transaction fee levied by OMES, the credit card or other financial institution charge, and a prorated share of the reasonable costs of development and implementation of, sustaining and upgrading, and future expansion of, the electronic/on-line application. Such transactions may include, but shall not be limited to, filing applications for permits or loans, filing reports of well drilling activities, and renewing licenses or certifications.

785:5-1-21. Documentation reviews related water trapped in producing mines

(a) Submittal of documentation requesting the Board's determination of whether a mine meets the requirements of OAC 785:30-15-3(b) (request for de minimis determination) shall be accompanied with a \$2,000.00 application fee. Thereafter, any of the Board's required submittals of de minimis documentation for the mine shall be accompanied with a \$250.00 application fee.

(b) A review fee of \$500.00 shall accompany all annual mine reports submitted to the Board as required by 785:30-15-3(2) and 785:30-15-4(2) & (3).

(c) Augmentation and Management Plans submitted to the Board in accordance with 785:30-15-6 shall be accompanied with a \$3,000.00 review fee.

[OAR Docket #20-692; filed 7-24-20]

**TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 25. DAMS AND RESERVOIRS**

[OAR Docket #20-693]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

785:25-1-3. Violations and penalties [AMENDED]

Subchapter 3. Responsibility, Classification and Design Standards

785:25-3-2. Owner's responsibility [AMENDED]

785:25-3-6. Minimum spillways performance standards [AMENDED]

Subchapter 5. Applications and Approval of Construction

785:25-5-4. Additional report information [AMENDED]

Subchapter 7. Post Approval Actions

785:25-7-7. Emergency action plans [AMENDED]

Subchapter 9. Actions after Construction

785:25-9-1. Inspections of dams [AMENDED]

785:25-9-3. Correction of deficiencies (not creating imminent peril) [AMENDED]

785:25-9-5. Correction of deficiencies creating imminent peril [AMENDED]

Appendix A. Jurisdiction of Board by Size and Hazard Classification [REVOKED]

Appendix A. Jurisdiction of Board by Size and Hazard Classification [NEW]

Appendix B. Minimum Spillway Performance Standards [NEW]

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S. § 1085.2; 82 O.S. § 110.1 And following; 82 O.S. § 105.20 and 105.27.

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n/a

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n/a

GIST/ANALYSIS:

The Oklahoma Water Resources Board ("Board") has amended various provisions of Oklahoma Administrative Code ("OAC") 785:25 as follows:

OAC 785:25-3-6(d) is amended by replacing a reference to an older hydrometeorological study (HMR No. 51, National Weather Service, 1978) that was previously used in determining design floods for dams in Oklahoma with a reference to a newer, regional study for probable maximum precipitation in Oklahoma. The proposed change also provides reference to an updated version of OWRB guidelines for acceptable methods to be used for the determination of the design flood.

OAC 785:25-9-1 is amended to clarify the requirements for the inspection of dams. Several minor amendments are proposed to move language from their current sub-sections to more appropriate sub-sections based on their content. The review of Emergency Action Plans and operations manuals was moved from sub-section (b) *Periodic inspections* to a new sub-section (g) *Minimum standards*. The proposed changes clarify the required scheduling of periodic inspections and the training and experience requirements for dam inspectors. The time requirement for the submittal of inspection reports after

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the inspection has been completed was moved from sub-section (c) *Expense of periodic inspections* to sub-section (g) *Minimum requirements*.

Other amendments to correct spelling or grammatical errors and to improve clarity.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

785:25-1-3. Violations and penalties

(a) Under Section 105.20 of Title 82 of the Oklahoma Statutes, the continued use of works which are unsafe, after receiving notice to repair, and the refusal to change unsafe works when directed to do so, or the injury or obstruction of waterworks shall be a ~~misdemeanor~~ misdemeanor and each day such violation continues shall be a separate violation.

(b) Under the Oklahoma Dam Safety Act (82 O.S. Supp. 1992, §§110.1 et seq.), the Board is authorized to issue emergency orders without prior notice and hearing and orders after notice and hearing requiring an owner to take action as necessary to put a dam in safe condition. In addition, the Board may impose administrative penalties against owners of dams who fail, refuse or neglect to comply with the provisions of the Oklahoma Dam Safety Act. Procedures for imposition of such penalties are found in Subchapter 11 of this Chapter.

SUBCHAPTER 3. RESPONSIBILITY, CLASSIFICATION AND DESIGN STANDARDS

785:25-3-2. Owner's responsibility

(a) General.

(1) Owners of dams to which the provisions of this Chapter apply shall have the responsibility to provide for the safety of such works by making any necessary changes to put the works in a safe condition.

(2) Such responsibility includes but is not necessarily limited to the following: the filing of an application to construct, enlarge, alter or repair the dam pursuant to Subchapter 5; the modification of the dam to meet applicable minimum requirements in this Subchapter; and the adequate maintenance, operation, and inspection of ~~a~~ an existing dam.

(b) Multiple owners.

(1) When there is more than one owner of a dam, the Board shall consider all such owners responsible for the safety of such dam unless evidence to the contrary shows otherwise.

(2) The Board shall provide copies of inspection reports to at least one owner of record at the Board and shall provide notice of hearing on dam safety related matters to such owner with an instruction that the notice shall be delivered or mailed to all owners.

(3) Unless otherwise agreed by all the owners and the Board, the Board may, after such notice and hearing, order all the owners to take whatever remedial action is necessary to put the dam in a safe condition.

(4) The Board will not attempt to delineate levels of responsibility or allocate particular items of action among the owners.

(c) **Transfer of ownership.** Upon transfer of ownership of the works, the new owner shall notify the Board of such transfer.

785:25-3-6. Minimum spillways performance standards

(a) General performance standards.

(1) Except as otherwise provided in this Chapter, all dams must meet or exceed the following performance standards as determined by analysis of plans and specifications for the dam and existing site conditions.

(2) Owners of existing dams which do not meet the following performance standards must make necessary changes in the dam to meet the applicable performance standards.

(3) The discharge capacity and/or storage capacity of the project shall be capable of passing the indicated spillway design flood without infringing on the minimum freeboard requirements, provided that a design which includes overtopping of the dam may be authorized if specifically approved by the Board.

(4) The minimum performance standards expressed as magnitude of spillway design flood and minimum freeboard will be assigned to the various size and hazard potential classification determined under 785:25-3-3 as ~~follows~~ described in Appendix B.

(b) Minimum Performance Standards.

MINIMUM SPILLWAY			
SIZE	HAZARD	DESIGN FLOOD	MINIMUM FREEBOARD
Small	Low	25% PMF	0 Feet
Small	Significant	40% PMF	0 Feet
Small	High	50% PMF	1 Feet
Intermediate	Low	25% PMF	1 Feet
Intermediate	Significant	50% PMF	1 Feet
Intermediate	High	75% PMF	3 Feet
Large	Low	50% PMF	1 Feet
Large	Significant	75% PMF	1 Feet
Large	High	100% PMF	3 Feet

(~~eb~~) **Amending minimum freeboard.** The minimum freeboard requirement may be amended by the Board on a case-by-case basis for good cause shown by the owner.

(~~ec~~) **Probable maximum flood.**

(1) PMF means and refers to the Probable Maximum Flood and is defined as the flood that may be expected from the most severe combination of critical meteorologic conditions, defined as the Probable Maximum Precipitation (PMP), and critical hydrologic conditions that are reasonably possible in the region as listed in Hydrometeorological Report No. 51, National Weather Service.

(2) Since design floods are usually determined by using mathematical computations through computer modeling and since several different acceptable models are available, flood design calculations must fall within plus/minus 5% PMF of the Board's current model results.

(3) The PMF storm should be the most conservative PMP storm type and of appropriate duration to adequately reflect the size and hydrologic characteristics of the watershed in which the dam is located.

(4) Regional Probable Maximum Precipitation Study for Oklahoma, Arkansas, Louisiana, and Mississippi (Applied Weather Associates, 2019) shall be used in determining precipitation depth, area, and duration relationships for the PMP.

(~~ed~~) **PMF on dam designated for regulation.** Adam which the Board has determined is subject to regulation because of its high hazard potential, although otherwise considered too small, shall be required to safely pass 25% PMF with no minimum freeboard.

(~~ef~~) **Dams constructed prior to June 13, 1973.** Any dam constructed prior to June 13, 1973, classified as having high hazard-potential as described in 785:25-3-3 shall be required to pass a minimum design flood as follows:

- (1) Small size - 25% PMF with one foot of freeboard.
- (2) Intermediate size - 50% PMF with no minimum freeboard.
- (3) Large size - 75% PMF with no minimum freeboard.

(~~gf~~) **Dams constructed after 1973 without Board approval.** An owner of a dam constructed after 1973 without prior approval by the Board shall remove the dam or may request a variance or waiver from the requirement for submittal of plans and specifications as provided for in 785:25-5-2 and 785:25-5-3, provided the owner of the dam shall submit an application containing the following:

- (1) A topographic map of the dam site showing the location of spillway and outlet works.
- (2) Drawings showing the length, width, and height of dam.
- (3) Detailed plans of spillway structures, spillway profile, and procedures for operating of the spillway structure.
- (4) Hydrologic and hydraulic analysis report as described in Hydrologic and Hydraulic Guidelines for Dams in Oklahoma, Oklahoma Water Resources Board, Dam Safety Program, August 2011.
- (5) Complete a dam breach inundation analysis and map if Board staff determines the dam may be a significant or high hazard-potential structure.

(6) Inspection of the dam by a registered Professional Engineer and submit a written inspection report to the Board not later than 30 days after the inspection and shall contain information as set forth in a Board hazard inspection report.

(7) Pay minimum application fee as provided in 785:5-1-9(a).

(8) In addition the applicant may be required to submit a detailed geotechnical investigation and analysis of the dam and report on such investigation. The geotechnical investigation shall include a minimum boring layout as follows:

- (A) One (1) crest boring extending through the embankment and foundation materials to bedrock.
- (B) Two (2) crest borings extending through the embankment and foundation materials to bedrock, one near each abutment.
- (C) One (1) boring extending through the embankment and foundation materials to bedrock near the mid-height on the downstream slope of the dam.
- (D) One (1) boring extending through the embankment and foundation material to bedrock along the toe of the dam.

SUBCHAPTER 5. APPLICATIONS AND APPROVAL OF CONSTRUCTION

785:25-5-4. Additional report information

An engineer's report giving details necessary for analysis of the structure and ~~appurtenances~~ appurtenances shall be submitted with the plans and specifications. Included as a part of the report shall be the following:

- (1) Formula and assumptions used in design;
- (2) Hydrologic data used in determining runoff from the drainage areas including copies of any records that the applicant has of flood flows and precipitation for the region;
- (3) Foundation and materials investigations; and
- (4) All other information which would aid in evaluating the design.

SUBCHAPTER 7. POST APPROVAL ACTIONS

785:25-7-7. Emergency action plans

(a) Owners of existing or proposed dams classified as high hazard-potential, regardless of the size of such dams, and any other dam as determined by the Board, shall create and maintain an EAP that utilizes the recommendations, as determined by the Board, of the "Federal Guidelines for Dam Safety, Emergency Action Planning for ~~Dam~~ Dam Owners," published ~~August 2004~~ July 2013 by the Federal Emergency Management Agency. The owner shall submit a copy of the EAP to the Board.

(b) Owners shall annually review their EAPs to assure they are still accurate and applicable, and submit any updates to the EAPs to the Board.

SUBCHAPTER 9. ACTIONS AFTER CONSTRUCTION

785:25-9-1. Inspections of dams

(a) **Oversight vested in Board.** Oversight of the maintenance and operation of constructed dams and reservoirs insofar as necessary to safeguard life and property from injury by reason of the failure thereof is vested in the Board.

(b) **Periodic inspections.** Except for low hazard potential dams, owners are required to have their dams inspected by qualified persons periodically according to a schedule prepared by the Board to meet the requirements of paragraphs (1) and (2) of this subsection ~~and shall include review of the Emergency Action Plan and of the operation and maintenance manual to assure they are still accurate and applicable.~~ Periodic inspections of dams shall be according to hazard potential classifications as follows:

- (1) High hazard. High hazard potential dams shall be inspected at least once annually.
- (2) Significant hazard. Significant hazard shall be inspected at least once every three years.
- (3) Low hazard. Low hazard potential dams shall be inspected at least once every five years, which inspection shall be conducted by the owner and shall consist of a review of the hazard classification on forms provided by the Board.
- (4) Significant or high hazard dams in an unsatisfactory or poor condition, described in Section 6 of the National Dam Safety Review Board's Guidelines for Updating the 2008 National Inventory of Dams (NID), April 2008, as determined by the Board shall be inspected by a register Professional Engineer at the expense of the owner at least every six months until such time as the deficiencies have been corrected.
- (5) Periodic inspections shall be conducted by the end of the calendar year indicated by the schedule above.

(c) **Expense of periodic inspections.** Periodic inspections shall be at the owner's expense (except for low hazard potential periodic inspections) and shall be conducted by a Registered Professional Engineer hired by the owner, who ~~shall have training and/or construction of dams and reservoirs is licensed in the state of Oklahoma, and shall have training and/or experience concerning the analysis, design, and/or construction of dams and reservoirs,~~ or by an engineer of any United States governmental agency acting in his official capacity. Provided that inspections of low hazard classification dams may be conducted by persons who are not Registered Professional Engineers but who are trained in inspecting dams. ~~If a periodic inspection is conducted by the owner or his representative, a written inspection report shall be submitted to the Board not later than 30 days after the inspection and shall contain information as set forth in a Board's hazard verification report.~~

(d) **Unscheduled inspections.** Unscheduled (non-periodic) inspections such, as those conducted in response to complaints, after major heavy precipitation events, after earthquakes within 50 miles of a high or significant hazard potential dam that measure 5.0 or greater on the Richter magnitude scale, or in emergency situations, may be conducted by Board staff, or the Board may require the owner to conduct an unscheduled inspection at the owner's expense. No fee for such inspection shall be due, provided that a request for inspection by other parties shall be governed by 785:25-9-6.

(e) **United States dams not subject to inspection.** Any dam *constructed by the United States or its duly authorized agencies shall not be subject to inspection while under the supervision of officers or the United States.* [82:105.27]

(f) **Board to notify when inspection due; violation.** The Board shall notify persons shown by its records to own the dam of the date the periodic inspection of the dam is due. Failure to have the inspection completed shall constitute a violation of Board rules.

(g) **Minimum standards.** Except for low hazard potential dams, qualified persons shall submit a written report describing any dam safety deficiencies observed and outline remedial actions to be taken to address those deficiencies as follows:

- (1) Engineering inspection reports shall be prepared for each inspection completed. The inspecting engineer shall record their findings of the inspection and submit a written inspection report to the Board not later than 30 days after the inspection.
- (2) All inspections shall also include documentary digital photographs of the dam, auxiliary spillway, principal spillway inlet structure, principal spillway outlet, and potential safety concerns. When explanation is needed to identify or describe the safety concern, notes shall be included in the written report to provide this explanation. Photographs shall be attached to the completed inspection report.
- (3) Inspection reports shall include a schedule of corrective actions to be taken to address dam safety deficiencies.
- (4) Periodic inspection reports shall also include review of the Emergency Action Plan and of the operation and maintenance manual to assure they are still accurate and applicable, as well as any changes in downstream development or other conditions if applicable.

785:25-9-3. Correction of deficiencies (not creating imminent peril)

(a) *When an owner fails, neglects or refuses to comply with the Oklahoma Dam Safety Act, rules of this chapter, or orders of the ... Board, and there is no imminent peril to the public health or welfare shown the Board may, after notice and opportunity for hearing; issue an order requiring such owner to take whatever action the Board deems necessary to place the dam in a safe condition, meet the requirements of the Oklahoma Dam Safety Act, rules of the Board, or the previous orders of the Board* [82:110.10].

(b) Actions which can be ordered *may include but are not limited to lowering the level of or removing all water in the*

reservoir, providing an adequate warning to the public downstream, repair or modification of the existing dam after having the appropriate application for approval of plans and specifications granted, cease all ~~construction~~ construction work on a dam, and implementation of an appropriate operation and maintenance plan [82:110.10].

(c) If after such hearing it shall be determined to order such amendments, modifications or changes, the owner shall submit, if necessary under 785:25-5-1, plans and specifications for Board approval. Upon approval of the plans and specifications, the Board shall direct the time within which such modification, alteration, or construction shall be completed.

(d) In determining whether amendments, modifications or changes are necessary to protect life and insure safety of the dam, the Board shall take into consideration the possibility that the dam and reservoir might be endangered by overtopping, seepage, settlement, erosion, cracking, earth movement, or other conditions which exist in any area in the vicinity of the dam or reservoir.

(e) Amendments, modifications or changes may include routine maintenance items that do not require plans and specifications, such as removal of trees on an earthen embankment, establishing vegetation cover to prevent erosion, or updating a warning and evacuation plan, etc. Amendments, modifications or changes may also include alterations or repairs which require submittal and approval of plans and specifications, including but not limited to changing the spillway design capacity, rebuilding embankments, etc.

785:25-9-5. Correction of deficiencies creating imminent peril

(a) *When an owner fails, neglects or refuses to comply with the Oklahoma Dam Safety Act, rules of this chapter, or orders*

of the Board, and there is an imminent peril to the public health or welfare shown, the Executive Director of the Board, or Assistant Director in the absence of the Executive Director, may, without notice or opportunity for hearing, issue an emergency order requiring such owner to take actions the Board deems necessary to place the dam in a safe condition. Such emergency order shall indicate the finding of imminent peril and shall specify the actions that are to be taken immediately. The order shall also specify a time and place for hearing to be held after such actions are taken [82:110.10]. In determining whether an imminent peril to the public health or welfare exists, the Board may consider the following:

- (1) The condition of any dam or reservoir is so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of an order after notice and hearing relative to maintenance or operation; or
- (2) Passing imminent floods threaten the safety of any dam or reservoir.

(b) The Board may, if the owner cannot be served or is otherwise unable to act, immediately employ remedial measures. The remedial measures the Board may take in such an emergency include but ~~is~~ are not limited to any of the following:

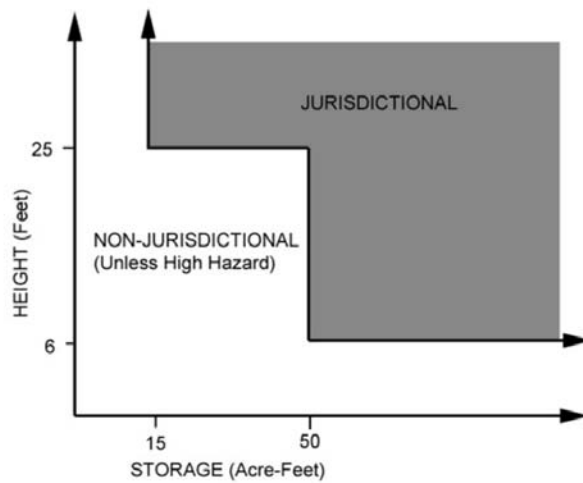
- (1) Lower the water level by releasing water from the reservoir;
- (2) Completely empty the reservoir; or
- (3) Take such other steps as may be essential to safeguard life and property.

(c) The cost and expenses of the remedial measures taken by the Board, including cost of any work done to render a dam or reservoir or its appurtenances safe, shall be recoverable by the State from the owner by action brought by the Board in the district court of the district wherein the dam or reservoir or any part thereof is situated.

APPENDIX A. JURISDICTION OF BOARD BY SIZE AND HAZARD CLASSIFICATION [REVOKED]

APPENDIX A. JURISDICTION OF BOARD BY SIZE AND NAZARD CLASSIFICATION [NEW]

JURISDICTION OF BOARD BY SIZE AND HAZARD CLASSIFICATION



APPENDIX B. MINIMUM SPILLWAY PERFORMANCE STANDARDS [NEW]

MINIMUM SPILLWAY			
SIZE	HAZARD	DESIGN FLOOD	MINIMUM FREEBOARD
Small	Low	25% PMF	0 Feet
Small	Significant	40% PMF	0 Feet
Small	High	50% PMF	1 Foot
Intermediate	Low	25% PMF	1 Foot
Intermediate	Significant	50% PMF	1 Foot
Intermediate	High	75% PMF	3 Feet
Large	Low	50% PMF	1 Foot
Large	Significant	75% PMF	1 Foot
Large	High	100% PMF	3 Feet

[OAR Docket #20-693; filed 7-24-20]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 30. TAKING AND USE OF GROUNDWATER

[OAR Docket #20-694]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Permit Application Requirements and Processing
785:30-3-1. General application requirements [AMENDED]
Subchapter 5. Groundwater Permits
785:30-5-5. Contents of permits [AMENDED]
785:30-5-7. Cancellation or suspension of permits [AMENDED]
785:30-5-9. Annual reports of water use [AMENDED]
785:30-5-10. Marginal water permits [NEW]
Appendix D. Identified Springs that Emanate from a Sensitive Sole Source
Groundwater Basin [REVOKED]
Appendix D. Identified Springs that Emanate from a Sensitive Sole Source
Groundwater Basin [NEW]

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S. § 1085.2; 82 O.S. § 1020.7, 82 O.S. § 1021.1a

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Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 11, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The Oklahoma Water Resources Board ("Board") has amended various provisions of Oklahoma Administrative Code ("OAC") 785:25 as follows:

The addition of a new section in OAC 785:30-5-10, relating to marginal water permits. This new section is necessary to conform the administrative rules to recent statutory changes authorizing the Board to monitor and regulate marginal water wells.

An amendment to OAC 785:30-3-1 to remove a limitation to the number of wells per 100 acre feet of water requested. The proposed amendment is intended to remove language not required by statute regarding the number of wells per 100 acre feet of water requested.

Amendments to OAC 785:30-5-5, 785:30-5-7, and 785:30-5-9 to include marginal water permits in the list of permits covered by these sections.

An amendment Chapter 30, Appendix D to update coordinates and legal descriptions of some springs that discharge 50 gallons per minute or more and emanate from a Sensitive Sole Source Groundwater Basin. Upon staff review, it was found that a number of these springs were not listed in the correct area in the current version of Appendix D.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED**

**FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 3. PERMIT APPLICATION REQUIREMENTS AND PROCESSING

785:30-3-1. General application requirements

(a) **Application form to be used.** The applicant shall complete an application for a groundwater permit ~~on the approved form set out in Appendix A to this chapter, or on an electronic or other form approved by the Board, copies of which are provided by the Board, and in the manner described by the form. The application form may be presented to the Board in person, by mail, by readable facsimile transmittal, or through the Board's online application service. With copies of the application form, the Board will provide copies of a sample plat on which information as required by the application form must be indicated. The Board may require that relevant portions of the approved form be completed for applications or petitions to amend an existing groundwater right.~~

(b) **Written permission of owner required if applicant does not own land.** Except as provided in 82 O.S., §1020.21, *no permit shall be issued to an applicant who is not the surface owner of the land on which the well is to be located, or hold a valid [82:1020.11(D)] right from such surface owner permitting withdrawal of water [82:1020.11(D)]*, provided that an owner (or lessee) of a mineral estate severed prior to May 28, 1985, shall not be required to get separate authorization from the surface estate owner, pursuant to the Oklahoma Supreme Court case of Unit Petroleum Co. v. Okla. Water Res. Board. A copy of the ownership documentation or written permission may be required as part of the application.

(c) **Existing and proposed well locations; potential well areas; maximum number of wells to be completed.**

(1) **Locations of existing wells.** The applicant may in the application form Appendix A describe or show the actual location of existing wells by distances in feet from readily identifiable objects or monuments such as section lines or provide latitude/longitude coordinates of existing wells requested to be authorized.

(2) **Locations of proposed wells.** If specific information is known, for instances by test drilling, the actual locations of proposed wells may be shown in the application plat by distances in feet from readily identifiable objects or monuments such as section lines or by latitude/longitude coordinates.

(3) **Potential well areas.** If the applicant does not have specific information as to location of existing or proposed wells, the potential area or areas where such wells are located or may be drilled and completed on the dedicated lands must be indicated on the application plat. Unless specified well location information is provided, the potential well area information for proposed well locations as indicated on the plat will be used to determine the certified

mail notice that the applicant must provide. To be authorized by the permit, specific location information about existing and proposed wells must be provided or the wells must be located in the potential well area or areas.

(4) **Maximum number of wells to be completed.** If the requested permit is issued, it will authorize a maximum number of existing wells and proposed wells to be drilled and completed. ~~Absent information to the contrary, a maximum of three wells will be authorized for each 100 acre feet of groundwater to be withdrawn per year. Pursuant to subchapter 7 of this Chapter 30, a permittee may request authority to complete additional wells after the permit is issued.~~

(d) **Additional information.** In addition to the information specified in (a) and (b) of this Section and in the application form, the applicant may be required to submit additional information necessary for proper consideration of the application.

SUBCHAPTER 5. GROUNDWATER PERMITS

785:30-5-5. Contents of permits

(a) Every regular, temporary, special, marginal water, and provisional temporary permit issued by the Board shall contain substantially the following:

- (1) Date of filing.
- (2) The county or counties in which the well(s) is or are located.
- (3) The permit number and date issued, which shall be the date the permit is approved by the Board or where appropriate, by the Executive Director.
- (4) The name and address to whom issued.
- (5) The amount of water in acre-feet authorized to be withdrawn annually.
- (6) The purpose for which the water will be used and the legal description of the land dedicated to the permit.
- (7) The legal description of the well location(s) to the nearest ten (10) acre subdivision, or by indicating "center of" when applicable for a larger tract of land.
- (8) Groundwater basin(s) or formation(s) from which water is to be withdrawn.
- (9) If a proposed well is not drilled and completed within one (1) year of permit issuance, groundwater will no longer be authorized to be withdrawn from that location unless a written request to extend the drilling period is approved by the Executive Director.

(b) In addition to the above, the permit shall contain any additional terms, conditions, limitations, or restrictions the Board may prescribe and on which the applicant agrees or as ordered after notice and hearing.

785:30-5-7. Cancellation or suspension of permits

(a) Any regular, temporary, marginal water, or special permit may be cancelled by the Board upon willful failure of the applicant to report annual usage upon proper notice and hearing as provided in the Administrative Procedures Act.

(b) In addition thereto, if any person commits waste as defined in 82 O.S. §1020.15, *the Board shall immediately institute action to enjoin in a court of competent jurisdiction and may suspend any permit to take water as long as such waste continues.* [82:1020.15]

(c) Any permit for marginal water may be reopened, amended, suspended, or cancelled by the Board at any time for failure to comply with the permit terms, limitations, or restrictions, or any provision of the relevant statutes or rules, upon proper notice and hearing as provided in the Administrative Procedures Act and the Board's rules.

785:30-5-9. Annual reports of water use

(a) Water use report forms will be mailed during January of each year to every holder of a valid prior right and every regular, marginal water, and temporary permit holder, with the exception of persons holding special permits, who must complete same and return to the Board within thirty (30) days of receipt.

(b) This report shall become a part of each permit record.

(c) *Willful failure to report annual usage may result in cancellation of the permit.* [82:1020.12]

(d) Holders of special permits are required to complete and return a water use report within thirty (30) days after expiration of such permit. Holders of provisional temporary permits will not be required to complete and return a water use report.

785:30-5-10. Marginal water permits

(a) In addition to the requirements of this section, all marginal water permits must comply with rules in 30-5-5.

(b) Any well used for the marginal water permit must meet well construction rules as specified in OAC 785:35-7-3(b)(2) so as to not contaminate fresh water resources.

(c) Wells used for marginal water permits shall be metered with the pumping rate logged and volume withdrawn recorded. Meter records shall be kept by the permit holder for the duration of the marginal water permit, and available to submit to the Board, upon request. The permit holder shall maintain records showing the meter is properly calibrated and make them available to the Board upon request.

(d) If the permit applicant can provide hydrologic information of the expected volume of marginal water underlying the proposed acreage of dedicated lands for the marginal water permit, the applicant may request the entire volume of marginal water to be permitted from the Board, with no annual limitation on withdrawal amount, until such time as the applicant withdraws the total permitted amount of marginal water.

(e) If the permit applicant cannot provide hydrologic information, as directed by subsection (d) of this section, the applicant will be allowed to dedicate land overlying the same geologic formation, as determined by the Board, containing the marginal water. In the event the Board determines the geologic formation not sufficient, the Board may allow the applicant to dedicate lands within the same county or contiguous county for use on the marginal water permit. Marginal water permits dedicated to lands based on geologic formation or county will be permitted a minimum of four acre-feet per acre

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(f) As determined by staff, and as approved by the Board, water quality sampling measuring total dissolved solids shall occur after every 100 acre feet withdrawn and must be submitted to the Board to verify total dissolved solids are between five thousand and ten thousand parts per million. The well should be purged three well volumes prior to sampling. If that is not possible, alternate methods of purging can be considered. These can include, chemical parameter stabilization where pH and specific conductance remain constant for at least three consecutive measurements, or if the well is pumped dry prior to three well volumes, it can be considered sufficiently purged, or using low flow methods where a pump or sampler is placed directly at the screen.

(g) Water quality sampling results for total dissolved solids from an accredited laboratory must be submitted to the Board. The Board may approve annual sampling after two years of readings between five and ten thousand parts per million.

(h) When the permit holder becomes aware of total dissolved solids below five thousand parts per million, the permit holder must report to the Board within 48 hours. Staff may determine that the permit holder will be required to apply for permit authorization for a provisional temporary permit or a regular permit.

APPENDIX D. IDENTIFIED SPRINGS THAT EMANATE FROM A SENSITIVE SOLE SOURCE GROUNDWATER BASIN [REVOKED]

APPENDIX D. IDENTIFIED SPRINGS THAT EMANATE FROM A SENSITIVE SOLE SOURCE GROUNDWATER BASIN [NEW]

Table 1.

The following springs flow 50 or more gallons per minute, emanate from a Sensitive Sole Source Groundwater Basin, and are protected by the spacing provisions of Section 785:30-3-6(c) of this Chapter.

Spring Name/Other ID	USGS Site ID	Latitude	Longitude	Legal Description
Anderson Spring	342718096380401	34.45496	-96.63432	NW NW SW Sec. 24 T01S R06EIM
Antelope Spring at Sulphur, OK	07329849	34.50444444	-96.9411111	NW NW NE Sec. 1 T01S R03EIM
Bilbo Spring	342732096400601	34.4589808	-96.6686163	NE SW NW Sec. 22 T01S R06EIM
Blue Hole Spring	342108096553801	34.3521	-96.92963	SE NW SW Sec. 30 T02S R04EIM
Boiling Spring	342819097123301	34.47203135	-97.2094644	SE SW NW Sec. 16 T01S R01EIM
Buck Irving Spring	342035096554101	34.34314776	-96.9283451	NW SE NW Sec. 31 T02S R04EIM
Buffalo Spring at Sulphur, OK	07329847	34.5027	-96.9393	SE NW NE Sec. 1 T01S R03EIM
Byrds Mill Spring nr Fittstown, OK	07334200	34.59453434	-96.6655632	SE SW SW Sec. 34 T02N R06EIM
Canyon Spring	343241096360201	34.54473886	-96.60082218	NE SE NE Sec. 19 T01N R07EIM
Chapman Spring	341927096541901	34.32446	-96.90536	NW NW SE Sec. 5 T03S R04EIM
Coffee Pot Spring	343114096332701	34.52064708	-96.5577813	SE SE SW Sec. 27 T01N R07EIM
Cold Spring	342253097165801	34.3814773	-97.2830754	SE NE SE Sec. 15 T02S R01WIM
Colvert Spring	342613096521101	34.43703557	-96.8700114	NE SW SE Sec. 27 T01S R04EIM
Colvert Spring	342613096514701	34.43703556	-96.8633445	NW SW SW Sec. 27 T01S R04EIM
Cummins Spring	342712096373701	34.45342537	-96.6272263	SE NE SW Sec. 24 T01S R06EIM
Daube Spring	341540096485101	34.2612051	-96.8144509	SW SE SE Sec. 30 T03S R05EIM
Deadmans Spring	342411096350101	34.4031200	-96.5838700	NW NW NW Sec. 9 T02S R07EIM
Desperado Spring	341958096354301	34.33304	-96.59525	SW SE SW Sec. 32 T02S R07EIM
Devils Bathtub Spring	342511097064501	34.4197000	-97.1120000	SW SE SE Sec. 32 T01S R02EIM
Diamond Spring	342414096364701	34.40387215	-96.61329907	NW NE NW Sec. 7 T02S R07EIM
Five Mile Spring	343247097181901	34.4811969	-97.3080775	NW SW SE Sec. 9 T01S R01WIM
Gray Spring	342342096464801	34.3948889	-96.7811111	SE NW SE Sec. 9 T02S R05EIM
Gregor Spring	342732096432201	34.4589807	-96.7230622	NW SW NW Sec. 19 T01S R06EIM
Inslee Spring	342726096380001	34.4573142	-96.633154	SE SW NW Sec. 24 T01S R06EIM
Lowrance Spring 2	342730096562701	34.45842354	-96.9411256	NW SW NE Sec. 24 T01S R03EIM
Lowrance Springs nr Drake, OK	07329880	34.4589	-96.9414	NW SW NE Sec. 24 T01S R03EIM
Pole Spring	342837097193301	34.47703024	-97.3261333	NW NW NE Sec. 17 T01S R01WIM
Rutherford Spring	342318096325401	34.38842597	-96.5486122	SW NW NW Sec. 14 T02S R07EIM
Seven Springs 2	342150096284002	34.36398146	-96.4780545	NW SW SW Sec. 21 T02S R08EIM
Shadowfax Spring	342732096395801	34.4589808	-96.666394	NW SE NW Sec. 22 T01S R06EIM
Sheep Creek Spring	343422096385101	34.572868	-96.647785	SW SE NW Sec. 11 T01N R06EIM
Smith Spring	342218096411301	34.3717595	-96.6872266	NW SW NW Sec. 4 T03S R04EIM
South Spring	342054096514501	34.34842584	-96.8627874	SW SW SW Sec. 26 T02S R04EIM
Three Springs	342147096393901	34.36314848	-96.6611147	NW SW SE Sec. 22 T02S R06EIM
Three Springs	342148096394001	34.36342625	-96.6613925	NW SW SE Sec. 22 T02S R06EIM
Tired Spring	341933096535201	34.32592599	-96.898066	SW SW NW Sec. 4 T03S R04EIM
Tisdell Spring	342732096402301	34.4589808	-96.6733387	NE SE NE Sec. 21 T01S R06EIM
Unnamed Spring	342724096400202	34.4567586	-96.6675052	SE SW NW Sec. 22 T01S R06EIM
Unnamed Spring	342712096374101	34.45296	-96.62846	SE NE SW Sec. 24 T01S R06EIM

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Unnamed Spring	342254096425501	34.38238	-96.71595	NE NE SW Sec. 18 T02S R06EIM
Unnamed Spring	342757097195501	34.46591938	-97.3322444	NE SW SW Sec. 17 T01S R01WIM
Unnamed Spring	342517096453401	34.4203222	-96.7588889	SE SE SE Sec. 34 T01S R05EIM
Unnamed Spring	342537096454701	34.4265900	-96.7633406	NE NW SE Sec. 34 T01S R05EIM
Unnamed Spring	342247097143301	34.37981089	-97.2427967	NW SE SW Sec. 18 T02S R01EIM
Unnamed Spring	342335096462501	34.393148	-96.773896	NW SW SW Sec. 10 T02S R05EIM
Unnamed Spring	342908096373701	34.4573333	-96.6694444	SW SW NW Sec. 22 T01S R06EIM
Unnamed Spring	342428096444301	34.4078702	-96.7419508	NE SE SE Sec. 2 T02S R05EIM
Unnamed Spring	342727096401301	34.4575919	-96.6705608	SW SW NW Sec. 22 T01S R06EIM
Unnamed Spring	342231096300901	34.37537049	-96.5027775	NE NW NE Sec. 19 T02S R08EIM
Unnamed Spring	342342097134701	34.39508844	-97.2300189	SW NW SW Sec. 8 T02S R01EIM
Unnamed Spring	342337097134801	34.39369958	-97.2302967	NW SW SW Sec. 8 T02S R01EIM
Unnamed Spring	343114096353101	34.5205000	-96.6077778	SW SW SE Sec. 30 T01N R07EIM
Unnamed Spring	342628097163001	34.4411981	-97.2752984	NE NE SW Sec. 26 T01S R01WIM
Unnamed Spring	343606096401301	34.6017564	-96.6705635	SE SE NE Sec. 33 T02N R06EIM
Unnamed Spring	342353097045501	34.39814549	-97.0822389	SE SE NW Sec. 10 T02S R02EIM
Unnamed Spring	342505097094401	34.4181442	-97.1625183	NE NE NE Sec. 2 T02S R01EIM
Unnamed Spring	342342097135501	34.3950884	-97.2322412	SE NE SE Sec. 7 T02S R01EIM
Unnamed Spring	342421097065401	34.40592276	-97.1152951	SW SW SE Sec. 5 T02S R02EIM
Unnamed Spring	342634097104401	34.4428657	-97.1791857	SE SE NE Sec. 27 T01S R01EIM
Unnamed Spring	342818097170501	34.47175286	-97.2850213	SW SE NE Sec. 15 T01S R01WIM
Unnamed Spring	342233096444501	34.3753333	-96.7469444	NE NW NE Sec. 23 T02S R05EIM
Unnamed Spring	341638096502301	34.2773159	-96.8400076	NW SE SW Sec. 24 T03S R04EIM
Unnamed Spring	341719096520801	34.28870449	-96.8691754	NE NW NE Sec. 22 T03S R04EIM
Unnamed Spring	342246097143601	34.3795331	-97.24363	NW SE SW Sec. 18 T02S R01EIM
Unnamed Spring	342634097160001	34.44286478	-97.2669649	SE SE NE Sec. 26 T01S R01WIM
Unnamed Spring	342639097160001	34.44425363	-97.2669649	NE SE NE Sec. 26 T01S R01WIM
Unnamed Spring	342738096401401	34.46064745	-96.6708386	SW NW NW Sec. 22 T01S R06EIM
Viola Spring	342216096314001	34.37966	-96.52692	SW NE SW Sec. 13 T02S R07EIM
Washington Spring	342726096400601	34.45738889	-96.6694167	SW SW NW Sec. 22 T01S R06EIM
Webb Spring	341718096515802	34.2884267	-96.8663976	NW NE NE Sec. 22 T03S R04EIM
Williams Spring	342232096561901	34.37564716	-96.9389017	NE NW NE Sec. 24 T02S R03EIM
Willis Spring	342911096373701	34.4864806	-96.6272269	SE SE NW Sec. 12 T01S R06EIM
Wolf Spring	342116096394601	34.35453746	-96.663059	SE SE NW Sec. 27 T02S R06EIM

Table 2.

The following springs flow 500 or more gallons per minute, emanate from a Sensitive Sole Source Groundwater Basin, and are protected by the spacing provisions of Section 785:30-3-6(c) of this Chapter.

Spring Name	USGS Site ID	Latitude	Longitude	Legal Description
Antelope Spring at Sulphur, OK	7329849	34.50444444	-96.94111111	NW NW NE Sec. 1 T01S R03EIM
Bilbo Spring	342732096400601	34.4589808	-96.6686163	NW SW NW Sec. 22 T01S R06EIM
Blue Hole Spring	342108096553801	34.3521	-96.92963	SW NE SW Sec. 30 T02S R04EIM
Buck Irving Spring	342035096554101	34.34314776	-96.9283451	NW SE NW Sec. 31 T02S R04EIM
Byrds Mill Spring nr Fittstown, OK	7334200	34.59453434	-96.6655632	SE SW SW Sec. 34 T02N R06EIM
Cold Spring	342253097165801	34.3814773	-97.2830754	SE NE SE Sec. 15 T02S R01WIM
Colvert Spring	342613096521101	34.43703557	-96.8700114	NE SW SE Sec. 27 T01S R04EIM
Colvert Spring	342613096514701	34.4370356	-96.8633445	NE SE SE Sec. 27 T01S R04EIM
Cummins Spring	342712096373701	34.45342537	-96.6272263	SE NE SW Sec. 24 T01S R06EIM
Devils Bathtub Spring	342511097064501	34.41981139	-97.1127954	SE SW SE Sec. 32 T01S R02EIM
Gregor Spring	342732096432201	34.4589807	-96.7230622	NW SE NE Sec. 21 T01S R06EIM
Inslee Spring	342726096380001	34.4573142	-96.6336154	SW SW NW Sec. 24 T01S R06EIM
Lowrance Springs nr Drake, OK	7329880	34.4589	-96.9414	NW NW NE Sec. 24 T01S R03EIM
Shadowfax Spring	342732096395801	34.4589808	-96.666394	NE SW NW Sec. 22 T01S R06EIM
Sheep Creek Spring	343422096385101	34.572868	-96.647785	SW SE NW Sec. 11 T01N R06EIM
Tisdell Spring	342732096402301	34.4589808	-96.6733387	NW SE NE Sec. 21 T01S R06EIM
Unnamed Spring	342712096374101	34.45296	-96.62846	SE NE SW Sec. 24 T01S R06EIM
Unnamed Spring	342254096425501	34.38238	-96.71595	NE NE SW Sec. 18 T02S R06EIM
Unnamed Spring	342757097195501	34.46591938	-97.3322444	NE SW SW Sec. 17 T01S R01WIM
Unnamed Spring	342517096453401	34.42148107	-96.7597293	SE SE SE Sec. 34 T01S R05EIM
Unnamed Spring	342537096454701	34.4270365	-96.7633406	SE SW NE Sec. 34 T01S R05EIM
Unnamed Spring	342247097143301	34.37981089	-97.2427967	NE SW SW Sec. 18 T02S R01EIM
Unnamed Spring	342738096401401	34.46064745	-96.6708386	SW NW Sec. 22 T01S R06EIM
Washington Spring	342726096400601	34.45738889	-96.6694167	SW SW NW Sec. 22 T01S R06EIM

[OAR Docket #20-694; filed 7-24-20]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 35. WELL DRILLER AND PUMP INSTALLER LICENSING

[OAR Docket #20-695]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Licensing and Certifications

785:35-3-1.2. Military service occupation, education and credentialing
[NEW]

Subchapter 11. Plugging and Capping Requirements for Wells and Test
Holes

785:25-11-1. Plugging and capping requirements for groundwater wells,
fresh water observation wells, heat exchange wells and water well test
holes [AMENDED]

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S. § 1085.2; 82 O.S. § 1020.16

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 1, 2019

COMMENT PERIOD:

December 2, 2019 through January 21, 2020

PUBLIC HEARING:

January 21, 2020

ADOPTION:

February 18, 2020

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 26, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 11, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The Oklahoma Water Resources Board ("Board") has amended various provisions of Oklahoma Administrative Code ("OAC") 785:55 as follows:

An amendment to OAC 785:35-3-1.2 to fulfill requirements of Senate Bill 670 that directs agencies granting occupational licenses to promulgate rules allowing military personnel and their spouses to receive expedited, reciprocal occupational licenses.

An amendment to OAC 785:35-11-1(c)(5) to provide an alternate, more efficient method for plugging and abandoning of contaminated groundwater wells and test holes. The current rules require that the upper twenty feet of well casing be completely removed. Stakeholders have submitted that, if the well meets current standards for grouting and annular seal, complete removal of the upper twenty feet of casing is unnecessary. Additionally, the presence of grout and annular seals increases the difficulty and cost of plugging and abandoning a well. In many cases, such as if the casing material is steel, removal or over-drilling of the casing material is not possible and results in a situation where a plugging variance from the Board is required. The processing of a variance adds additional cost and administrative overhead to plugging and abandoning a well and stands at odds with the Board's emphasis on plugging unused and abandoned wells.

CONTACT PERSON:

Sara Gibson, General Counsel, Oklahoma Water Resources Board,
3800 North Classen Blvd, Oklahoma City, OK 73228, (405) 530-8800,
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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

**SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 3. LICENSING AND CERTIFICATIONS

785:35-3-1.2. Military service occupation, education and credentialing

(a) **Expedited temporary, reciprocal, or comity license or certification.** Every active duty military personnel and their spouse who is licensed or certified in another state, upon receiving notice or orders for military transfer or honorable discharge to this state, may in advance of actual transfer or discharge submit a completed application to the Board to request an expedited temporary, reciprocal or comity license or certification for their currently held valid license or certification from another state or territory of the United States so such person may upon entering this state be authorized to continue their licensed or certified occupation or profession without delay.

(b) **Issuance of the license or certification.** The Board shall, upon receipt of an active duty military application submitted and presentation of satisfactory evidence of equivalent education, training and experience on such valid license or certification from another state, accept the valid license or certification and apply all its education, training and experience in the manner most favorable toward satisfying the qualifications for issuance of the requested license or certification in this state. The Board shall issue the requested Oklahoma license or certification within thirty (30) days provided the license or certification from the other state is found to be in good standing and reasonably equivalent to the requirements of this state. In addition, the applicant shall submit an affidavit stating that they have read and understand the rules and regulations of this Chapter.

(c) **Temporary, reciprocal, or comity license or certification.** The temporary, reciprocal or comity license or certification issued pursuant to this section shall be valid for the same period as authorized for full license or certification in this state, unless the person is notified that there is cause for a denial of the application or that certain documentation required is lacking or unavailable. In such case, a temporary credential shall be issued to allow the person time to obtain the necessary requirement while continuing to be employed in his or her occupation or profession in this state. Any active duty military applicant receiving a notice of denial of full licensure or certification shall have the right to appeal the denial determination as provided in the Administrative Procedures Act to obtain and submit the documentation required to complete full license or certificate requirements in this state.

(d) **Fees.** The Board shall waive the application fee for active duty military personnel and their spouse and shall further waive the license or certificate fees for the first period of issuance for such temporary, reciprocal or comity license or certificate.

(e) **Work performed on military bases.** Any active duty military personnel who, pursuant to any federal or military law, rule, or regulation, is not required to be licensed or credentialed

while employed and performing their occupation or profession only on the premises of an assigned military base, shall not be required to be licensed or credentialed in this state pursuant to the same law, rule, or regulation.

(f) **Eligibility standards, criteria, qualifications and requirements for licensure or certification.** Nothing in the Military Service Occupation, Education and Credentialing Act shall be construed to require the issuance of any license or certificate to an applicant who does not otherwise meet the stated eligibility standards, criteria, qualifications or requirements for licensure or certification, nor shall the provisions be construed to automatically allow issuance of any license or certificate without testing or examination, without proper consideration by the licensing and examination board, or without proper verification that the applicant is not subject to pending criminal charges or disciplinary actions, has not been convicted of any offense prohibiting licensure or certification, and has no other impairment which would prohibit licensure or certification in this state.

SUBCHAPTER 11. PLUGGING AND CAPPING REQUIREMENTS FOR WELLS AND TEST HOLES

785:35-11-1. **Plugging and capping requirements for groundwater wells, fresh water observation wells, heat exchange wells and water well test holes**

(a) **Temporary capping.** When a groundwater well or fresh water observation well is temporarily removed from service, the top of the well casing will be properly sealed with a pitless adapter cap, sanitary well seal, or well casing cap that cannot easily be removed. A new well shall be properly capped before the well driller leaves the drilling site.

(b) **Time for plugging or completing water well test holes.** Water well test holes shall be properly plugged as provided in this section by the well driller prior to removal of drilling equipment unless the test hole is completed as an observation well for aquifer testing, including the installation of surface casing and cement seals. In the alternative and prior to drilling equipment being removed from site, water well test holes may be temporarily cased with SDR 26 water well casing a minimum of 10 feet below ground and 12 inches above ground. Bentonite shall be installed from 10 feet to 2 feet below land surface and cement grout installed from 2 feet to land surface. The top of casing shall be properly sealed or capped. Permanent completion or plugging shall become the responsibility of the landowner and shall be completed within 60 days of drilling equipment being removed from the site. A written statement from the landowner acknowledging such responsibility shall be obtained and submitted to the Board with the multipurpose completion report. The multi-purpose completion report shall be submitted to the Board within sixty (60) days after plugging or temporary completion of each water well test hole.

(c) **Permanent abandonment.** The following plugging requirements apply if a groundwater well, fresh water observation well, heat exchange well or water well test hole is

permanently abandoned, was drilled by a person not holding a valid license or operator certification from the Board, or if the Board determines that the well or test hole was not drilled or completed in compliance with the applicable minimum standards set forth in this Chapter or may otherwise allow pollution to groundwater.

(1) The well driller shall be responsible for plugging the well or test hole if the well drilling equipment is on the drilling site. If a well is abandoned after the well drilling equipment has been removed from the drilling site, the owner of the land where the well or test hole is located shall be responsible for plugging.

(2) If the well or test hole is uncontaminated and unless paragraph 3 or paragraph 5 below applies, fill such well or water well test hole with uncontaminated, compacted drill cuttings and/or uncontaminated surface clay, cement, bentonite pellets or granules, or high solids (a minimum of twenty percent (20%) solids by dry weight) bentonite grout to within fourteen (14) feet of the land surface, and a minimum of ten (10) feet of the annular space and interior of the well casing shall be filled with cement grout to at least four (4) feet below the land surface.

(3) To plug uncontaminated groundwater wells, fresh water observation wells, or heat exchange wells in the alluvium and terrace deposits of the Arkansas, Cimarron, Salt Fork of the Arkansas, North Canadian, Canadian, Washita, North Fork of the Red, Salt Fork of the Red River, Red River, and other streams or rivers authorized by the Board, fill the well with clean, uncontaminated silica sand to within sixteen (16) feet of the land surface, then two (2) feet of bentonite pellets or granules shall be placed on the uncontaminated silica sand, and finally, a minimum of ten (10) feet of cement grout shall be installed in the annular space and interior of the well casing to at least four (4) feet below the land surface.

(4) Hand dug water wells shall be filled with uncontaminated surface clay or grout to within six (6) feet of land surface. The lining of the well shall be removed from the top five (5) feet and a minimum of two (2) feet of cement grout shall be installed. The top four (4) feet shall be filled with compacted uncontaminated native soil, unless otherwise directed by the Board.

(5) If the well or water well test hole is contaminated, or if the well or test hole is located at an underground tank site or within 300 feet of the outside perimeter of an existing wastewater lagoon or is located on a tract of land where a wastewater lagoon is proposed, the casing shall be removed or perforated from the bottom of the casing to twenty (20) feet below land surface. ~~The casing shall be removed from twenty (20) feet below land surface to the surface, then the~~ The well or test hole shall be plugged with cement grout from the bottom to within four (4) feet of the land surface. If the total depth of the well is in excess of twenty feet (20') below land surface, the cement grout shall be placed by pumping from the bottom of the hole to within four (4) feet of the land surface. If the well does not meet current minimum construction standards for grouting and sealing the annulus, the casing shall be

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removed from twenty (20) feet below land surface to the surface.

(6) Vertical closed loop heat exchange wells shall be plugged according to standards set forth by Clause 10.9 of ANSI/CSA/IGSHPA C448.3.

[OAR Docket #20-695; filed 7-24-20]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 10. SPORT FISHING RULES

[OAR Docket #20-484]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Harvest and Possession Limits

800:10-1-4. Size limits on fish [AMENDED]

800:10-1-5. Bag limits on fish [AMENDED]

Subchapter 5. Area Restrictions and Special Fees

800:10-5-2. Department fishing areas [AMENDED]

800:10-5-3. Designated trout areas [AMENDED]

AUTHORITY:

Title 29 O.S., Section 3-103, 5-401; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 7, 2019

COMMENT PERIOD:

December 2, 2019 - January 3, 2020

PUBLIC HEARING:

Date: January 2, 2020

Time: 7:00 p.m.

Oklahoma City - OK Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK

Date: January 2, 2020

Time: 7:00 p.m.

Broken Bow Public Library, 404 N. Broadway, Broken Bow, OK

ADOPTION:

February 11, 2020

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 14, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 25, 2020.

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 11, 2020

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 1. Harvest and Possession Limits

800:10-1-5. Bag limits on fish [AMENDED]

Gubernatorial approval:

August 30, 2019

Register publication:

37 Ok Reg 39

Docket number:

19-734

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

These rules will remove minimum length limit for Blue and Channel catfish at Lake Texoma, define the reporting requirements for the harvest of Alligator Gar, and allow antlerless deer harvest during deer gun seasons and deer muzzleloader season on certain Department lakes. These rules also reduce the Rainbow Trout bag limit, increase the Rainbow Trout and brown Trout minimum length limits, eliminate bait restrictions while adding

a barbless hooks restriction, and expand the area boundaries of the lower Mountain Fork River trout area.

Due to public comment, we clarified the upper boundary of the lower mountain fork trout area.

CONTACT PERSON:

Barry Bolton, Chief of Fisheries Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd, Oklahoma City, OK 73105. Phone: 405/521-3721 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 1. HARVEST AND POSSESSION LIMITS

800:10-1-4. Size limits on fish

There are no length and/or size limit restrictions on any game or nongame fish taken from waters of this state, except as follows:

(1) All largemouth and smallmouth bass less than fourteen (14) inches in total length must be returned to the water unharmed immediately after being taken from public waters unless regulated by specific municipal ordinance or specified in regulations listed below: Lakes and Reservoirs with no length limit on largemouth and smallmouth bass - Lake Murray, all waters in the Wichita National Wildlife Refuge.

(2) All largemouth and smallmouth bass between thirteen (13) and sixteen (16) inches in total length must be returned unharmed immediately after being taken from lakes Chimney Rock (W.R. Holway), Arbuckle, Okmulgee and Tenkiller Lake (downstream from Horseshoe Bend boat ramp).

(3) All crappie (*Pomoxis* sp.) less than 10 inches in total length must be returned to the water unharmed immediately after being taken from Lakes Arbuckle, Tenkiller, Hudson, Texoma, Ft. Gibson, including all tributaries and upstream to Markham Ferry Dam and Grand Lake, including all tributaries to state line.

(4) All walleye, sauger, and saugeye (sauger x walleye hybrid) less than 14 inches in total length must be returned to the water unharmed immediately after being taken statewide, except at Great Salt Plains Reservoir and tailwater where the size limit does not apply, the Arkansas River from Keystone Dam downstream to the Oklahoma state line including all major tributaries upstream to impoundment and R.S. Kerr, Webbers Falls, W.D. Mayo reservoirs as legally defined in Title 800 where all walleye, sauger and saugeye less than 16 inches must be returned to the water unharmed immediately, and at Atoka Bluestem, Bluestem, Carl Blackwell, Haledon, Ponca City, Shell, Sooner, and Thunderbird Reservoirs and the respective tailwaters where all walleye, sauger, and saugeye less than 18 inches total length must be returned to the water unharmed immediately.

(5) All largemouth and smallmouth bass between sixteen (16) and twenty-two (22) inches in total length must be returned to the water immediately after being taken from McGee Creek Lake, Dripping Springs Lake and Crowder Lake (Washita County).

(6) All rainbow trout less than twenty-five (25) inches in total length must be returned to the water immediately after being taken from the lower Mountain Fork River trout area from the State Park Dam downstream to the U.S. Highway 70 Bridge, and all rainbow trout less than twenty (20) inches in total length must be returned to the water immediately after being taken from the lower Mountain Fork River trout stream below Broken Bow dam from the first Highway Bridge below the Spillway downstream to the second Highway Bridge below the Spillway, including the Evening Hole stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek and in the lower Illinois River trout stream area from the USGS stream gauge downstream to the gravel pit county road. All brown trout less than thirty (30) inches in total length must be returned to the water immediately after being taken from the lower Mountain Fork River trout area, all brown trout less than twenty (20) inches in total length must be returned to the water immediately after being taken from the lower Mountain Fork River from Broken Bow Dam downstream to the U. S. Highway 70 bridge, and from the lower Illinois River trout stream area from Tenkiller Dam downstream to the U. S. Highway 64 bridge.

(7) ~~All blue catfish and channel catfish less than twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Texoma Lake.~~

(8) All smallmouth bass less than fourteen (14) inches in total length must be returned to the water unharmed immediately after being taken from all rivers and streams including the Illinois River upstream from the Horseshoe Bend boat ramp, and from the Glover River from the confluence with the Little River upstream to the 'Forks of the Glover River'. Possession of smallmouth bass less than fourteen (14) inches in total length on all streams and rivers is prohibited.

(9) All black bass (largemouth, spotted and smallmouth) less than fourteen (14) inches in total length must be returned unharmed immediately after being taken from the Blue River Public Fishing Area.

(10) All striped bass less than twenty (20) inches must be returned unharmed immediately after being taken from Sooner Reservoir.

(10) On Bull Lake (City of Vinita) - Bag limit of six (6) largemouth bass per day, of which only one (1) largemouth bass may be greater than sixteen (16) inches in total length.

800:10-1-5. Bag limits on fish

No person shall, during any one day, take, attempt to take, kill, or harvest from waters of this state more than:

(1) Six (6) largemouth or smallmouth bass or six in aggregate, except in "Close To Home" fishing water and

Doc Hollis Lake where all largemouth bass caught must be returned to the water unharmed immediately after being taken (no harvest allowed), at Texoma Reservoir where the limit is five (5), largemouth, smallmouth or spotted bass or five in aggregate, at Lake Konawa, McGee Creek Lake, Dripping Springs Lake and Crowder Lake (Washita County) where the limit is six (6) of which only one (1) may be twenty-two (22) inches or longer and rivers and streams including the Illinois River upstream from the Horseshoe Bend boat ramp, and from Glover River from the confluence with the Little River upstream to the "Forks of the Glover River" where the limit is six (6) black bass aggregate of which only one may be a smallmouth bass, which must be fourteen (14) inches or longer.

(2) Fifteen (15) channel and/or blue catfish, or fifteen (15) in aggregate, of which only one (1) blue catfish may be 30 inches in length or larger; except at all U.S. Forest Service and State Park lakes (not including Lake Murray) and Department of Wildlife Management Area ponds and all Department of Wildlife Conservation fishing areas, in "Close To Home" fishing waters and all waters within the Wichita Mountains National Wildlife Refuge, where the limit is six (6). Five (5) flathead catfish.

(3) Thirty-seven (37) crappie (*Pomoxis* sp.) except at Blue River Public Fishing and Hunting Area where the limit is six (6) and at lakes Arbuckle, Tenkiller, Hudson, Ft. Gibson including all tributaries and upstream to Markham Ferry Dam and Grand Lake including all tributaries to state line where the limit is fifteen (15).

(4) Six (6) rainbow trout ~~—possession limit of twelve (12) after first day, except in the lower Mountain Fork River trout stream below Broken Bow dam from the first Highway Bridge below the Spillway downstream to the second Highway Bridge below the Spillway, including the Evening Hole stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek, and~~ , except in the lower Illinois River trout ~~stream area~~ from the USGS stream gauge downstream to the gravel pit county road where the limit is one (1) rainbow trout per day twenty (20) inches or longer in total length (no culling); and in the lower Mountain Fork River trout area where the daily limit is three (3) rainbow trout of which only one (1) may be greater than twenty-five (25) inches in total length (no culling); and in the Blue River from its entry onto the Plaster Wildlife Management Unit/Landrum Wilderness downstream approximately $\frac{1}{2}$ mile to a marker cable where all trout caught must be released immediately from November 1 to March 1 (thereafter, statewide trout bag limit applies).

(5) Six (6) brown trout, except in the lower Mountain Fork River trout ~~areastream below Broken Bow dam downstream to the U. S. Highway 70 bridge~~ where the limit is one (1) brown trout per day thirty (30) inches or longer in total length (no culling), and in the lower Illinois River trout ~~stream area~~ from Tenkiller Dam downstream to US Highway 64 bridge where the limit is one (1) fish per day twenty (20) inches or longer in total length.

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- (6) Six (6) walleye, sauger and/or saugeye, or six (6) in aggregate.
- (7) Five (5) striped bass except as designated in 800:10-1-5(8).
- (8) Ten (10) striped bass and/or striped bass hybrids or ten (10) in aggregate of which only two (2) may be twenty (20) inches or longer in Texoma Reservoir.
- (9) Twenty (20) striped bass hybrids of which only five (5) may be twenty (20) inches or longer, except as designated in 800:10-1-5(8) and (10).
- (10) Five (5) striped bass and/or striped bass hybrids, in aggregate, of which only two (2) may be 20 inches or longer in Arcadia Lake and Skiatook Lake.
- (11) Twenty-five (25) white bass in Lake Texoma.
- (12) One (1) paddlefish (*Polyodon spathula*) per day on Sunday, Tuesday, Wednesday, Thursday, and Saturday, statewide. Catch and release of paddlefish only (no harvest) is permitted on Monday and Friday, statewide. Possession of paddlefish in the field is prohibited on Monday and Friday, statewide. The catch and release of paddlefish is permitted by use of rod and reel, trotline and throwlines. Paddlefish must be released immediately unless kept for the daily limit. Paddlefish taken by bow and arrow, gigs, spears or spearguns shall not be released.

(A) Individual annual harvest limit- An individual harvest limit for paddlefish may be set or amended annually by the Wildlife Conservation Commission and will be listed in the Oklahoma Department of Wildlife Conservation Fishing Guide. Special area (or management unit) paddlefish harvest caps, a general statewide paddlefish harvest cap, and the total number of paddlefish permits issued may be set or amended annually by the Wildlife Conservation Commission for use in determining the individual annual harvest limit. Once an individual angler has reached their annual harvest limit, continued catch and release is permitted.

(B) Paddlefish permit- It shall be unlawful for any person, regardless of residency, age or disability, to fish for paddlefish or be in possession of paddlefish parts without having first secured from the Department of Wildlife Conservation, an annual paddlefish permit. This permit must be carried on their person while fishing and/or in possession of paddlefish or parts and be produced for inspection upon the demand of any Oklahoma citizen or game warden. This permit shall be valid for paddlefish catch and release fishing in all waters of the state and at any time unless otherwise prohibited.

(C) Harvest Tagging- Paddlefish caught and placed on a stringer or otherwise held in possession must be plainly labeled (tagged) immediately with the angler's paddlefish permit number. Paddlefish taken into possession cannot be released (no culling). Each person must keep their own paddlefish distinctly separate from paddlefish taken by other anglers. Each cleaned paddlefish, or its meat, eggs, or carcass, must be kept

separate from all other cleaned paddlefish or its parts. Paddlefish or their parts must remain tagged until the person in possession of the paddlefish or paddlefish parts has reached their residence. All paddlefish must have all viscera (internal organs) removed from the paddlefish before leaving the state. Persons fishing trotlines or throwlines must release all paddlefish on their lines, except the one (1) paddlefish held in possession for their daily limit, before leaving the trotline or throwline. Anglers must cease snagging for the day when they have taken their daily limit of paddlefish into possession.

(D) Reporting- Harvest of paddlefish must be reported by the harvesting angler to Oklahoma Department of Wildlife within 24 hours of harvest. Instructions for reporting harvest will be provided in the Oklahoma Department of Wildlife Fishing Guide and on the Oklahoma Department of Wildlife website.

(13) Release of striped bass and/or striped bass hybrids caught and placed on a stringer, in a live well or otherwise held in possession is prohibited statewide (no culling).

(14) One (1) alligator gar (*Atractosteus spatula*) per day, statewide, except during the period of May 1 through May 31 when angling for alligator gar by all angling methods is prohibited on Lake Texoma between the Highway 99 bridge upstream to the I-35 bridge. The catch and release of alligator gar is permitted year round, except during the closure referenced above, by use of rod and reel, trotline and throwlines. Alligator gar must be released immediately unless kept for the daily limit. Persons fishing trotlines or throwlines must release all alligator gar on their lines except the one alligator gar held in possession for their daily limit, before leaving the trotline or throwline. Alligator gar taken by bow and arrow, gigs, spears or spearguns shall not be released. Alligator gar caught and placed on a stringer or otherwise held in possession cannot be released (no culling). Anglers must cease snagging when they have taken their daily limit of alligator gar into possession. Reporting - Harvest of alligator gar must be reported by the harvesting angler to Oklahoma Department of Wildlife Conservation within 24 hours of harvest. Instructions for reporting harvest will be provided in the Oklahoma Department of Wildlife Conservation Fishing Guide and on the Oklahoma Department of Wildlife Conservation website.

(15) One (1) of any fish species classified as those of Special Concern Category I or Category II (as identified in 800:25-19-6). Such harvest must be reported to ODWC.

(16) All tiger muskie (*Esox masquinongy* x *Esox lucius*) caught must be returned to the water unharmed immediately after being taken (no harvest allowed).

(17) Other fish do not have bag or possession limits. Notwithstanding the foregoing fish bag limits, any bag limits for fish can be superseded and set by Commission resolution as authorized by Section 6-302(B) of Title 29 of the Oklahoma Statutes.

SUBCHAPTER 5. AREA RESTRICTIONS AND SPECIAL FEES

800:10-5-2. Department fishing areas

The following rules and restrictions govern public use on all Department Fishing Areas, including:

(1) **Department owned lakes and access areas.** The following rules apply:

(A) Camping is permitted, but limited to three (3) days duration at all areas, except at the Kiamichi River Access Area and the Lower Illinois River Public Fishing and Hunting Area - Simp and Helen Watts Management Unit where no overnight camping is permitted and at Lakes Watonga, Carl Etling and the Illinois River Access Areas where camping shall be limited to fourteen (14) consecutive days. Camping is permitted only in designated camping areas.

(B) Boats and motors are permitted except at Doc Hollis Lake. All boats and motors must comply with existing state boat regulations and boat operators must obey Oklahoma State Boat Laws. All boats must be operated at no-wake speed (six '6' miles per hour or less) and may not be left on the water or the areas longer than the limit on camping.

(C) Water skiing is prohibited.

(D) Disposal of trash, refuse and debris is prohibited, except in designated trash containers. This includes organic and inorganic materials.

(E) Glass beverage containers are prohibited at Department fishing areas except in designated camping and parking areas.

(F) Commercial concessions and private developments on Department property are prohibited. Soliciting, advertising or promoting any commercial or private activity is prohibited. The use of these areas for any commercial operation in any way is prohibited.

(G) Dogs must be kept on a leash at all times, except when used to hunt with, during legal open hunting seasons on those areas where hunting is permitted.

(H) Boat houses, ramps, docks and other facilities may not be constructed on Department property without specific approval of the Oklahoma Wildlife Conservation Commission.

(I) It shall be unlawful to drive, occupy or park any motor driven vehicle, including automobiles, trucks, mini bikes, motorcycles, etc., except on maintained roads, (unless posted as "no parking zones"), designated parking areas, and designated camping areas. It shall be unlawful to operate any vehicle in a manner to create a public nuisance or to park in a "no parking zone." Operators must be licensed drivers.

(J) Cutting or defacing of trees and vegetation shall be prohibited. Removal of any vegetation, soil, rocks, water or minerals is prohibited except under written approval of the Department Director.

(K) Vandalism, theft, and damage to State property are prohibited.

(L) No person shall use threatening, abusive, or indecent language, participate in a disorder assemblage, nor publicly appear nude or intoxicated on any lands owned or managed by the Oklahoma Department of Wildlife Conservation.

(M) After 10:00 p.m., and until 5:00 a.m., all Department fishing areas will be restricted to fishing and fishing related activities only, and hunting if permitted by Commission.

(N) Swimming is not permitted unless a designated swimming area is established by the Wildlife Conservation Commission.

(O) Hunting is permitted on the following lakes: Hall, Jap Beaver, Burttschi, Nanih Waiya, Ozzie Cobb, Schooler, Evans-Chambers, American Horse and Vanderwork during the period of September 1 through Spring Turkey Season, including migratory bird seasons. Hunting regulations and restrictions for lakes Dahlgren, and Doc Hollis, and Vincent are the same as those listed for Lexington WMA (Dahlgren), Sandy Sanders WMA (Doc Hollis), and Ellis County WMA (Vincent). The following lakes are closed to hunting or taking of wildlife by any means: Elmer, Etling, Raymond Gary and Watonga. Hunting is restricted to shotguns, muzzleloaders or archery only except no muzzleloaders allowed at Schooler, Ozzie Cobb, or Nanih Waiya. These lakes are closed to antlerless deer harvest, except during archery season. Hunting and shooting other than that provided above is prohibited. The Director may designate "closed areas" for purposes of safety and/or security.

(P) Fishing is permitted in accordance with provisions provided in OAC 800:10, Subchapter 1. The Director may designate "closed areas" for purposes of safety and/or security.

(Q) No person may fish with more than two (2) poles, except during trout seasons at "Designated Trout Areas" where no person may fish with more than one (1) pole.

(R) Trotlines, throwlines, limblines, juglines, nets, seines, yo-yo's, spearguns, and the taking of any fish by noodling and the taking of bait minnows by any method is prohibited, except cast nets may be used to take bait for personal use at Lake Carl Etling.

(S) No person shall possess, consume or use any intoxicating beverage or ~~low point~~ beer, as defined in Title 37, except in camping and parking areas on any lands or waterways subject to the control of the Oklahoma Department of Wildlife Conservation except U.S. Forest Service regulations shall apply to Black Kettle, Ouachita, Rita Blanca and Tiak Wildlife Management Areas.

(T) No person shall possess, consume, use or manufacture any controlled or dangerous substance, as

defined in Title 63 on any lands or waterways subject to the control of the Oklahoma Department of Wildlife Conservation.

(U) All impoundments are catch and release only on the following Department property unless determined otherwise as published in the Oklahoma Fishing Guide: Cimarron Bluff WMA.

(2) **Blue River Public Fishing and Hunting Area.**

The following rules apply:

(A) Hunting shall be permitted during regular hunting seasons and is restricted to shotgun ~~and long bow and arrow and archery equipment~~ only. No other use or other firearms are permitted.

(B) Blue River PFHA is closed to all except emergency traffic from 10:00 p.m. to 6:00 a.m. throughout the year.

(C) Glass beverage containers are prohibited at Blue River PFHA except in designated camping and parking areas.

(D) Fishing is permitted in accordance with provisions provided in OAC 800:10, Subchapter 1.

(E) Trotlines, throwlines, noodling, limblines, spearguns, juglines, nets, seines, and yo-yo's are prohibited throughout the year.

(F) No person may fish with more than two (2) poles, except only one (1) pole and line or rod and reel is permitted during the designated trout season.

(G) The following special rules pertain to the Carl R. and Ruth Walker Landrum Wilderness and Plaster Wildlife Management Unit:

- (i) no camping
- (ii) areas closed from 10:00 p.m. to 6:00 a.m.
- (iii) no swimming
- (iv) walk-in access only (except where wheelchair access is provided).

(H) The Blue River Campground Area is closed to swimming, effective January 1, 1990, unless suitable agreement can be reached between the Department and an acceptable second party who would be responsible for managing a designated swimming area for a three month season, annually. The Department will assume no cost or liability for development and operation of a designated swimming area.

(I) Effective July 1, 2000 the following rules apply to camping at the Blue River Campground Area:

- (i) Camping is restricted to 14 days in a 30 consecutive day period. The Area Manager may grant extensions by issuing a permit for camping beyond the 14 day limit. Such extensions shall be based upon degree of area use, anticipated weekend or holiday occupancy and recreation season. Extensions shall be requested 48 hours prior to the requested date of the extension.
- (ii) Camping is permitted only in designated camping areas.
- (iii) No person shall leave a vehicle, camper, tent or any personal property unattended for more

than a 48-hour period without approval of the Area Manager.

(iv) If property must be removed, it will be at owner's expense and liability. The unauthorized placement of camping equipment or other items on a campsite and/or personal appearance without overnight occupancy at a campsite for the purpose of reserving a designated campsite for future occupancy is prohibited.

(3) **Arcadia Conservation Education Area**

(A) Walk-in fishing permitted on all parts of the lake shoreline. No fishing in any ponds or wetland areas unless part of an ODWC sanctioned education event.

(B) Camping prohibited except as authorized by ODWC.

800:10-5-3. Designated trout areas

(a) **Designated trout areas and seasons.** The following are the designated trout areas and trout seasons at each area:

(1) The Illinois River and its tributaries from the Tenkiller Ferry Reservoir Dam downstream to the Highway 64 Bridge near Gore, trout season is year-round.

(2) Blue River, within boundaries of the Blue River Public Fishing & Hunting Area (includes Landrum Wilderness Area and Plaster Wildlife Management Unit), trout season is from November 1 through March 31 of the following year; season is annual.

(3) Lake Watonga located within the boundaries of Roman Nose State Park, trout season is from the November 1 through March 31 of the following year; season is annual.

(4) The lower Mountain Fork River and tributaries ~~from Broken Bow Dam below Broken Bow reservoir downstream to U.S. Highway 70 bridge, excluding that portion from the mouth of Rough Branch Creek downstream to the Re-regulation dam.~~ Trout season is year-round.

(5) Medicine Creek from Gondola Lake dam downstream to the State Highway 49 bridge, where trout season is from November 1 through March 15 of the following year; season is annual.

(6) Lake Carl Etling located within the boundaries of Black Mesa State Park, trout season is from November 1 through April 30 of the following year; season is annual.

(7) The Fourche Maline River from Carlton Lake Dam downstream to the Robbers Cave State Park boundary a distance of approximately one and one-quarter ($1\frac{1}{4}$) miles, trout season is from November 1 through March 15 of the following year; season is annual.

(8) Perry CCC Lake trout season is from November 1 through March 31 of the following year; season is annual.

(b) **General; area restrictions.** The following rules apply to designated trout areas and to specified locations within certain designated trout areas:

(1) It shall be unlawful to take or attempt to take fish from these areas during trout seasons except with rod and reel or pole and line, except collecting shad with cast nets is legal from the south boundary of the MarVal trout camp

downstream to the Highway 64 bridge; only one (1) rod and reel or pole and line per person is allowed.

(2) Once a trout is reduced to possession by being placed on a stringer or in the creel of any type, said trout must count toward day's limit and cannot be released.

(3) Glass beverage containers are prohibited at designated trout areas except in designated camping and parking areas.

(4) The following areas are restricted to fishing tackle made by fly-tying or artificial lures made of wood, metal, glass, feathers, hair, synthetic fibers or hard plastic and barbless hooks only with the exception of the lower Illinois trout stream when fishing for species other than Rainbow Trout and Brown Trout with hooks 3/0 or larger. The use of any substance in combination with restricted fishing tackle is prohibited:

~~(A) The lower Mountain Fork River trout stream below Broken Bow dam from the first Highway Bridge below the Spillway to the second Highway Bridge below the Spillway including the Evening Hole stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek.~~

~~(BA)~~ Fishing in the lower Illinois River trout stream below Tenkiller dam from the USGS stream gauge downstream to the gravel pit county road is restricted to artificial flies and lures only and barbless hooks only, except that barbed hooks, size 3/0 or larger, may be used in combination with natural or artificial bait, including soft plastics, for species other than Rainbow and Brown Trout.

~~(CB)~~ Fishing in the Blue River from its entry onto the Plaster Wildlife Management Unit/Landrum Wilderness Area downstream approximately $\frac{1}{2}$ mile to a marker cable is restricted to artificial flies and lures only and barbless hooks only during the period November 1 to March 1, annually.

(5) All trout retained in possession must be kept separate from other anglers' fish on a stringer or in a creel that is clearly marked with that anglers name and license number.

(6) The lower Mountain Fork River trout area is restricted to barbless hooks.

[OAR Docket #20-484; filed 6-29-20]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 25. WILDLIFE RULES

[OAR Docket #20-485]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Hunting on Corps of Engineers Land

800:25-3-2. Areas open to archery equipment and shotguns with pellets only [AMENDED]

800:25-3-5. Areas open to archery equipment and all legal firearms other than centerfire rifles and handguns [AMENDED]

Subchapter 5. Migratory Bird Hunting Season

Part 11. Waterfowl Hunting Blinds

800:25-5-48. Purpose [AMENDED]

800:25-5-49. Permits for ~~permanent~~ or ~~temporary~~ daily blinds [AMENDED]

800:25-5-50. Drawing process [AMENDED]

800:25-5-51. Blind construction [AMENDED]

Subchapter 7. General Hunting Seasons

Part 5. Upland Game

800:25-7-12. Pheasant [AMENDED]

Part 13. Deer

800:25-7-52. Deer- primitive firearms (muzzleloading) [AMENDED]

800:25-7-53. Deer - gun [AMENDED]

Part 19. Season on areas owned or managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service

800:25-7-82. Atoka WMA [AMENDED]

800:25-7-83. Beaver River WMA [AMENDED]

800:25-7-83.1. Beaver River WMA - McFarland Unit [AMENDED]

800:25-7-84. Black Kettle WMA [AMENDED]

800:25-7-88. Canton WMA [AMENDED]

800:25-7-91. Cherokee GMA [AMENDED]

800:25-7-92.1. Cimarron Bluff Wildlife Management Area [AMENDED]

800:25-7-92.2. Cimarron Hills Wildlife Management Area [AMENDED]

800:25-7-93. Cookson WMA [AMENDED]

800:25-7-94. Copan WMA [AMENDED]

800:25-7-94.1. Cooper WMA [AMENDED]

800:25-7-94.1.1. Cross Timbers WMA [AMENDED]

800:25-7-95. Ellis County WMA [AMENDED]

800:25-7-101. Fort Supply WMA [AMENDED]

800:25-7-108. Hickory Creek WMA [AMENDED]

800:25-7-111. Hulah WMA [AMENDED]

800:25-7-113. James Collins WMA [AMENDED]

800:25-7-116. Keystone WMA [AMENDED]

800:25-7-118. Little River NWR [AMENDED]

800:25-7-121. Major County WMA [AMENDED]

800:25-7-125. McGee Creek WMA [AMENDED]

800:25-7-127. Okmulgee GMA [AMENDED]

800:25-7-128. Okmulgee PHA [AMENDED]

800:25-7-130. Optima WMA [AMENDED]

800:25-7-131.2. Osage WMA - Western Wall Unit [AMENDED]

800:25-7-134. Packsaddle WMA [AMENDED]

800:25-7-136. Pushmataha WMA [AMENDED]

800:25-7-137. Rita Blanca WMA [AMENDED]

800:25-7-139. Salt Plains NWR [AMENDED]

800:25-7-140.1. Sans Bois WMA [NEW]

800:25-7-141. Schultz WMA [AMENDED]

800:25-7-142. Sequoyah NWR [AMENDED]

800:25-7-142.1. Shorb WMA [AMENDED]

800:25-7-143. Skiatook WMA [AMENDED]

800:25-7-145. Spavinaw GMA [AMENDED]

800:25-7-151.1. Tishomingo NWR [AMENDED]

800:25-7-153. Washita NWR [AMENDED]

800:25-7-154.1. Wichita Mountains NWR [AMENDED]

Subchapter 24. Import of Cervids

800:25-24-1. Purpose [AMENDED]

800:25-24-3. Requirements [AMENDED]

Subchapter 26. Scientific Collector Permits

Part 1. Scientific Purposes [NEW]

Part 2. Authorization Letters [NEW]

800:25-26-5. Purpose [NEW]

800:25-26-6. Application Process and Reporting [NEW]

800:25-26-7. Uses and Specifications [NEW]

Subchapter 37. Nuisance Wildlife Control Program

Part. 3. Wildlife and feral hog nuisance and depredation rules

800:25-37-16. Feral swine night shooting exemptions [AMENDED]

Subchapter 41. Three-Day Special Use Permits [NEW]

800:25-41-1. Purpose [NEW]

800:25-41-2. Procedures and guidelines [NEW]

800:25-41-3. Application and fees [NEW]

AUTHORITY:

Title 29 O.S., Section 3-103, 5-401; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 7, 2019

Permanent Final Adoptions

COMMENT PERIOD:

December 2, 2019 - January 3, 2020

PUBLIC HEARING:

Date: January 2, 2020

Time: 7:00 p.m.

Oklahoma City- OK Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK

Date: January 2, 2020

Time: 7:00 p.m.

Broken Bow Public Library, 404 N. Broadway, Broken Bow, OK

ADOPTION:

February 11, 2020

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 14, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 11, 2020

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 7. General Hunting Seasons

Part 19. Season on Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service

800:25-7-140.1. Sans Bois WMA [NEW]

Gubernatorial approval:

July 23, 2019

Register publication:

37 Ok Reg 41

Docket number:

19-735

Superseded rules:

Subchapter 41. Three-Day Special Use Permit [NEW]

800:25-41-1. Purpose [NEW]

800:25-41-2. Procedures and Guidelines [NEW]

800:25-41-3. Applications and Fees [NEW]

Gubernatorial approval:

September 13, 2019

Register publication:

37 Ok Reg 84

Docket number:

19-766

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

Subchapter 3 - These rules will restrict small portions of Corps of Engineers land at Lake Texoma to shotgun with pellets and archery only due to safety concerns, and correct descriptive wording of property.

Subchapter 5 - Clarify language for waterfowl blind construction (seasonal and daily) and drawing process on select Corps of Engineers and Bureau of Reclamation Reservoirs, increase minimum age to 18 to participate in drawing, and define when unoccupied blinds can be used by other hunters. Due to public comments, delete the words "signed federal" since stamps can be purchased electronically; add wording to clarify that seasonal blinds will be designated "by the hunter", and that "no daily blind will be constructed or used within 250 yards of an occupied seasonal blind".

Subchapter 7 - Open all of Osage County to pheasant hunting. In response to public comments regarding the proposal to increase deer gun season to 23 days, staff proposes withdrawing it as this time, keeping the deer gun season at 16 days, and instead maintaining the proposal to allow the Commission by resolution to extend the holiday antlerless season and to increase antlerless deer bag limits for muzzleloader and gun season within certain zones where additional antlerless deer harvest is needed; correct a misspelled word; open several Wildlife Management Areas (WMA's) to archery turkey and deer seasons to same as the statewide season dates; reduce the bag limit of spring turkey to 1 tom on Black Kettle and Ellis County WMA's; open several WMA's to limited antlerless hunting opportunity; reduce days of antlerless harvest on Hickory Creek WMA; standardize quail season to match other open small game seasons on Okmulgee GMA/PHA, and open deer gun season to same as statewide season dates on Okmulgee PMA; open several National

Wildlife Refuges to controlled hunts for deer and turkey, and other hunting opportunities; establish hunting seasons on the new Sans Bois WMA.

Subchapter 24 - Prohibit importation of cervid carcasses or carcass parts from other states, with a few exceptions, to help prevent spreading Chronic Wasting Disease into Oklahoma; and update rules for live cervid imports for commercial hunting areas to align with ODAFF rules since under their jurisdiction.

Subchapter 26 - Allows exemption for Scientific Collectors Permit for Department funded research, clarifies reporting requirements, and other housekeeping wording changes.

Subchapter 37 - Remove reference to 16 day deer gun season to allow flexibility to match current regular gun season for feral swine night shooting regulation.

Subchapter 41 - Rules for application process and requirements for the newly created 3-day special use permit for charity events.

CONTACT PERSON:

Bill Dinkines, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd, Oklahoma City, OK 73105. Phone: 405/521-2739 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 3. HUNTING ON CORPS OF ENGINEERS LAND

800:25-3-2. Areas open to archery equipment and shotguns with pellets only

The following Corps of Engineers areas are open to archery equipment and shotguns with pellets only:

- (1) Canton Lake: A 80-acre unit above Highway 58A in the Sandy Cove Area.
- (2) Keystone Lake:
 - (A) A 460-acre unit including land north and south of the Cowskin North Recreation Area.
 - (B) A 200-acre unit on the west side of the north end of the Highway 64 bridge.
 - (C) A 530-acre unit north of the New Mannford Ramp area.
 - (D) A 480-acre unit east of the Cimarron Park area.
 - (E) A 100-acre unit north and south of the Pawnee Cove Access Point.
 - (F) A 200-acre unit in the Old Mannford Ramp area.
 - (G) A 280-acre unit on the south side of the road ending at Washington Irving North.
 - (H) A 120-acre unit west and south of the Sinnett Cemetery and south of the old Keystone road.
 - (I) A 200-acre unit south of Highway 51 on Bakers Branch.
 - (J) A 135-acre area on the west side of Walnut Creek (old Walnut Creek #3).
- (3) Hugo Lake: Except, archery only during all deer seasons.
 - (A) A 2,373-acre unit in the Kiamichi Park Area.
 - (B) A 418-acre unit in the Salt Creek Area.
 - (C) A 478-acre unit in the Wilson Point Area.

- (D) A 481-acre unit in the Virgil Point Area.
- (E) A 280-acre unit in the Sawyer Bluff Area.
- (F) A 60-acre unit in the Rattan Landing Area.
- (G) A 500-acre unit in the embankment area above Hugo Dam.
- (4) Tenkiller Ferry Lake: A 110-acre unit north of the asphalt road and east of Highway 10A.
- (5) Copan Lake: Except, archery equipment only during all deer seasons.
 - (A) A 650-acre unit below the dam.
 - (B) A 100-acre unit east and southeast of Copan Point Park.
 - (C) Three islands north of Washington Cove Park.
- (6) Fort Gibson Lake:
 - (A) A 300-acre unit on the north side of North Bay.
 - (B) A 800-acre unit on the south side of the Chouteau Creek, starting at Highway 69 and running east and south to Highway 33.
 - (C) A 320-acre unit across the lake from the Chouteau Bend Recreation Area.
 - (D) A 480-acre unit on the west side of Mallard Bay.
 - (E) A 103 -acre unit in Section 13 of the Blue Bill Point housing addition.
 - (F) A 160-acre unit west of the town of Murphy.
 - (G) A 650-acre unit on Pryor Creek beginning on the east side of Highway 69 in Sections 29, 30 & 31.
 - (H) A 190-acre unit in the south $\frac{1}{2}$ of Section 12, north of the Blue Bill Recreation Area.
 - (I) A 120-acre unit west of the town of Hulbert.
- (7) Sardis:
 - (A) A 950-acre unit in the Potato Hills Area.
 - (B) A 100-acre unit in the Sardis Cove Area.
- (8) Webbers Falls Lock and Dam 16:
 - (A) A 37-acre unit on the peninsula north of the lock and dam.
 - (B) A 150-acre unit in the Hopewell Park Area.
 - (C) A 150-acre unit in the Brewer's Bend Area only open for hunting 1 December through 28 February.
 - (D) A 50-acre unit south of the Spaniard Creek Area.
 - (E) A 60-acre unit off Lock View access road and south of the project office.
- (9) Lake Texoma:
 - (A) A 380-acre unit below Denison Dam.
 - (B) A 160-acre unit in the Willow Springs Area.
 - (C) A 100-acre unit in the Buncombe Creek West Area
 - (D) A 110-acre unit on the Limestone Creek Area.
 - (E) A 250-acre unit on the Treasure Island, North Island Group.
 - (F) A 512-acre unit in the McLaughlin Creek Southwest Area.
 - (G) A 1,100-acre unit in the Washita Point Area.
 - (H) A 300-acre unit south of the Butcher Pen Area.
 - (I) A 800-acre unit on either side of Highway 70 on the east side of the lake.
- (J) A 650-acre unit in the Lakeside West and South Area.
- (K) A 420-acre unit in the Lebanon Area.
- (L) A 226-acre unit on the west side of Wilson Creek.
- (M) A 130-acre unit in the Caney Creek Area.
- (O) A 170-acre unit in the Oakview North Area.
- (P) A 115-acre unit in the North Platter Flats Area.
- (Q) A 95-acre unit in the Newberry Creek South Area.
- (10) Kaw Lake:
 - (A) A 280-acre unit in the Traders Bend Area.
 - (B) A 320-acre unit in the Sarge Creek Cove Area.
 - (C) A 220-acre unit in the Burbank Landing Area.
 - (D) A 110-acre unit between Sandy Park Swim Beach and Osage Cove.
 - (E) A 100-acre unit in the Bear Creek Cove, open for hunting only from 15 September through 15 February.
 - (F) A 186-acre unit south of Camp McFadden and north of a housing addition.
- (11) Eufaula Lake:
 - (A) Open for archery equipment 1 October through 28 February and open for shotguns with pellets from 1 November through 28 February.
 - (i) A 165 -acre unit in the Highway 31 Land-ing Area.
 - (ii) A 128 -acre unit in Holiday Cove Recreation Area.
 - (iii) A 200-acre unit in Hickory Point Recreation Area.
 - (iv) A 90 -acre unit in the Gentry Creek Recreation Area.
 - (B) Open for hunting for all species that can be legally taken during legal open seasons by archery equipment and shotguns with pellets.
 - (i) A 275-acre unit known as Duchess Creek Island.
 - (ii) A 47-acre unit in Juniper Park.
 - (iii) A 99-acre unit in the Coal Creek area.
 - (iv) A 69-acre unit southwest of the city of Crowder.
 - (v) A 116-acre unit east of the city of Crowder.
 - (vi) A 95-acre unit in the Rock Creek Heights area.
 - (vii) A 63-acre unit around Highway 9 Marina.
 - (viii) A 411-acre unit in the area of Highway 9A.
 - (ix) A 247-acre unit known as Bunny Creek.
 - (x) A 251-acre unit in Sandy Bass Bay.
 - (xi) A 32-acre unit in Dam Site area.
 - (xii) A 95-acre unit below Eufaula Dam, north of the river
 - (xiii) A 443-acre unit in the Longtown Creek area known as Round Tree Landing.
 - (C) Open for hunting for all species that can be legally taken during legal open seasons by archery equipment and shotguns with pellets, except for the

Permanent Final Adoptions

2nd Friday through Monday in December: A 395-acre unit in the Brooken Cove Recreational Area.

(12) Chouteau Lock and Dam 17: All lands beginning from the MK&T Railroad below Chouteau Lock and Dam 17 and continuing upstream to Newt Graham Lock and Dam 18, except that Pecan Park is open to hunting with archery equipment only and the Chouteau Lock and Dam 17 has a 600 yard "No Hunting" buffer area around both the lock and dam, and that Coal Creek Access Point and Afton Landing Park are closed to all hunting.

(13) Hulah Lake:

(A) A 200-acre unit in the Turkey Creek Point Area.

(B) A 60-acre unit below Hulah Dam.

(C) A 375-acre unit in the Caney Bend Area.

(14) Wister Lake: A 400-acre unit east of the uncontrolled spillway and Glendale Dike.

(15) Oologah Lake:

(A) A 80-acre unit on the east side of Blue Creek Park.

(B) A 180 acre-unit on the south side of Spencer Creek Park.

(C) A 120-acre unit east of Double Creek Park.

(16) Waurika Lake: All lands presently designated as open to public hunting, except fall turkey hunting is archery only.

(17) Newt Graham Lock and Dam 18: All lands beginning from Newt Graham Lock and Dam 18 and continuing upstream to Interstate 44, except that the Newt Graham Lock and Dam 18 has a 600 yard 'No Hunting' buffer area around it, and that Bluegill Access Point, Highway 33 Access Point and Bluff Landing Public Use Area are closed to all hunting.

800:25-3-5. Areas open to archery equipment and all legal firearms other than centerfire rifles and handguns

The following Corps of Engineers areas are open to archery equipment and all legal firearms other than centerfire rifles and handguns:

(1) Tenkiller Lake:

(A) A 320-acre unit between Tenkiller State Park and Cato Creek Landing public use area.

(B) A 300-acre unit southeast of Etta Bend.

(C) A 1,090-acre unit known as the Tenkiller Basin Wildlife Management Area, located south of the dam embankment, spillway and project office, the area is open for hunting of all species which may legally be taken during the open seasons by archery equipment, shotguns (utilizing federally approved nontoxic shot only), and rimfire firearms, except that the area is closed to all hunting from 1 October through 15 November and deer hunting is by archery equipment only.

(D) A 240-acre unit south and southwest of Carters Landing Park.

(2) Robert S. Kerr Lock and Dam 15:

(A) A 90-acre unit in Little Sans Bois Creek Public Use Area.

(B) A 160-acre unit on the eastern portion of Cowlington Point Public Use Area.

(C) A 145-acre unit south of the Cowlington Point Public Use Area.

(D) A 200-acre unit on the ~~eastern~~southwestern portion of Short Mountain Cove Public Use Area.

(E) A 135-acre unit in the Applegate Cove Area.

(3) Lake Texoma:

(A) ~~A 800-acre unit in the Platter Flats Area. A 685-acre unit in the South Platter Flats Area.~~

(B) A 330-acre unit in the Streetman East Area.

(C) A ~~400-acre~~305-acre unit in the Newberry Creek ~~South~~North Area.

(D) A 220-acre unit in the Enos East Area.

(E) A 115-acre unit in the Island View East Area.

(F) A 350-acre unit in the Buncombe Creek East Area.

SUBCHAPTER 5. MIGRATORY BIRD HUNTING SEASON

PART 11. WATERFOWL HUNTING BLINDS

800:25-5-48. Purpose

Waterfowl blinds constructed on Corps of Engineers and Bureau of Reclamation Reservoirs are classified in two categories: ~~Permanent blinds constructed for seasonal use and temporary blinds constructed for only one hunting trip and removed at the end of said trip.~~ Seasonal - blinds which are constructed by a hunter permitted by the Department and at a Department approved designated location and used throughout the current hunting season. Daily - blinds constructed for use on any given day and removed at the end of the day's hunt. Daily blinds would include boat blinds, layout blinds, panel blinds and/or any other blind constructed from natural material that is removed at the end of the day's hunt. This Part establishes the guidelines for blind construction.

800:25-5-49. Permits for permanent seasonal or temporary daily blinds

(a) Hunters wishing to construct permanent seasonal blinds for waterfowl hunting on Corps of Engineers installations in Oklahoma must first obtain a permit for construction of said blind from the Oklahoma Department of Wildlife Conservation.

(b) No permit is required for ~~temporary daily~~ blinds.

(c) ~~Permanent Seasonal or temporary daily~~ blinds may be constructed or used on the following reservoirs: ~~Canton, Eu-
faula, Fort Gibson, Fort Supply, W. D. Mayo (Lock and Dam
14), Waurika and Webbers Falls.~~

(d) Temporary Daily blinds only may be constructed or used on all other reservoirs open to waterfowl hunting unless specifically prohibited the following reservoirs: ~~Altus Lugert, Ar-
buckle, Birch, Broken Bow, Chouteau (Lock and Dam 17),~~

Copan, Fort Cobb, Newt Graham (Lock and Dam 18), Heyburn, Hugo, Hulah, Kaw, Robert S. Kerr, Keystone, Mountain Park, Oologah, Optima, Pine Creek, Skiatook, Tenkiller, Texoma and Wister.

(e) ~~Permanent~~Seasonal blind permits will be issued by public—a drawing on for the following reservoirs: Eufaula, Fort Gibson, W D. Mayo (Lock and Dam 14), ~~Waurika~~ and Webbers Falls.

(f) To obtain a ~~permanent~~seasonal blind permit after the first day of issuance, the biologist ~~or for Game Warden~~ for the area of interest should be contacted.

(g) ~~Permanent blind permits will be issued on a first come first served basis on Canton and Fort Supply Lakes.~~

800:25-5-50. Drawing process

(a) Applicants for ~~permanent~~seasonal~~blinds~~blind permits must be at least ~~16~~18 years old on the day of the permit issuance and possess all valid hunting licenses, ~~signed~~ stamps, and permits as required for hunting waterfowl during the waterfowl season, unless exempt.

(b) Anyone wishing to obtain a ~~permanent~~seasonal blind permit must appear in person at the appropriate drawings.

(c) No person may obtain a ~~permanent~~seasonal blind permit for more than one reservoir.

800:25-5-51. Blind construction

(a) ~~Blinds~~Seasonal blinds must be constructed within 25 yards of the location designated by the hunter on the official map approved by the Department ~~designed locations~~. No ~~seasonal blinds, whether temporary or permanent,~~ shall be constructed within 250 yards of another seasonal blind and no daily blind shall be constructed or used within 250 yards of an occupied seasonal blind.

(b) Permit holders must have their permit number and their first and last name conspicuously displayed in the blind, this information must be clearly legible, throughout the waterfowl season.

(c) ~~Blinds~~Seasonal blinds must be constructed as of two (2) weeks before opening day of waterfowl season, otherwise the blind location may be reissued to another licensed hunter on a first come, first serve basis.

(d) All seasonal blinds must be removed ~~within 14 days after the close of the waterfowl season.~~ by March 15 of each year. Blinds remaining after this date ~~shall~~may become the property of the Oklahoma Department of Wildlife Conservation.

(e) ~~Permit~~Seasonal blind permit holders will have priority use on said blind each day until ~~7:30 a.m.~~1/2 hour before official sunrise (legal shooting time). Permit holders claiming priority use before this time must be prepared to furnish identification to ensure priority use. After this time, unoccupied blinds will be available to ~~others~~other hunters.

(f) Blinds must not be locked.

(g) Failure to comply with regulations may result in forfeiture of ~~right~~privilege to obtain a permit for constructing seasonal blinds during the forthcoming year.

SUBCHAPTER 7. GENERAL HUNTING SEASONS

PART 5. UPLAND GAME

800:25-7-12. Pheasant

The following provisions apply to hunting pheasants in Oklahoma:

(1) **Dates.** The dates for pheasant hunting shall be December 1 through January 31.

(2) **Areas.** The counties open to pheasant hunting are Alfalfa, Beaver, Cimarron, Garfield, Grant, Harper, Kay, Major, Noble, Osage, Texas, Woods and Woodward; ~~that portion of Osage County west of Highway 18;~~ and that portion of Blaine, Dewey, Ellis, Kingfisher and Logan counties North of Highway 51.

(3) **Bag limit.** The bag limit shall be cocks only. County bag limits will be determined annually and published in the current Oklahoma Hunting Guide. Persons who hunt in two states having separate daily bag limits may not exceed the largest number of birds that can legally be taken in one of the states in which they take birds.

(4) **Hunting hours.** Official sunrise to official sunset.

(5) **Legal means of taking.** Legal means of taking shall be shotgun (conventional or muzzleloading), bow and arrow, hand-propelled missile, slingshot; except as otherwise provided.

(6) **Identification.** Evidence of sex (head or one foot) must remain on the bird until it has reached final destination.

PART 13. DEER

800:25-7-52. Deer - primitive firearms (muzzleloading)

The following hunting dates, open areas, bag limits and legal means of taking apply to deer hunting with primitive (muzzleloading) firearms:

(1) **Dates.** The dates for the deer primitive (muzzleloading) firearms seasons shall be the fourth Saturday in October continuing nine days through Sunday.

(2) **Open areas.** The season is open statewide.

(3) **Bag limit.** ~~The bag limit shall be one antlered deer and on designated days and areas, two antlerless deer. Antlerless areas and days will be determined annually and published in the Hunting Regulation brochure. No more than one antlered and two antlerless deer may be taken, and only with the appropriate tags. A separate antlerless tag is required to hunt for each antlerless deer on all designated days and in all designated areas, except an~~Up to six (6) deer including no more than one (1) antlered deer. A separate license is required for each deer to be hunted or harvested. All deer taken are included in the combined season statewide bag limit. Individual Management Zone antlerless bag limits and antlerless days will be determined by resolution and be published in the Hunting Guide. An unfilled muzzleloading ~~buck tag~~ antlered license may be

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used to harvest an antlerless deer in designated areas on the last day of the primitive (muzzleloading) season.

(4) **Legal means of taking.** The legal means of taking deer with primitive (muzzleloading) firearms shall be as follows:

(A) Muzzleloading rifles, shotguns and pistols: 40 caliber or larger rifle or pistol, or 20 gauge or larger shotgun, firing a single slug or ball that is loaded from the muzzle.

(B) Archery equipment described as legal for the deer archery season may be used during the primitive (muzzleloading) firearms season. The hunter shall have the option of hunting with a primitive (muzzleloading) ~~license~~tag or an archery ~~tag~~license. If hunting with a primitive (muzzleloading) ~~license~~tag, the bag limit is one antlered deer, except as otherwise provided.

(C) Persons hunting with archery equipment with either archery or primitive (muzzleloading) ~~license~~tags are required to wear either the upper garment or head covering as described in 800:25-7-3(c).

(D) No person shall carry or use any modern firearm in conjunction with any legal primitive firearm (~~muzzleloader~~)(muzzleloading) during the primitive firearm (~~muzzleloader~~)(muzzleloading) deer season while hunting deer with a muzzleloader, except under the provisions of the Oklahoma Self-Defense Act.

800:25-7-53. Deer - gun

The following hunting dates, bag limits and legal means of taking apply to hunting deer with gun:

(1) **Dates.** The dates for the deer gun season shall be the Saturday prior to Thanksgiving and run for sixteen (16) consecutive days in management zones as designated by Commission resolution.

(2) **Bag limit.** ~~The bag limit shall be one antlered deer, and on designated days and areas, two antlerless deer. Antlerless areas and days will be determined annually and published in the Hunting Regulation brochure. No more than one antlered and two antlerless deer may be taken, and only with appropriate tags. A separate antlerless tag is required to hunt for each antlerless deer on all designated days and in all designated areas, except an unfilled buck tag may be used to harvest an antlerless deer in designated areas on the last day of the gun season. Up to six (6) deer including no more than one (1) antlered deer. A separate license is required for each deer to be hunted or harvested. All deer taken are included in the combined season statewide bag limit. Individual Management Zone antlerless bag limits and antlerless days will be determined by resolution and published in the Hunting Guide. An unfilled deer gun antlered license may be used to harvest an antlerless deer in designated areas on the last day of the deer gun season.~~

(3) **Legal means of taking.** The legal means of taking deer with gun shall be as follows:

(A) Rifles (conventional or ~~muzzleloader~~muzzleloading), handguns, shotguns or bow and arrows, ~~see~~ 800:25-7-54. All public lands within the state are open to rifles, handguns, shotguns or bows unless otherwise specified.

(B) Muzzleloading firearms that are legal for the primitive (muzzleloading) season shall also be legal in all areas open to rifles, except black powder firearms loaded from the breech are also legal. Metallic and/or optical sights may also be used on muzzleloading firearms during the deer gun season. Muzzleloading pistols (single shot or revolver) with characteristics that are described for rifles are permissible.

(C) Hunters choosing to hunt with primitive (muzzleloading) firearms must possess appropriate deer gun ~~tag~~license and comply with fluorescent clothing and bag limit requirements as set for the Deer Gun Season.

(D) Laser sights are illegal.

(4) **Zone Management Hunts.**

(A) Dates and open areas: The Commission may, by ~~Resolution~~resolution, establish an antlerless deer gun season at any time in designated management zones or on designated Wildlife Management Areas, as published in the current Oklahoma Hunting Guide and Regulations, ~~during the period of December 15–January 6 or other~~during any dates as established by the Commission.

(B) Bag Limit: ~~One (1) antlerless deer. Zone Management Hunt bag limits will be established by resolution. Antlerless deer taken during the late firearms season on a Zone Management Hunt are considered bonus deer and do not count against the statewide deer bag limit. Unfilled deer gun tags/licenses for the traditional deer gun season or controlled hunts are not valid for the late gun season.~~Zone Management Hunts.

(C) Legal means of taking: Same as deer gun season.

(5) **The harvest of antlerless mule deer shall be prohibited during the deer gun seasons.**

PART 19. SEASONS ON AREAS OWNED OR MANAGED BY THE OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION AND THE U.S. FISH AND WILDLIFE SERVICE

800:25-7-82. Atoka WMA

The following hunting and trapping seasons apply to the Atoka WMA:

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey-Fall:

(A) Archery: Same as statewide season dates, ~~except closed during first 9 days of deer gun season.~~

(B) Gun: Closed season.

(5) Turkey-Spring: Same as Southeast season dates. Bag limit will be determined annually and published in the current Oklahoma Hunting Guide.

(6) Squirrel: Same as statewide season dates, except closed from opening day of archery season through first nine days of deer gun season.

(7) Rabbit: Same as statewide season dates, except closed from opening day of archery season through first nine days of deer gun season.

(8) Crow: Same as statewide season dates, except closed from opening day of archery season through first nine days of deer gun season.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.

(11) Common snipe: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.

(12) Woodcock: Same as statewide season dates, except closed from the opening day of archery season through first nine days of deer gun season.

(13) Deer-archery: Same as statewide season dates, ~~except closed during first nine days of deer gun season.~~

(14) Deer - primitive firearms: Controlled hunts only.

(15) Deer - gun: Controlled hunts only.

(16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.

(17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season. In addition, closed during spring turkey season.

(18) Predator/furbearer calling: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season. In addition, closed during spring turkey season.

(19) Waterfowl: Same as statewide dates except closed from opening day of archery season through first nine days of deer gun season.

800:25-7-83. Beaver River WMA

The following hunting and trapping seasons apply to the Beaver River WMA:

(1) Quail: Same as statewide dates, except closed during deer primitive and the first nine days of deer gun season and hunting hours close at 4:30 p.m. daily.

(2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates ~~except closed during the first nine days of deer gun season,~~ either-sex.

(B) Gun: Same as statewide season dates, 1 bird either sex and shotgun only.

(5) Turkey - Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.

(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.

(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.

(8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Same as statewide season dates.

(11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.

(12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.

(13) Deer - archery: Same as statewide season dates, ~~except closed during first nine days of deer gun season.~~

(14) Deer - primitive: Same as statewide season dates, except closed to mule deer antlerless hunting.

(15) Deer - gun: Controlled hunts only.

(16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.

(17) Pursuit with hounds: Closed season.

(18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.

(19) Waterfowl: Same as statewide season dates, except closed during deer gun season.

800:25-7-83.1. Beaver River WMA - McFarland Unit

The following hunting and trapping seasons apply to the McFarland Unit on Beaver River WMA: That portion of the McFarland Unit lying in Section 1 & 12, T4N, R23E and Section 7, T4N, R24E are restricted to archery and shotgun with pellets only.

(1) Quail: Same as statewide season dates, except closed the first nine days of deer gun season and hunting hours close at 4:30 p.m. daily.

(2) Pheasant: Same as statewide season dates and bag limit, except closed during the first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates ~~except closed during the first nine days of deer gun season,~~ either-sex.

(B) Gun: Same as statewide season dates, 1 bird either sex and shotgun only.

(5) Turkey - Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.

(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.

(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.

(8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Same as statewide season dates.

(11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.

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- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.
- (14) Deer - primitive: Controlled Hunts Only.
- (15) Deer - gun: Controlled Hunts Only.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Closed season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during deer gun season.

800:25-7-84. Black Kettle WMA

The following hunting and trapping seasons apply to the Black Kettle WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Same as statewide season dates, one bird either-sex, shotgun only.
- (5) Turkey-Spring: Same as statewide season dates, 21 tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates.
- (15) Deer-gun: Same as statewide season dates, except closed last seven days.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide dates, except closed during first nine days of deer gun season.

800:25-7-88. Canton WMA

The following hunting and trapping seasons apply to the Canton WMA:

- (1) Quail: Same as statewide season dates, except closed the first nine days of deer gun season and hunting hours close at 4:30 p.m. daily.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates—~~except closed during the first nine days of deer gun season~~, either-sex.
 - (B) Gun: Same as statewide season dates, one bird either-sex, shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 2 tom limit.
- (6) Squirrel: Same as statewide dates, except closed the first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates except closed the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide dates, except closed the first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed the first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates—~~except closed during the first nine days of deer gun season~~.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates except controlled hunts opening weekend and the following seven days of the season buck only hunting. Closed the last seven days of the season.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide dates, except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-91. Cherokee GMA

The following hunting and trapping seasons apply to the Cherokee GMA:

- (1) Quail: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates—~~except closed from the opening day of deer primitive firearms season through deer gun season~~.
 - (B) Gun: Closed season.

- (5) Turkey - Spring: Same as statewide season dates, one (1) tom limit on the PHA and GMA combined.
- (6) Squirrel: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (8) Crow: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (9) Dove: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (10) Rail and gallinule: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (11) Common snipe: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (13) Deer - archery: Same as statewide season dates; ~~except closed from the opening day of deer primitive firearms season through deer gun season.~~
- (14) Deer - primitive firearms: Controlled hunts only.
- (15) Deer - gun: controlled hunts only.
- (16) Trapping: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (17) Pursuit with hounds: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season and spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season and spring turkey season.
- (19) Waterfowl: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

800:25-7-92.1. Cimarron Bluff Wildlife Management Area

The following hunting and trapping seasons apply to the Cimarron Bluff WMA:

- (1) Quail: Same as statewide season dates, except open the Monday following the close of deer gun season. Hunting hours close at 12:00 noon daily.
- (2) Pheasant: Same as statewide season dates, except open the Monday following the close of deer gun season. Hunting hours close at 12:00 noon daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Same as statewide season dates, ~~except closed during the first nine days of deer gun season.~~ One (1) bird either-sex.

- (B) Gun: Same as statewide season dates, except closed during deer muzzleloader season. One (1) bird either-sex, shotgun only.

- (5) Turkey-Spring: Same as statewide season dates, One (1) tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (8) Crow: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (9) Dove: Same as statewide season dates, except closed during deer muzzleloader season.
- (10) Rail and gallinule: Same as statewide season dates, except closed during deer muzzleloader season.
- (11) Common snipe: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (13) Deer-archery: Same as statewide season dates, ~~except closed during the first nine days of deer gun season.~~
- (14) Deer-primitive firearms: Controlled Hunts Only.
- (15) Deer-gun: Controlled Hunts Only.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.

800:25-7-92. 2 Cimarron Hills Wildlife Management Area

The following hunting and trapping seasons apply to the Cimarron Hills WMA:

- (1) Quail: Same as statewide season dates, except open the Monday following the close of deer gun season. Hunting hours close at 12:00 noon daily.
- (2) Pheasant: Open the Monday following the close of deer gun season through February 15. Hunting hours close at 12:00 noon daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, ~~except closed during the first nine days of deer gun season.~~ One (1) bird either sex.
 - (B) Gun: Same as statewide season dates, except closed during muzzleloader season and deer gun season. One (1) bird either sex, shotgun only.

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- (5) Turkey - Spring: Same as statewide season dates, One (1) tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (8) Crow: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (9) Dove: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (10) Rail and gallinule: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (11) Common snipe: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (13) Deer - archery: Same as statewide season dates, ~~except closed during the first nine days of deer gun season.~~
- (14) Deer - primitive firearms: Controlled Hunts Only.
- (15) Deer - gun: Controlled Hunts Only.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.

800:25-7-93. Cookson WMA

The following hunting and trapping seasons apply to the Cookson WMA:

- (1) Quail: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Same as statewide season dates, ~~except closed from the opening day of deer primitive firearms season through deer gun season.~~
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, one (1) tom limit.
- (6) Squirrel: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

- (7) Rabbit: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (8) Crow: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (9) Dove: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (10) Rail and gallinule: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (11) Common snipe: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (13) Deer - archery: Same as statewide season dates, ~~except closed from the opening day of deer primitive firearms season through deer gun season.~~
- (14) Deer - primitive firearms: Controlled hunts only.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (17) Pursuit with hounds: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season and spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

800:25-7-94. Copan WMA

The following hunting and trapping seasons apply to the Copan WMA:

- (1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, one bird either sex limit.
 - (B) Gun: Same as statewide season dates, one tom limit.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.

- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: ~~Same as statewide season dates, except closed the last seven days and closed to antlerless deer hunting. Same as statewide season dates, except closed the last seven days, one antlered and one antlerless deer limit.~~
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-94.1. Cooper WMA

The following hunting and trapping seasons apply to the Cooper WMA:

- (1) Quail: Same as statewide season dates, except closed during deer primitive and first nine days of deer gun season and hunting hours close at 4:30 PM daily.
- (2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Same as statewide season dates—~~except closed during the first nine days of deer gun season~~, either-sex.
 - (B) Gun: Same as statewide season dates, one bird either sex, shotgun only.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates ~~except closed during first nine days of deer gun season.~~
- (14) Deer-primitive firearms: Same as statewide season dates, except closed to mule deer antlerless hunting.
- (15) Deer-gun: Same as statewide season dates except closed the last seven days and closed to antlerless deer hunting.
- (16) Trapping: Same as statewide season dates Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates except closed during deer gun season.

- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

800:25-7-94.1.1. Cross Timbers WMA

The following hunting and trapping seasons apply to the Cross Timbers WMA:

- (1) Quail: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, ~~except closed the first nine (9) days of deer gun season~~, either-sex.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Controlled Hunts only.
- (6) Squirrel: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun seasons.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.
- (11) Common snipe: Same as statewide season dates, except closed from the opening day of deer archery through the first nine (9) days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed from the opening day of deer archery through the first nine (9) days of deer gun season.
- (13) Deer-archery: Same as statewide season dates, ~~except closed the first nine (9) days of deer gun season.~~
- (14) Deer - primitive: Controlled hunts only.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season. Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide seasons dates, except closed from opening day of archery through the first nine (9) days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.

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800:25-7-95. Ellis County WMA

The following hunting and trapping seasons apply to the Ellis County WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Same as statewide season dates, either-sex.
- (5) Turkey-Spring: Same as statewide season dates, 21 tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates.
- (15) ~~Deer-gun: Same as statewide season dates, except closed last seven days and closed to antlerless deer hunting.~~ Same as statewide season dates, except closed the last seven days of deer gun season. Antlerless hunting permitted last two days of the area season.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide dates, except closed during first nine days of deer gun season.

800:25-7-101. Fort Supply WMA

The following hunting and trapping seasons apply to Fort Supply WMA:

- (1) Quail: Same as statewide season dates, except closed during deer primitive and first nine days of deer gun season. Hunting hours close at 4:30 PM daily.
- (2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, ~~except closed during the first nine days of deer gun season~~, either-sex.

(B) Gun: Same as statewide season dates, one bird either sex, shotgun only.

- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) ~~Deer - archery: Same as statewide season dates, except closed during the first nine days of deer gun season.~~
- (14) Deer - primitive firearms: Same as statewide season dates, except closed to mule deer antlerless hunting.
- (15) Deer - gun: Same as statewide season dates except closed the last seven days and closed to antlerless deer hunting.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of gun season.

800:25-7-108. Hickory Creek WMA

The following hunting and trapping seasons apply to the Hickory Creek WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Same as statewide season dates, 1 tom limit, shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.

(14) Deer - primitive firearms: Same as statewide season dates, except closed to antlerless hunting after opening day.

(15) Deer - gun: Same as statewide season dates, except closed to antlerless hunting after opening day.

(16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.

(17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.

(18) Predator/furbearer calling: Same as statewide season dates, except closed during the first nine days of deer gun season.

(19) Waterfowl: Same as statewide season dates.

800:25-7-111. Hulah WMA

The following hunting and trapping seasons apply to the Hulah WMA:

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates, either-sex.

(B) Gun: Same as statewide season dates, one (1) tom limit.

(5) Turkey - Spring: Same as statewide season dates, one (1) tom limit.

(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.

(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.

(8) Crow: Same as statewide season dates.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Same as statewide season dates.

(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.

(12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.

(13) Deer - archery: Same as statewide season dates.

(14) Deer - primitive firearms: Same as statewide season dates.

(15) Deer - gun: ~~Same as statewide season dates, except closed the last seven days of deer gun season and closed to antlerless deer hunting.~~ Same as statewide season dates, except closed the last seven days, one antlered and one antlerless deer limit.

(16) Trapping: Same as statewide season dates.

(17) Pursuit with hounds: Same as statewide dates except closed during the first nine days of deer gun season.

(18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.

(19) Waterfowl: Same as statewide season dates.

800:25-7-113. James Collins WMA

The following hunting and trapping seasons apply to the James Collins WMA:

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall

(A) Archery: Same as statewide season dates, ~~except closed during first nine days of deer gun season.~~

(B) Gun: Closed season.

(5) Turkey - Spring: Same as Southeast season dates. Bag limit will be determined annually and published in the current Oklahoma Hunting Guide.

(6) Squirrel: Same as statewide dates, except closed from opening day of archery season through first nine days of deer gun season.

(7) Rabbit: Same as statewide season dates, except closed from opening day of archery season through first nine days of deer gun season.

(8) Crow: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.

(11) Common snipe: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.

(12) Woodcock: Same as statewide season dates, except closed from the opening day of archery season through first nine days of deer gun season.

(13) Deer - archery: Same as statewide season dates, ~~except closed during first nine days of deer gun season.~~

(14) Deer - primitive firearms: Controlled hunts only.

(15) Deer - gun: Controlled hunts only.

(16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.

(17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season. In addition, closed during spring turkey season.

(18) Predator/furbearer calling: Same as statewide season dates, except closed from opening day of archery season through first nine days of deer gun season. In addition, closed during spring turkey season.

(19) Waterfowl: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.

800:25-7-116. Keystone WMA

The following hunting and trapping seasons apply to the Keystone WMA: That portion of the Arkansas River arm of the Keystone WMA that was formerly the waterfowl refuge has restricted hunting. The west boundary of this portion is a northern extension of Swan Drive in the City of Cleveland. In this designated area, lands in Osage County and in the

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Arkansas River are restricted to archery and shotgun with pellets only; lands in Pawnee County are restricted to archery only.

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, ~~either sex, except closed during deer gun season.~~
 - (B) Gun: Same as statewide season dates; 1 tom limit, shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates, bag limit of one antlered and one antlerless deer.
- (15) Deer - gun: Same as statewide season dates, except open to antlerless hunting on opening day only, bag limit of one antlered and one antlerless deer, and Cottonwood Creek Wetland Development Unit lands are closed.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-118. Little River NWR

(a) Hunting, fishing, and all other activities on National Wildlife Refuges and National Fish Hatcheries under the US Fish and Wildlife Service shall be in accordance with all applicable state and federal regulations and all special regulations posted on signs or in brochures. Brochures are found on-line at (<https://www/fws/gov/refuges/refugeLocatorMaps/Oklahoma.html>) and at the headquarters of each refuge or hatchery.

(b) The following hunting and trapping seasons apply to Little River NWR:

- (1) Quail: Closed season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey -Fall:

(A) Archery: Open same as statewide season dates, except closed the Friday before deer primitive firearms season through ~~the first nine days of deer gun season~~ Sunday after the last controlled hunt.

(B) Gun: Closed season.

- (5) Turkey - Spring: Controlled hunts only.
- (6) Squirrel: Same as statewide season dates, except closed the Friday before deer primitive firearms season through the first nine days of deer gun season, and the season closes the last day of January.
- (7) Rabbit: Same as statewide season dates, except closed the Friday before deer primitive firearms season through the first nine days of deer gun season, and the season closes the last day of January.
- (8) Crow: Closed season.
- (9) Dove: Closed season.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Closed season.
- (12) Woodcock: Closed season.
- (13) Deer - archery: Same as statewide season dates, except closed the Friday before deer primitive firearms season through the first nine days of deer gun season.
- (14) Deer - primitive firearms: Controlled hunts only.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Contact refuge for special restrictions.
- (17) Pursuit with hounds: Same as statewide season dates, except closed the Friday before deer primitive firearms season through the first nine days of deer gun season.
- (18) Predator/furbearer calling: Closed season.
- (19) Waterfowl: Contact refuge for special restrictions.

800:25-7-121. Major County WMA

The following hunting and trapping seasons apply to the Major County WMA:

- (1) Quail: Same as statewide season dates, except closed the first nine days of deer gun season and hunting hours close at 4:30 p.m. daily.
- (2) Pheasant: closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates ~~except closed during the first nine days of deer gun season,~~ either-sex.
 - (B) Gun: Same as statewide season dates, one bird of either-sex.
- (5) Turkey - Spring: Same as statewide season dates, 2 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed the first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Closed season
- (11) Common snipe: Same as statewide dates, except closed the first nine days of deer gun season.

- (12) Woodcock: Same as statewide dates, except closed the first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates ~~except closed during the first nine days of deer gun season.~~
- (14) Deer - primitive firearms: Same as statewide season dates, except closed to antlerless hunting.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season, and closed to antlerless hunting.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide dates, except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-125. McGee Creek WMA

The following hunting and trapping seasons apply to the McGee Creek WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, ~~except closed during first nine days of deer gun season.~~
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast season dates. Bag limit will be determined annually and published in the current Oklahoma Hunting Guide.
- (6) Squirrel: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (11) Common snipe: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed from the opening day of archery season through the first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, ~~except closed during first nine days of deer gun season.~~
- (14) Deer - primitive firearms: Controlled hunts only.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season

through the first nine days of deer gun season. In addition, closed during spring turkey season.

(18) Predator/furbearer calling: Same as statewide season dates except closed opening day of archery season through the first nine days of deer gun season. In addition, closed during spring turkey season.

(19) Waterfowl: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.

800:25-7-127. Okmulgee GMA

The following hunting and trapping seasons apply to the Okmulgee GMA:

- (1) Quail: Same as statewide season dates, except ~~closed during from the opening day of deer archery season through~~ the first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Either-sex, same as statewide season dates, ~~except closed from the opening day of primitive firearms season through the first nine days of deer gun season.~~
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates except closed from the opening day of deer archery season through the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.
- (10) Rail and gallinule: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.
- (11) Common snipe: Same as statewide season dates, except closed from the opening day of archery deer season through the first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed from the opening day of archery deer season through first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, ~~except closed from opening day of primitive firearms season through first nine days of deer gun season.~~
- (14) Deer - primitive firearms: Controlled hunts only.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
- (17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.

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(18) Predator/furbearer calling: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.

(19) Waterfowl: Same as statewide season dates, except closed during designated controlled hunt dates.

800:25-7-128. Okmulgee PHA

The following hunting and trapping seasons apply to the Okmulgee PHA:

(1) Quail: Same as statewide dates, except closed ~~during~~ from the opening day of deer archery season through the first nine days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates, either-sex.

(B) Gun: Same as statewide season dates, 1 tom limit, shotgun only.

(5) Turkey - Spring: Same As statewide season, 1 tom limit.

(6) Squirrel: Same as statewide season dates, except closed from opening day of deer archery season through first nine days of deer gun season.

(7) Rabbit: Same as statewide dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.

(8) Crow: Open December 9 - March 4.

(9) Dove: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.

(10) Rail and gallinule: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.

(11) Common snipe: Same as statewide dates except closed from opening day of archery season through first nine days of deer gun season.

(12) Woodcock: Same as statewide dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.

(13) Deer - archery: Same as statewide season dates.

(14) Deer - primitive firearms: Same as statewide season dates, closed to antlerless deer hunting.

(15) Deer - gun: Same as statewide season dates, except ~~closed the last seven days of deer gun season and~~ closed to antlerless deer hunting.

(16) Trapping: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.

(17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.

(18) Predator/furbearer calling: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.

(19) Waterfowl: Same as statewide season dates.

800:25-7-130. Optima WMA

The following hunting and trapping seasons apply to the Optima WMA:

(1) Quail: Same as statewide season dates, except closed during deer primitive and the first nine days of deer gun season and hunting hours close at 4:30 PM daily.

(2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates—~~except closed during first nine days of deer gun season,~~ either-sex.

(B) Gun: Same as statewide season dates, One tom only, shotgun only.

(5) Turkey - Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.

(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.

(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.

(8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: closed season.

(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.

(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.

(13) Deer - archery: Same as statewide season dates, ~~except closed during the first nine days of deer gun season.~~

(14) Deer - Primitive firearms: Same as statewide season dates, except closed to antlerless hunting.

(15) Deer - gun: Same as statewide dates, except closed last seven days of deer gun season and closed to antlerless deer hunting.

(16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.

(17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.

(18) Predator/furbearer calling: Same as statewide season dates, except closed during deer season.

(19) Waterfowl: Same as statewide season dates.

800:25-7-131.2. Osage WMA - Western Wall Unit

The following hunting and trapping seasons apply to the Osage WMA Western Wall Unit. Unless otherwise provided, firearms are restricted to rimfire ammunition or shotguns with pellets.

(1) Quail: Same as statewide season dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates, ~~except closed from the opening day of deer primitive~~

~~season through the first nine (9) days of deer gun season.~~

(B) Gun: Closed season.

- (5) Turkey - Spring: Same as statewide season dates, one (1) tom limit.
- (6) Squirrel: Same as statewide season dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (9) Dove: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (10) Rail and gallinule: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (11) Common snipe: Same as statewide season dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, ~~except closed from the opening day of deer primitive season through the first nine (9) days of deer gun season.~~
- (14) Deer - primitive firearms: Controlled hunts only.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of deer archery season through deer gun season and spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

800:25-7-134. Packsaddle WMA

The following hunting and trapping seasons apply to the Packsaddle WMA.

- (1) Quail: Same as statewide season dates except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Same as statewide season dates; one tom limit.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.

- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates,
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates, except closed to mule deer antlerless hunting.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season ~~and closed to antlerless deer hunting.~~ Antlerless hunting permitted last two days of area season.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates except closed opening day of archery season through deer gun season. In addition, closed during spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

800:25-7-136. Pushmataha WMA

The following hunting and trapping seasons apply to the Pushmataha WMA:

- (1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, ~~except closed during first nine days of deer gun season.~~
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as Southeast season dates. Bag limit will be determined annually and published in the current Oklahoma Hunting Guide.
- (6) Squirrel: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.

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- (11) Common snipe: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed from the opening day of archery season through the first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, ~~except closed during first nine days of deer gun season.~~
- (14) Deer - primitive firearms: controlled hunts only.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season. In addition, closed during spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season. In addition, closed during spring turkey season.
- (19) Waterfowl: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.

800:25-7-137. Rita Blanca WMA

The following hunting and trapping seasons apply to the Rita Blanca WMA:

- (1) Quail: Same as statewide season dates, except closed during deer primitive and the first nine days of deer gun season and hunting hours close at 4:30 PM daily.
- (2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates.
 - (B) Gun: Same as statewide season dates, one tom only, shotgun only.
- (5) Turkey - Spring: Same as statewide season dates; one tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, ~~except closed during first nine days of deer gun season.~~
- (14) Deer-primitive firearms: Same as statewide season dates, except closed to antlerless hunting.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season and closed to antlerless hunting.
- (16) Antelope:
 - (A) Archery: Same as statewide season dates.
 - (B) Gun: Controlled hunt only.
- (17) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (18) Pursuit with hounds: Same as statewide season dates-, except closed during deer gun season.
- (19) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
- (20) Waterfowl: Same as statewide season dates, except closed during deer gun season.

800:25-7-139. Salt Plains NWR

- (a) Hunting, fishing, and all other activities on National Wildlife Refuges and National Fish Hatcheries under the US Fish and Wildlife Service shall be in accordance with all applicable state and federal regulations and all special regulations posted on signs or in brochures. Brochures are found on-line at (<https://www.fws.gov/refuges/refugeLocatorMaps/Oklahoma.html>) and at the headquarters of each refuge or hatchery.
- (b) The following hunting and trapping seasons apply to designated open areas on the Salt Plains NWR:

- (1) Quail: Same as statewide dates, except closed during deer gun season and designated controlled hunt dates. Federally approved nontoxic shot only. Closed at noon daily. Contact refuge for special restrictions.
- (2) Pheasant: Same as statewide season dates and bag limit, except closed during deer gun season and designated control hunt dates. Federally approved nontoxic shot only. Closed at noon daily. Contact refuge for special restrictions.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Closed season.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: ~~Closed season.~~ Controlled Hunts Only.
- (6) Squirrel: Closed season.
- (7) Rabbit: Closed season.
- (8) Crow: Closed season.
- (9) Dove: Same as statewide season dates. Federally approved nontoxic shot only. Closed at noon daily. Contact refuge for special restrictions.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Closed season.
- (12) Woodcock: Closed season.
- (13) Deer - archery: Controlled hunts only.
- (14) Deer - primitive firearms: Controlled hunts only.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Closed season.
- (18) Predator/furbearer calling: Closed season.
- (19) Waterfowl: Contact refuge for special restrictions.

800:25-7-140.1. Sans Bois WMA

The following hunting and trapping seasons apply to the Sans Bois WMA:

- (1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (8) Crow: Same as statewide dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (11) Common snipe: Same as statewide dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Controlled hunts only.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Same as statewide season dates, except closed during first nine days of deer gun season.
- (17) Pursuit with hounds: Same as statewide dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed from opening day of archery season through the first nine days of deer gun season.
- (19) Waterfowl: Same as statewide dates, except closed from opening day of archery season through the first nine days of deer gun season.

800:25-7-141. Schultz WMA

The following hunting and trapping seasons apply to the Schultz WMA:

- (1) Quail: Same as statewide season dates, except closed during deer primitive and the first nine days of deer gun season and hunting hours close at 4:30 PM daily.
- (2) Pheasant - Panhandle: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 PM daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:

(A) Archery: Same as statewide season dates, either-sex.

(B) Gun: Same as statewide season dates, one tom only, shotgun only.

- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Closed season.
- (11) Common Snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, ~~except closed during first nine days of deer gun season.~~
- (14) Deer - primitive firearms: Same as statewide season dates. Closed to antlerless hunting.
- (15) Deer - gun: Same as statewide season dates; except closed the last seven days of deer gun season and closed to antlerless hunting.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-142. Sequoyah NWR

(a) Hunting, fishing, and all other activities on National Wildlife Refuges and National Fish Hatcheries under the US Fish and Wildlife Service shall be in accordance with all applicable state and federal regulations and all special regulations posted on signs or in brochures. Brochures are found on-line at (<https://www/fws.gov/refuges/refugeLocatorMaps/Oklahoma.html>) and at the headquarters of each refuge or hatchery.

(b) The following hunting and trapping seasons apply to the Sequoyah NWR: Unless otherwise provided, hunting is permitted with shotguns using federally approved nontoxic shot in designated areas on Saturdays, Sundays, Mondays and Tuesdays only. Contact refuge for special restrictions.

- (1) Quail: Closed season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Closed season.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: ~~Closed season~~ Controlled Hunts Only.
- (6) Squirrel: Same as statewide season dates, except opens September 1.
- (7) Rabbit: Opens same as statewide season dates, except closes January 31.

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- (8) Crow: Closed season.
- (9) Dove: Same as statewide season dates.
- (10) Rail : Closed season.
- (11) Common snipe: Same as statewide season dates.
- (12) Woodcock: Same as statewide season dates.
- (13) Deer - archery: Controlled Hunts only.
- (14) Deer - primitive firearms: Controlled Hunts only.
- (15) Deer - gun: Closed season.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Closed season.
- (18) Predator/furbearer calling: Closed season.
- (19) Waterfowl: Contact refuge for special restrictions.

800:25-7-142.1. Shorb WMA

The following hunting and trapping seasons apply to the Shorb WMA:

- (1) Quail: Same as statewide season dates, except closed during deer primitive and the first nine days of deer gun season and hunting hours close at 4:30 PM daily.
- (2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates—~~except closed during first nine days of deer gun season, either-sex.~~
 - (B) Gun: Same as statewide season dates, One tom only, shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: closed season.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, ~~except closed during the first nine days of deer gun season.~~
- (14) Deer - Primitive firearms: Same as statewide season dates, except closed to antlerless hunting.
- (15) Deer - gun: Same as statewide dates, except closed last seven days of deer gun season and closed to antlerless deer hunting.
- (16) Trapping: Open to water sets, live box traps and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-143. Skiatook WMA

The following hunting and trapping seasons apply to the Skiatook WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Same as statewide season dates, ~~either sex, except closed during first nine days of deer gun season.~~
 - (B) Gun: Same as statewide season dates, 1 tom limit, shotgun only.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer-primitive firearms: Same as statewide season dates, bag limit of one antlered and one antlerless deer.
- (15) Deer-gun: Same as statewide season dates, bag limit of one antlered and one antlerless deer.
- (16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-145. Spavinaw GMA

The following hunting and trapping seasons apply to the Spavinaw GMA:

- (1) Quail: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, ~~except closed from the opening day of deer primitive season through deer gun season,~~ and one (1) either sex bird limit on the PHA and GMA combined.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, one (1) tom limit on the PHA and GMA combined.

- (6) Squirrel: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (8) Crow: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (9) Dove: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (10) Rail and gallinule: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (11) Common snipe: Same as statewide season dates, except closed from opening day of archery season through deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed from opening day of archery season through deer gun season.
- (13) Deer - archery: Same as statewide season dates, ~~except closed from the opening day of deer primitive season through deer gun season.~~
- (14) Deer - primitive firearms: Controlled hunts only.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Same as statewide season dates, except closed from the opening day of archery season through deer gun season.
- (17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of deer archery season through deer gun season and spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

800:25-7-151.1. Tishomingo NWR

- (a) Hunting, fishing, and all other activities on National Wildlife Refuges and National Fish Hatcheries under the US Fish and Wildlife Service shall be in accordance with all applicable state and federal regulations and all special regulations posted on signs or in brochures. Brochures are found on-line at (<https://www.fws.gov/refuges/refugeLocatorMaps/Oklahoma.html>) and at the headquarters of each refuge or hatchery.
- (b) The following hunting and trapping seasons apply to the Tishomingo NWR:
 - (1) Quail: Closed season.
 - (2) Pheasant: Closed season.
 - (3) Prairie chicken: Closed season.
 - (4) Turkey - Fall:
 - (A) Archery: Closed season.
 - (B) Gun: Closed season.
 - (5) Turkey - Spring: ~~Closed season.~~ Controlled Hunts Only.
 - (6) Squirrel: Closed season.

- (7) Rabbit: Closed season.
- (8) Crow: Closed season.
- (9) Dove: Closed season.
- (10) Rail and gallinule: ~~Closed season.~~ Contact Refuge for special restrictions.
- (11) Common snipe: ~~Closed season.~~ Contact Refuge for special restrictions.
- (12) Woodcock: Closed season.
- (13) Deer - archery: ~~Closed season.~~ Controlled Hunts Only.
- (14) Deer - primitive firearms: ~~Controlled Hunts. Bonus hunt permit required. Consult bonus hunt regulations.~~ Controlled Hunts Only.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Closed season.
- (18) Predator/furbearer calling: Closed season.
- (19) Waterfowl: ~~Closed season.~~ Contact Refuge for special restrictions.

800:25-7-153. Washita NWR

- (a) Hunting, fishing, and all other activities on National Wildlife Refuges and National Fish Hatcheries under the US Fish and Wildlife Service shall be in accordance with all applicable state and federal regulations and all special regulations posted on signs or in brochures. Brochures are found on-line at (<https://www.fws.gov/refuges/refugeLocatorMaps/Oklahoma.html>) and at the headquarters of each refuge or hatchery.
- (b) The following hunting and trapping seasons apply to the Washita NWR: All shotgun hunting restricted to federally approved nontoxic shot.
 - (1) Quail: Same as statewide season dates except closed during controlled deer hunts. Contact Refuge for special restrictions.
 - (2) Pheasant: Closed season.
 - (3) Prairie chicken: Closed season.
 - (4) Turkey - Fall:
 - (A) Archery: Closed season.
 - (B) Gun: Closed season.
 - (5) Turkey - Spring: Controlled hunts only.
 - (6) Squirrel: Closed season.
 - (7) Rabbit: Same as statewide season dates, except closed during ~~first nine days of the deer gun season.~~ controlled deer hunts. Contact Refuge for special restrictions.
 - (8) Crow: Closed season.
 - (9) Dove: ~~Closed season.~~ Same as statewide season dates except closed during controlled deer hunts. Contact Refuge for special restrictions.
 - (10) Rail and gallinule: Closed season.
 - (11) Common snipe: Closed season.
 - (12) Woodcock: Closed season.
 - (13) Deer - archery: Closed season.
 - (14) Deer - primitive firearms: Closed season.
 - (15) Deer - gun: Controlled hunts only.
 - (16) Trapping: Closed season.
 - (17) Pursuit with hounds: Closed season.
 - (18) Predator/furbearer calling: Closed season.

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(19) Waterfowl: ~~Controlled Hunts. Bonus hunt permit required. Consult bonus hunt regulations.~~Same as statewide season dates except only on designated days. Contact Refuge for designated days and special restrictions.

800:25-7-154.1. Wichita Mountains NWR

(a) Hunting, fishing, and all other activities on National Wildlife Refuges and National Fish Hatcheries under the US Fish and Wildlife Service shall be in accordance with all applicable state and federal regulations and all special regulations posted on signs or in brochures. Brochures are found on-line at (<https://www.fws.gov/refuges/refugeLocatorMaps/Oklahoma.html>) and at the headquarters of each refuge or hatchery.

(b) The following hunting and trapping seasons apply to the Wichita Mountains NWR:

- (1) Quail: Closed season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Closed season.
 - (B) Gun: Closed season.
- (5) Turkey - Spring: ~~Closed season.~~Controlled Hunts Only.
- (6) Squirrel: Closed season.
- (7) Rabbit: Closed season.
- (8) Crow: Closed season.
- (9) Dove: Closed season.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Closed season.
- (12) Woodcock: Closed season.
- (13) Deer - archery: Closed season.
- (14) Deer - primitive firearms: Closed season.
- (15) Deer - gun: Controlled hunts only.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Closed season.
- (18) Predator/furbearer calling: ~~Closed season.~~Open to participants of other controlled hunts.
- (19) Waterfowl: ~~Closed season.~~Contact Refuge for special restrictions.

SUBCHAPTER 24. IMPORT OF CERVIDS

800:25-24-1. Purpose

The purpose of this Subchapter is to establish requirements for the importation of animals ~~in or specific carcass parts from~~ the family Cervidae that will help protect Oklahoma's native deer and elk population from the threat of chronic wasting disease (CWD).

800:25-24-3. Requirements

~~The following restrictions apply to the importation of animals in the family Cervidae.~~

(1) ~~Import authorization is suspended for animals in the family Cervidae which originate from any state or Canadian province where chronic wasting disease has been identified in free-ranging native cervids.~~

(2) ~~In cases where the source herd originates from a state or Canadian province where CWD has not been identified, import will be granted only if the source herd is a participant in a CWD surveillance and certification program which conforms to standards described in Subchapters 11 and 47 of Title 35 of the Oklahoma Administrative Code.~~

(a) The following relate to the importation of live cervids into Commercial Hunting areas.

(1) The import of cervidae for the purpose of deposition in a Commercial Hunting area that are originating in any county or Canadian province where Chronic Wasting Disease exists in free-ranging native herds shall be prohibited, except the State Veterinarian may allow an import from a Canadian province with Chronic Wasting Disease after notification to the Oklahoma Department of Wildlife Conservation and based on a review of the following factors:

- (A) distance of the farmed cervidae facility from the Chronic Wasting Disease area,
- (B) existence of double fencing between the farmed cervidae facility and free-ranging native herds,
- (C) farmed cervidae facility biosecurity measures,
- (D) participation of the farmed cervidae facility in any Canadian Chronic Wasting Disease herd certification programs, and
- (E) any other relevant factors.

(2) All other cervidae imports into Commercial Hunting areas shall only be from a source herd that is in a Chronic Wasting Disease surveillance and certification program for a minimum of five (5) years monitored and the program meets the standards of cervidae importation into Oklahoma.

(3) import of cervidae into Commercial Hunting areas shall be accompanied by a Certificate of Veterinary Inspection and an approved Cervidae Import Permit, and

(4) import of cervidae into a Commercial Hunting area shall follow all other disease testing required by the Oklahoma Statutes or rules promulgated by the Department of Agriculture, Food, and Forestry.

(b) The following restrictions apply to the statewide importation of cervid carcasses or carcass parts

(1) No person shall import, transport, or possess any cervid carcass or part of a cervid carcass from outside the boundaries of Oklahoma. The following items are the only exceptions:

- (A) Antlers or antlers attached to clean skull plate or cleaned skulls (all tissue removed);
- (B) Animal quarters containing no spinal materials or meat with all parts of the spinal column removed;
- (C) Cleaned teeth;
- (D) Finished taxidermy products;
- (E) Hides or tanned products.

SUBCHAPTER 26. SCIENTIFIC COLLECTOR PERMITS

PART 1. SCIENTIFIC PURPOSES

PART 2. AUTHORIZATION LETTERS

800:25-26-5. Purpose

Consistent with State Statute 29-3-103, the Oklahoma Wildlife Conservation Commission may enter into cooperative agreements with federal, state and local agencies regarding the study or conservation of fish and wildlife. The purpose of this section is to establish application procedures and qualification for obtaining a letter of authorization from the Director of the Oklahoma Department of Wildlife Conservation for the capture, holding and/or vouchering of fish and wildlife species for biological monitoring, conservation education, or agency-supported research purposes by government entities.

800:25-26-6. Application process and reporting

(a) The Director, acting on behalf of the Commission, may issue a letter of authorization to a government agency or a subdivision of a government agency including municipal, county, state or federal resource management agencies, for the capture, possession, and/or vouchering of fish and wildlife for the purposes of biological monitoring, conservation education, or research funded by the Oklahoma Department of Wildlife Conservation.

(b) The following are the procedures for obtaining a letter of authorization:

- (1) A request for a letter of authorization must be sent in writing to the Fisheries Division Chief or Wildlife Division Chief of the Oklahoma Department of Wildlife Conservation.
- (2) The request must identify the following:
 - (A) the need for or purpose of the letter of authorization.
 - (B) the name, agency and contact information (phone number, address and email) of one or more primary points of contact to whom the letter of authorization is issued.
 - (C) the species and estimated numbers of individuals for which the applicant seeks authorization to capture, possess or voucher.
 - (D) the geographic area over which the request extends.
 - (E) a list or description of the methods by which fish and wildlife will be captured or taken.
 - (F) the names of all individuals, including the primary point of contact, who are intended to be covered under the letter of authorization.
 - (G) the intended final disposition of the fish and wildlife requested to be collected.

(3) Once a letter of authorization request is received, ODWC fish and wildlife biologists will conduct an internal review process. Once the request is reviewed and

deemed adequate, it will be submitted for the Director's approval and signature and the approved letter of authorization will be sent to the applicant.

(4) Letters of authorization expire at the end of each calendar year, and a new request must be submitted each year that the applicant requested authorization.

(5) Within two months of the end of the calendar year, the primary point of contact is responsible for submitting a written report summarizing the activities conducted under the letter of authorization including the geographic locations where fish and wildlife were captured, the species and numbers of individuals captured, and the disposition of those animals or specimens at the end of the year. Failure to provide an annual report in a timely manner could preclude the issuance of letters of authorization in subsequent years.

800:25-26-7. Uses and specifications

(a) A copy of the letter of authorization must be carried by each authorized individual when active in the field.

(b) Each letter of authorization will describe the extent of the activities that it covers including the geographic area and the methods of capture or take.

(c) Letter of authorization may be issued for the capture, possession and vouchering of species that cannot be permitted under a scientific collector's permit including deer, bear, elk, antelope and turkey.

(d) Letters of authorization may be issued to individuals and laboratories within government research institutions and public universities that conduct fish and wildlife research funded by the Oklahoma Department of Wildlife Conservation.

(e) A letter of authorization does not preclude the need for a federal permit. The capture, possession and vouchering of migratory birds and federally-listed threatened or endangered species requires a federal permit unless exempted under an Endangered Species Act Section 4(d) rule.

(f) A letter of authorization does not preclude the need to obtain permission from landowners to operate on private property, or the need to obtain permission from official area managers when operating on municipal, state or federal lands.

SUBCHAPTER 37. NUISANCE WILDLIFE CONTROL PROGRAM

PART 3. WILDLIFE AND FERAL HOG NUISANCE AND DEPREDATION RULES

800:25-37-16. Feral swine night shooting exemptions

The following rules detail exemptions to shoot feral swine at night under provisions of T29-4-135:

(1) Night Shooting exemptions will only be issued to the deed-holding landowner or a written designee. Only one exemption will be issued per property. The landowner or their written designee may obtain an immediate exemption to night shoot by contacting their game warden in the county in which their property is located. A game

warden in an adjoining county may also be contacted to immediately issue the exemption. If the landowner or their written designee does not speak to the game warden by telephone, the landowner or their written designee may leave a voice mail message, send a text message or email to the game warden which will serve as sufficient means for an immediate exemption to shoot feral swine at night. The Wildlife Department may also create an electronic exemption issuance and notification system.

(2) If the initial contact is through the game warden, then the game warden will be responsible for following up with the requesting party to issue a night shooting exemption.

(3) Exemptions shall be valid for one year. Exemptions shall contain the landowner's name, the name of the written designee (if landowner designates someone in place of himself or herself) claiming the exemption, the person's address, and contact information, plus either a legal description or a listing of the landowner's acreage and location relative to the nearest roadways (e.g.: $\frac{1}{2}$ mile west of the intersection of Hwy 177 and Tooley Rd; on the north side of the roadway; 280 acres). Persons shooting feral swine on a night exemption may not shoot from, to, on or across any public roadway. Anyone under age 18 is recommended to be immediately accompanied by an adult.

(4) Exemptions may be revoked for violations within the last three years of Title 800:25-37-16; Title 29 Section 5-411; Title 29 Section 5-203.1; or municipal law violations (night shooting in a prohibited area).

(5) During the period outside of the ~~16-day~~ regular ~~firearms~~ deer gun season - and in areas where firearms deer season(s) is/are not in effect - the landowner or their written designee can allow anyone to night shoot on the landowner's property by providing written or electronic (text/email) permission. At least one person in the group must have a copy of the landowner's or written designee's exemption (written or electronic copy). Any person night shooting during this time period is encouraged to provide some type of advance notification to the local game warden, but advanced notification is not required.

(6) During the ~~16-day~~ regular ~~firearms~~ deer gun season - only the landowner or their written designee can night shoot on the property listed on their exemption, and he or she is required to provide some type of advanced notification to the local game warden. The advanced notification can be by text message, voice mail message, email, or through an electronic notification system. Family members (parents, children, grandchildren, sons-in-laws and daughters-in-laws) can assist an exemption holder. At least one person in the group must have a copy of the exemption while night shooting.

(7) Night vision equipment, including image-enhancement technology and thermal imaging technology will be allowed, as will infra-red or what are commonly called 'night scopes'. The use of a hand-held or other powerful light (firearms mounted) shall be allowed and for the purposes of night shooting feral swine, vehicle headlights and

vehicle mounted headlights will be allowed. Motor-driven land conveyances to pursue or follow feral swine will be allowed.

(8) There are no firearm restrictions for night shooting feral swine.

(9) Persons controlling only feral swine shall be exempt from possessing the hunting license and Fishing and Hunting Legacy permit.

SUBCHAPTER 41. THREE-DAY SPECIAL USE PERMITS

800:25-41-1. Purpose

The Director of the Oklahoma Department of Wildlife Conservation will determine acceptability of applications and may issue three-day special use permits subject to the following rules pursuant to 29 O.S., Section 4-113.2.

800:25-41-2. Procedures and guidelines

(a) The area where the hunting or fishing will occur during the three-day period shall be restricted to the property, land or area indicated on the permit application.

(b) No more than two permits may be issued per calendar year for a designated property, land, area, landowner, nonprofit or charitable organization.

(c) Permits shall only be issued for hunting and fishing activities during designated seasons as specified in rules promulgated by the Department of Wildlife Conservation, and all statewide bag limits, size restrictions and other limitations shall apply, including check-in requirements.

(d) Permits are not valid for hunting elk, antelope, or bear.

(e) Participants are required to have appropriate federal permits and stamps for hunting migratory birds.

(f) Event organizers cannot charge a fee for participation or otherwise profit from the event.

(g) Law enforcement personnel shall have the authority to enter the property, land or area at any time during the three-day period.

800:25-41-3. Application and fees

(a) The fee for a Three-Day Special Use Permit shall be:

(1) \$300 for 1- 9 participants.

(2) \$500 for ten to twenty participants.

(b) Applications for permits must be submitted to the Department by the landowner no later than thirty (30) days prior to the requested three-day event on forms prescribed by the Department.

(1) Permits will be issued for a period of three consecutive days, for the specific dates requested by the applicant.

(2) Permit applications must include a legal description of the property where the event will occur. Property must be a minimum of 200 contiguous acres.

(3) The Customer ID or other required identifying information of the landowner and all of the participants must be submitted to the Department prior to the event.

- (4) If the event is for veterans, all participants must submit a DD-214, Certification of Release, Discharge from Active Duty Certification under Honorable Conditions documentation, or an affidavit of veteran status.
- (5) All non-profit and charitable organizations must submit documentation of Internal Revenue Service tax exempt status for verification, and their participants must relate to and be of the type to help fulfill the stated mission and purpose of the organization.
- (6) If individual participants are deemed ineligible, the permit may still be approved but limited to eligible individuals.

[OAR Docket #20-485; filed 6-29-20]

**TITLE 800. DEPARTMENT OF WILDLIFE
CONSERVATION
CHAPTER 30. DEPARTMENT OF
WILDLIFE LANDS MANAGEMENT**

[OAR Docket #20-486]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. Use of Department Management Lands
800:30-1-4. Camping [AMENDED]
800:30-1-5. Vehicles [AMENDED]
800:30-1-8. Language, disorderly assemblage, noise or other disruptive acts [AMENDED]
800:30-1-20. Restricted public use areas [AMENDED]

AUTHORITY:

Title 29 O.S., Section 3-103, 5-401; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

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

November 7, 2019

COMMENT PERIOD:

December 2, 2019 - January 3, 2020

PUBLIC HEARING:

- Date: January 2, 2020
Time: 7:00 p.m.
Oklahoma City - OK Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK
Date: January 2, 2020
Time: 7:00 p.m.
Broken Bow Public Library, 404 N. Broadway, Broken Bow, OK

ADOPTION:

February 11, 2020

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

February 14, 2020

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 25, 2020.

FINAL ADOPTION:

June 25, 2020

EFFECTIVE:

September 11, 2020

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

- Subchapter 1. Use of Department Managed Lands
800:30-1-4. Camping [AMENDED]
800:30-1-20. Restricted public use areas [AMENDED]

Gubernatorial approval:

July 23, 2019

Register publication:

37 Ok Reg 42

Docket number:

19-736

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

These rule changes will allow hunter and fisherman camping in designated areas on Drummond Flats and Sans Bois Wildlife Management Areas (WMA's); remove the motor displacement restriction for Three Rivers and Honobia Creek WMA's; delete reference to low point beer restriction; define safety zones and restrictions; close Sans Bois WMA to all non-hunting activity from Oct 1-Jan 31 and during spring turkey season. Due to public comments, change requiring name and hunting license or Department issued customer identification number to just require Department issued customer identification number on any equipment (such as tree stands, ground blinds, trail cameras, etc.) while being used on a WMA.

CONTACT PERSON:

Bill Dinkines, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd, Oklahoma City, OK 73105. Phone: 405/521-2739 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

**SUBCHAPTER 1. USE OF DEPARTMENT
MANAGED LANDS**

800:30-1-4. Camping

- (a) Camping is limited to a maximum of 14 days, except at areas open only to hunter camping for special season(s). Camping on these areas is limited to 2 days longer than the period which the camper (hunter) is authorized to hunt.
- (b) Quiet shall be maintained in all camping areas between the hours of 11:00 p.m. and 7:00 a.m. Excessive noise during such times which unreasonably disturbs persons is prohibited.
- (c) All dogs or other pets must be kept on a leash or otherwise confined while in a camping area.
- (d) No overnight camping is permitted at the following areas unless otherwise authorized by the Department:

- (1) Altus-Lugert WMA.
- (2) Arcadia Conservation Education Area - Any authorized camping must have education or conservation purpose.
- (3) Broken Bow WMA.
- (4) Canton WMA (waterfowl refuge portion).
- (5) Cherokee (GMA portion).
- (6) Dewey County WMA.
- ~~(7) Drummond Flats WMA.~~
- (8) Eufaula WMA
- ~~(9)~~ Fort Gibson WMA.
- ~~(10)~~ Gist WMA.
- ~~(11)~~ Grady County WMA
- ~~(12)~~ Grassy Slough WMA.
- ~~(13)~~ Hackberry Flat (waterfowl refuge portion).
- ~~(14)~~ Hugo WMA (waterfowl refuge portion).
- ~~(15)~~ Major County Lands.
- ~~(16)~~ McClellan-Kerr WMA (includes waterfowl refuge portion).

Permanent Final Adoptions

- (~~47~~16) McCurtain County Wilderness.
- (~~48~~17) Okmulgee WMA (GMA portion).
- (~~49~~18) Osage WMA (Western Wall Unit).
- (~~20~~19) Ozark Plateau WMA.
- (~~21~~20) Red Slough WMA.
- (~~22~~21) Sparrow Hawk WMA.
- (~~23~~22) Tenkiller WMA.
- (~~24~~23) Thomas A. Bamberger Sr WMA
- (~~25~~24) Van Osdol WMA.
- (~~26~~25) Washita County WMA.
- (~~27~~26) Whitegrass Flats WMA.
- (~~28~~27) Wister WMA (waterfowl refuge portion).
- (e) Hunter and fishermen camping is permitted only in designated camping areas at:
 - (1) Arbuckle Springs WMA
 - (2) Atoka WMA (includes PHA portion).
 - (3) Beaver River WMA including McFarland Unit.
 - (4) Candy Creek WMA
 - (5) Canton WMA (except waterfowl refuge portion).
 - (6) Cherokee WMA (PHA portion).
 - (7) Chickasaw NRA (Arbuckle).
 - (8) Cimarron Bluff WMA.
 - (9) Cimarron Hills WMA
 - (10) Cooper WMA.
 - (11) Copan WMA.
 - (12) Cross Timbers WMA
 - (13) Drummond Flats WMA
 - (~~14~~14) Ellis County WMA.
 - (~~15~~15) Fobb Bottom WMA.
 - (~~16~~16) Fort Cobb WMA.
 - (~~17~~17) Fort Supply WMA.
 - (~~18~~18) Hackberry Flat WMA (except waterfowl refuge portion).
 - (~~19~~19) Heyburn WMA .
 - (~~20~~20) Hickory Creek WMA.
 - (~~21~~21) Hugo WMA (except waterfowl refuge portion).
 - (~~22~~22) Hulah WMA.
 - (~~23~~23) James Collins WMA.
 - (~~24~~24) Kaw WMA.
 - (~~25~~25) Lexington WMA.
 - (~~26~~26) Mountain Park WMA.
 - (~~27~~27) Okmulgee WMA (PHA portion, i.e., the area north and east of the Deep Fork River).
 - (~~28~~28) Oologah WMA
 - (~~29~~29) Optima WMA.
 - (~~30~~30) Osage WMA (Rock Creek Unit).
 - (~~31~~31) Pushmataha WMA.
 - (~~32~~32) Sandy Sanders WMA.
 - (33) Sans Bois WMA
 - (~~34~~34) Stringtown WMA
 - (~~35~~35) Schultz WMA.
 - (~~36~~36) Skiatook WMA.
 - (~~37~~37) Texoma-Washita Arm WMA.
 - (~~38~~38) Tishomingo WMU.
 - (~~39~~39) Waurika WMA.
 - (~~40~~40) Yourman WMA.
- (f) Hunter camping is permitted only in designated camping areas and only during specified hunting seasons at:
 - (1) Cookson Hills WMA, only during open hunting seasons on the area.
 - (2) Ouachita WMA (Homer L. Johnston portion), only during deer and turkey seasons.
 - (3) John Dahl WMA, only during hunting seasons.
 - (4) Packsaddle WMA, only during open hunting seasons.
 - (5) Robbers Cave WMA, only during open deer and turkey seasons.
 - (6) Spavinaw Hills WMA, only during open hunting seasons on the area.
 - (g) Hunter and fishermen camping is permitted only within 50 yards of roads designated as open for public use at:
 - (1) Deep Fork WMA.
 - (2) Gary Sherrer WMA, only during open hunting seasons on the area.
 - (3) Keystone WMA.
 - (4) Love Valley WMA.
 - (5) Pine Creek WMA.
 - (6) Wister WMA, (except waterfowl refuge portion).
 - (h) Camping is permitted in accordance with U.S. Forest Service regulations at:
 - (1) Ouachita WMA - Le Flore Unit (Ouachita National Forest), except Homer L. Johnston Unit.
 - (2) Ouachita WMA - McCurtain Unit (Ouachita National Forest).
 - (3) Black Kettle WMA (Cibola National Forest) - Black Kettle National Grasslands.
 - (4) Rita Blanca WMA (Cibola National Forest) - Rita Blanca National Grasslands.
 - (i) Camping is permitted in designated camping areas only at McGee Creek WMA.

800:30-1-5. Vehicles

- (a) Except as otherwise provided, all motorized vehicles are required to stay on roads designated as open for public or hunter use. There are no exceptions for motorcycles, four-wheel drive vehicles, snowmobiles or all terrain vehicles. Travel on roads which are gated and locked or designated as closed is prohibited, unless otherwise specified in annual regulations for nonambulatory persons holding valid permits.
- (b) Only those vehicles registered as legal to operate on Oklahoma public roadways may be used or parked on lands owned or managed by the Oklahoma Department of Wildlife Conservation, except on specified areas designated for off-road use; unless otherwise provided for nonambulatory persons holding valid permits. All vehicles used by nonambulatory permittees must conspicuously display a sticker designating the vehicle is being used by a nonambulatory permittee and motor vehicle permittees must conspicuously display a sticker designating the vehicle is being used by a motor vehicle hunt permittee.
- (c) Maximum speed limit shall be 25 mph unless otherwise posted.
- (d) Off-highway vehicle (OHV) use on the Ouachita WMA shall be the same as U.S. Forest Service rules and regulations for the Ouachita National Forest.

(e) Off-highway vehicle (OHV) use on the Black Kettle and Rita Blanca WMAs shall be the same as U.S. Forest Service rules and regulations for the Cibola National Forest.

(f) It shall be unlawful to operate an all-terrain vehicle (ATV) or off-road vehicle (ORV) on the Three Rivers WMA and Honobia Creek WMA except under the following restrictions:

- (1) During any open deer season.
- (2) Any deer hunter licensed in Oklahoma, unless otherwise exempt.
- (3) Any hunter while operating an ATV/ORV shall comply with daylight fluorescent orange head and chest covering as required for hunting deer gun seasons. If a crash helmet is worn, only the fluorescent orange chest covering is required.
- (4) ATV/ORV use is restricted to WMA roads that are delineated on the current Three Rivers WMA map and Honobia Creek WMA map unless otherwise closed.
- ~~(5) Only unaltered standard manufactured ATV/ORV's with a 700 cc motor displacement or less are allowed.~~
- (6) ATV/ORV use shall be restricted to a maximum speed of 25 mph.
- (7) Operator and/or passenger under the age of 18 shall wear a crash helmet of a type which complies with standards established by C.F.R., Section 571.218.
- (8) No operator of an ATV/ORV shall carry a passenger unless that ATV/ORV has been specifically designed by the manufacturer to carry passengers in addition to the operator.
- (9) Leaving any ATV/ORV, treestand, or game camera unattended on the Three Rivers and Honobia Creek WMA's without the owner's name and address affixed thereto in a conspicuous manner is prohibited.
- (10) Use of ATV/ORV off of delineated roads for retrieval of lawfully taken deer shall be permissible only with the following restrictions:
 - (A) ATV/ORV's not travel more than $\frac{1}{2}$ mile from the nearest road.
 - (B) ATV/ORV's shall not cross rivers and streams unless on a road with constructed stream crossing structures.
 - (C) ATV/ORV's used for deer retrieval shall not be used in areas otherwise closed to the use of motor vehicles (walk-in only hunting areas, etc.)

(g) It is unlawful for any person to hunt, chase, capture, shoot, attempt to shoot, wound or kill any wildlife from a motor driven vehicle on any Department managed areas, except as provided for persons holding a nonambulatory motor vehicle hunting permit.

(h) It is unlawful for any person to transport a loaded firearm on any Department managed area. No crossbow may be transported in a motor vehicle unless uncocked or disassembled. No bow that is at full or partial draw may be transported in a motorized vehicle. In addition, no person may take, catch, capture, kill or pursue wildlife or otherwise attempt to use for any purpose a vehicle mounted spotlight or other powerful light at night for any purpose on Department managed lands, except as otherwise provided for hunting of furbearers and

predators, taking of frogs, or for navigational purposes while in a water conveyance.

(i) Grassy Slough WMA, Hackberry Flat WMA, Mountain Park WDU, Red Slough WMA, Tishomingo WMU, Walker Creek WDU, Washita Arm WDU, Waurika WDU and Whitegrass Flats WMA are closed to all air driven water craft.

(j) It shall be unlawful for any person to use, transport, park, or unload any personal watercraft within the land and/or water boundaries of the Fort Gibson Wildlife Management Area.

(k) Air drive water craft use on the Tishomingo National Wildlife Refuge shall be the same as U.S. Fish and Wildlife Service rules and regulations.

800:30-1-8. Language, disorderly assemblage, noise or other disruptive acts

(a) No person shall use threatening, abusive or indecent language, participate in a disorderly assemblage, nor publicly appear nude or intoxicated on any lands owned or managed by the Oklahoma Department of Wildlife Conservation.

(b) No person shall possess, consume or use any intoxicating beverage or ~~low point~~ beer, as defined in Title 37, except in camping and parking areas, not including shooting range parking areas, on any lands or waterways subject to the control of the Oklahoma Department of Wildlife Conservation except U.S. Forest Service regulations shall apply to the Black Kettle, Ouachita, Rita Blanca and Tiak Wildlife Management Areas.

(c) Any act or conduct by any person which interferes with, impedes or disrupts the use of Department managed lands or impairs the safety of another person is prohibited. Individuals who are boisterous, rowdy, disorderly or otherwise disturb the peace on Department managed lands or waters may be requested to leave.

(d) The operation or use of any audio or other noise producing device including, but not limited to radios, televisions, or musical instruments and motorized equipment, including vessels or vehicles, in such a manner as to reasonably annoy or endanger persons at any time or exceed state or local laws governing noise levels from motorized equipment is prohibited.

(e) No person shall possess, consume, use or manufacture any controlled or dangerous substance, as defined in Title 63, on any land or waterways subject to the control of the Oklahoma Department of Wildlife Conservation.

(f) No person shall use or possess any explosive devices, including fireworks or firecrackers on Department managed lands.

800:30-1-20. Restricted public use areas

(a) The following Wildlife Management Areas are closed to all non-hunting activities except hunter camping (areas where camping is allowed) during the period October 1 - February 15: Beaver River, Beaver River - McFarland Unit, Canton, and Okmulgee. The following Wildlife Management Areas are closed to all non-hunting activities except for hunter and/or angler camping (areas where camping is allowed) and fishing during the period of October 1 - February 15: Arbuckle Springs, Ellis County (Lake Vincent), Fort Supply, Lexington (Lake Dahlgren), and Sandy Sanders.

Permanent Final Adoptions

(b) The following Wildlife Management Areas are closed to all non-hunting activities except hunter camping (on areas where camping is allowed) during the period October 1 - January 31 and spring turkey season: Atoka, Cherokee, Cookson, Cross Timbers, James Collins, McGee Creek, Osage, Pushmataha, Sans Bois and Spavinaw.

(c) Lake Dahlgren shall be closed to all other activities during Lexington Wildlife Management Area designated controlled hunt dates.

(d) The following Conservation Education Areas are closed to all non-hunting and non-fishing activities during the period of October 1 - January 15 unless authorized by ODWC; camping and fires of any kind are not permitted unless authorized by ODWC: Arcadia Conservation Education Area.

(e) The following Wildlife Management Areas are closed to the possession of a dog(s) from 1 hour before official sunrise to 1 hour after official sunset during the deer firearms, primitive, and youth seasons, except under the provision of the Americans with Disabilities Act: Honobia Creek WMA, Pine Creek WMA, and Three Rivers WMA.

(f) Areas identified as safety zones will have restricted access and use as designated by the signs posted.

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 25, 2020

FINAL ADOPTION:

June 25, 2020

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September 11, 2020

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed revisions provide a definition for "Electronic equivalent" to reflect the addition of electronic filing methods under the implementation of the Commission's Electronic Database Interchange System; a streamlined process for filing agency public information requests with either the Clerk of the Commission or the General Counsel; and the correction of two statutory citations, one to reflect a statutory change and one to correct an errant comma.

CONTACT PERSON:

Lauren Hammonds Johnson, Commission General Counsel, 405-522-3222, LaurenH.Johnson@wcc.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

800:30-1-22. Hunting equipment on Wildlife Management Areas

It shall be unlawful to place any equipment, including but not limited to treestands, ground blinds, or game cameras on Department managed lands, without permanently affixing the owner's Department issued customer identification number to the equipment in a conspicuous manner. All equipment not properly identified will become the property of the Oklahoma Department of Wildlife Conservation and be disposed of in the best practical manner.

[OAR Docket #20-486; filed 6-29-20]

TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION CHAPTER 1. GENERAL INFORMATION

[OAR Docket #20-524]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

810:1-1-2 [AMENDED]

810:1-1-6 [AMENDED]

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SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 3, 2020

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810:1-1-2. Definitions

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

"**Administrative Law Judge**" means an Administrative Law Judge of the Commission to whom the Commission has delegated by order or otherwise, the authority to conduct a hearing.

"**Affidavit of Exempt Status**" means an affidavit authorized by 85A O.S., § 36 which any individual or business entity that is not required to secure compensation pursuant to the AWCA may execute and file with the Oklahoma Workers' Compensation Commission.

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

"**Claimant**" means a person who claims benefits for an alleged work injury, occupational disease or illness, or death, pursuant to the provisions of the AWCA.

"**Claim administrator**" means the trading partner sending electronic transactions to the Commission, which can be an insurer filing directly with the Commission on its own behalf, or a servicing company/third party administrator filing on behalf of the insurer.

"**Claim Information**" means data submitted via First Report of Injury (FROI) or Subsequent Report of Injury (SROI).

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

"**Electronic Data Interchange**" means the transmission of claim information through electronic means, in a format established by the Commission.

"**Electronic equivalent**" means a Commission-approved means of filing an electronic form through the Commission's

case system. In all cases where a party is required to mail a Commission form to the opposing party, a copy may be sent by electronic mail when an electronic mail address is known. In all cases where a paper form is required to be filed to effect a certain purpose, an electronic equivalent, if available, may also be filed to effect that purpose.

"EDI" means electronic data interchange.

"Executive Director" means the Executive Director of the Commission.

"FROI" means first report of injury.

"Insurer" means the entity responsible for making electronic filings as prescribed by law and these rules. This term includes self-insurers.

"Mandatory EDI implementation date" means September 1, 2018.

"Self-insurer" means any duly qualified individual employer or group self-insurance association authorized by the Commission to self-fund its workers' compensation obligations.

"SROI" means subsequent report of injury.

"Trading Partner" means an entity that has registered with the Commission to exchange data through Electronic Data Interchange.

"Workers' Compensation Commission fee schedule" means a state mandated schedule of maximum allowable reimbursement levels for health care providers, including hospitals, ambulatory surgical centers, and inpatient rehabilitation facilities, rendering reasonable and necessary health care services and supplies to an injured employee for a compensable injury pursuant to the Oklahoma workers' compensation laws.

"Written" means that which is expressed in writing, and includes electronic records.

810:1-1-6. Requests for agency public information

(a) Public access to Commission records is subject to the Oklahoma Open Records Act, 51 O.S. § 24A.1, et seq. and 85A O.S. § 120. Any person making a request for a Commission record shall comply with the following:

(1) The request must be in writing and directed to the Clerk of the Commission when the request is to access information on workers' compensation claims, and to the General Counsel for all other requests to the Commission's Insurance Division Director when the request is for workers' compensation insurance related information maintained by the Commission, or to the Executive Director for all other requests.

(2) Requests to access information on workers' compensation claims are subject to the written request and search fee requirements of 85A O.S. § 120, unless an exemption outlined in the law applies. The Commission may request information of a requester sufficient to determine whether or not an exemption pertains.

(A) To access information on workers' compensation claims, the request must be made in writing, on a form prescribed by the Commission. The request form requires identification of the person requesting the information and the person for whom a search is

being made. The request form must contain an affidavit signed by the requester under penalty of perjury stating that the information sought is not requested for a purpose in violation of state or federal law. Those making a request shall pay the Commission One Dollar (\$1.00) per search request, not to exceed One Dollar (\$1.00) per claims record of a particular worker, plus applicable copy charges set forth in 85A O.S. § 119(A), any applicable fees according to the Oklahoma Open Records Act, 51 O.S. § 24A.5(3), and certification fees if any.

(B) Electronic searches of workers' compensation claims data using public terminals at the Commission's offices may be made. The search function permits searches using the name of a claimant or the Commission file number. Certain information related to the search criteria will be displayed on the terminal. Access to additional information on claims pertaining to the search results is subject to the written request and search fee requirements described in this Paragraph.

(3) Requests not subject to Paragraph (2) of this Subsection, should describe the record(s) requested, indicate the name of the party making the request, and have the party's mailing address and telephone number. The requesting party shall pay for copies and research of such records in accordance with 85A O.S. § 119(A) and the Oklahoma Open Records Act, 51 O.S. § 24A.5(3)(4), and, if applicable, for certification of the record according to a fee established by the Commission if any.

(4) Copy charges may be waived at the Commission's discretion for copies requested by the media or by a public officer or public employee in the performance of his or her duties on behalf of a governmental entity.

(b) This Section does not apply to records specifically required by state or federal law, or by state or federal administrative rule, or by order of a court of competent jurisdiction, to be kept confidential, including, but not limited to, financial data obtained by or submitted to the Commission for the purpose of obtaining a license or permit and records subject to proprietary agreements, confidentiality orders and sealed exhibits.

[OAR Docket #20-524; filed 7-6-20]

TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION CHAPTER 10. PRACTICE AND PROCEDURE

[OAR Docket #20-525]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

810:10-1-3 [AMENDED]

810:10-1-9 [AMENDED]

Subchapter 5. Hearings Conducted by Administrative Law Judges and Commissioners

Permanent Final Adoptions

Part 1. Commencement of Claims

810:10-5-2 [AMENDED]

810:10-5-3 [AMENDED]

810:10-5-7 [AMENDED]

Part 3. Subsequent Pleadings

810:10-5-15 [AMENDED]

810:10-5-16 [AMENDED]

810:10-5-17 [AMENDED]

810:10-5-18 [AMENDED]

Part 5. Prehearing Proceedings

810:10-5-30 [AMENDED]

Part 7. Initial and Subsequent Proceedings

810:10-5-49 [AMENDED]

Part 9. Post Order Relief

810:10-5-66 [AMENDED]

Part 15. Settlements

810:10-5-95 [AMENDED]

Part 17. Fees

810:10-5-105 [AMENDED]

AUTHORITY:

Workers' Compensation Commission; 85A O.S. §§ 19, 22, 101, 120

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rules: add a definition for "Electronic equivalent" to the Definitions section; add references regarding the ability to file certain forms through an electronic equivalent; remove the requirement to file in quadruplicate; correct language to reflect the current process for assigning a file number to claims for discrimination or retaliation, and provide that attorneys may provide an email address to receive electronic docket notices and orders, which reflect the addition of electronic filing methods under the mandatory implementation of the Commission's Electronic Database Interchange System.

The proposed revisions also reflect changes made by HB 2367 to: 85A O.S. § 7 which provide that the Commission retains exclusive jurisdiction to hear and decide claims related to employer discrimination or retaliation stemming from injuries occurring on or between February 1, 2014 and May 27, 2019; and also to 85A O.S. § 118, regarding the payment of the filing fee for Joint Petitions or medical fee disputes by the employer.

Other proposed revisions correct language regarding a Commission Vice Chair, and changes it to "an available Commissioner," since there is no designated Vice Chair at the Commission; update language regarding the retention and disposition of exhibits, since they are part of the record, and judges do not maintain a separate list; and provide procedure for when a party fails to appear at oral argument without leave of the Commission.

Other non-substantive revisions to correct formatting and grammar errors are included.

CONTACT PERSON:

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405-522-3222, LaurenH.Johnson@wcc.ok.gov.

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

FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 1. GENERAL PROVISIONS

810:10-1-3. Definitions

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

"Acceptable Electronic Signature Technology" means technology that is capable of creating a signature that is unique to the person using it, is capable of verification, is under the sole control of the person using it, and is linked to the data in such a manner that if the data is changed, the electronic signature is invalidated.

"Administrative Law Judge" means an Administrative Law Judge of the Commission to whom the Commission has delegated by order or otherwise, the authority to conduct a hearing.

"Attorney" means an attorney licensed to practice law in Oklahoma and a member in good standing of the Oklahoma Bar Association, or an out-of-state attorney.

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

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

"Certified workplace medical plan" means an organization that is certified by the Oklahoma State Department of Health to provide management of quality treatment to injured employees for injuries and diseases compensable pursuant to the workers' compensation laws of the State of Oklahoma.

"Claim administrator" means the trading partner sending electronic transactions to the Commission, which can be an insurer filing directly with the Commission on its own behalf, or a servicing company/third party administrator filing on behalf of the insurer.

"Claim for compensation" means a Commission prescribed form filed by or on behalf of an injured worker or the worker's dependents to initiate a claim for benefits pursuant to the AWCA for an alleged work injury, occupational disease or illness, or death.

"Claim Information" means data submitted via First Report of Injury (FROI) or Subsequent Report of Injury (SROI).

"Claimant" means a person who claims benefits for an alleged work injury, occupational disease or illness, or death, pursuant to the provisions of the AWCA.

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

"Commission Chair" means the Chair of the Oklahoma Workers' Compensation Commission.

"Continuance" means postponing a hearing from the time or date set, and rescheduling it on a later time or date.

"Controverted claim" means there has been a contested hearing before the Commission over whether there has been a compensable injury or whether the employee is entitled to temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, or death compensation.

"Discovery" means the process by which a party may, before the hearing, obtain evidence relating to the disputed issue or issues from the other parties and witnesses.

"Document" means any written matter filed in a cause, including any attached appendices.

"Electronic Data Interchange" means the transmission of claim information through electronic means, in a format established by the Commission.

"Electronic equivalent" means a Commission-approved means of filing an electronic form through the Commission's case system. In all cases where a party is required to mail a Commission form to the opposing party, a copy may be sent by electronic mail when an electronic mail address is known. In all cases where a paper form is required to be filed to effect a certain purpose, an electronic equivalent, if available, may also be filed to effect that purpose.

"EDI" means electronic data interchange.

"Electronic Signature" means an electronic symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Executive Director" means the Executive Director of the Commission.

"FROI" means first report of injury.

"Good cause" means, in the context of a request for continuance or failure of a party to comply with the Rules of this Chapter, circumstances beyond the party's control or that the party could not reasonably foresee. In the context of a claim, defense, or order, it means a reasonable legal basis.

"Insurance carrier" means any stock company, mutual company, or reciprocal or interinsurance exchange authorized to write or carry on the business of workers' compensation insurance in this state, and includes an individual own risk employer or group self-insurance association duly authorized by the Commission to self fund its workers' compensation obligations.

"Insurer" means the entity responsible for making electronic filings as prescribed by law and these rules. This term includes self-insurers.

"Joint Petition Settlement" means a settlement between the employer/insurance carrier and the employee, of all or some issues and matters in a claim for compensation.

"Legal holiday" means only those days declared legal holidays pursuant to 25 O.S. § 82.1 or by proclamation of the Governor of Oklahoma.

"Mandatory EDI implementation date" means September 1, 2018, unless a subsequent date is adopted by the Commission.

"Mediation" means the process of resolving disputes with the assistance of a mediator, outside of a formal administrative hearing.

"Out-of-state attorney" means a person who is not admitted to practice law in the State of Oklahoma, but who is admitted in another state or territory of the United States, the District of Columbia, or a foreign country.

"Pro se" means without an attorney.

"Proceeding" means any action, case, hearing, or other matter pending before the Commission.

"Representative" means a person designated in writing by an injured employee, person claiming a death benefit, employer, insurance carrier or health or rehabilitation provider, to assist or represent them before the Commission in a matter arising under the AWCA.

"Sanction" means a penalty or other punitive action or remedy imposed by the Commission on an insurance carrier, representative, employee, employer, or health care provider for an act or omission in violation of the AWCA or a rule, judgment, order, or decision of the Commission.

"Self-insurer" means any duly qualified individual employer or group self-insurance association authorized by the Commission to self fund its workers' compensation obligations.

"SROI" means subsequent report of injury.

"Subpoena" means a Commission issued writ commanding a person to attend as a witness to testify or to produce documents, including books, papers and tangible things, at a deposition or at a hearing.

"Trading Partner" means an entity that has registered with the Commission to exchange data through Electronic Data Interchange.

"Workers' compensation fee schedule" means a state mandated schedule of maximum allowable reimbursement levels for health care providers, including hospitals, ambulatory surgical centers, and inpatient rehabilitation facilities, rendering reasonable and necessary health care services and supplies to an injured employee for a compensable injury pursuant to the Oklahoma workers' compensation laws.

"Written" means that which is expressed in writing, and includes electronic records.

810:10-1-9. Who may appear before Commission

(a) Attorneys licensed to practice law in Oklahoma and members in good standing of the Oklahoma Bar Association may appear on behalf of parties to litigation before the Commission and in Joint Petition Settlement proceedings before the Commission. Legal interns licensed by the Oklahoma Supreme Court may appear on behalf of a party only on matters properly within the scope of their license. Out-of-state attorneys who have complied with the requirements of Chapter 1, Appendix 1, Article II, Section 5 of Title 5 of the Oklahoma Statutes⁴ may appear on behalf of a party with leave of the Commission. The attorney shall file an entry of appearance with the Commission as provided in 810:10-1-10. Attorneys appearing before the Commission may provide a valid email address for the purposes of docket notice and electronic delivery of Commission Orders.

(b) Persons other than licensed attorneys, including adjusters, may file standard, administrative

reporting forms such as the FROI per 810:10-1-4(a) and notice of compliance with payment and reporting obligations related to Multiple Injury Trust Fund assessments (85A O.S. § 31) and Self-insurance Guaranty Fund assessments (85A O.S. § 98), which are required by law and/or Commission rules, are not considered legal pleadings, and the submission of which in no way is intended as an act of legal representation. Persons other than licensed attorneys may not assume an advocate's role or introduce evidence or examine witnesses in proceedings before the Commission or an Administrative Law Judge.

(c) An individual may appear pro se or by an attorney. A corporation, limited liability company, insurance carrier, individual own risk employer, and group self-insurance association, may appear only by its attorney.

SUBCHAPTER 5. HEARINGS CONDUCTED BY ADMINISTRATIVE LAW JUDGES AND COMMISSIONERS

PART 1. COMMENCEMENT OF CLAIMS

810:10-5-2. Claim for compensation

(a) A claim for compensation for benefits for an injury, including a cumulative trauma injury and death, or occupational disease or illness, occurring on or after February 1, 2014, shall be commenced by filing, ~~in quadruplicate~~, an executed notice form with the Commission that includes the employer's Federal Employer Identification Number and the worker's full name and date of birth, and the last five digits of the worker's Social Security number. The following forms, or electronic equivalents, shall be used, as appropriate:

- (1) CC-Form-3 claim for compensation for benefits for a single event or cumulative trauma injury;
- (2) CC-Form-3A claim for compensation for death benefits; and
- (3) CC-Form-3B claim for compensation for occupational disease or illness benefits.

(b) A proceeding under 810:15-15-3 to address payment of disputed fees for health services (e.g. physician fees, hospital costs, etc.), vocational rehabilitation or medical case management, shall be commenced by filing an MFDR Form 19 or electronic equivalent. A CC-Form-9 or electronic equivalent shall be filed to request a hearing on an MFDR Form 19 dispute.

(c) Within ten (10) days of the filing of a claim for compensation (i.e. CC-Form-3, CC-Form-3A or CC-Form-3B), the Commission shall mail or send electronically a copy of the claim form bearing the assigned file number to the service agent designated by the self-insured employer, group self-insurance association, or insurance carrier—, or as otherwise directed in that Section.

810:10-5-3. Claim against the Multiple Injury Trust Fund

(a) A claim against the State Treasurer as custodian of the Multiple Injury Trust Fund shall be commenced by filing an executed CC-Form-3F or electronic equivalent. The CC-Form-3F shall list each of the claimant's prior adjudicated claims, the date of each injury, the file number and the percentage of permanent partial disability awarded for each injury. If the claimant claims a pre-existing obvious and apparent disability, the disability shall be fully described on the CC-Form-3F, but no percentage of impairment need be included. A CC-Form-9 or electronic equivalent shall be filed to request a hearing. Upon filing the CC-Form-9, the claimant or the claimant's attorney, if any, shall mail a copy thereof to the Multiple Injury Trust Fund.

(b) The CC-Form-3F filed with the Commission shall be served on the State Treasurer and the Multiple Injury Trust Fund and shall have a certificate of service setting forth the manner of such service as required by 810:10-1-7.

(c) A notation on the CC-Form-3 or CC-Form-3B that the claimant is a previously impaired person shall not be deemed to commence a claim against the Multiple Injury Trust Fund. The CC-Form-3F must be filed in the claim in which benefits are sought and shall use that same Commission file number.

(d) All requests by the Multiple Injury Trust Fund for the appointment of an independent medical examiner shall be governed by 85A O.S. § 112 and 810:10-5-45.

810:10-5-7. Claim for discrimination or retaliation

(a) A claim for discrimination or retaliation as prescribed by 85A O.S. § 7, which stems from an injury that occurred on and between February 1, 2014 and May 27, 2019, shall be commenced by filing an executed Commission prescribed CC-Form-3C Claim for Discrimination or Retaliation, or electronic equivalent, with the Commission. ~~The CC Form 3C shall be filed in the underlying workers' compensation claim filed pursuant to the Workers' Compensation Act and shall use that same Commission file number.~~

(b) The CC-Form-3C filed with the Commission shall be served on the employer and shall have a certificate of service setting forth the manner of such service as required by 810:10-1-7. The employer may respond to the CC-Form-3C by timely filing an executed Commission prescribed CC-Form-10C Employer's Response to Claim for Workers' Compensation Discrimination or Retaliation, or electronic equivalent, pursuant to 810:10-5-15.

(c) A CC-Form-9 must be filed to request a hearing. Upon filing the CC-Form-9, the claimant or the claimant's attorney, if any, shall mail a copy thereof to the respondent.

PART 3. SUBSEQUENT PLEADINGS

810:10-5-15. Response to initial pleading; notice of contested issues

(a) An employer or its insurance carrier may respond to any issue related to a claim and liability therefor, including a claim for compensation, a claim for discrimination or retaliation, a

claim for payment of health care or rehabilitation expenses, or a claim against the Multiple Injury Trust Fund for combined disabilities, by timely filing a CC-Form-10 Answer and Notice of Contested Issues, CC-Form-10C, or an MFDR Form 10M, or electronic equivalents pursuant to 810:10-5-16 or 810:15-15-3, as appropriate.

(b) A general denial or failure to timely file a CC-Form-10, CC-Form-10C, or MFDR Form 10M or electronic equivalents shall be taken as admitting all allegations in the claim form except jurisdictional issues; and

- (1) the extent, if any, of the claimant's disability, for a CC-Form-3 or CC-Form-3B claim; or
- (2) the amount due, if any, for a death claim.

(c) Unless excused by the Commission for good cause shown, denials and affirmative defenses shall be asserted on the CC-Form-10, CC-Form-10C, or MFDR Form 10M, or electronic equivalents or shall be waived. No reply to the CC-Form-10, CC-Form-10C, or MFDR Form 10M is required.

810:10-5-16. Request for administrative hearing and pretrial stipulations

(a) Any party may request an administrative hearing before the Commission on any issue by filing a CC-Form-9 Request for Hearing or electronic equivalent. As provided in 85A O.S. § 71(B)(2), the request for hearing shall clearly set forth the specific issues of fact or law in controversy and the contentions of the party applying for the hearing.

(b) When a CC-Form-9 or electronic equivalent is filed on the issues of permanent partial disability or permanent total disability, the claimant shall deliver a medical report to the opposing party. The name of the physician and the date of the report shall be noted on the CC-Form-9. No CC-Form-9 may be filed less than ten (10) days from the date the claimant has filed a claim for compensation as provided in 810:10-5-2 or 810:10-5-3.

(c) Objections to termination of temporary compensation made pursuant to 85A O.S. § 45(A)(2), and requests for temporary compensation or medical treatment, shall be set by the Commission on the assigned Administrative Law Judge's prehearing conference docket for expedited hearing, prior to being docketed for an administrative hearing, unless otherwise directed by the assigned judge. At the time of the prehearing conference, all parties, to the best of their ability, shall advise the Commission and all parties of the number of witnesses expected to be called at the administrative hearing.

(d) The procedure to request an administrative hearing for the termination of temporary compensation is governed by 810:10-1-6.

(e) In all cases, the employer or insurance carrier shall file a CC-Form-10 Answer and Notice of Contested Issues, CC-Form-10C, or MFDR Form 10M or electronic equivalents no later than thirty (30) days after the filing of the CC-Form-9. The CC-Form-10, CC-Form-10C, or MFDR Form 10M may be amended at any time, not later than twenty (20) days before the date of the administrative hearing.

(f) The CC-Form-9, CC-Form-10, CC-Form-10C, and MFDR Form 10M, shall list the names of all witnesses, including any expert witnesses, which the party intends to call

at the time of the administrative hearing. Absent waiver by the opposing party, failure without good cause to comply with this Subsection may, in the discretion of the hearing officer or the Commission, result in a witness not listed being prohibited from testifying, or in the exclusion of the evidence if submitted at the administrative hearing.

(g) Except as otherwise provided in Subsection (h) of this Section, no later than twenty (20) days before the date of the administrative hearing, all parties shall exchange all documentary evidence, exhibits and a complete list of witnesses with all opposing parties.

(h) As provided in 85A O.S. § 72(C), any party proposing to introduce a medical report or testimony of a physician at the hearing on a controverted claim, shall furnish a copy of the written report of the physician's findings and opinions to the opposing party and to the Commission no later than seven (7) days before the date of the hearing. If no written report is available to a party, that party shall notify the opposing party and the Commission in writing of the name and address of the physician proposed to be used as a witness and the substance of the physician's testimony no later than seven (7) days before the date of the administrative hearing. Cross-examination of the physician is governed by 85A O.S. § 72(C)(2)(b).

(i) The time periods specified in Subsections (g) and (h) of this Section may be waived by agreement of the parties.

(j) Absent waiver by the opposing party, failure without good cause to comply with Subsections (g) or (h) of this Section, may, in the discretion of the hearing officer or the Commission, result in exclusion of the evidence if submitted at the administrative hearing.

810:10-5-17. Joinder and consolidation of proceedings

(a) Joinder.

(1) A claimant who desires to add additional employers and/or insurance carriers, shall promptly amend the claim for compensation (CC-Form-3, CC-Form-3A, or CC-Form-3B or electronic equivalents) and mail a copy of the amended claim form to all parties, including the additional employers and/or insurance carriers named. Mailing shall constitute service upon the additional parties.

(2) An employer or insurance carrier that desires to add additional employers and/or insurance carriers shall file a CC-Form-13 Request for Prehearing Conference on the issue, or electronic equivalent, and mail a copy of the CC-Form-13 to all parties, including the additional employers and insurance carriers named. The Commission shall notify all parties of the date of the prehearing conference. At the prehearing conference, the Commission shall hear argument, and based upon its discretion, enter its order granting or denying the request.

(3) The additional employers and insurance carriers shall comply with 810:10-5-15.

(4) The Commission, in its discretion, may impose an appropriate sanction prescribed in 85A O.S. § 83(B) against a party or the party's attorney who, without good cause shown, frivolously joins another party.

(b) Consolidation of proceedings.

- (1) **Consolidation to afford the parties a joint hearing stage.** Consolidation of multiple cases involving the same claimant may be made for hearing purposes only at the discretion of the Administrative Law Judge assigned to the lowest case number, upon request of either party. Cases consolidated for purposes of hearing only shall maintain individual case numbers and shall remain subject to separate filing fees prescribed in 85A O.S. § 118 and costs.
- (2) **Consolidation of cases involving the same claim.** Cases involving the same claim shall be consolidated to the lowest case number.
- (3) **Prehearing conference on consolidation request.** All motions and requests to consolidate shall be set for prehearing conference before the entry of a Commission order sustaining or overruling the motion for case consolidation.

810:10-5-18. Continuances

- (a) A request for a continuance will not be granted as a matter of course. Any motion for a continuance may be granted only by the assigned Administrative Law Judge for good cause shown. All motions for continuance shall be signed by the party on whose behalf the motion is made.
- (b) No continuance of an appeal scheduled for review by the Commission en banc is permitted before the date of an oral argument authorized as provided in 810:10-5-66 without approval of the Commission Chair, or in the absence of the Commission Chair, ~~an available Commissioner~~ ~~the Commission Vice Chair~~. Continuances requested on the date of the oral argument will be granted only upon a majority vote of the Commission en banc.
- (c) Continuances in appeals to the Commission en banc are governed by 810:10-5-66.

PART 5. PREHEARING PROCEEDINGS

810:10-5-30. Prehearing conference

- (a) Any party shall have the right to request a prehearing conference before the Commission on any issue by filing a CC-Form-13 Request for Prehearing Conference or electronic equivalent. The requesting party must certify on the request that the parties have conferred or attempted to confer in good faith, but have reached an impasse and are unable to resolve the issue.
- (b) Except as otherwise provided in 810:10-3-5, the purpose of the prehearing conference is to permit an informal hearing between the parties and the Administrative Law Judge in an effort to resolve the case or issues in the case before an administrative hearing, and to discuss the facts, identify the legal issues, present discovery requests, make all appropriate stipulations, and discuss such other matters as may facilitate consideration of the case.
- (c) The Administrative Law Judge shall set the matter for prehearing conference on the Administrative Law Judge's docket or a Benefit Review Officer's docket, as appropriate, at the earliest available time after the filing of the CC-Form-13. Notice of the date, time and place of the prehearing conference

shall be provided by the Commission to all parties or their attorneys of record.

- (d) Nothing in this Section shall limit a party's right to request a conference with the assigned Administrative Law Judge at the time of the administrative hearing.

- (e) The Commission, in its discretion, may order the appearance of any party or attorney at any prehearing conference or conference requested with the Administrative Law Judge at the time of the administrative hearing. Nothing in this Section shall limit the authority of an Administrative Law Judge to order a prehearing conference or conference at the time of the administrative hearing.

- (f) The Commission may, in its discretion, impose an appropriate sanction prescribed in 85A O.S. § 83(B) against an offending party for failure to appear at a conference, appearance at a conference substantially unprepared, failure to participate in the conference in good faith, or for seeking the conference in an effort to delay, harass or increase costs.

PART 7. INITIAL AND SUBSEQUENT PROCEEDINGS

810:10-5-49. Rules of evidence

- (a) **Generally.** The Commission and Administrative Law Judges and are not bound by technical or statutory rules of evidence or procedure, 85A O.S. § 72(A).
- (b) **Presentation of evidence.** At the hearing, an opportunity shall be afforded all parties to present evidence and argument with respect to matters and issues involved, although the argument may be restricted to a presentation in written form, to cross-examine witnesses who testify, and to submit rebuttal evidence. During a hearing, irrelevant, immaterial, or unduly repetitious evidence shall be excluded.
- (c) **Taking official notice.** The Administrative Law Judge may take official notice of the law of Oklahoma and other jurisdictions, facts that are judicially cognizable, and generally recognized facts within the Commission's specialized knowledge; provided all parties shall be notified either before or during the hearing of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.
- (d) **Documents.**

- (1) A photographic copy of a document which is on file as part of the official records of the Commission will be received without further authentication.

- (2) A photographic copy of a public record certified by the official custodian thereof will be received without further authentication. A written statement by such custodian of records that no record or entry of described character is found in his records shall be received as proof of absence of such record.

- (3) A photographic copy of a document may be substituted for the original at the time the original is offered in evidence.

- (4) A document may not be incorporated in the record by reference except by permission of the Commission or Administrative Law Judge. Any document so received must be precisely identified.

- (5) The Commission or Administrative Law Judge may require that additional copies of exhibits be furnished for use by other parties of record.
 - (6) When evidence is offered which is contained in a book or document containing material not offered, the person offering the same shall extract or clearly identify the portion offered.
 - (7) The Commission or Administrative Law Judge may permit a party of record to offer a document as part of the record within a designated time after conclusion of the hearing.
- (e) **Witnesses.** All witnesses who appear to testify during a hearing shall first be subject to oath or affirmation and any testimony submitted by deposition shall show on the face thereof that the witness was so qualified.
- (f) **Prepared testimony.** Except as otherwise provided in Subsection (g) and (h) of this Section, written testimony of a witness in the form of a notarized affidavit may be received in lieu of direct examination.
- (g) **Expert medical testimony.**
- (1) Expert medical testimony may be offered by:
 - (A) a written medical report of the physician;
 - (B) deposition; or
 - (C) oral examination before the Commission or Administrative Law Judge.
 - (2) Medical opinions addressing compensability and permanent disability must be stated within a reasonable degree of medical certainty. Medical opinions concerning the existence or extent of permanent disability must be supported by competent medical testimony of a physician described in 85A O.S. § 45(C)(1) and shall be supported by objective findings as described in 85A O.S. § 2(31). The medical testimony must include the employee's percentage of permanent partial disability and whether or not the disability is job-related and caused by the accidental injury or occupational disease or illness.
 - (3) The fact that the medical report constitutes hearsay shall not be grounds for its exclusion.
 - (4) Objection to and request for cross-examination of a Commission appointed independent medical examiner is governed by 85A O.S. § 112(J). The claimant is responsible for scheduling the deposition regardless of which party asserted the objection. The respondent shall choose the court reporter.
 - (5) Objection to and request for cross-examination of a physician, other than a Commission appointed independent medical examiner, must be made in writing to all parties within ten (10) days after receipt of the physician's report. The party requesting the deposition testimony is responsible for the physician's reasonable charges for such testimony, preparation time and deposition expenses. Arrangements for the deposition shall be made by the offering party.
- (h) **Vocational rehabilitation and case management evidence.**
- (1) Testimony of a vocational rehabilitation expert or medical case manager may be offered by:
 - (A) a written report of the vocational rehabilitation expert or medical case manager, as appropriate;
 - (B) deposition; or
 - (C) oral examination before the Commission or Administrative Law Judge.
 - (2) The fact that the report constitutes hearsay shall not be grounds for its exclusion.
 - (3) Objection to and request for cross-examination of a Commission appointed vocational rehabilitation evaluator or Commission appointed medical case manager shall be made in writing to the Commission and all parties within ten (10) days after receipt of the evaluator's or manager's report. The claimant is responsible for scheduling the deposition regardless of which party asserted the objection. The respondent shall choose the court reporter. All costs associated with the deposition shall be borne by the respondent regardless of which party asserted the objection.
 - (i) **Exhibits.** All exhibits shall be identified by the case style and Commission assigned file number before being submitted.
 - (j) **Retention and retrieval of exhibits.** For purposes of this part, an exhibit is a document or other evidence that is introduced at a hearing and is marked, offered, and accepted into the record by a judge as an exhibit. ~~Exhibits do not become a permanent part of the Commission file; however, the judge's lists of exhibits must be retained in the Commission file.~~ Exhibits must be retained by the Commission or the office for 60 days after a final decision is served and filed in the case. During this 60-day period, exhibits may be retrieved by the submitting party upon request to the Commission. If no party has retrieved the exhibits after 60 days, the exhibits will be destroyed consistent with the records disposition schedule.

PART 9. POST ORDER RELIEF

810:10-5-66. Appeal of Commission Administrative Law Judge order

- (a) **Request for Review.** Any party aggrieved by a judgment or award of an Administrative Law Judge, which party for purposes of this Section shall be known as the "appellant", may appeal the order to the Commission en banc by filing an original and three (3) copies of a Request for Review with the Commission within ten (10) days of when the order was issued as reflected by the file-stamped date on the order. The Request for Review shall:
- (1) be in writing;
 - (2) include a copy of the order being appealed;
 - (3) clearly and concisely rebut each issue in the Administrative Law Judge's order that the appellant wants reviewed, and state the relief sought. General allegations of error do not suffice. Allegations of error concerning matters not included in a timely filed Request for Review shall be deemed waived;
 - (4) be served on all other parties of record, which for purposes of this Section shall be known as the "respondents";

- (5) have a certificate of service setting forth the manner of such service as required by 810:10-1-7;
 - (6) be accompanied by a designation of record filed by the appealing party and a copy submitted to the Commission reporter and all parties in the case concurrently with or before filing a Request for Review in all actions which are appealed to the Commission en banc. The cost of preparing the transcript shall be advanced immediately by the designating party. The transcript shall be prepared and sent to all parties to the appeal within thirty (30) days from the date the designation of record is filed; and
 - (7) be accompanied by a non-refundable filing fee in the sum of One Hundred Seventy-five Dollars (\$175.00) pursuant to 85A O.S. § 78(B).
- (b) **Timeliness of filings.** The timeliness of the filing of a Request for Review is governed by 810:10-1-13. Untimely Requests for Review do not invoke the jurisdiction of the Commission en banc and will not be reviewed by the Commission en banc.
- (c) **Oral argument.** Oral argument before the Commission en banc shall be limited to ten (10) minutes per side, unless the time is enlarged by leave of the Commission en banc. Any party failing to appear when the appeal is called for oral argument shall be deemed to have waived the right to argue the case, and the Commission en banc may hear argument on behalf of the present party and decide the appeal on the briefs and argument heard. A party who fails to appear for oral argument without seeking leave of the Commission may be found to be in contempt of the Commission and may be subject to a fine pursuant to 85A O.S. § 73. If no party appears, the appeal shall be considered as submitted on the record.
- (d) **Written argument.** In any case pending on a Request for Review, the parties of record shall submit written arguments, including a statement of facts and legal authority for their respective positions, as an aid to the Commission en banc. The written argument shall not exceed five (5) pages in length, and shall be double spaced and prepared in at least ten point font size on 8 1/2" x 11" paper with one inch margins. No appendix or other documents shall be attached to the written argument. Appellants and cross-appellants have forty-five (45) days after the filing of the designation of record within which to file an original and three (3) copies of the written argument with the Commission, with a copy served on all opposing parties. The opposing parties shall have ten (10) days within which to submit a response. When submitted, the original and three (3) copies of the response shall be filed with the Commission and a copy served on the appellant or cross-appellant.
- (1) Extensions of time for the filing of written arguments shall be granted only for cause.
 - (2) The failure of any party to timely file a written argument under this section may result in the striking of that party's brief from consideration, or if the untimely brief is that of an appellant or cross-appellant, in the dismissal of the appellant's or cross-appellant's appeal.
- (e) **Motions.** For the purposes of this Section, "motion" means a formal request or application by a party for specific action by the Chair or Commission en banc, which is made

orally, in the presence of all other parties, or in writing, served on all other parties.

- (1) Prior to filing any motion, the movant shall personally confer with the opposing party or parties or, if represented, their attorneys of record to attempt to amicably resolve the subject matter of the motion. All motions shall include a statement that the movant has personally conferred or has used good-faith efforts to confer with all other parties and, if known, shall state whether any party has an objection to the motion. Any document referenced in the motion shall be attached to the motion.
 - (2) Written motions shall have a title describing the relief requested and be served on all other parties, or if represented, the attorneys of record. Any party may respond to a motion within ten (10) days, unless otherwise specified by the Chair or the Commission en banc. Hearings on motions will not be set unless a hearing is specifically requested and good cause is shown in the motion or response.
 - (3) No continuance of an appeal scheduled for review by the Commission en banc is permitted before the date of an oral argument without approval of the Commission Chair. Continuances requested on the date of the oral argument will be granted only upon a majority vote of the Commission en banc.
 - (4) Except for the time periods in subsection (a), the Chair or Commission en banc may order time periods or procedures that differ from those specified in this Section. The Chair may rule on procedural motions and shall issue written notice of any change ordered under this subsection to the parties to any appeal affected by the change.
- (f) **Voluntary dismissals.** A request for review by the Commission en banc may be dismissed upon the agreement of all parties to the review. If a settlement is reached, the appellant shall promptly notify the Commission en banc.
- (g) **Description of appeal proceeding.**
- (1) In appeals pursuant to this Section, the Commission en banc may:
 - (A) modify the decision of the Administrative Law Judge;
 - (B) reverse the decision of the Administrative Law Judge and render a new decision;
 - (C) reverse the decision of the Administrative Law Judge and remand the matter to the Administrative Law Judge with instructions or for a new administrative hearing; or
 - (D) affirm the decision of the Administrative Law Judge; or
 - (E) remand for further proceedings and appropriate action with or without relinquishing the Commission's jurisdiction of the appeal.
 - (2) The Commission en banc may reverse or modify the decision of an Administrative Law Judge only if it determines that the decision was against the clear weight of the evidence or was contrary to law. Any judgment of the Commission en banc which reverses a decision of the Administrative Law Judge shall contain specific findings relating to the reversal. In any case in which it appears that

a prior controlling appellate decision is dispositive of the appeal, the Commission may summarily affirm or reverse, citing in its order this Section and the controlling decision.

(3) All proceedings of the Commission en banc shall be recorded by a court reporter, if requested by a party. Any party requesting a transcript of the proceedings shall bear the costs associated with its preparation. During the pendency of an appeal to the Commission en banc, the Administrative Law Judge shall retain jurisdiction over any issue not affected by the eventual ruling of the appellate body.

(h) **Appeal to Supreme Court.** An order of the Commission en banc may be appealed to the Oklahoma Supreme Court, as provided in 85A O.S. § 78, within twenty (20) days of being sent to the parties as reflected by the file-stamped date on the order.

PART 15. SETTLEMENTS

810:10-5-95. Joint petition settlements

(a) Under 85A O.S. § 87 and 85A O.S. § 115, upon and after the filing of a claim for compensation, or, in the absence of a claim for compensation, the filing of the applicable Employer's First Notice of Injury or FROI per 810:10-1-4(a) in a claim involving a pro se employee, the parties may engage in a compromise and release of any and all liability which is claimed to exist under the AWCA on account of the injury or occupational disease or illness, subject to approval by the Commission, an Administrative Law Judge, or a Benefit Review Officer.

(b) The parties in interest to a claim for compensation may settle upon and determine any and all issues and matters by agreement, subject to the terms and conditions of this Section.

(c) Any agreement submitted to the Commission, Administrative Law Judge or Benefit Review Officer of the Commission's Counselor Division, for approval shall be set forth in a Commission prescribed CC-Joint Petition Settlement, or electronic equivalent. Nothing in this rule shall preclude the Multiple Injury Trust Fund from compromising a claim as authorized by 85A O.S. § 32(F).

(d) No CC-Joint Petition Settlement agreement shall be binding on the parties in interest unless it is approved by the Commission pursuant to 85A O.S. § 22, Administrative Law Judge of the Commission pursuant to 85A O.S. § 115, or a Commission Benefit Review Officer pursuant to 85A O.S. § 70. The CC-Joint Petition Settlement, including any attached appendix as provided in 85A O.S. § 115(B), identifying the outstanding issues that are subject to the Commission's continuing jurisdiction and possible reopen, shall be approved unless it is determined that:

- (1) The agreement is unfair, unconscionable, or improper as a matter of law; or
- (2) The agreement is the result of an intentional misrepresentation of a material fact; or
- (3) The agreement, if for permanent disability, is not supported by competent medical evidence as required by 85A O.S. § 2(33).

(e) As used in this Section, "parties in interest" means the respondent (employer and the employer's insurance carrier if insured), and an employee. An employee who is not represented by legal counsel may effect a CC-Joint Petition Settlement upon the employer's filing of the applicable Employer's First Notice of Injury or FROI as provided in 810:10-1-4(a), or the employee's filing of a claim for compensation (CC-Form-3 or CC-Form-3B), regarding the injury or occupational disease or illness which is the subject of the CC-Joint Petition Settlement.

(f) In no instance shall the total attorney's fee amount provided for in a CC-Joint Petition Settlement exceed the maximum attorney fee allowed by law.

(g) No CC-Joint Petition Settlement shall be made upon written interrogatory or deposition except in cases where the claimant is currently engaged in the military service of the United States, is outside of the state, is a nonresident of Oklahoma, or in cases of extreme circumstances.

(h) A stenographic record of the terms and conditions of an approved joint petition settlement and the understanding of the claimant concerning the effect of the settlement must be made by a Commission court reporter and transcribed at the expense of the employer or insurance carrier. The transcript shall be prepared and provided to the parties within ninety (90) days. Medical reports and other exhibits submitted in support of a CC-Joint Petition Settlement shall not be transcribed. The original exhibits or duplicate copies thereof shall be affixed to the original transcript and placed in the Commission file.

(i) A file-stamped copy of an approved CC-Joint Petition Settlement shall be mailed by the Commission to all unrepresented parties and attorneys of record.

(j) A CC-Joint Petition Settlement that fully and finally resolves all issues in a claim for compensation between the employee and the employer, shall not be deemed an adjudication of the rights between the medical or rehabilitation provider and the employer for reasonable and necessary medical and rehabilitation expenses incurred by the employee due to the injury before the file-stamped date of the approved CC-Joint Petition Settlement.

(k) Within seven (7) days of the date a medical provider provides initial treatment for a work-related accident, the medical provider shall provide notice in writing to the Commission, if and only if, a CC-Form-3 or CC-Form-3B has been filed with the Commission, and in all cases shall provide notice in writing to the patient's employer, and if known, the employer's insurance carrier. If the medical provider fails to provide the required notification, the medical provider forfeits any rights to future notification, including those circumstances where a case is fully and finally settled by a CC-Joint Petition Settlement, unless the medical provider is actually known to the employer or insurance carrier or is listed by the employee.

(l) If the issue of medical treatment is fully and finally settled by a CC-Joint Petition Settlement, the employee shall provide to the employer or insurance carrier a list of all medical providers known to the employee. The Commission prescribed Form CC-Joint Petition Settlement, or electronic equivalent, shall be used for that purpose. Within ten (10) days from the file-stamped date of the CC-Joint Petition Settlement, the employer or insurance carrier shall send notice

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of the CC-Joint Petition Settlement to all medical providers listed by the employee and to all medical providers known to the employer or insurance carrier. The employee is liable for payment of any medical services rendered after the CC-Joint Petition Settlement is filed. The employee also is responsible for informing any future medical providers that the case or issue of medical treatment was fully and finally disposed of by a CC-Joint Petition Settlement and that the employee, rather than the employer or insurance carrier, is the party financially responsible for such services.

PART 17. FEES

810:10-5-105. Fees

Fees payable to the Commission include:

- (1) A fee of One Thousand Dollars (\$1,000.00), payable by each carrier writing worker's compensation insurance in this state, upon securing a license to transact business in this state [85A O.S. § 29(A)];
- (2) A fee of One Thousand Dollars (\$1,000.00), payable by each self-insurer at the time it is approved to self-insure its obligations under the AWCA [85A O.S. § 29(B)];
- (3) An annual fee of One Thousand Dollars (\$1,000.00), payable by third-party administrators [85A O.S. § 29(C)];
- (4) A fee of One Hundred Seventy-five Dollars (\$175.00), payable by a party appealing an order or award of an Administrative Law Judge to the Commission en banc [85A O.S. § 78(B)];
- (5) A fee of One Hundred Dollars (\$100.00), for compiling and transmitting a record for appeal of a Commission order to the Oklahoma Supreme Court, payable by the appealing party [85A O.S. § 78(D)];
- (6) A fee of One Hundred Forty Dollars (\$140.00), payable by the employer in the event any award becomes final against the employer. ~~the party against whom an award becomes final (i.e. the employer or insurance carrier if there is an award of compensation, or the worker if there is a denial or dismissal of a claim for compensation)~~ [85A O.S. § 118(A)]. Ten Dollars (\$10.00) of the fee is payable by the Commission to the credit of the Attorney General's Workers' Compensation Fraud Unit Revolving Fund;
- (7) A fee of One Hundred Thirty Dollars (\$130.00), payable by the worker if the reopen request is to reopen on a change of condition for the worse, or payable by the employer or insurance carrier if the reopen request is to reopen on a change of condition for the better [85A O.S. § 118(B)];
- (8) A fee of One Dollar (\$1.00) per page, payable as a copy charge [85A O.S. § 119(A)];
- (9) A fee of One Dollar (\$1.00) per search request for prior claims records, not to exceed One Dollar (\$1.00) per claims record of a particular worker [85A O.S. § 120(B)];
- (10) A fee of Forty-five Dollars (\$45.00), plus postage, if any, for a Commission handbook [85A O.S. § 20(B)]; and

- (11) A fee of Fifty Dollars (\$50.00), payable by any individual or business entity filing an Affidavit of Exempt Status or a renewal thereof [85A O.S., § 36(D)]; and
- (12) Such other fees as may be allowed by law or this Title.

[OAR Docket #20-525; filed 7-6-20]

TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION CHAPTER 15. MEDICAL SERVICES

[OAR Docket #20-526]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. Independent Medical Examiners

810:15-9-1 [AMENDED]

810:15-9-5 [AMENDED]

AUTHORITY:

Workers' Compensation Commission; 85A O.S. §§ 19, 22, 101, 120.

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n/a

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n/a

GIST/ANALYSIS:

The proposed revisions: remove the requirement that qualified independent medical examiners ("IMEs") hold an Oklahoma Bureau of Narcotics and Dangerous Drugs Control registration and a federal Drug Enforcement Agency registration; provide an exception to the set reimbursement rate for IME medical testimony when good cause is shown; and delete an errant comma in a statutory citation.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 11, 2020:**

SUBCHAPTER 9. INDEPENDENT MEDICAL EXAMINERS

810:15-9-1. Qualifications

(a) The Commission shall maintain a list of private physicians to serve as independent medical examiners. The list shall be placed on the Commission's website at <http://www.wcc.ok.gov>.

(b) To be eligible for appointment by the Commission to the list of qualified independent medical examiners, and for retention on the list, the physician must:

- (1) have a valid, unrestricted professional license as a physician which is not probationary;
- (2) have at least three (3) years' experience and competency in the physician's specific field of expertise and in the treatment of work-related injuries;
- (3) be knowledgeable of workers' compensation principles and the workers' compensation system in Oklahoma, as demonstrated by prior experience and attend Commission approved educational programming at least once every two (2) years, including programming in the Official Disability Guidelines if a treating physician and/or in the American Medical Association's "Guides to the Evaluation of Permanent Impairment" if a rating physician;
- (4) have in force and effect health care provider professional liability insurance from a domestic, foreign or alien insurer authorized to transact insurance in Oklahoma. The per claim and aggregate limits of the insurance must be at least One Million Dollars (\$1,000,000.00);
- (5) have no felony conviction under federal or state law within seven (7) years before the date of the physician's application to serve as a qualified independent medical examiner; and
- ~~(6) have a valid Oklahoma State Bureau of Narcotics and Dangerous Drugs Control (BNDD) registration and federal Drug Enforcement Agency (DEA) registration, as authorized by law for the physician's professional license.~~

(c) Physicians who are serving unexpired terms as qualified independent medical examiners for the Oklahoma Workers' Compensation Court on February 1, 2014 shall serve as qualified independent medical examiners for the Commission until their respective terms expire, unless voluntarily terminated by the physician or revoked by the Commission, and may reapply for successive qualification periods. The two year period in which to meet the educational requirement in 810:15-9-1(b)(3) commences with the independent medical examiner's first appointment or renewal after February 1, 2014.

810:15-9-5. Fees and costs

(a) Fees for services performed by a Commission appointed independent medical examiner shall be paid according to the following schedule:

- (1) Diagnostic tests relevant to the questions or issues in dispute shall be paid by the employer or insurance carrier in accordance with the Oklahoma workers' compensation fee schedule; provided, diagnostic tests repeated sooner than six (6) months from the date of the test are not authorized for payment unless agreed to by the parties or ordered by the Commission for good cause shown.
- (2) The review of records and information, including any treating physician evaluation and/or medical reports

submitted by the parties, the performance of any necessary examinations, and the preparation of a written report as prescribed by Commission rules, shall be billed at the physician's usual and customary rate, not to exceed Three Hundred Dollars (\$300.00) per hour or any portion thereof, not to exceed a maximum reimbursement of One Thousand Six Hundred Dollars (\$1,600.00) per case. The Commission may permit exception to this provision, for good cause shown. Subject to reimbursement if appropriate, these costs shall be billed to, and initially paid by, the respondent.

(3) Reimbursement for medical testimony given in person or by deposition shall be paid by the employer or insurance carrier in accordance with the independent medical examiner's usual and customary charges, not to exceed Four Hundred Dollars (\$400.00) per hour or any portion thereof, plus an allowance of One Hundred Dollars (\$100.00) for 15 minute increments thereafter. Preparation time shall be reimbursed at the examiner's usual and customary charge, not to exceed Four Hundred Dollars (\$400.00). A Four Hundred Dollar (\$400.00) charge is allowable whenever a deposition or scheduled testimony is canceled by any party within three working days before the scheduled start of the deposition or scheduled testimony. The party canceling the deposition or scheduled testimony is responsible for the incurred cost. No physician may receive more than Four Hundred Dollars (\$400.00) in advance in order to schedule a deposition. The advance payment shall be applied against amounts owed for testimony fees. The Commission may permit exception to these provisions, for good cause shown.

(4) Amounts owed to the independent medical examiner for services are payable upon submission of the examiner's written report.

(5) The independent medical examiner may charge and receive up to Two Hundred Dollars (\$200.00), to be paid initially by the employer or insurance carrier in the event the employee fails to appear for any scheduled examination, or if the examination is canceled by the employee or the respondent within forty-eight (48) hours of the scheduled time. The employer or insurance carrier shall be reimbursed by the employee if the failure to appear or the cancellation by the employee was without good cause. The independent medical examiner may not assess a cancellation charge for appointments canceled by the examiner.

(b) Failure to timely pay a Commission appointed independent medical examiner for services rendered pursuant to Commission order may result in the imposition of assessments or sanctions at the discretion of the administrative law judge or Commission, including a fine for contempt as provided in 85A O.S., § 73(B). Disputes regarding payment for services rendered by a Commission appointed independent medical examiner that cannot be resolved by the examiner and the parties themselves, may be addressed by filing a request for

hearing before an administrative law judge of the Commission as provided in 810:10-5-16, or by mediation, as appropriate.

[OAR Docket #20-526; filed 7-6-20]

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

[OAR Docket #20-527]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 7. Enforcement of Workers' Compensation Insurance Requirements

810:25-7-1 [AMENDED]

810:25-7-2 [AMENDED]

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SUPERSEDED EMERGENCY ACTIONS:

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The two proposed rule amendments reflect changes to 85A O.S. § 40 made by HB 2367 (2019). The first proposed amended rule addresses the enforcement of workers' compensation insurance coverage, specifically related to the cap on penalties for failing to maintain coverage and the Commission's ability to institute certain collection or garnishment proceedings. This rule change also deletes an errant comma in a statutory citation. The second proposed amended rule removes restrictions on what the Commission must consider to reduce a penalty, reflects the statutory change in Section 40 that the Commission may intercept an income tax refund, and deletes errant commas in statutory citations, and corrects a grammatical error.

CONTACT PERSON:

Lauren Hammonds Johnson, Commission General Counsel, 405-522-3222, LaurenH.Johnson@wcc.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2020:

SUBCHAPTER 7. ENFORCEMENT OF WORKERS' COMPENSATION INSURANCE REQUIREMENTS

810:25-7-1. Proof of insurance

(a) Whenever the Commission has reason to believe that an employer is required to secure the payment of compensation under the AWCA and has failed to do so, the Commission may make reasonable inquiry of the employer, issue subpoenas and demand proof of current workers' compensation insurance coverage compliant with 85A O.S. § 38 or documentation substantiating the employer's exemption from coverage requirements. Subpoenas issued under this Section shall be governed by 810:10-5-31.

(b) As authorized in 85A O.S. § 40, if no proof of insurance or exemption is provided; or the documentation offered does not substantiate a claimed exemption or is not current, valid proof of insurance in accordance with 85A O.S. § 38; or the employer fails to respond in a timely manner, the Commission shall serve on the employer a proposed judgment declaring the employer to be in violation of the workers' compensation insurance coverage requirements mandated by law and may assess a monetary fine against the employer, if any, in an amount not to exceed One Thousand Dollars (\$1,000.00) per day of violation, and not to exceed a total of Fifty Thousand Dollars (\$50,000.00) for the first violation.

810:25-7-2. Hearing process and consent agreements

(a) A proposed judgment issued under 810:25-7-1 may be contested by the employer as provided in 85A O.S. § 40, and is subject to a hearing process conducted pursuant to 85A O.S. § 70 through 78.

(b) An employer served with a proposed judgment, may waive its right to a contested hearing and execute a consent agreement with the Commission for a reduced penalty. The employer shall secure the payment of compensation within the meaning of 85A O.S. § 38 as a condition to executing a consent agreement. ~~In determining the rate of reduction in penalty, consideration shall be given to the appropriateness of the penalty in light of the business of the employer charged, the gravity of the violation and the extent to which the employer charged has complied with the provisions of 85A O.S. § 38 or has otherwise attempted to remedy the consequences of the violation. The penalty amount shall never be reduced to less than the amount in premiums saved by the employer's non-compliance, unless an employer can show that such a penalty would cause an undue financial hardship that would have a significant impact on employer's business or livelihood.~~

(c) The consent agreement may become void if the employer defaults on payment under the agreement or if the agreement was obtained by fraud or misrepresentation of a material fact.

(d) The Commission may institute collection proceedings independently or in District Court, including, but not limited to, an asset hearing, garnishment of income and wages, judgment lien against personal and/or business properties, or an intercept of an income tax refund consistent with Section 205.2 of Title

68 of the Oklahoma Statutes upon any penalties becoming final under the provisions of 85A O.S. § 40.

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